

The incomplete transformation of institutions of economic policy: From clientelism to competition?

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1. Introduction

Economic policy in Turkey has gone through significant amount of transformation in the last three decades. While Turkey used to be a closed economy governed by an import-substitution industrialization strategy, starting in the early 1980s it went through substantial liberalization and privatization, and the market mechanism has gained increased importance in the allocation of resources. Hence domestic goods and financial markets have been deregulated, import tariffs and quantitative barriers have been reduced or eliminated, and since 1990 international capital flows have been liberalized as well. This tendency towards integration into the global economy has accelerated since the establishment of a Customs Union with the European Union.

Especially in the last decade this economic transformation has been coupled with a significant change in the institutions of economic governance as well. Hence Turkey has witnessed a proliferation of what have been called independent regulatory agencies (IRAs) in areas such as capital markets, competition policy, banking sector, energy and telecommunications. Significant changes have occurred in institutions of fiscal and monetary policy as well.

The European Union has played a significant role in these changes. The process of accession has naturally pushed Turkey to emulate European institutions. In many cases the EU has provided significant templates on how to restructure policy as well as institutions, and overall has provided a roadmap as to how to build the legal and regulatory infrastructure for a modern capitalist economy.

The purpose of this chapter is to provide an overview of this institutional transformation. It will be argued that this transformation is especially important for a country like Turkey, where a strong tradition of clientelism, by allowing differential access to political influence, may distort competition and limit productivity gains that are expected from the functioning of the market mechanism. In this respect, the chapter will discuss how the institutional form of IRAs may reduce the impact of clientelism in the economy. The chapter will discuss some of the achievements of this transformation, identify some important shortcomings and offer examples of how implicitly or explicitly the EU model has guided this transformation. Special attention will be given to the area of competition policy, both because this is now recognized as a fundamental component of the legal infrastructure for a proper competition-based market economy, and because in the special case of Turkey developments in competition policy have influenced other policy areas as well. The chapter will also discuss recent threats to the independence of IRAs.

The chapter is organized as follow. Section 2 will provide an analytical background on why delegation occurs in the first place. Section 3 will review the transformation of economic institutions in Turkey and will underline the special role of competition policy. Section 4 will provide an assessment and section 5 will conclude.

2. Institutions, delegation and rules vs. discretion

The importance of the role institutions in the long run economic performance of countries has emerged as one of the most powerful hypotheses of the economics discipline over the last few decades (North, 1990; Acemoğlu and Robinson, 2012). Economic institutions can be defined as rules that regulate interactions between economic agents, individuals or groups. Generally good economic institutions are thought to be those that protect property rights, create and maintain a competitive environment (or a “level playing field”) encourage entry, investment and creative destruction, provide more or less equal access to important public services such as education and health as well as to economic resources such as credit.

There is also general agreement that it is not only the formal rules that are important. The implementation of these rules is equally important because real economic activity and transactions between economic agents may be more closely influenced by informal rules and formal rules may have real bite unless they are enforced effectively. The difference between formal and informal rules (sometimes also referred to as *de jure* versus *de facto* rules) was already emphasized by the pioneers of “new institutional economics” (e.g. North, 1990). Recent literature has reiterated that distinction and that reform of formal rules may have little or no effect on the operation of informal rules (e.g. Hallward-Driemeier et. al, 2010).

An important characteristic of what today are seen as good institutions of governance is that they involve delegation of significant amounts of authority from governments, ministries and traditional bureaucracies to what are often called as “independent regulatory authorities”(IRAs). This is especially so in high income countries, including the member states of the European Union (EU), and especially in the areas of competition and regulation of network industries such as energy (especially electricity and gas) and electronic communications. Indeed, in those industries regulatory agencies enjoy a substantial degree of independence from governments, and they have wide rule making and enforcement powers. What exactly is meant by independence will be discussed in more detail below, but the fact that such delegation exists raises the question of why governments would agree to delegate such power in the first place. As will be discussed below, the main reason that has been put forward as a justification of this delegation is that, from a public welfare point of view, it is desirable to insulate the regulatory process from political influence so as to generate credibility with respect to investors as well as consumers.

