



# Turkey ❖

– Ibrahim Aydemir<sup>†</sup>

Turkey, established by a unique War of Independence after World War I, is situated at a very strategic point between Europe and Asia. Thanks to this natural endowment, Turkey has always been a connecting point between the East and the West. Thus, the country enjoys a special position geographically and geopolitically. Turkey is a Muslim country and at the same time is secular. She is both European and Asian; both Mediterranean and Middle Eastern; both Caucasian and Balkan.

Since 1950, Turkish political parties have increased in number, but democracy has been fractured by periods of instability and intermittent military coups (1960, 1971, 1980), which in each case eventually resulted in a return of political power to civilians.

Turkey joined the UN in 1945 and in 1952 it became a member of NATO. In 1964, Turkey became an associate member of the European Community. Over the past decade, it has undertaken many reforms to strengthen its democracy and economy, enabling it to begin accession talks with the EU.

## Economic Scenario

Turkey's dynamic economy is a complex mix of modern industry and commerce, along with a traditional agriculture sector that still accounts for 30 percent of employment. It has a strong and rapidly growing private sector, yet the State still plays a major role in basic industries such as banking and transportation.

The largest industrial sector is textiles and clothing, which accounts for one-third of industrial employment though it faces stiff competition in international markets with the end of the global quota system. However, other sectors, notably the automotive and electronics industries are rising in importance within Turkey's exports.

PROFILE	
Population:	74 million*
GDP (Current US\$):	735.2 billion*
Per Capita Income: (Current US\$)	5,349 (Atlas method)* 15,321 (at PPP)*
Surface Area:	774.8 thousand sq. km
Life Expectancy:	72.5 years*
Literacy (%):	95.7* (of ages 15 and above)
HDI Rank:	95*
<i>Sources:</i> - Turkish Statistical Institute (TurkStat) - Human Development Report Statistics, UNDP, 2011 (* For the year 2011)	

In recent years, the economic situation has been marked by erratic economic growth and serious imbalances. However, effective macroeconomic and structural policies helped the Turkish economy rebound vigorously following the global crisis: growth averaged close to 9 percent in 2010-11, accompanied by strong job creation. In the process, however, the current account deficit widened to around 10 percent of the GDP and consumer price inflation rose to over 10 percent.

The main challenge of Turkey's monetary policy today is to tame inflationary pressures without generating a destabilising surge in short-term capital inflows. These inflows may fuel domestic credit growth, thereby counteracting the intended monetary tightening. At the same time, they push up the exchange rate, undermining competitiveness. This gives rise to the so-called policy trilemma. Capital flows have been highly volatile, partly reflecting changes in the monetary policy stance abroad, especially since the eruption of the global crisis.

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– Views expressed by the Author in this document are by no means binding upon the Competition Authority of Turkey.

To address this policy trilemma, the authorities embarked on an innovative monetary policy regime in November 2010 that puts more weight on exchange rate developments, credit growth and rebalancing of demand, in tune with some new international approaches.<sup>1</sup>

### **Evolution of Economic Policy<sup>2</sup>**

Turkey has re-established itself after the Independence War of 1919-1922. The State pursued state-planned development until the end of 1970s. A series of economic crises in the 1970s exposed the deficiencies of the existing system and led to reforms that opened Turkey's borders to international trade and liberalised domestic market operations. Rapid liberalisation began in the early 1980s, and is still prevailing. In 2005, the Turkish government accomplished a great success in privatisation, to mention some, Turkish Telecom, Telsim<sup>3</sup>, Erdemir<sup>4</sup> and Tüpraş<sup>5</sup>.

A major political and economic issue over the next decade is whether or not Turkey will become a member of the EU. In December 2004, the European Council concluded that the EU will continue to monitor closely the progress of the political reforms on the basis of an Accession Partnership setting out priorities for the reform-process. In October 2005, Turkey started negotiations with the EU on its accession to the same. Accession of the Greek Administration of Southern Cyprus to the EU before reaching a final solution to the problem of division in the Island has been an impediment before accession negotiations.

