

Competition vs. Regulation and the Appropriate Organizational Structure of a Competition Agency SESRIC Workshop 2021

Şamil PİŞMAF

Chief Competition Expert/Acting Head of Economic Analysis
and Research Department
Turkish Competition Authority
spismaf@rekabet.gov.tr



- Are Regulation and Competition Policy complementary or substitutes?
 - «Regulatory Capture»: Stigler (1971): argues that regulation is an inferior substitute for competition and it is better for the government not to intervene and to allow the market agents to function autonomously.
 - Brennan (2005): argues that competition without regulation will inevitably lead to market failure as it would not reach efficient economic outcomes. Therefore, market regulation can complement competition by setting ground rules for conduct and structure, allowing competition to determine price, output and quality of products/services. (regulation-for-competition)

- **Justifications for Regulation**

- Market Failure Regulation: Market failure may be defined as the inability to deliver products to consumers in an efficient manner because unrestricted competition can not be sustained in the industry in question. (Regulation of a natural monopoly either its prices or conduct to ensure that the market power is not abused)
- Public Interest Regulation: Another rationale for regulation is to promote what is perceived to be the public interest. (regulations related to financial markets and institutions to prevent systemic instability as our past experiences proved that financial crises led to devastating consequences)
- Special Interest Regulation: A form of regulation which aims to protect the interest of some participants of the economy at the expense of others. (licensing regimes which build entry barriers for foreign firms or regulations to protect «national champions»)
- Transitional regulation: Regulation facilitates the transition from regulation to competition and ensures that the benefits of future deregulation are not lost.

Competition vs. Regulation

- In Turkey, as is the case with many free market economies, sector-specific regulations and competition law are in force.
- As a matter of principle, competition law is applied to all sectors
- In some cases, concurrent application of sector-specific regulation and competition law may be puzzling
 - What to do when the two intersect or conflict?
 - What if the regulation itself turns out to be not effective enough to achieve regulatory goals?
 - Is it possible to use competition law enforcement to achieve these goals? (regulatory remedies, commitment decisions, prescriptive competition law doctrines such as excessive pricing)

- Turkish Competition Authority (TCA) has always been active during and after the privatization period of the electricity market by using its statutory powers and advocacy tools,
- It has issued many opinions regarding how to improve the competitive structure of the electricity market,
- 2012 and 2014 preliminary investigations:
 - Two separate cases concerning alleged abusive practices of distributors on relevant markets which aimed to prevent eligible customers from switching to alternative service providers,
 - The TCA's decisions on closing those cases,
 - 2012: The TCA considered the Energy Market Regulatory Authority (EMRA)'s opinion suggesting that the alleged practices were legal under market regulation,
 - 2014: The TCA stated that the EMRA had power by the law to handle the matter and referred the case to the regulatory body. However, this time the TCA stated the importance of removing any practices that hindering liberalization process.

- In order to assess the competitive structure of the market, the TCA had conducted a market study between 2013-2015, and revealed potential behavioral and structural problems, such as:
 - Liberalization process which involves legal separation and the decrease of the eligible customer limit, was not working well in practice and therefore care must be taken in the future,
 - The process of liberalization of the natural gas market and the electricity market should be parallel to each other as natural gas was one of the major input to produce electricity.

Application of Competition Law to the Actors of the Electricity Market

- The TCA opened preliminary investigations in 2016 and proceeded with full-fledged investigations,
- The investigations were concluded in 2018. The TCA concluded that 3 distributors and their retail firms abused their dominant positions by
 - Preventing their costumers from switching to other suppliers,
 - Signing bilateral agreements with consumers who are under eligible consumer limit (Incumbent company benefits from this application to keep its former captive consumers in its portfolio when they become eligible consumers in the future),
 - Foreclosing market by means of eliminating eligible consumers' mobilization process,
 - Notifying power cut to indebted customers, the distribution company created advantage to its retail company and increased debt collection capacity compared to other retailers.

Application of Competition Law to the Actors of the Electricity Market

- Although the EMRA also had the power to intervene and impose sanction on grounds of anticompetitive behavior of the suppliers, the TCA enforced competition law and fined the undertakings in question. (overlapping powers)
- There are several Turkish Administrative Court rulings about overlapping powers of an Independent Regulatory Agency and the TCA, which state that both bodies are obliged to enforce relevant law, but to avoid double jeopardy because of the same infringement, the lesser fine should be deducted from the larger one.

- To sum up, regulation and competition are complements rather than substitutes.
- Sector-specific ex-ante regulations seeks to promote competition, however they are limited in scope and arguably prone to capture.
- As an ex-post tool in general, competition law seeks to protect competition and it is flexible.
- What is the right balance?
 - No «one-size-fit-all» answers
 - Highly depends on the characteristics of the market in question and the competitive problem in hand
 - Behavioral – structural
 - Timing?
 - Market itself,
 - Regulation
 - Competition policy

Thank you!