

Competition & Antitrust - Turkey

Competition Authority completes inquiry of wholesale and retail electricity market

Contributed by [ELIG Attorneys at Law](#)

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Introduction

The Turkish Competition Authority recently concluded its sector inquiry of the wholesale and retail electricity market. The resulting sector inquiry report was published in January 2015. Electricity Market Law 4628, which entered into force in 2001, accelerated the liberalisation of the electricity market and the enactment of Electricity Market Law 6446 in 2013 further hastened the process. Accordingly, the Competition Authority launched a wholesale and retail electricity market sector inquiry in 2013 to contribute to policy making, guide sector players and establish the framework for an efficient competition policy.

The Competition Authority analysed four main areas in its inquiry:

- the liberalisation process;
- the competitive structure of the wholesale electricity market;
- the competitive structure of the retail electricity market; and
- corporate structures within liberalisation.

Liberalisation process

The sector inquiry report assessed the liberalisation, development and current status of the electricity market. Accordingly, the report indicates that liberalisation is a process that needs to be monitored, re-evaluated and revised consistently. Further, the report concludes that purchase agreements within the scope of build-operate and build-operate-transfer projects that constitute stranded costs are the basis for transitioning to a more competitive structure. The years 2018 to 2019, when these agreements terminate, will thus be key to the assessment of future competition law policy. The creation of a liquid wholesale market has become the crucial issue in the short term. The report indicates that the necessary measures must be implemented while liberalisation and privatisation are being carried out. Finally, the report emphasises that organisational structures should ideally be designed in line with the fact that after privatisation, the public's regulatory and supervisory roles will become more prominent.

Wholesale electricity market

The power of market participants, which affects pricing and economic parameters, is more important than the number of buyers and sellers operating in the market. The report states that market power problems, which were formerly non-existent, may develop following privatisation in fields that are insufficiently competitive and dominated by public enterprises. Further, the report examines market power problems arising from transmission limits, such as regional market power. The report also mentions the need for a market monitoring unit to identify potential risks and modernise the related authorities in line with the evolution of the electricity market.

In relation to the transparency of the market and considering EU law, the report states that the transparency regime should be restructured in a more efficient way. Information should be published through a central platform. On the demand side, the report indicates the need to develop legal and technological infrastructure to increase demand and provide consumers with the freedom to choose their supplier. Regarding vertical integration and liquidity within the wholesale electricity market, the report concludes that strategies in which sector regulations and competition regulations comply with each other are required. Accordingly, the creation of a liquid wholesale market, in which the risks from vertical integration are minimised, is considered a necessity. The report emphasises the importance

of a liquid bilateral agreements market, which has a significant role to play in establishing pricing signals and facilitating efficient risk management. Further, the report states that short-term entrants to the market that create over-competitive market structures can cause the sector to focus on short-term consequences and harm the development of a liquid market with bilateral agreements.

Retail electricity market

The report also analyses the factors needed to establish a competitive structure in the Turkish retail market in which all consumers can exercise their right to choose their own supplier (liberalisation). Within this framework, legal disaggregation was seen as an important stage and compliance programmes were found to be beneficial in pursuing this process. Accordingly, the report emphasises the importance of balancing legal disaggregation by remedying the deficiencies in those regions that fell behind in the disaggregation process. Further, the report finds that sectorial regulations should be reviewed frequently to introduce the necessary changes to establish the efficiency of disaggregation. However, the report states that the current legislation is insufficient for the establishment of efficient legal disaggregation. The report further assesses the obligation on companies to promote consumer awareness by informing them of alternative suppliers and prices. Facilitating changes of supplier is discussed from the point of view of companies. The report provides suggestions for the terms of contracts that favour consumers, invoicing and not penalising consumers for moving to alternative suppliers. Finally, retail-level pricing is analysed with respect to consumer pricing during the liberalisation process. The report divides pricing tariffs into three types:

- default supply tariffs;
- ultimate source supply tariffs; and
- social tariffs.

The report indicates that consumers should be able to revert to their previous tariffs when switching until sufficient competition and a sufficient number of alternative suppliers are present on the market.

Relevant institutions

The report also examines the duty, authority and different approaches of the institutions involved in the liberalisation process, as well as the protection of competition. It concentrates on the role of the Competition Authority in the liberalisation process in particular. The Competition Authority has played a significant role in raising awareness of the different players in the sector and the identification of anti-competitive behaviour and its implementation. In addition, the report also highlights the importance of cooperation between the Energy Market Supervisory Authority and the Competition Authority regarding the need to accelerate information exchange in investigations.

The report concludes that contrary to expectations, liberalisation has not yet created the required level of competitiveness in the wholesale and retail electricity market. The report indicates that the ability of consumers to choose their own suppliers does not, by itself, create a positive competitive environment.

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