Turkey has made an important change in January 2005 by launching "Yeni Türk Lirası", New Turkish Lira or YTL, by dropping six zeros from old currency. This was both a strong step and a major outcome of successful struggle with inflation.

Turkey's economy grew an average of 6.0 percent per year from 2002 through 2007 - one of the highest sustained rates of growth in the world. During this period, inflation and interest rates fell significantly, the currency stabilised, and government debt declined to more supportable levels (39.5 percent of GDP in 2008). However, booming economic growth contributed to a growing current account deficit (5.6 percent of GDP or US\$41.6bn 2008). Growth fell to 1.1 percent in 2008, and the economy contracted by 4.7 percent in 2009 due to the global economic slowdown and reduced exports. Growth picked up to 9 percent in 2010 and an estimated 7.5 percent in 2011. Continued implementation of reforms, including tight fiscal policy, and securing independent Central Bank monetary policies is essential to sustain growth and stability.

After years of low levels of foreign direct investment (FDI), Turkey succeeded in attracting US\$18.3bn in net FDI in 2008. Global market conditions reduced foreign capital inflows in 2009. Turkey attracted US\$7.7 bn in net FDI in

2009. Inward FDI increased in 2010 to US\$9bn. A series of large privatisations, the stability fostered by the start of Turkey's EU accession negotiations, strong and stable growth, and structural changes in the banking, retail, and telecommunications sectors contributed to the 2008 rise in foreign investment. Turkey has taken steps to improve its investment climate through administrative streamlining, an end to foreign investment screening, and strengthened intellectual property legislation. Turkey has a number of bilateral investment and tax treaties, including with the United States, which guarantee free repatriation of capital in convertible currencies and eliminate double taxation.

While Turkey's long-term economic prospects are bright, the government is working to limit growth of its current account deficit, which grew to 10 percent of GDP in 2011; and rein in inflation of nearly 10 percent.

### **Competition Evolution and Environment**

Market regulatory laws and competition policy (accompanied by a competition law in 1994) were introduced in the last 20 years. The Constitution provides an explicit foundation for competition policy by requiring that the State take measures for ensuring and developing sound and orderly functioning of the money, capital, credit, goods and services markets and to prevent monopolisation and cartelisation in markets.

Accordingly, the Law on the Protection of Competition No 4054 was enacted by the Turkish Parliament and became effective on December 13, 1994. Final impetus for the legislation was Turkey's negotiation of a customs union agreement with the EU, which obliged Turkey to enact the EU's standard competition provisions as its own law and to establish an agency to enforce them. Turkish competition law was prepared in accordance with the EU Law. It is one of the most important components of the process of harmonisation of the Turkish legislation with the EU.

The Law is designed to check:

- agreements, decisions and practices which prevent, restrict or distort competition
- the abuse of dominant position by dominant undertakings.
- mergers & acquisitions.

Pursuant to Article 20 of the Law, the Turkish competition authority was created in 1997 as an autonomous antitrust enforcement agency, with a Competition Board as the decision-making body to supervise the implementation of the Law and carry out duties assigned by the Law.

Initially, competition policy was the responsibility of the General Directorate of Consumer and Competition Protection, which was established in 1993 in the Ministry of Trade and Industry. The Competition Board was

appointed in February 1997, two years after the Competition Act was adopted, and most of another year passed before the Board began operations in November 1997.

The Competition Authority has rapidly adapted to the EU legislation through the Communiqués issued by it, and ensures a considerable alignment with the EU by closely following EU practices in competition policy and law.

### **Purpose**

The purpose of the Law on the Protection of Competition is to protect competition by ensuring necessary regulation, supervision and prevention of abuse of dominant position by dominant enterprises, and agreements, decisions and practices, which prevent, restrict or distort competition within the markets for goods and services.

### **Scope**

- Agreements, decisions and practices, which prevent, distort or restrict competition between enterprises, which operate in or affect the goods and services markets in the territory of Republic of Turkey;
- Abuse of dominant position by dominant enterprises;
- All kinds of operations and practices, such as a merger or an acquisition, by which competition in the market is significantly impeded; and
- All operations concerning the measures, decisions, regulation and supervision for the protection of competition.

