

# GEDİK & ERAKSOY

February 2014

## *Opinion on the Draft Act on Retail Sales*

*The TCA has recently issued its opinion on the Draft Act on retail sales, which is also known as the “shopping mall act” by the public.*

### **Summary**

This legislative proposal has been awaited for a couple of years as the increasing number of shopping malls, department and chain stores has allegedly created competitive disadvantages for small retail stores. However, referring to its recent inquiry in the fast moving consumer goods market, the TCA is of the opinion that some provisions of the draft could create restrictions of competition in the retail sales market.

### **What changes do the new rules bring to the sector?**

The draft provides changes in five main areas which may affect competition in the retail sales market.

First, it proposes the formation of strategic commercial plans for each city. These plans will determine commercial zones and the maximum number of market players that can operate on a street, quarter or district basis. The aim of this provision is to prevent the negative social and environmental effects caused by the opening of “more than needed” shopping malls and, more importantly, to reduce the closure of small retail stores that opened without an initial feasibility study. The plans will be binding on shopping malls and department/chain stores while they will be optional for the small retail stores.

The second change relates to the creation of an on-line information system which is called “PERBIS”. By gathering all information about retail sales market in one place, this system will simplify the approval procedures and will prevent losses in terms of time and cost. Thanks to this system, new players are also expected to enter the market.

Third, the draft stipulates that big retail stores cannot request premiums or fees that do not directly relate to product demand (i.e. store opening/renovation, turnover deficit or bank/credit card participation fees) from producers and suppliers.

Fourth, in the draft, the Ministry is empowered to limit the number or variety of private label products sold in big retail stores. In parallel with this provision, the timing and duration of discounts or special offers have also been limited. According to this, discounts or special offers for products other than fast moving consumer goods can only be made on public holidays, special days, liquidation, change of workplace or seasonal closing outs. In addition, special offers for these products can only last 15 days.

The final issue affecting competition relates to the establishment of joint supply and distribution companies. The aim of this provision is to enable producers or suppliers to counteract the buying power of big retail stores. However, these companies can only be established by ministerial authorisation and the Ministry is entitled to take over the management and assets of these companies under a judicial decision.

## **Opinion of the Authority**

In its opinion, the TCA first refers to its report in the inquiry on the fast moving consumer goods market issued in May 2012. In this report, the Authority determined that an organized retail market is still developing in Turkey and, despite some consolidation, the market is retaining its competitive structure especially given the increasing number of the local department and chain stores. Thus, the TCA concluded that the buying power of big retail stores does not pose a threat because the cost advantages are still passed on to consumers. The TCA also made it clear that competition between the suppliers and big stores are not hindered because of private labels. Having this in mind, the Authority objects to some of the provisions in the draft.

The first point of objection concerns the strategic commercial plans. The TCA believes that too much state intervention on the choice of location is against the free market principles and it suggests that the determination of commercial zones can only be limited on environmental or social grounds (e.g. to solve a traffic problem). The TCA further explains that, considering the binding nature of these plans for big retail stores, such entry barriers will increase the concentration level and the market power of the existing players in the market.

The TCA also points to the fact that the creation of PERBIS can increase the level of transparency, which can facilitate price sensitive or other types of anti-competitive information exchange between market players. The Authority therefore suggests that this proposal should be consulted on by the Ministry before setting the details of the system.

As for the provision regarding premiums and fees, it seems unlikely for the TCA to be able to identify a fee that does not directly relate with product demand. The TCA believes that these premiums and fees result from the bargaining power of the parties and they are part of the final end-user prices. Thus, instead of this provision, the Authority suggests that only those fees that are not defined in the supply contracts should not be requested from the producers/suppliers.

With regard to private label products and discounts/special offers, the TCA is of the opinion that these two provisions should be revoked in their entirety because they restrict competition rather than enhancing it. According to the Authority, private label products and discounts/special offers are factors that bring efficiency to the market, by decreasing prices and increasing choices for consumers.

Finally, the TCA objects to the fact that joint supply or distribution companies are subject to such scrutiny of the Ministry. In practice, there is no legal barrier to establish this type of entity and the TCA retains the power to forbid or exempt them under Competition Act. Therefore, the Authority believes that no additional control mechanism is needed for the establishment of joint supply or distribution companies.

## **Concluding remarks**

The Draft Act on retail sales is welcomed by all market participants who are of the view that there has been a need for specific regulation in the market for the past few years. However, as the TCA points out correctly, there are some signs of over-regulation in the draft. Therefore, the Ministry should revise the Draft Act in accordance with the comments of the TCA. After all, one should not forget that it is the competition itself, not the competitors, which must be protected under free market economy.

## Gedik & Eraksoy Avukatlık Ortaklığı

Kanyon Ofis Binası, Kat 6,  
Office No: 1015 - 1023  
Büyükdere Caddesi No.: 185  
TR-34394 Levent, Istanbul  
Turkey

Tel +90 212 371 2950  
Fax +90 212 371 2955

[www.gedikeraksoy.com](http://www.gedikeraksoy.com)

© Gedik & Eraksoy Avukatlık Ortaklığı 2012. This document is for general guidance only and does not constitute definitive advice.



**Hakkı Gedik**  
Partner, Gedik & Eraksoy

**Contact**  
Tel +90 212 371 2953  
hakkı.gedik@gedikeraksoy.com



**Gökhan Eraksoy**  
Partner, Gedik & Eraksoy

**Contact**  
Tel +90 212 371 2952  
gokhan.eraksoy@gedikeraksoy.com



**Emre Önal**  
Senior Associate- Istanbul

**Contact**  
Tel +90 212 371 2965  
Emre.onal@gedikeraksoy.com