

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

OBSERVATEUR/OBSERVER

Turquie
Conseil d'Etat

Turkey
Council of State

THE SCOPE AND THE PURPOSE OF THE ECONOMIC SECTORAL REGULATIONS

- 1.** In addition to the sectors mainly focused in EU, public procurements subjected to public procurement law, capital market, sugar market, tobacco and alcohol market and banking sector are regulated by independent regulatory authorities specialised in the related fields in Turkey.
- 2.** EU secondary legislation is implemented in Turkey after it's transposition into national law.
- 3.** The economic sectoral regulation in Turkey aims to liberalize the sectors such as electricity, gas and telecommunication and to regulate them after liberalization, in order to generate a powerful and well-structured market, to provide an effective supervision, to fulfill the universal service obligations, to introduce and to guard the competition, to punish anti-competitive acts and to protect consumer rights and etc.
- 4.** The economic sectoral regulation – an ex ante control in terms of regulation authorities and an ex port control in terms of competition law in Turkey - is generally carried out by “ Rekabet Kurumu” which is a Turkish competition authority. Not only is Rekabet Kurumu the sole competent authority in ex post control, but also certain authorities have some competence on ex-post control of anti-competitive acts in cooperation and coordination with Rekabet Kurumu. Besides, regulation authorities have competence on ex-port control of other matters apart from competition law.
- 5.** One of the main purposes of economic sectoral regulation is to introduce competition in regulated markets and to generate a well-structured market. The regulations within this framework, promote competition in related sectors. Within this scope, it is tried to remove the market entry barriers to make new entrants manage to fit in market, so fitting in market has a high rate except the sectors which have structural problems and difficulties in introducing competition.
- 6.** The prior aim of economic sectoral regulation in the sectors such as telecommunication, electricity and retail sale and distribution of gas is to liberalize the sectors in question and to regulate the new structure composed afterwards. The privatisation of publicly owned companies in the sectors abovementioned as a whole or partly by considering their regions, institutions or area of activities is allowed .
- 7.** The critical sectors in Turkey to address more specifically are; markets of electricity, gas, petroleum and LPG; telecommunication market, capital market and banking sector.
- 8-** Economic sectoral regulations are made by independent administrative authorities which are specialized in their own areas. Besides, lots of sectors are subject to state regulation, and these regulations are done by the ministries. Turkish Competition Institution “ Rekabet Kurumu” is the general authority for the protection of competition for all sectors, punishment for anti-competitive behaviours and permits fo mergers and take-overs. For certain sectors, carrying out of the activities

by establishing independent administrative authorities, arises from the delicacy of those sectors, requirement of the regulations to be done by rapidly and with speciality and the requirement of interventions or non-interference strategies to be done effectively. The independence of the administrative authorities is guaranteed by the self-acts of them; like especially the statutes of the members as secured public officers, duration of remaining on duty and selection procedures, financial and administrative independence and not to be subjected to the ministerial hierarchy.

9- These authorities operates independent from the sector, because their members are mostly public officers and the representatives of the sectors in them are minority.

10- It's accepted that these authorities have general regulation authority about the sectors in the frame which is drawn by their foundation acts in their regulation area.

11- These authorities do not directly take place in the procedures of making law, but they may take role in the preparation processes of the acts which will be about their own acts or acts about their regulation areas.

12- These authorities have competence to apply sanctions over the associations in the sectors as; administrative fines, cancellation of licences, decommissioning and to take compelling or preventive measures. When it comes to the implementation of the sanctions, every authority implement the sanctions according to the type of the sanction and detailed administrative procedures which are determined in their own acts as subject to the rules and procedures defined in the Misdemeanor Law. Those procedures are generally in compliance with the Article 6/1 of the Convention (CPHRFF), but in the circumstances where they're not in compliance with , the Council of State as a Supreme Judicial Authority reviews the procedure in its judgements.

13- Economic Sectoral Regulations are carried out by independent administrative authorities which are specialized in their own areas. Besides, lots of sectors are subject to state regulation, and these regulations are done by the ministries. Turkish Competition Institution " Rekabet Kurumu" is the general authority for the protection of competition for all sectors, punishment for anti-competitive behaviours and permits for mergers and take-overs.

14- The auditation on the Economic Sectoral Regulations is generally ex-ante for regulation institutions. Ex-post auditation is generally carried out by the Turkish Competition Institution "Rekabet Kurumu" which is the Turkish Competent Authority of Competition. On this point, in ex-post auditation, besides the Turkish Competition Institution which has the general authority, some other certain institutions also have authority to review the anti-competitive behaviours. This auditation is carried out in coordination and collaboration of the " Rekabet Kurumu".

15- Article 125 of the Constitution rules that, all acts and actions shall be subject to judicial review. Due to this clear provisions, the acts and actions of economic sectoral regulatory authorities adopted as a part of Administration shall be subject to judicial review. There is no decisions of authorities outside the scope of judicial review.

16- Economic sectoral regulatory authorities' decisions are subject to administrative judicial review. As a rule, the administrative courts, as first instance courts, deal with the legality of decisions. To

decide as a court of first and last instance on the administrative cases listed in the Act of the Council of State. (Act No: 2575). The acts and actions of the competition authority equipped with prevailing competence, shall subject to administrative judicial review as other regulatory authorities.

17- As mentioned above, Economic sectoral regulatory authorities decisions shall be subject to administrative judicial review. As a rule, judicial procedure is only applied against the these decisions. The persons concerned may request the authorities act or take an action that may be the subject to litigation. Before bringing the action, the person concerned may request the abolishment, withdrawal, alteration of the administrative act or the implementation of new act from the superior authority, if there is no superior authority, from the authority that implements act. These administrative applications are regulated of administration are situated in the Law 2577 on Procedure of Administrative act.

18- Regular procedure of administrative judicial review is applied against the acts and actions of authorities specified above. According to the Law 2577 on Procedure of Administrative Act, administrative courts competed to ex officio examine administrative acts claimed to be illegal due to an error regarding one of the elements; competence, form, reason, subject and aim. In this context, there is not specific regulation limiting judicial review of the legality.

19- According to the Law 2577, administrative courts have jurisdiction to ex officio examine the compatibility of any administrative decisions and actions with the law. For this examination, there is not any need for request or application from parties. While ex officio examine is being carried out, administrative judges may appoint an expert, ask for any related informations and documents from authorities concerned, inspect about facts and hold hearing etc...

20- The Council of State reviews on appeals the judgements of administrative courts reviewing economic sectoral regulatory authorities acts and actions. According to Article 49 of Law on 2577; the Council of State, as the court of appeal, may quashes those judgements rendered by the Chambers of Council of State acting as first degree courts and those judgements which are passed by a committee of three judges in administrative courts. As a result of appellate review, the Council of State shall set aside the decision examined because of the following three reasons;

- ❖ The court lacked jurisdiction,
- ❖ The decision against the law,
- ❖ Procedural errors.

In case of reversal, the case file shall be sent to the relevant chamber or the court that rendered the decision. The court shall give the priority to the examination of this case, complete the research, if required and renew its decision.

The chamber or the court may not obey the reversal decision and insist on its previous judgement. If the person concerned brings an appeal against the judgement of persistence, the case shall be reviewed at the Plenary Session of the Administrative Law Chambers.

Those judgements given by the Council of State as a first instance court by analogy shall be applied to the examination of appeals by the Plenary Session of the Administrative Divisions.

In total 30.000 judgements have been given by Council of State which directly effects the economic sectoral authorities.