The Act's substantive competition prohibitions appear in three articles. The first, Article 4, deals with agreements among two or more firms (and parallels Article 81(1) of the EU law). The second, Article 6, deals with abuse of dominance by one or more firms (parallel to EU Article 82). The third, Article 7, focuses on mergers & acquisitions (following the EU merger regulation).

The law was amended respectively in 2003, 2005, 2008, 2011 and 2012. Amendments prior to 2011 were mostly on procedural issues, powers regarding request for information and on-the-spot inspections were strengthened and mandatory notifications for exemption requests abolished in 2005. Changes in 2011 were as a result of general reform policy regarding organisation of public bodies, recruitment of civil servants, etc. In 2012, as a part of the judicial reform package, administrative court was designated as the appellate court for decisions of the Board. With these amendments, *inter alia*, the powers regarding request for information and on-the-spot inspections became more viable, collection of fines was facilitated, deterrence of fines was raised, leniency programme was introduced, and the number of members of the Competition Board reduced to 7 from 11 and the administrative court in Ankara replaced the Council of State as the first instance court for competition cases.

### **Institutions and its Competencies**

The competition authority has a distinct place in the Turkish economy, with its timely and efficient interventions, thanks to its administrative and financial autonomy.

The Competition Act establishes the competition authority as an autonomous enforcement agency and vests its decision-making authority in a seven-member Competition Board (reduced from 11 by the 2005 Amendments). Law enforcement procedures can be triggered by a complaint or at the Board's own initiative. The competition authority has broad investigative powers, including powers to obtain a court order permitting the search of corporate premises.

Whilst performing, on the one hand, the task of surveillance and supervision entrusted to it by the Act, the Authority has the responsibility of spreading a culture of competition in society through events organised by itself or taking part in others' activities. It engages in continuous cooperation and communication with public institutions, as well as sector participants.

By the end of the year 2011, the Authority had completed many investigations, and given decisions in 1487 cases involving breaches of competition, finalised 2103 merger cases and 564 exemption files.<sup>6</sup>

The competition authority can fine up to 10 percent of an enterprise's gross income for violating prohibitions cited in Articles 4 and 6 of the Law. In cases, where such a fine is imposed, an additional fine of up to 10 percent of the corporate fine may be imposed on the individuals managing these entities. The Board may also impose periodic penalty payments per day. Until now, the Board has imposed TL 800 mn (about US\$500mn) fines in total. The largest fines imposed by the competition authority on a single enterprise is US\$50mn on Turkcell, the leading GSM operator in Turkey for distorting competition of rival mobile operators by forcing big retailers to de facto exclusivity. The highest fine on a single case is a US\$150mn fine on an automotive cartel for fixing retail prices.

Board decisions may be appealed to the administrative courts in Ankara and subject to appeal by the highest administrative court, "The Council of State". Most of the Board's decisions imposing significant fines have been appealed, and many of the appeals are decided in favour of the authority.

The Competition Act empowers the Board to give an opinion on the competition policy aspects of government legislation and regulations. A communiqué from the Prime Minister's office encourages other government agencies to consult with the Board about proposed regulations and decisions with implications for competition policy. The

### Box 1: Anadolu Cam Case (Predatory Pricing)

Turkey's competition body has fined Anadolu Cam •1.5mn for predatory pricing.

The agency found that the company cut its prices below cost after a new entrant arrived in the market to supply bottles for alcoholic drinks. Marmara Cam, the competitor, complained that it was forced out of the relevant market by these practices. The purchaser, Tekel, which is state-owned, is subject to import-rules and cannot buy bottles abroad.

Source: *Global Competition Review, April 18, 2005*

communiqué is not treated as obligatory, however, and there are no sanctions if agencies fail to notify the competition authority of an important regulation.

The competition law is not deemed applicable to state agencies and organs acting in a governmental capacity. Sectoral legislation that involves creating a regulatory agency may also effectively oust the Competition Board, by giving the regulator authority the power to control or approve various aspects of sector business operations. There are also state-owned or controlled commercial undertakings that assert the 'right to undertake anticompetitive conduct' based on various statutory powers and privileges.

