

**DUE PROCESS IN COMPETITION LAW ENFORCEMENT:
A DIALOGUE ON BEST PRACTICES BETWEEN AGENCIES AND BUSINESS
ICC ROUNDTABLE, ISTANBUL, 30 APRIL 2010**

**Introductory Address
by
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Dear participants,

First of all, I would like to thank ICC for the kind invitation extended to me to address such a distinguished audience.

The topic is of utmost importance in competition law enforcement and I believe we will have invaluable discussions and assessments during the roundtable with the participation of the two most important stakeholders, the competition agencies on the one hand and the private sector on the other.

I believe this would shed light on the strengths and weaknesses of the Recommended Framework for International Best Practices in Competition Law Enforcement Proceedings and the feasibility of the recommended practices.

In my opinion, the Recommended Framework is a well-prepared document and I want to congratulate ICC Commission on Competition for the fine job.

I am sure the discussions and views expressed during the roundtable will be highly beneficial and provide a good opportunity to further reflect on and improve the document.

As it is rightly emphasized in the Recommended Framework, ensuring procedural fairness definitely strengthens agency decision-making process and increases confidence and respect by all interested parties in the decisions of the competition agencies.

Of course, this is not an easy task and the jurisdictions may need a very well-thought legislative framework as well as necessary enforcement tools and resources, lack of which may have detrimental impact on enforcement efforts.

I believe, a single example from Turkey would suffice to make a compelling case for this argument. There used to be a provision in the Competition Act providing that the Competition Board, which is the decision making organ of the Competition Authority, would designate a member of the Competition Board to lead each investigation team, composed of the professional staff of the Competition Authority.

The investigation teams were responsible for conducting investigations and preparing an investigation report that would be taken into account by the Competition Board while taking the final decision on the case.

As the member of the Board, who led the investigation team, also attended the meeting of the Board in which final decision was taken, the appellate court (the Council of State) ruled that the practice was contrary to the principle of impartiality.

According to the Court, the member of the Board leading the investigation team had already expressed his/her opinion in the investigation report, which concluded whether the parties infringed the Competition Act and therefore should be imposed fines or not.

As a result, it was ruled that his/her participation in the meeting in which the Competition Board was supposed to take the final decision after discussions in an objective manner was contrary to the principle of impartiality. The judgment was a heavy blow to enforcement efforts of the Competition Board as the procedure had already been carried out in many investigations.

The provision was removed from the Competition Act via an amendment in 2005 and investigation teams are no longer led by members of the Competition Board. It is good to see that this issue has already been addressed in the Recommended Framework under Due Process/Fairness heading

Apart from this, although there may still be need for improvement, I am happy to emphasize that the Competition Act in Turkey is generally in line with the Recommended Framework.

To cite very briefly some provisions in the Competition Act and the practice in its enforcement concerning due process;

- First of all, transparency is ensured via publication of the Competition Act and secondary legislation in the Official Gazette and/or the internet page of the Competition Authority. Moreover, the decisions of the Competition Board are published on the internet page of the Competition Authority,
- The Competition Authority is independent of political influence as it is clearly written in the Competition Act that no organ, authority and person may give commands and orders to influence the final decisions of the Competition Authority,
- The Competition Act provides for detailed rules of procedure applicable to investigations with appropriate deadlines, rights of defence, hearing, access to file, and judicial review.

For instance,

- Upon initiation of an investigation, the Board has to send adequate information on the allegations to the relevant parties,
- The parties are granted the right to defence in written form three times and an oral hearing as part of the investigation procedure,
- The parties are granted adequate time to prepare their written defences and prepare for the oral hearing,
- The parties are entitled to have access to file in the sense that they may ask for a copy of any paperwork drawn up within the Competition Authority in connection with themselves, and if possible, a copy of any evidence obtained,

- The Competition Board may not consider in its decisions issues about which the parties have not been informed and granted the right to defense,
- The decisions should provide for adequate reasoning such as evaluation of all evidences and pleas submitted, factual grounds, and the legal basis.
- In addition, it is also obligatory that duties imposed on and rights granted to the parties with the decision have to be written explicitly in such a way that they do not give rise to any doubts and hesitations,
- The decisions of the Competition Board should be published in such a way not to disclose the trade secrets of the parties.
- Moreover, the personnel of the Competition Authority may not disclose trade secrets of undertakings even if they have left their office,
- Finally, decisions of the Competition Board are subject to judicial review by the Council of State which is the supreme administrative court.

That is all I want to say for the moment.

I thank again for the opportunity to address such distinguished participants and hope to experience lively and fruitful discussions and exchange of opinions.