

3 May 2006

# Screening report

# Turkey

## Chapter 8 – Competition Policy

**Date of screening meetings:**

Explanatory meetings: 8 and 9 November 2005

Bilateral meetings: 1 and 2 December 2005

## I. CHAPTER CONTENT

The competition *acquis* covers both anti-trust and state aid control policies. It includes rules and procedures to fight anti-competitive behaviour by companies (restrictive agreements between undertakings and abuse of dominant position), to scrutinise mergers between undertakings, and to prevent governments from granting state aid which distort competition in the internal market. Generally, the competition rules are directly applicable in the whole Union and Member States must co-operate fully with the Commission in enforcing them. The Competition *acquis* is based on Article 31 (State monopolies of a commercial character), Articles 81-85 (Rules applicable to undertakings), Article 86 (Public undertakings and undertakings with special or exclusive rights) and Articles 87-89 (Rules applicable to state aid) of the EC Treaty.

The *acquis* under this chapter is to a large extent linked to the obligations arising from the Customs Union between the EU and Turkey presently in force.

In the field of **anti-trust**, national competition authorities must closely co-operate with the Commission in Community competition procedures. Since 1 May 2004, all national competition authorities are also empowered to apply fully the provisions of the Treaty in order to ensure that competition is not distorted or restricted. National courts may also apply directly EU anti-trust rules so as to protect the individual rights conferred to citizens by the Treaty.

In the field of **state aid**, the decision as to whether or not aid granted by Member States is compatible with the Common Market can be taken only by a supranational and independent authority. Exclusive authority for scrutinising the state aid measures was conferred on the European Commission by the Member States.

The term **liberalisation** refers to Article 3 of the EC Treaty which states that the activities of the Community shall include a system ensuring that competition in the internal market is not distorted. For this purpose, there is a specific surveillance system in the case of public undertakings and undertakings to which Member States grant special or exclusive rights. With respect to the liberalisation of specific sectors, reference is made to the relevant sector specific negotiating chapters.

## II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Turkey and the discussion at the screening meeting.

Turkey indicated that it can accept the *acquis* regarding the competition policy. Turkey indicated that it does not expect any difficulties to implement the *acquis* by accession.

### II. a. Anti-trust including mergers

The Turkish Constitution, the Customs Union Decision 1/95, the Law on Protection of Competition No 4054 of 1994 and the Communiqué on the Mergers and Acquisitions of 1997 contain the basic rules on restrictive agreements, dominant position and merger control.

Turkey considers its anti-trust legislation including mergers to be generally in line with the *acquis*. Turkey plans to amend its legislation in the anti-trust field in order to bring it further

into line with the Community's new rules and to revise its existing secondary legislation accordingly.

There is no sector in which the competition rules cannot be implemented except for a certain type of merger in the banking sector. According to the Turkish current banking legislation (Article 19, Law No 5411), mergers in which the merged entity has a market share below 20% of the Turkish banking market are excluded from the merger provisions of the Law on Protection of Competition.

Procedural rules are contained in the Law on Protection of Competition. Turkey stated that in order to achieve more effective enforcement, the Turkish Competition Authority is preparing a draft bill that envisages the redesign of certain procedural rules in light of Regulation 1/2003. Turkey envisages introducing rules on immunity from fines and reduction of fines in cartel cases, as well as the possibility of adopting commitment decisions.

As to secondary legislation, Turkey considered it to be broadly in line with the EU *acquis*. This concerns in particular the rules on motor vehicle distribution. Although there is no secondary legislation regarding insurance, air transport and maritime transport sectors, Turkey states that it takes into account the EC legislation and the Commission decisions related to these sectors. In the field of vertical agreements, Turkey stated that a *Communiqué* on vertical agreements is generally in line with the *acquis* except for the absence of a 30% market share threshold. Also in the case of the Commission Regulations on horizontal cooperation agreements and on R&D agreements Turkey considered that some adjustment is necessary. Turkey stated that there are no rules which correspond to the Commission *de minimis* notice and the technology transfer block exemption regulation. Turkey acknowledged that it would be useful to align its legislation with the EU *acquis* regarding the *de minimis* rule. Concerning technology transfer, Turkey's main approach is to take into account the principles of the *acquis*. In other cases, i.e. the Commission guidelines on the effect on trade and the Commission regulation on specialisation agreements, Turkey considers that there is no need to align its legislation with this part of the EU *acquis* before accession.

