



Competition law and regulation in the Turkish telecommunications industry: Friends or foes?

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ABSTRACT

The interaction between national competition authorities (NCAs) and national regulatory authorities (NRAs) plays a vital role in institutionalizing competition policy during regulatory reforms. Questions about jurisdictional authority over competition policy are far from settled

What role should NCAs play in regulated industries? Should we see NRAs and NCAs as complements or substitutes? This paper attempts to discuss these issues within the context of the Turkish telecommunications industry. Recent events in this industry point to relative strengths and weaknesses of a legally powerful NRA against a NCA.

We address the complementarity issue as an empirical question and dispute its practical viability in a hostile environment where two agencies differ on the role of competition. The Turkish telecommunications industry shows that legal ambiguity surrounding competition policy creates inefficiencies and increased power struggles.

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1. Introduction

The interaction between national competition authorities (NCAs) and national regulatory authorities (NRAs) plays a vital role in institutionalizing competition policy¹ during the implementation of regulatory reforms in certain industries. The Trinko case² in the United States, the enlargement of the European Union and the increasing number of NRAs around the world create both theoretical and empirical issues concerning the role of competition rules³ and NCAs in regulated industries. From a political, economic, and legal standpoint, the answers to questions such as ‘who has the authority over what?’, and ‘to what extent?’ authority can be used are quite blurry.

What role should NCAs play in regulated industries? Should NRAs and NCAs be seen as complements or substitutes? This paper tries to discuss these issues within the context of the Turkish telecommunications industry. Recent events in this industry point to the relative strengths and weaknesses of an NRA with strong legal authorities versus an NCA. Herein,

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¹ Competition policy refers to the set of rules designed to promote and protect competition and restrict monopoly practices. These rules include oversight of mergers, prohibition of price fixing and agreements (tacit or explicit) for sharing the market and other behavior that might restrain competition.

² Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398 (2004).

³ Competition rules comprise rules and remedies to prevent anti-competitive contracts or practices, monopolization or abuse of dominant position and merger controls.

the issue of complementarity as an empirical question is addressed and its practical viability in a hostile environment where two agencies differ on the role of competition rules is disputed.

Many countries differ in their emphasis on the role of NCAs in the regulated industries. At one extreme, NCAs have broad powers over regulated industries, as in Australia and New Zealand. At the other end, in countries such as the United States, both state (PUCs) and federal (FCC) regulators control competition issues by means of heavy regulation, which leaves a limited room for NCAs. Turkey, as a latecomer, tends to come closer to the US example. However, the jury is still out on how Turkey should and will proceed and political interests are not yet settled.

Competition is a relatively new issue in terms of legal structure in Turkey. Although the Constitution of 1982 has a provision (article no. 167) ordering the state to prevent cartelization and monopolization, the Act which brought forward the necessary legal tools was enacted in 1994 and the NCA did not even take office until 1997. Following on from the 1990s, the economic crisis of 2001 and privatizations within the banking, energy and telecommunications sectors galvanized regulatory reforms in these industries with an independent regulator being established for each industry.

As a rule, the Turkish the NCA's authority covers all industries. The NRAs create room for themselves through exceptions and immunities. In the absence of any exception or regulation,⁴ the NCA is supposed to have the final say on competition issues. Exceptions do not have a systematic pattern and follow industry-specific expectations. Furthermore, political and business interest groups do tend to have some power over immunities.

From a legal and political point of view, the design and implementation of competition rules and regulatory relations are far from clear. Depending on the issue at hand, competition rules may become secondary to political preferences.

Should there be general competition rules applied to all industries with a limited number of exceptions? Or, should a long list of exceptions and immunities be attached to the competition and regulatory rules? Politicians, regulators, and economists all tend to answer these questions quite differently.

This study maintains that competition rules, implemented fully and indiscriminately, should have authority in these industries. They should also complement regulatory legislation for permanent market failures. More importantly, competition rules should be seen as a restraint on the anti-competitive behaviors of regulators. This is not the case in the current legal framework in Turkey.

Political tensions and legal problems occur from time to time. For example, some NRAs do not recognize the authority of the NCA in their areas. In some cases, legal authority could not find any political support. In some other situations, legal immunities have been introduced to overcome competition issues.

In this paper, the issues are considered from the perspective of complementarity. The next section addresses the complementarity issue. The advantages and disadvantages of general competition rules and sector-specific regulation are debated. Then, the discussion turns to the recent experience in the Turkish telecommunications industry. In the last section, relative efficiency and effectiveness of alternative mechanisms are compared and contrasted. The paper concludes by summarizing the findings.

2. Antitrust vs. regulation: complementary or substitute?

The study of the relationship between competition rules and regulation is relatively new. Theoretical literature on the interaction between agencies (NRAs and NCAs) having the power to interfere in markets goes back to [McCubbins et al. \(1987, 1989\)](#). In this setting, legislative activity is structured as a multilateral principle-agent problem. NCAs and NRAs have conflicting goals and react to different incentives.

Recently, [Carlton and Picker \(2006\)](#) offered a general framework based on McCubbins, Noll and Weingast's work.⁵ [Newbery \(2006\)](#) offers another discussion of the subject, with a differing view on the fundamental issue. While Carlton and Picker generalize their preference of competition rules over regulation, Newbery makes a distinction between the telecommunications and electricity industries, the latter possibly requiring a more extensive regulation than telecommunications does. [Beato and Laffont \(2002\)](#) also point to the conflict between the social goals of regulatory policy and efficiency considerations of a general competition policy. Moreover, when the regulatory reform is closely related to privatizations (as in the case of Turkey) the emerging industrial structure will be influential over the potential for competition in the industry. Some of the issues discussed below have their origins in the current privatization and liberalization reform in the telecommunications industry. Institutional environment may thus play a more important role than technical considerations. For example, in the European context, [Knieps](#) argues that technical regulations are justified for a more competitive environment. On the other hand, competition policy should take a primary role on interconnection and network access problems ([Knieps, 1997](#)).⁶ This may not hold for many other countries because of the continuing process of regulatory reform.⁷

⁴ The Turkish NCA does not have a legal standing of filing a suit for any NRA regulation. Even this regulation evidently lacks a sound legal foundation to overrule completion rules.

⁵ See [McCubbins et al. \(2007\)](#) for a recent recapitulation of this approach.

⁶ See, [Buigies \(2003\)](#), [Economides \(2005\)](#), [Geradin and Kerf \(2003\)](#), [MacAvoy \(1998\)](#), and [Shelanski \(2002\)](#) for further discussions of the relationship between competition policy and regulation in telecommunications.

⁷ On the relationship between privatization, regulation and competition, see particularly [Zhang et al. \(2005\)](#) and [Parker et al. \(2005\)](#).

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