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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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COMMITMENT DECISIONS IN ANTITRUST CASES

-- Note by Turkey --

15-17 June 2016

This document reproduces a written contribution from Turkey submitted for Item 9 of the 125th meeting of the OECD Competition Committee on 15-17 June 2016.

*More documents related to this discussion can be found at
www.oecd.org/daf/competition/commitment-decisions-in-antitrust-cases.htm*

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TURKEY

1. In Turkey, there is no legal procedure for adopting commitment decisions set by Turkish Competition Act No 4054 (Competition Act). Although parties cannot offer commitments officially, the decisions adopted by the Turkish Competition Authority's (TCA) Board (Board) on the basis of Article 9(3) of the Competition Act can be accepted as commitment under certain conditions. According to this provision; *"The Board, prior to taking a decision pursuant to the first paragraph, shall inform in writing the undertaking or associations of undertakings concerned of its opinions concerning how to terminate the infringement."* As it is clear from the ground for the article, this article arranges how the Board must act in case infringements of the Articles 4, 6 and 7 are established, to terminate the infringements.

2. Throughout the years, the Board has adopted some decisions as a way to close antitrust investigations on the basis of this provision. For example, in *Cable TV Operators*¹ and *Turkish Telecom*² Decisions, upon the parties' acceptance of the Board's requirements for terminating the infringements, the preliminary inquiries were closed and the Board decided that there were no grounds for further action. In another example, *Kale Pazarlama*³, the Board accepted commitments and the investigation was closed. *Xerox*⁴ is another example in which the Board ruled that there is no more need for action if Xerox makes necessary changes to its distribution agreements and sent its opinions to Xerox regarding the necessary changes.

3. However, it is not possible to say that this provision is applied consistently. There are numerous discussions about how this provision should be applied and under which procedure the commitment decisions should be adopted. To end these discussions, the Draft Act on the amendment of the Act No. 4054 (Draft Act), paves the way for the commitment procedure. According to the relevant article of the Draft Act; *"During a preliminary inquiry or an investigation, in case undertakings or associations of undertakings concerned make commitments for eliminating competition concerns occurred within the scope of Article 4 or 6 and those commitments are accepted by the Board, an investigation may not be initiated about those undertakings or associations of undertakings, or the ongoing investigation may be terminated."* Within this sense, Board will be able to accept reasonable commitments submitted by the parties during preliminary investigations or investigations, and decide not to launch an investigation or to end an ongoing one. Additionally, if the grounds for the commitment decision change, the Board can open an investigation or resume the investigation to determine if there has been a competition infringement.

4. It can be said that this Draft Act is similar to other jurisdictions' regulation within the sense that it entails legally binding commitments voluntarily submitted to a TCA by parties in an antitrust investigation with the objective of eliminating the grounds for the enforcement action to continue.

¹ 25.12.2003, 03-83/1003-405

² 08.01.2004, 04-01/27-9

³ 13.06.2005, 05-39/548-125

⁴ 02.05.2013, 13-25/331-150