The authority responsible for anti-trust in Turkey is the Competition Authority, which is operational since November 1997. According to Turkey, it is independent in fulfilling its duties. It consists of a Board, a Presidency and Service units and has 91 experts. Between 1999 and 2004 there were 289 anti-trust infringements of which 189 were cleared. Mergers and acquisitions came to 585.

## **II.b. State aid**

### *Procedural regulations:*

There is no framework legislation and no single authority in the state aid field but only related international agreements. Turkey underlined that it does not want this issue to be an obstacle for the negotiations. A draft State Aid Monitoring and Supervision Law has been prepared in 2002. Turkey did not indicate a possible date for its adoption. Turkey added that after the enactment of this law, the authority would need to be established with sufficient administrative capacity and that secondary legislation should be adopted. Turkey stated that it is difficult to establish a timeframe for this process at the moment.

*Rules on reference/discount and recovery interest rates:*

The State Aid Monitoring and Supervision Law, when adopted, will be in line with the EU rules on reference/discount rates. Turkey does not always apply market interest rates when asking for the recovery of illegal aid.

*Financial transfers to public enterprises:*

The main provision is Decree Law No 233, under which the Treasury must transfer capital for investment and operational deficits to state-owned enterprises and may offset dividend receivables and other receivables against its capital and duty loss obligations to them. At present, 11 state-owned enterprises active in the field of defence machinery, hard coal, agriculture, railways, carpets, maritime transport, copper, electricity distribution and tobacco, derive capital from their owners (the Treasury or the Privatisation Agency).

*State guarantees:*

The Law on the Regulation of Public Finances and Debt Management of 2002, a Communiqué of 2002 and a number of Laws on stranded costs in the electricity sector are the main legislative acts. There are four types of Treasury Guarantees: repayment guarantees, investment guarantees, counter guarantees and country guarantees. State-owned enterprises and institutions subject to special regulations and in which the public owns a stake of more than 50% are the beneficiaries. Repayment and investment guarantees can be extended to 95% of the total liability. As regards stranded costs in the electricity sector, i.e. the potential losses to electric power utilities as their industry is deregulated and the state aid involved in the process to compensate for these potential losses, the Electricity Market Law No 4628 addresses these within a competitive market structure.

*Public Land Sales:*

The legal provisions are the Law No 2886 on State Tenders, the Law No 4706 on sales and the Law No 1164 on sales and free-of-charge transfers together with the Law No 4562 as the Organised Industrial Zones are concerned and Laws No 5084 and No 5396 on free-of charge transfers. There are currently two procedures for land sales: the unconditional bidding procedure and the conditional procedure. In both cases, the Ministry of Finance is responsible for selling the land to private and state-owned companies, individuals, local administrations and other public institutions. Under the unconditional bidding procedure, immovable property is sold by the administration at market value and is exempt from real estate tax for five years. The conditional procedure provides for sales both at market value and book value and transfers are free of charge in the case of the Housing Development Administration and the Organised Industrial Zones, or under the Promotion of Investments and Employment Law and Law No 5396 on the construction of health institutions.

*Export Credit Insurance:*

Since 1989 Turkey has had a system of short term credit insurance, which has been profitable since then and which provides for commercial and political risk cover up to 90%. The maximum credit length is 360 days and 176 countries are covered at present. Since 1989 Türk Eximbank has benefited from private market reinsurance at a ceding percentage of 70% of commercial and political risks, as well as from corporate tax exemptions, capital injections by the Treasury and indemnification by the Treasury against losses due to political risks. According to Turkey, Türk Eximbank is the only institution willing to insure risks demanded by Turkish exporters. Turkey considers that Türk Eximbank provides export credit insurance cover in compliance with generally accepted private sector business principles. However, Turkey stated that compensation from the Treasury for political risk losses in its short-term operations has never been asked by Turk Eximbank. Until the

maturing of the currently less-developed insurance market in Turkey, Türk Eximbank will continue to play a central role in the sector.