The logic of delegation is not restricted to network industries. Competition policy has been enforced by independent agencies for a long time in Europe and the USA, and in countries that have adopted some sort of competition law in the last few decades. The idea that central banks should be independent

from governments has also been around for a long time and central bank independence is today seen as a major institutional requirement for macroeconomic stability. The regulation of financial markets is also carried out agencies that enjoy independence from governments. Delegation is observed in social and environmental policy as well, although most studies show that in those policy areas variability in the degree of independence across countries is higher and overall, independence is much more limited.

Of course, independence is not absolute. Overall sector policy is still supposed to be in the domain of the government, and IRAs are expected to design and implement regulations with a view to achieve these policy objectives. Moreover, the scope of the authority of independent agencies is limited by their constituting legislation. Finally, in order to ensure that independent agencies do not misuse their authorities, various mechanisms of transparency and accountability have been established.¹

Another dimension along which the quality of economic institutions is often evaluated has to do with the extent to which discretionary behavior of policy making bodies of governments, or agencies in the case of IRAs, are themselves constrained by rules. Here the evaluation is not absolute and tradeoffs are taken into consideration. Total discretion would be undesirable, if anything because it would create a large amount of uncertainty, but total elimination of discretion would also be undesirable because that would limit policy makers' ability to respond to unexpected or unforeseen circumstances. It would be fair to say that in the last few decades the overall global trend has been to restrain discretion, and not only by rules, but also through procedures, public consultations, transparency and stakeholder participation.

Why delegation?

IRAs first appeared in the US. In the US, the first regulatory agency the Interstate Commerce Commission (ICC) was established upon the complaints by railway operator companies that owners of infrastructure were engaged in discriminatory pricing (Joskow, 2007). When it was first established, the ICC had limited power and was not independent at all and was organized under the Interior Department (Moe, 1982, p. 198). It was given both more authority and more independence over time and it was only in early 1990s that Congress recognized the IRA as an important institutional innovation to limit presidential power (ibid, p. 199). Since then, independent agencies have been a formal component of industry regulation in the US.

In the rest of the world, the diffusion of IRAs is a more recent phenomenon and seems to have been accelerated in the last three decades. An important reason for this diffusion seems to be widespread liberalization and privatization in industries that were until recently dominated by publicly owned vertically integrated monopolies. Under his form, government intervention used to take a more direct form, through state owned enterprises or departments in ministries that controlled them. Even in cases when government intervention took milder forms such as licensing and price control, such activities

¹ This chapter will primarily focus on independence from the political authority. There is of course a second important component of independence, namely from capture by the regulated industries. It can be said that in countries with a strong tradition of clientelism (see the discussion below) capture by private sector would primarily work through connections at the political level.

were carried out through the departments of the central government (Majone, 1996). While country experiences differ, the main objectives of liberalization and privatization of especially network industries were to attract private investment to alleviate the public purse of the financial burden that such investments would create (often called the public finance reason) and to introduce competition into these industries. However, most of these industries are characterized by a serious lack of competition. A crucial objective of liberalization is the development of competition which requires new entry. For new entrants to gain market share incumbent dominant undertakings must be prevented from foreclosing entry. Moreover, often competition also requires that new entrants have access to networks owned by the incumbents. This in turn requires the design and implementation of regulations which oblige incumbents to provide access and prevent them from abusing their dominant position. This is a standard “market failure” argument for regulation of industries. This argument states that unregulated markets work under certain conditions. When such conditions are absent, effective competition being one of them, government intervention is justified. The interesting fact is that for reasons discussed below, independent regulatory agencies have become the standard institutional model through which such regulation is designed and implemented.

At the same time, the diffusion of the IRA form was not limited to the areas of competition and regulation of network industries, and independent agencies have been formed in other fields that are presumed to be subject to market failures such as financial markets, environmental policy and even safety and health. In a way, then, the emergence of IRAs was an institutional response to new problems and issues that emerged with the greater reliance on the private sector and the market mechanism witnessed in the last few decades.

