

FIFTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY
AGREED EQUITABLE PRINCIPLES AND RULES FOR
THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES
Antalya, Turkey, 14–18 November 2005

**Opening Statement by
the President of the Turkish Competition Authority**

The President of the Turkish Competition Authority

Mr. Mustafa Parlak

5th UN REVIEW CONFERENCE ON COMPETITION

OPENING SPEECH

Dear Acting Prime Minister, Secretary-General of UNCTAD, Dear Ministers, Heads of Agencies, Delegates participating from various countries of the world, and Distinguished Guests,

I would like to express that on the occasion of the 5th UN Conference, we are very glad to host the distinguished members of the world of competition law in Turkey and in the city of Antalya of our country, which resembles a site of paradise with its historical and natural beauties, and I say welcome to you all on behalf of my Authority and myself.

As is known, the UN General Assembly adopted, in its session of December 5, 1980, a "Set of Multilateral Equitable Principles and Rules for the Control of Restrictive Business Practices". Following this decision, as you know, a conference is held every five years under the coordinatorship of UNCTAD for purposes of reviewing the set in question in all aspects. To date the first four Conferences have been held in Geneva, and the 5th Conference is for the first time organized in a place outside Geneva and in Turkey. I would like to share with you the happiness and pride we feel in hosting the first Conference held outside Geneva. On this occasion, I would like to thank to the Secretary-General of UNCTAD Dr. Supachai Panichpakdi who, without any hesitation, supported the idea of organizing the Conference in question in Turkey by confiding in our country and Authority, to the head of the Competition Division Mr. Philippe Brusick and his team, and to all UN staff.

Distinguished Participants,

Experience obtained to date demonstrates that in economies where the allocation of economic resources is not left to the market mechanism and where resources are distributed by a central authority, distress is experienced even in meeting the most fundamental needs of citizens, and losses occur in the social welfare. Therefore, today free market economy is adopted in many countries. The model of free market economy based on free competition enables increased social welfare through the static and dynamic efficiency presented by it. However, the ability of market mechanism to increase welfare is chiefly subject to the existence of competition rules. The experiences in the world have shown that free markets do not automatically create a competitive environment. In markets which are left alone, it is possible that tendencies for cartelization and monopolization emerge, market entry becomes complicated, and consequently, due to these deficiencies, the market based on free competition bears the risk of transforming into a mechanism which impairs social welfare rather than contributing to the social welfare. Here at this point, competition policies appear before us as the most efficient way of preventing losses in social welfare which may occur in an imperfect competitive environment.

As is known very well by all of you, in markets where there are cartels and monopolies, it is possible for firms to determine prices at a higher level as compared with competitive conditions and to lose their incentives to create innovations, which are important as regards dynamic efficiency. As a result of both high prices that emerge in respect of static efficiency, and firms' loss of their incentives to innovate in the context of dynamic efficiency, it is possible to observe raised costs, fall in quality and decreased diversity in the relevant markets for goods and services. These losses of static and dynamic efficiency, arising out of lack of competition in markets for goods and services form the greatest threat against the overall growth and development of a country's economy. A country's economy standing far from a competitive structure cannot benefit adequately from new opportunities created by increased globalization and liberalization of international trade, as well as not being able to fight against problems posed by them. For this reason, the existence of an operational market economy based on free competition is quite important in terms of economic development and growth.

On the other hand, for an operational market economy, the protection of free competition, competition and competition law as regards today's market economies are a *sine qua non*. At this point, it would not be wrong to consider competition rules forming the framework of competition law and policy as the constitution of market economy. The survival ability of those economies which do not fulfil these conditions is simply and solely possible through sacrifices from the welfare of their own public.

It should not be forgotten that in democracies, economic rights and liberties are the complementary and supporter of fundamental rights and liberties. When one looks from this point of view, competition law at the same time secures equality of opportunities and freedom of enterprise, ensuring that the society benefits from the abilities of entrepreneurs, and it is viewed as an element complementing the democratic regime.

As a matter of fact, when we take a look at the world today, we see that the most powerful economies possess the oldest competition laws and agencies at the same time.

Interventions of states in a market via competition policies have certain advantages as compared with the other policy tools.

Primarily, the design and implementation of competition policy are easy. The main philosophy of competition policy is laying down the rules of the game and punishing those behaviours which do not comply with these rules. In practice, the most important power of sanction as to competition rules does not stem from an active supervision but from deterrence. We have a famous proverb in this matter. "What attends the vineyard is not the watchman but the fear as to the watchman".