*Fiscal aid and direct business taxation:*

The following fiscal aid measures are currently in place in Turkey:

- Free Zones Law 3218 (Provisional Article 3). Taxpayers who already have licence to operate in the free zones by the date this Article comes into effect (6 February 2004) benefit from the following support measures:
  - a) Earnings from activities conducted in free zones are exempt from income and corporate taxes within the validity of the operating licence.
  - b) Wages paid will be exempt from income tax until 31 December 2008. If the operating licence expires before 31 December 2008, this exemption only applies until the operating licence expires.
  - c) Operations concerning the activities of users in free zones are exempt from all provisions concerning other taxes and fees until 31 December 2008.
  - d) Profits earned from taxpayers' production activities are exempt from income and corporate taxes until the end of the fiscal period of the year when Turkey becomes a full member of the European Union.

Turkey explained that the one and same company cannot benefit from undue accumulation of above aid schemes because of the monitoring carried out by the Turkish authorities before granting the operating licence.

- Tax Holiday for Training and Education Business (Income Tax Law Article 20). Earnings received for operation of preschools, primary schools, private education and secondary education schools are exempted from income tax for five years.
- Exemption Provided by the Law No 4490 for Maritime Transport (Amended by Article 3 of Law No 5266). Earnings from operating and transferring ships and yachts registered in the Turkish International Ship Register are exempt from fund levies, income and corporate taxes. Contracts for buying and selling, mortgage, registration, credit and freight related to ships and yachts registered in the Turkish International Ship Register are exempt from stamp duty, fees, banking and insurance transaction tax and fund levies. The wages of staff working on ships and yachts registered in the Turkish International Ship Register are exempt from income tax and funds.
- Exceptional Earnings under Law No 4325 on Less Developed Regions (Article 3). Newly established businesses can deduct a certain rate from corporate and income tax until 2007, provided that they employ at least 10 workers in the business located in at least one of the 22 provinces situated in the east and southeast of Turkey. This incentive does not require a specific certificate. For companies employing 10 workers, the tax deduction rate is 40%. For companies with between 11 and 50 workers, the tax reduction is increased by half a percentage point for each additional worker. For companies with 51 workers or more, the tax deduction rate is 60%.
- Exemption Provided by Law No 5084 to support regions with a low GDP. This exemption is applicable to all sectors. Income and corporate taxpayers (resident or non-resident) can benefit from a reduction in withholding tax for their workers' wages, if they meet the following conditions:

- a) The enterprise was set up after 1 April 2005 or had at least 30 employees before that date and increased the number of its employees by 20%.
  - b) The enterprise is located in a province where the GDP per capita, as determined by the Turkish Statistics Institute for the year 2001, is equal to or below USD 1500 or where the socio-economic development index value, as determined by the State Planning Organization, is negative.
  - c) For enterprises in organized industrial zones, 100% of the income tax base is exempt from income tax on wages; in other regions 80% of the income tax base is exempt from income tax on wages.
- Earnings Gained in Technology Development Zones Law No 4691. Companies that conduct business in the technology development zones are exempt from income and corporate tax on earnings from software and R&D activities until 31 December 2013 (extended by Law No 5035). Wages paid to researchers, programmers and R&D staff employed in the region are exempt from income tax until 31 December 2013.

*Rules on the assessment of state aid with horizontal objectives and regional aid:*

The following provisions and aid measures are applicable:

- Aid in order to encourage employment in sectoral foreign trade companies, by the Undersecretariat for Foreign Trade. The Support and Price Stability Fund granted a total of EUR 57 000 of such aid in 2004.
- Training aid to SMEs and sectoral foreign trade companies by the Undersecretariat for Foreign Trade. The Support and Price Stability Fund granted a total of EUR 4 000 of such aid in 2004.
- Aid to SMEs granted by the Undersecretariat for Foreign Trade, the Undersecretariat of the Treasury and KOSGEB (a small and medium-sized industry development organisation) in the form of tax exemptions and credit facilities. In this area, SMEs may benefit from state aid for investment purposes, environmental protection, market research, participation in international fairs, operating stores abroad, promoting Turkish trademarks and improving the image of Turkish products abroad. Turkey stated that since the aid measures in this field are a combination, inter alia, of tax exemptions and credit facilities, it is difficult for Turkey to put a figure on them.
- Research and development aid in form of tax exemptions, credit and grant facilities granted by the Undersecretariat of Treasury, the Undersecretariat for Foreign Trade, TUBITAK (the Scientific and Technological Research Council of Turkey), TTGV (Technological Development Foundation), the Ministry of Industry and Trade and the Ministry of Finance. The aid granted by the Undersecretariat of Treasury, in the form of credit allocations, amounted in 2004 to approximately EUR 89 000. Beneficiaries are natural or legal persons investing in research and development. Aid provided in the form of grants by the Undersecretariat for Foreign Trade and by TUBITAK amounted in 2004 and 2005 to 40 and 82 million Euros respectively.
- Aid for environmental protection is granted by the Undersecretariat of the Treasury in the form of tax exemptions and credit allocations. Turkey stated that since the aid measures granted in this field are a combination, inter alia, of tax exemptions and credit facilities, it is difficult for Turkey to put a figure on them. As regards the energy sector, the Law No 5346 on the Utilisation of Renewable Energy defines mechanisms to support the renewable based electricity generation within the competitive electricity market structure, with the obligation of purchasing a certain amount.