In parallel to these developments, the academic literature has come to formulate the primary aims of IRAs as designing and implementing regulations in areas of the economy that are subject to market failures (especially imperfect competition, imperfect information and externalities). However, the need for intervention to correct for market failures in itself does not explain why delegation and independence came to be important characteristics of the institutional response to more widespread use of the market mechanism. After all, why not undertake such intervention through more traditional bureaucratic forms? The answer that has been given to his question has to do with the problem of regulatory commitment and credibility. The main argument² is as follows: many investments are sunk in nature, that is, once made it is very costly or impossible to reverse them. This makes investors hostage to an expropriation risk. Even though ex-ante governments would like to commit to allow investors a fair rate of return on their investments, ex-post, that is once investments are undertaken, governments may be tempted, if anything for political reasons, to expropriate returns to investment through various means, for example by allowing lower retail prices in cases where prices are regulated. When governments cannot commit, rational investors will not invest in the first place. Delegating regulatory authority to independent agencies provides governments with a commitment mechanism: because independent agencies will be less subject to political pressures relative to ministries, government promises not to expropriate would be more credible.

² See, for example, Majone (1996) and various chapters in Levy and Spiller (1996).

Delegation and clientelism

Interestingly the commitment problem exists even when governments are well-meaning. The credibility theory was initially formulated as an argument for the independence of central banks:³ In that theory governments face a credibility problem even when their only motivation is to maximize social welfare. Once sunk investments are made, welfare maximization may dictate policies that are not optimal ex-ante.⁴ In most writings of the literature on IRAs, potential distortions in policy created by political motivations were discussed in reference to relatively benign political environments of western democracies such as the EU, where political and legal institutions present substantial constraints on governments.

This, of course, is less the case in many middle income countries such as Turkey. A major problem in these economies is illicit relations between those who hold public authority and business people where political authority is used to favor certain businesses over other, sometimes called clientelism or cronyism.⁵ Often asymmetric access to political influence may grant specific businesses special treatments especially in non-competitive areas, or political influence may be used to limit competition and new entry in the first place. Hence, in countries like Turkey, a key dimension of good economic institutions is non-discrimination, that is, that the governance of economic activity in the country should be done in such a way that some economic agents or business groups are not favored against others simply for having good political relations: Hence economic success should depend on creativity, productivity and innovation and not on relations with those who hold political power. The reason should be clear: If the objective of institutions of economic governance is to promote economic development and growth, then this can presumably be best achieved by enlarging the economic space, enhancing competition, attracting the widest scope of entrepreneurial talent and by installing the confidence that investors that exhibit hard work, talent and creativity will have a reasonable chance at success and that the fruits of their efforts will not be expropriated by some rivals who have better political connections.

In such a context, the establishment of regulatory agencies outside the traditional bureaucracy, the delegation of substantial regulatory authority to such agencies and granting them independence may acquire a special meaning: IRAs may act as a commitment that political authority will not be used to favor some companies over others, or at least they may act as institutional constraints on such tendencies. This does not mean that such a concern was not present in the adoption of the IRA form in more established democracies of Europe or the US. What is meant here that in an emerging market context, the IRAs may be expected to, or may face the need to, compensate for the lack of political and legal institutions that help constrain the discretionary powers of governments.

Indeed, relying more on rules rather than discretion may serve a similar purpose. Take the case of industrial policy. At one extreme the policy framework could give the government full discretion in determining what sectors and firms to support. In a less discretionary regime, conditions for support

³ For example, Cuikerman et. al (1992).

⁴ This has also been called the "time inconsistency" problem.

⁵ For the purposes of this chapter these terms will be used as synonyms.

could be specified in a transparent manner and all firms that meet those conditions could be eligible for support. Clearly under the latter framework the government would have less opportunity to divert public money to firms that it favors.

Hence delegation of rule-making power, the emergence of IRAs may at the same time both reflect and facilitate the transformation of the economy from one which is predominantly clientelistic to one which is regulated on a more non-discriminatory and competitive basis. However, delegation is itself a political act, that is, ultimately it is governments that decide to delegate.⁶ So this observation raises two questions: First, under what conditions would governments be expected to delegate significant amounts of rule making and enforcement authority to entities that they do not directly control? Second, to what extent is this delegation politically sustainable? Turkey presents an interesting case from the perspective of both questions.