#### Exemptions

Article 5 of the Law (which contains the same provisions as Article 81(3) of the EC Treaty) is the main exemption clause. According to the provisions of Article 5, even in the presence of agreements, concerted practices or decisions, which restrict competition, in some cases, the Board may allow exemptions from the provisions of Article 4. The exemption regulation includes agreements, concerted practices and decisions, which complies with all of the conditions given below:

- a) contributing to new developments and progress, or technical or economic improvement in the production or distribution of goods and in providing services;
- b) allowing consumers to share the resulting benefit;
- c) not eliminating competition in a substantial part of the relevant market; and
- d) not restraining competition in a manner that is more than essential for achieving the goals in (a) and (b).

Exemption may be granted for a definite period. The granting of exemption may be subjected to the fulfillment of particular terms and/or particular obligations. It is possible to prolong the exemption by re-examination after the specified time. The Board may issue communiqués which ensure block exemptions for the types of agreements in specific subject-matters and which indicate their terms.

#### Mergers & Acquisitions

Article-7 of the Competition Act, and a Merger Communiqué issued by the Board in 1997, deal with M&As through the transfer of stock, assets, or managerial authority. Joint ventures are also covered if the emerging entity is an autonomous economic actor. Article-7 bars transactions that "create or strengthen the dominant position of one or more enterprises, as a result of which competition is significantly impeded" in a relevant market.

The system of notification was changed in 2010. Formerly, there were two thresholds for notification of M&As in Turkey. Where total market shares of the undertakings that are parties to the merger or acquisition exceed 25 percent of the market in the relevant product market within the whole territory of the country or a part of it, or even though they do not exceed this rate, their total turnovers exceed 25 million New Turkish Lira (approximately US\$15mn), it was mandatory to apply for clearance from the Competition Board. In the new system, the market share threshold is removed and a dual-turnover threshold was introduced for triggering the obligation for notification of a merger.<sup>7</sup>

The Board has also ruled that the merger control provisions in the Act apply to government privatisation proceedings, and has issued communiqués about competition policy aspects of privatisation. The Turkish Competition Authority plays an increasingly major role in the privatisation process by giving illuminating and decisive advisory opinions to the political authority, and making public the competition dimensions of proposed privatisation actions.

For the privatisation of incumbent telecom operator, Turkish Telecom, the Board ruled divestiture of cable TV and retail Internet companies.

In cases, where a merger or an acquisition that is subject to authorisation has not been notified, the Board, when it is informed about the transaction concerned, by any means, will investigate the merger or acquisition. Upon conclusion of the investigation:

- If the Board finds that the merger or an acquisition concerned does not create any problems with regard to competition issues, it will consent to the transaction. However, the Board can impose fines against the parties concerned for their failure to notify; and
- If the Board finds that the merger or acquisition concerned "creates or strengthens the dominant position of one or more undertakings as a result of which, competition would be significantly impeded in a market for goods and services in the whole territory of state or in a substantial part of it", as well as imposing fines, it decides the termination of the transaction and necessary measures for restitution.

### Box 2: Roaming Case Disagreement among Incumbent and Newcomer GSM Operators in Turkey

Turkcell and Telsim, two major GSM operators in Turkey have entered the market in 1994, by paying a license fee of US\$500mn each. For 2004, they had 65 and 25 percent market share respectively. Turkcell had 15 million users, whilst Telsim had 6-7 million. Neither company entered the market after a competitive auction, but by paying an amount predetermined by the Government.

Aria and Aycell were two new entrants in the market. They entered in 2000, via an auction, paying US\$3bn worth of license fee each.

Newcomers have faced two major problems. First, they had to compete with two major operators, who achieved a 95 percent of coverage area and gained a huge market share. Second, in addition to US\$3bn entrance fees, they had to spend much more than the others for infrastructure investment as GSM 1800 technology is more costly.

Facing such difficulties, Aria wanted roaming capabilities for its network, which would mean the use of another operator's infrastructure with a fee, instead of duplicating a very costly investment.

Turkcell and Telsim were not interested and, at first, they did not respond to Aria, a joint venture of Telecom Italia, and later they demanded too much fee for a roaming agreement.