- Risk capital. Aid is granted to encourage the investment by SMEs and high-tech enterprises in the form of credit allocations by public and private institutions. Turkey stated that since the aid measures in this field are a combination, inter alia, of tax exemptions and credit facilities, it is difficult for Turkey to put a figure on them.

*Regional aid is granted under the following regimes:*

The following provisions and aid measures are applicable:

- Decree No 2002/4367 on State Encouragements to Investments. The Undersecretariat of Treasury grants state aid to promote investments in order to reduce regional imbalances. Regions are classified as developed, normal and of priority development. The aid takes the form of tax exemptions and credit facilities.
- Decree No 2000/1822 on State Aids in Investments of SMEs. The Undersecretariat of Treasury grants aid to promote SMEs' investment.

Turkey insisted that since both decrees provide for a combination of tax exemptions (customs duties, fund levies and VAT exemptions) and credit facilities, it is difficult for Turkey to put a figure on them.

- Law No 5084 on Encouragement of Investments and Employment and Amendment of Certain Laws. The Undersecretariat of the Treasury, the Ministry of Finance, the Ministry of Labour and Social Security, the Ministry of Energy and the Ministry of Industry and Trade, together with the Council of Ministers, grant state aid to encourage investment and employment in the least developed regions via tax and social security incentives, energy support and free-of-charge land allocation. For new investments to be completed until 31 December 2007, tax exemptions, social security incentives and energy support are implemented for 5 years following the completion of the investment. For other undertakings, the programme runs until 31 December 2008. As for free-of-charge land allocation no deadline is specified. Again, since the programme is a combination of tax exemptions and grants, Turkey considered it difficult to put a figure on it, but it estimates that the total amount transferred for energy support was EUR 5.9 million in 2004.
- Law and Regulation on Organised Industrial Zones of 2000 and 2002 respectively. The Ministry of Industry and Trade provides infrastructure for the administration of the Organised Industrial Zones and cooperatives of the Small Scale Estates.

*Rescue and restructuring aid:*

Turkey stated that there is no specific regulation in this area.

*Steel:*

There is no specific regulation in Turkey regarding rescue and restructuring aid or closure aid for the steel sector. As regards the size of the sector, the total number of companies in 2004 was 147 (3 integrated, 18 electric arc furnaces and 126 re-rollers) employing 34 383 persons. In 2004 Turkey exported 12.1 million tonnes of steel products and imported 7.9 million. A national restructuring programme for the Turkish steel industry was drafted at technical level by June 2005. The draft does not include any individual business plan and has not been approved by the government. Turkey did not give any precise indication of when the national restructuring programme might be adopted.

The following state aid programmes and measures are currently available to steel companies:

- General Investment Encouragement Programme (GIEP) (based on Decree No 2002/4367 on State Encouragements to Investments). Turkey stated that under this regime, domestic and foreign investors are treated equally. As stated above under *Rules on the assessment of state aid with horizontal objectives and regional aid*, according to the Decree on State Encouragements to Investments, eligible investment projects which are granted a certificate can benefit from exemption from customs duties and fund levies, and from value added tax on imported and domestically purchased machinery and equipment, plus a credit allocation from the budget. Turkey stated that no investment encouragement certificate has been granted to the steel industry since July 2004. None of the steel producers has benefited from the credit allocation measure under this programme
- Research and development support. The conditions are described above under *Rules on the assessment of state aid with horizontal objectives and regional aid, point Research and development*.
- Environmental support programme of 31 July 1997. The only beneficiaries are SMEs.
- Support programme for participation in international fairs.

