
**Working Group on the Interaction
between Trade and Competition Policy**

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COMMUNICATION FROM TURKEY

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The Impact of State Monopolies, Exclusive Rights and Regulatory
Policies on Competition and International Trade

I. INTRODUCTION

1. Competition, which is appreciated as an effective means for efficient resource allocation and maximization of consumer welfare, may sometimes be overridden by various public interests. In fact, governments may choose to participate directly or indirectly in practices that restrain or restrict competition for such reasons as protection of the environment, public safety and health, achievement of economies of scale, price stabilization, strategic control, expansion of domestic output and improvement of terms of trade.

2. State monopolies, special exclusive rights and privileges accorded to public or private firms and some regulatory policies may be good examples of this kind of involvement. These practices can be seen in the areas of goods as in the case of state-trading enterprises (i.e., marketing boards, fiscal monopolies, canalizing agencies) or in the area of services as in the case of network industries (i.e., telecommunications, gas, electricity, water, transport, postal services).

II. STATE MONOPOLIES - NATURAL MONOPOLIES, EXCLUSIVE RIGHTS AND REGULATORY POLICIES

3. State monopolies founded to provide public services are usually seen in areas suitable for the existence of natural monopolies. Natural monopolies are widely observed in network industries which require large amounts of initial investments and high fixed costs. In these areas, multiple firms may cause duplication and result in waste of resources. Apart from network industries, natural monopolies may also be essential for facilitating access to the country, as in the case of airports, harbours and bridges.

4. Although the nature of the market is the main factor for the formation of state monopolies, there are some other reasons such as inadequate accumulation of private capital, lack of attractive profits for the firms, peculiarity of technology and the nature of the service. Moreover, some social concerns or national prestige are other motives for the public body to act as a monopoly in the service sector.

5. In addition to state monopolies, governments may extend exclusive rights to either state-owned or private companies for importing, exporting and supplying goods and services or may introduce regulations in various areas such as: agriculture, banking, insurance, energy, transport, to stabilize the market or exercise control.

6. These practices aim to protect the well-being and rights of society, but at the same time result in a lack of competition. Even though the policy approach towards this dilemma differs from one country to another, it is a fact that there is a global trend towards liberalization and regulatory reform in domestic markets.

III. APPLICATION OF COMPETITION POLICY

7. As the purpose and the substance of government involvement in commercial activities differ, the same is true for the applicability of competition rules to these activities. While some countries apply competition rules to these activities as if they are applied to activities of private companies, some countries apply them partly, and in some others, commercial activities of government are totally exempted from competition rules. Regarding the partial application or total exemption, the relevant legal base can be either competition law itself or another law or regulation which contains exemption provisions.

8. Applications of competition rules to government activities may also differ at the international level. Although the doctrines of "sovereign immunity", "state act" and "foreign compulsion" establish a reasonable ground for these applications, **a common language is necessary** in this respect. To this end, a good start to work on these applications is to concert further efforts for **transparency** - as also reflected in the Understanding on the Interpretation of Article XVII of the GATT 1994 – in order to determine the extent of government involvement.

IV. IMPACTS ON INTERNATIONAL TRADE

9. Article XVII of the GATT 1994 recognizes that operations of state enterprises or any other enterprises which are granted exclusive or special privileges may create serious obstacles to international trade. Thus, in their exports or imports, they are required to act consistently with the principle of "non-discrimination". In addition, such privileges cannot be used in a restrictive manner, either in imports or exports, inconsistently with the provisions of the GATT 1994. Moreover, a state-owned import monopoly cannot operate so as to afford excess protection.

10. This broad and detailed outlook of GATT provisions establishes a reliable framework for the government involvement in commercial activities for minimizing the distortion effects of such practices. Considering the need for smooth functioning of the international trading system, with due regard for development needs and priorities, it is vital:

- to accelerate **liberalization** and **regulatory reforms** in domestic markets;
 - to enhance **transparency** of the involvement of governments in economies; and
 - to give due consideration **to comply with relevant provisions of the GATT 1994**.
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