The Turkish Telecommunications Authority had issued a directive of arbitration in case of a dispute on a subject under its authority. Aria applied to the Authority for a dispute resolution, indicating that their negotiations with

Turkcell and Telsim had been in process for 6 months (in 2001), and still no outcome had been obtained.

The Telecommunications Authority had given a decision saying that the parties should reach a solution in one month, if not it would determine the conditions (mainly the price) of roaming and solve the problem.

Meanwhile, Turkcell and Telsim applied to the Court of First Instance to revoke the Telecom Authority's decision, and the Court decided in their favour stating that the licence agreement with Turkcell and Telsim does not oblige them to enter into a roaming agreement with another party.

In the meantime, Aria also applied to the Competition Board. The Board decided to investigate the situation (parallel to the investigation by Telecom Authority), as the dispute raised the issue of alleged abuse of dominant position by Turkcell and Telsim, by not opening their infrastructure, an essential facility, to competition.

At the end of the arduous resolution process, the Competition Board imposed a total fine of US\$20mn on Turkcell and Telsim, and decided that:

- Turkcell and Telsim are in a collective dominant position in the Turkish GSM market;
- They abused such dominant position by not giving roaming access to Aria; and
- The Telecommunications Authority should determine and take necessary measures to remove this breach and inform the Competition Authority on this decision.

### Anticompetitive Business Practices

The function performed by regulatory authorities, and by the Competition Board specifically, also has a direct influence on consumers' lives. In one case, certain newspaper distributors exerted pressure on their dealers to prevent distribution of particular newspapers. This anticompetitive practice was stopped and fines imposed by the Board. Thus, it paved the way for consumers to find newspapers and magazines of their choice at the final sales points.

Likewise, an investigation was carried out against a GSM firm, which prevented its distributors from engaging in campaigns with other GSM firms. It put these companies into a difficult situation and prevented them from using any SIM card in certain mobile phones. The practice was terminated and the restriction of consumer preferences was precluded. Such examples are numerous.

Every decision taken by the Competition Board ultimately reflects on consumers in the form of price reduction,

increased alternatives for choices and increase in quality. There are many cases, which resulted in spectacular benefits for consumers and competing firms. Box 2 and 3 contains only two of them.

### Box 3: Belko Case (The Coal Monopoly)

Ankara Municipality, which has the legal monopoly in coal sales to the capital city of Turkey, used to sell coal for household use through its subsidiary company Belko, with prices 60-70 percent above the prices prevailing in similar markets.

The Competition Authority investigated the case and imposed a fine on Belko for abusing monopoly power by charging excessive prices. Moreover, the decision required the removal of its monopoly in the coal sales market, allowing other players to enter into the market. As a result, coal prices have now been greatly reduced.

## Other Regulatory Laws

Some other market regulatory laws of Turkey are:

- *The Banking Regulation Act* that is implemented by the Banking Regulatory Authority, whose mission is to safeguard the rights and benefits of depositors, and to create the proper environment in which banks and financial institutions can operate with market discipline in a healthy and globally competitive manner;
- *Capital Markets Act* regulating Turkish Exchange Markets, implemented by the Capital Markets Board. Capital Markets Board of Turkey (CMB) is the regulatory and supervisory authority in charge of the securities markets in Turkey. Empowered by the Capital Markets Law (CML), which was enacted in 1981, the CMB has been making detailed regulations for organising the markets and developing capital market instruments and institutions for the past 19 years in Turkey; and
- *Energy Markets Act* implemented by the Energy Market Regulatory Authority. The objective of the above mentioned Law is to establish a financially viable, stable, transparent and competitive energy market, which will function as per the provisions of the law and ensure independent regulation and supervision of the market, in order to provide sufficient electricity and natural gas of good quality to consumers, at low cost, in a reliable and environmentally friendly manner.

There are also other regulatory authorities, such as the Information and Communication Technologies Authority, Public Procurements Authority, Radio and TV Supreme Council.

Turkey has been on a steady path in privatisation of its SoEs, but the country still has a long way to go. Enterprises that are to be privatised are put under the control of the Privatisation Authority which controls and prepares them for future sale.