#### *Privatisation:*

The basic legal framework is Communiqué No 1998/4 and Communiqué No 1997/1 with regard to privatisation in merger and acquisition control context. Under these Communiqués, the Turkish Competition Authority delivers its opinion before the bidding process and participates in the authorisation phase. Some companies recently privatised or in the process of privatisation are TEKEL (tobacco and alcohol), IGSAS (fertilisers), Türk Telekom A.S, Tüpras (petroleum).

#### *Shipbuilding:*

The Turkish shipbuilding sector may benefit from the general investment encouragement aid programme. A specific provision is the exemption from customs duties and related taxes for imported equipment for shipbuilding or repair yards under the terms of Law No 2581 on the Development of Maritime Merchant Fleet and Encouragement of Shipping Construction Facilities.

The sector mainly consists of ship and yacht building, maintenance and repair yards, repairing slipways, sub-industry manufacturers and equipment suppliers. There are currently 44 private shipyards with a new building capacity of 1 100 000 dwt per year on a project basis. The capacity for building new ships, including naval yards, in various types and tonnages in one unit is up to 150 000 dwt. Shipyards currently have a shipbuilding output of 450 000 dwt per year. Turkey is ranked 15th in “newbuildings on order by country of build” and its share of shipbuilding in terms of contract value is much higher than that of tonnage value.

#### *Postal services:*

The legislative framework is Postal Law No 5584 according to which the General Directorate of PTT has monopoly rights on sealed or unsealed letters and postcards. The PTT is fully owned by the Treasury. In other services in the sector there are private companies operating in Turkey.



### *Broadcasting:*

Public broadcasting is regulated by the Law on Revenues of the TRT (Turkish Radio and Television Corporation) No 3093 and the Law on Establishment of TRT No 2954. The main revenue sources of the TRT are fees collected from radio, television, video and integrated equipments, a proportion of electricity bills (2%) and transfers from the Government budget. The first two revenue streams are exempt from corporate tax. As regards the radio and television transmission buildings that the TRT owns, buildings that are acquired by the TRT are exempt from estate duties and some specific fees. A quarter of the channels and frequency bands in the national frequency plans are allocated to the Turkish Radio and Television Corporation.

### *Audiovisual production:*

The basic legislative framework is Law No 5224 on the Evaluation, Classification and Support of Cinema Films and the Decree on Supporting Cinema Films. The system in place provides for grants for pre-production stages up to a maximum of 50% of the project cost and in the case of script writing support up to 100%. The production and post-production phases can also be supported up to 30% of the costs. Co-productions are also supported by the state up to a maximum of 30% of project costs as well as the promotion phase.

In contrast to the anti-trust area, there is no single authority in Turkey responsible for state aid monitoring. The Turkish institutions in charge of the policy making process are the Turkish Grand National Assembly, the Council of Ministers, the High Planning Council, the Money, Credit and Co-ordination Committee, the Prime Minister and the ministries. The main public institutions granting state aid in Turkey are the Undersecretariat of the Treasury, the Undersecretariat for Foreign Trade, Türk Eximbank, the Small and Medium-sized Industry Development Organisation (KOSGEB), the Ministry of Finance, the Turkish Revenue Administration, the Ministry of Culture and Tourism, the Ministry of Industry and Trade and the Turkish Scientific and Technological Research Council (TÜBİTAK). Turkey stated that when the state aid monitoring and supervision law is enacted; a State Aid Monitoring Authority will need to be established with sufficient administrative capacity.

## **II.c. Liberalisation**

### *Public undertakings and undertakings with special or exclusive rights:*

According to Turkey, the Law on Protection of Competition No 4054 of 1994, which contains the basic framework of anti-trust rules in Turkey, applies fully to public undertakings and undertakings with special or exclusive rights. Currently there is no explicit legislation on the control of exclusive and special rights granted by the state. The Turkish Competition Authority forwards its opinion upon application by public authorities in cases where exclusive and special rights are to be granted. Turkey added that the Law on the Protection of Competition will be amended in order to make it compulsory to ask the Turkish Competition Authority's opinion when drafting legislation in this area.

