The Turkish Competition Authority issues a new "communiqué" on complaint procedure relating to competition infringements

Turkey, Procedures, Leniency, Admissibility (complaint), Competence, All business sectors


The Communiqué was issued in order to determine the procedures and principles related to complaints regarding infringements of Articles 4, 6 or 7 of the Act on the Protection of Competition No. 4054 [1] (the "Act") to be lodged before Turkish Competition Authority (the "Authority") on the basis of Article 27 of the Act which enumerates the duties and the powers of the Competition Board.

Procedure to Lodge a Complaint

Three aspects of the procedure to lodge a complaint are regulated by the Communiqué:

Persons Entitled to Lodge a Complaint

Complaints before the Authority may be made by both natural and legal persons through complaint applications, denouncement or upon request of the Ministry of Customs and Trade. Complaints to be made by public bodies are not covered by the Communiqué.

As per this Article, all persons, including the ones who have not any legitimate interest are entitled to lodge a complaint. However, Article 9 of the Act expressly states that "Natural and legal persons who have a legitimate interest are entitled to file a complaint". Within this scope, it should be mentioned that it would be better to include in the Communiqué the "legitimate interest" condition in order to ensure a full compliance between the Communiqué and the Competition Act.

Moreover, neither the difference between denouncement and complaint nor their consequences are stated in the Communiqué.
Form of the Complaint

Complaint application before the Authority should principally be made in writing and submitted to the Authority either personally or via mail, fax, telephone or any other way. It is unclear whether an application made through telephone should be followed by a written submission. Applications, not made personally to the Authority are considered as denouncements as it is the case for applications made verbally and to put down on a minute.

Content of the Complaint

► **As regard to the complainants.** Applications made by natural persons should include the name and surname, identity number, address and signature of the applicant. As for complaints made by legal persons, they should include the commercial name of the legal entity, its address, specimen of signature and signatures of people entitled to represent and bind the legal entity pursuant to the specimen of signature. In case that a complaint application is made by a representative; the application should include the addresses of both the representative and the principal as well as the signature of the representative. In addition, the original or true copy of the document, which shows the power of the representative, should be annexed to the application. The complainant has the right to request that its personal data is to be protected and kept confidential. In case of such claim, the personal data would not be disclosed. However, it would be better if, in all cases, information or documents should not be communicated or made accessible by the Authority in so far as they may contain sensitive institutional data or sensitive personal information about any person. Applications, which do not include the above-stated information would in principle not be taken into account by the Authority. However, the Authority, on its own initiative, would be able to open proceedings even though the above-mentioned information are not complete, if the application is considered important and serious.

► **As regard to the infringement of competition.** In addition to the above, applications should also include clear, detailed and precise information on the infringement of competition. In other words, applications should include the date, place and form of the infringement and detailed information or documents on the undertakings or associations of undertakings parties to the infringement. Otherwise, the applications should in principle not be taken into account. However, the Authority would have the right to ask additional information before initiating preliminary investigations. In such case, it would be more appropriate that the Authority sets a time-limit within which the complainant may make known its view in the form indicated above. In addition, it would be also preferable that the complainants submit all documentation in their possession relating to or directly connected with the facts set out in the application such as agreements, business documents, correspondences, etc. as well as the names and addresses of the persons able to testify to the facts set out in the complaint and in particular of persons affected by the alleged infringement. In the light of the foregoing, it would be more efficient and easy for both the complainants and the Authority to prepare a standard application form including all the required information.

► **As regard to the incorrect information.** In case that incorrect information is given by the applicants, the Authority will have the power to initiate legal actions.
Evaluation of the Complaint

The Authority will inform the complainants or their representatives about the outcome of their application within thirty days. Concerning incomplete applications, the complainants or their representatives will not be informed.

In addition to the critics indicated above, it should also be mentioned that the Communiqué does also not include any provision to regulate what steps should be taken in cases where the complaints are rejected.

Conclusion

Notwithstanding to the above given critics, the issuance of the Communiqué would be beneficial, since the Authority would be able to act more efficiently and rapidly on the basis of the information and the documents provided by the applicants.

[1] Please see the following link to access the Competition Act http://www.rekabet.gov.tr/index.php... (accessed on: 31.08.2012)