Second, competition policies are more transparent than the other policy tools, and their implementational criteria are more objective. Competition rules have been determined by international experiences. As a matter of fact, the General Assembly of United Nations adopted the "Set of Multilateral Equitable Principles and Rules for the Control of Restrictive Business Practices" in 1980, and emphasized the

requirement for countries to have similar common competition rules. That competition policy is transparent and objective does not allow political interventions and seeking rents.

Third, since competition policies target preventing powerful market actors from abusing such power of them, they are supported by a large segment of the society and do not create a problem of legitimacy. The acknowledgment of its legitimacy to such an extent renders this policy tool much more attractive than the others.

An efficient and successful competition policy would emerge as one of the elements with regard to the formation process of a new type of state model which is not discriminative and where rules are applied to everyone equally and fairly.

Distinguished Participants,

In Turkey the mixed economic system where nationalism and private capital existed together has been applied for long years, and since 1980's, orientation towards market economy has increased. The 1982 Constitution entrusted the State with the task of preventing monopolization and cartelization in markets, and the Act on the Protection of Competition No. 4054 was adopted in 1994 based on this provision. And an important factor in the formation and development of competition law in Turkey is the perspective for the membership in the European Union. Therefore, the Turkish Competition Act has been shaped under the relevant provisions of the Rome Treaty. The Competition Authority which is charged with the implementation of the Act in question commenced operating by the end of 1997. As is mentioned in article 20 of the Act, "The Authority is independent in fulfilling its duties. No organ, authority and person may give commands and orders to influence the final decision of the Authority".

As is seen, the Turkish Competition Authority is quite a young agency. However, it has attained a prestigious position and commenced to make its efficacy felt in the country since its establishment, both with its administrative capacity and decisions taken by it. During the past eight years, our Authority has successfully undergone two OECD review processes among which the first was in 2001 and entitled "Regulatory Reform" where Turkey was assessed overall and the second was the one entitled "Competition Law and Policy in Turkey", which was volunteered by the Turkish Competition Authority and was concluded early this year. In the last report, there are assessments and suggestions from which we benefitted very much. In the report, there are statements which give us morale and encourage us in relation to the Turkish Competition Authority.

It says that "The Agency has continued to make excellent progress since 2002, and has developed a reputation as one of Turkey's most effective and best administered agencies. It has pursued its mission with energy, imagination, and integrity and has won respect and support from leaders in the business community. Most importantly, it has played a critically important role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented mechanisms."

Distinguished Participants,

As regards national economic growth and development, just as the role and importance of competition law and policy, resorting to international cooperation in this area is quite important for being able to obtain the expected benefits. In other words, international cooperation in the area of competition law and policy gains further importance each day. International cooperation both enables countries' exchanges of information and experience, and more importantly, it presents the potential for reaching adequate capacities and opportunities in fighting international cartels. However, for this cooperation, countries primarily need to possess a common practice of competition law and policy at the minimum level.

Distinguished Participants,

When one looks at the implementation in practice, international cooperation has reached an appreciable point in respect of the exchange of information and experience on the theoretical and practical basis. Today, UNCTAD being in the lead, many international platforms provide important opportunities in respect of countries' exchange of information and experience in the area of competition law and policy. As a matter of fact, during the forthcoming five days, we shall discuss very important issues under the 5th UN Conference, and more importantly, we shall share with each other the information and experience we possess. But the international society which took major distances in the context of exchanging information and experience could not display, on different grounds, sufficient success in creating a common basis for fighting jointly against international infringements of competition in particular. Of course countries may have different and maybe, in some cases, understandable grounds in this matter. But as the President of the Turkish Competition Authority, it should be expressed that members of the international society have to meet on a common basis in some way for actually fighting international infringements of competition we face each day.

Distinguished Participants,

Before concluding my remarks here, I would like to thank to all who spent labor in organizing this Conference in Turkey and to you as the distinguished members of the world's competition family, who honor this Conference.

Last, I should express that during the forthcoming five days, you will have discussions here, which I believe would be very beneficial, and you will share the information and experience you have. But at the same time, during this period of time, I wish that you will also benefit from the historical and natural beauties of Antalya insofar as your time allows and that you have a pleasant time here, and I pay my respects to you all wishing that your work would be productive and successful.