### *State monopolies of a commercial character:*

Regarding national monopolies of a commercial character, Turkey stated that there are two monopolies: TMO (the Turkish Grain Board, as regards the legal production of opium for medical purposes) and ETI Maden (ETI mining, which researches and explores boron, thorium and uranium ores).

### **III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY**

Overall Turkey has not reached a satisfactory level of alignment with the *acquis*; nor does it have the administrative capacity to do so at this stage. In the area of anti-trust and merger policy, Turkey has reached a satisfactory level of alignment with and capacity to implement the *acquis*, although further efforts are still required in order to bring the Turkish legislation in line with the new Community's framework in this field. In the area of state aid control, the alignment of Turkey's legislation with the *acquis* is far from being satisfactory. As regards the necessary administrative capacity to implement the state aid *acquis*, it can be considered as non-existent. In this context, the adoption of a state aid law establishing the basic legislative framework and the setting up of a state aid monitoring authority allowing effective state aid control is crucial. In addition, Turkey needs to start developing an enforcement record in the state aid area. Special attention is needed as regards state aid to the steel sector and state aid in the form of fiscal measures.

Given that in the Competition chapter the Candidate Countries' present legal obligations under the association agreements are equivalent to those of the *acquis* in the field of competition, the Commission notes that its assessment could carry specific legal implications. Therefore, the Commission assessment must be understood as being based on a provisional appraisal of the information provided by the Turkish authorities and is without any prejudice to the outcome of any further procedure to be carried out at a later stage.

#### **III.a. Anti-trust including mergers**

The Law on Protection of Competition No 4054 of 1994 and the Communiqué on Mergers and Acquisitions of 1997, which together with the Turkish Constitution and Customs Union Decision 1/95 form the basic legislative framework in this field, largely reflect the main principles of Community anti-trust rules as regards restrictive agreements, abuse of dominant position and merger control. However, further alignment with EU rules is still required particularly as to secondary legislation, e.g. block exemption regulations on vertical and horizontal co-operation agreements.

The Turkish Competition Authority can be considered operationally independent. Its administrative capacity to ensure the implementation of the anti-trust *acquis* can be considered satisfactory. However, the enforcement record in this area is also hampered by the competing responsibilities of sector regulatory authorities such as the Energy Market Regulatory Authority, the Telecommunication Authority, and the Banking Regulatory and Supervision Authority.

#### **III.b. State aid**

##### *Procedural regulations:*

Turkey has not aligned its legislative framework with the Community's state aid rules as required by Council Decision 1/95 on the final phase of the implementation of the Customs Union and the 1996 ECSC-Turkey Agreement on trade in products covered by the ECSC Treaty (the Free Trade Agreement on steel). The lack of a basic legislative framework in this area prevents Turkey from ensuring full transparency and effective control of its state aid regime. Therefore, the adoption of the State Aid Monitoring and Supervision Law in line with the EU rules is crucial for Turkey. Turkey has fallen short of presenting any timetable for alignment in the state aid field. Future alignment will also require modification of the secondary legislation to adapt the existing state aid schemes to EU rules.

*Rules on reference/discount rates and recovery interest rates:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. The rates the Turkish authorities apply when asking for the recovery of illegal state aid measures are too low. In addition, the provisions applied by the Turkish authorities in this area seem to differ depending on the case.

*Financial transfers to public enterprises:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. Turkey is currently granting operating aid in this field, which is considered incompatible according to the EU rules unless it is granted in the context of services of general economic interest. Turkey informed of its intention to privatise most of the public companies and to liquidate those that are not viable and cannot be sold. However, Turkey did not present a concrete proposal on how and when this process will take place.

*State guarantees:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. Proper risk assessment needs to be carried out. The partial coverage applied by the Turkish authorities should be limited in order to induce lenders also to do proper risk assessment.

*Public land sales:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. The Turkish system needs to be modified so that publicly owned real estate is sold in principle under market conditions and open procedures. Sales at book value for industrial zones and investment promotion can constitute state aid and therefore, their compatibility needs to be assessed.

*Export credit insurance:*

The market is dominated by Turk Eximbank and there are no private operators. In order to make a proper assessment in terms of possible state aid granted to the sector, it would be necessary to have more information and to make a proper analysis of the Turkish market for credit insurance.