It should be stated that all of the above-mentioned laws and implementing authorities are fairly new in Turkey. The oldest one is the Capital Markets Law, which was enacted only in 1981. The Turkish liberalisation process, which began at the beginning of 1980s, has a short, but successful history.

## Consumer Protection

The Consumer Protection Act (No.4077) dates back to 1995 and aims at protecting consumers against fraud and other kinds of dissatisfaction. It contains provisions related to:

- flawed goods and commodities;
- sales with installments;
- campaign sales;

- door to door sales;
- consumer credits;
- labels and price lists;
- discount sales; and
- guarantees and guidebooks.

The Act requires compensation to be awarded to consumers, as a result of dissatisfaction arising in one of the fields mentioned above.

The statute establishes an Advertising Board with powers to enforce the rules about deceptive advertising, while vesting the Directorate for Consumer Protection and Monitoring of Markets in the Ministry of Customs and Trade with the authority for enforcing the other provisions of the law. The Directorate, in addition to its enforcement responsibilities, also has a consumer education function implemented through brochures and radio and television programmes.

The law provides consumers with a 2-tier redress system, differentiating between small and large claims. Consumer Arbitration Boards deal with small claims, whilst for large ones, application to courts is necessary. There is a Consumer Arbitration Board in every district. The ultimate arbiter is the Supreme Court of Turkey.

## Concluding Observations and Future Scenario

Turkish competition law has been playing a vital role in the harmonisation of the Turkish legislation with the EU, and reaching the standards of the developed world. The Competition Authority, till now, has been very successful in implementing the Law and becoming the major player in shaping Turkish competition policy.

The Authority has hired and trained a competent team of experts, quickly and carefully adapted the secondary legislation in line with developments in competition policy, and fulfilled its duty of competition advocacy in various ways, like giving seminars, publishing works regarding policy, and organising meetings with sector players.

However, there are still some steps to be taken, in order for competition policy to be truly and successfully implemented. In this regard, it should be noted that both OECD reviews and EU progress reports indicate and praise the fact that Turkish Competition Authority has achieved important progress.

The required steps involve overcoming obstacles impeding the implementation of competition policy. For example unfair competition regulation, which is regulated in Turkish Commercial Code, and antitrust regulation implemented by the Competition Authority. This duality should be ended by giving both to the sole jurisdiction of the Competition Authority, for a comprehensive and coherent competition policy.

Another problematic issue concerns the relationship between the Competition Authority and sector specific regulatory bodies. Competencies of the former and sector specific bodies like the Information and Communication Technologies Authority, Energy Market Regulatory Authority, and Banking Regulation and Supervision Agency, should be further clarified and the regulation processes be bound and aligned across the sectors.<sup>8</sup>

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### Endnotes

- 1 OECD Economic Surveys: Turkey 2012
- 2 This part is largely taken from <http://www.state.gov/r/pa/ei/bgn/3432.htm>
- 3 Turkey's second big GSM operator with about 9 million subscribers.
- 4 Turkey's major iron and steel production factory.
- 5 Turkish Petroleum Refineries Corporation.
- 6 <http://www.rekabet.gov.tr/dosyalar/faaliyetraporu/falrap27.pdf>
- 7 - Notification is required either total turnovers of the transaction parties in Turkey exceed TL 100 mn (about \$ 60 mn), and turnovers of at least two of the transaction parties in Turkey each exceed TL 30 million, or:  
- Global turnover of one of the transaction parties exceed TL 500 mn, and at least one of the remaining transaction parties has a turnover in Turkey exceeding TL 5 million.
- 8 See the interview by GCR with Prof.Nurettin Kaldirimci, President of the TCA, for late reforms and developments in as well future expectations about the TCA and Turkish competition policy in general. <http://www.globalcompetitionreview.com/features/article/31450/an-interview-nurettin-kald-305r-305mc-305/>

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### Suggested Readings

1. Web Site of the Turkish Competition Authority <http://www.rekabet.gov.tr/index.php?Lang=EN>
2. Annual Reports of the Turkish Competition Authority <http://www.rekabet.gov.tr/index.php?Lang=EN>

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