*Fiscal aid and direct business taxation:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. The main fiscal aid regimes currently in place in Turkey seem to be related to the free zones, the organised industrial zones and the technology development zones. The legislation on the free zones is not in line with Turkey's Customs Union obligations, in particular because the companies established in the free zones benefit from complete exemption from tax and customs duties. The same can be said as regards the companies established in industrial and technology zones, where companies do not benefit from exemption from customs duties but from a limited number of tax exemptions (e.g. from corporate or income tax, or social security payments) and reduced energy costs. Moreover, municipalities may grant land to companies in these regions free of charge. In the case of the technology development zones, some tax exemptions are also granted. According to the information provided by Turkey, there are at present 21 free zones and around 50 to 60 organised and technology development zones.

In addition, several fiscal aid measures are granted at the same time without respecting the basic accumulation rules in the state aid *acquis*. Furthermore, the Turkish authorities make no link with the eligible expenses when granting state aid.

*Rules on the assessment of state aid with horizontal objectives and regional aid:*

At this stage, the Commission considers that the Turkish legislation in this area is not in line with the *acquis*. The aid measures and provisions in this area raise serious doubts as to their compatibility with the *acquis*. In some cases, the measures refer to non-economic activities and are therefore not relevant to the assessment of compatibility with the *acquis*. In most cases, there is no link between the state aid measure in question and eligible expenses. Furthermore, there seems to be no respect for accumulation rules.

*Rescue and restructuring aid:*

Turkey has no specific provision in this field. In order to ensure full transparency and to put into place an effective state aid control system in an area that is highly sensitive, the adoption by Turkey of specific guidelines in line with the EU provisions is essential.

*Steel:*

In December 2000, Turkey requested the possibility to use the benefits of Article 8 of the Free Trade Agreement on steel on a possible exemption from the general principle of a prohibition of state aid support for restructuring purposes. Any derogation from this state aid prohibition can only be envisaged in the framework of a national restructuring programme including detailed information and individual business plans for all companies involved in the restructuring process. It also requires the modification of the Free Trade Agreement to include the necessary legal basis.

The EU provided technical assistance to establish a national restructuring programme which was concluded in spring 2005. However, this programme has not yet been adopted by the Turkish government. So far, Turkey has not ensured a satisfactory level of transparency on the state aid granted to the sector. Only one law, related to investment allowance, has been notified to the Commission in April 2005.

Since Turkey has not so far made use of the possibility provided by Article 8 of the Free Trade Agreement on steel to give restructuring aid in the framework of a national restructuring programme, the aid granted in this context is in breach of the Free Trade Agreement on steel and is not in line with the *acquis* requirements. Furthermore, the Commission notes that Turkey has also been increasing capacity in the steel sector in breach of the Free Trade Agreement on steel.

Therefore, Turkey has to discontinue the granting of state aid to the steel sector. Furthermore, the Turkish legislation needs to be amended in order to exclude the steel sector from general state aid measures.

*Shipyards:*

At this stage, due to the lack of transparency regarding the state aid measures in place in Turkey in favour of the shipbuilding sector in particular, the Commission is not in a position to make an assessment in this area.

*Postal services:*

At this stage, the Commission considers that the Turkish legislation in this area is in line with the *acquis*.

*Broadcasting:*

At this stage, the Commission considers that the Turkish legislation in this area is in line with the *acquis*.

*Audiovisual production:*

At this stage, the Commission considers that the Turkish legislation in this area is in line with the *acquis*.

The necessary administrative capacity to implement the state aid *acquis* in Turkey can be considered as non-existent. A first step to remedy the situation and to make possible effective state aid control is the setting up of a state aid monitoring authority. In addition, Turkey needs to start developing a state aid enforcement record.

### **III.c Liberalisation**

*Public undertakings and undertakings with special or exclusive rights:*

The Turkish system currently in place does not fully reflect EU rules. In this context, Turkey needs to ensure that anti-trust rules and EU state aid rules are applied fully to public undertakings and undertakings with special or exclusive rights, in accordance with Article 86 of the EC Treaty and with the definition of undertaking in the *acquis*. Furthermore, Turkey needs also to ensure that the EU rules on transparency of financial relations between public authorities and public undertakings apply.

*State monopolies of a commercial character:*

The Commission notes that there are two monopolies of a commercial character. Turkey should keep the Commission informed of any new developments in this area.