3. Economic institutions in Turkey and their (incomplete?) transformation

The pre-crisis period

An overview of the evolution of economic institutions over the last three decades brings out an interesting contrast (Atiyas, 2012). In the 1980s and 1990s, while on the one hand there was significant liberalization, that is, significant reduction in state intervention in many spheres of economic activity, liberalization was undertaken under a relatively weak regulatory and institutional framework. In addition, with a few albeit important exceptions (see below) economic policy in the 1980s and 1990s was predominantly centralized and discretionary. In the 1980s, there were significant attempts to bypass both the parliament and the bureaucracy in the pursuit of economic liberalization.⁷ Export promotion and industrial policies during the 1980s also reflect a fundamentally discretionary approach, with substantial ad-hoc variability across sectors and over time (Atiyas and Bakış, 2013). In the specific case industrial policy the degree of discretion as well as the extent of financial support were both reduced in the 1990s, both because of membership to the World Trade Organization and the establishment of Customs Union (both of which required restrictions on the scope and type of subsidies) and because of increasing lack of public funds.

Two important institutional weaknesses became apparent during the 1990s. The first was related to fiscal institutions. Budget deficits were high most of the decade and were financed through public debt. A good part of public debt was held by the banking system. In addition, however, by the end of the 1990s, “budget unity” was broken down, that is, there were significant amounts of off-budget expenditures, especially through state owned banks. Such expenditures led to high quasi-fiscal deficits, but the size exact size of these deficits were not known. Public banks were given certain non-banking functions such as lending to certain politically favored borrowers through preferential lending rates of

⁶ Hence Acemoğlu and Robinson (2008) warn that “...one should not try to understand or manipulate economic institutions without thinking about the political forces that created or sustain them” (p. 10).

⁷ See, for example, Heper (1990) and Öniş and Webb (1994).

financing agricultural support programs. The losses that were created by these activities were accumulated over time and created an additional amount of public debt that was not recognized in official statistics.

The second weakness had to do with the regulation and supervision of the banking system. Macroeconomic stability created arbitrage opportunities for the banking system (borrowing in foreign currency and lending in domestic currency at very high real interest rates). This encouraged excessive risk taking. At the same time, supervision of the banking system was undertaken by the Treasury and the central bank, and ultimate decisions were to be taken by the political authority. Even though a banking law of 1985 did give the authorities significant powers to intervene in the banking system, lack of independence and ultimate reliance on the banking system to refinance the public debt created adverse incentives and the law was not properly implemented. Macroeconomic stability coupled with excessive risks in the banking system led to the crisis of 2000-2001. It later turned out that the banking system had been subject to significant amounts of corruption as well.

Privatization, including attempts to engage the private sector in the provision of public services such as telecommunications and electricity, also reflected non-rule-based tendencies. Many governments attempted privatizations in the 1980s and 1990s but without first establishing a proper legal basis. A proper legal basis would have meant that the procedures to be followed in privatizations, valuation and tender methodologies would be specified in law. Instead, most efforts in the 1980s and 1990s attempted to vest the authority to take these decisions in the government or an agency controlled by the government. These efforts met resistance from the constitutional court which cancelled privatization laws because according to the court, these laws effectively transferred legislative authority to the executive. Finally a privatization law was passed in 1994, went through further amendments until the end of 1990s to take its final form in which many concerns raised by the constitutional court were addressed.

An important aspect of the privatization efforts during the 1980s and 1990s was that governments attempted to privatize public monopolies in network industries without first establishing a legal and regulatory framework with the aim of developing competition and prevent anti-competitive practices of incumbents. Hence, for example, there was an attempt to privatize part of Turk Telekom without any measures to eliminate its monopoly rights, liberalize the industry or establish mechanisms that would prevent the company from abusing its dominant position.

In energy, there were numerous efforts to engage the private sector in electricity generation and distribution through contracts (so-called "build operate transfer", "build-operate" and "transfer of operating rights" contracts) that provided widespread exclusivity and monopoly rights, as well as various forms of government price and purchase guarantees. In generation, some such investment contracts were approved without any competitive tender mechanism. Some of these were later heavily criticized by the press for very high prices paid by the state and some were investigated by the high court of accounts (Sayıştay). In electricity distribution, the government attempted to transfer operating rights to private companies granting them monopoly rights over consumers in their regions; most were cancelled by the Council of State (Danıştay), which is the high appeals court in administrative law.

Irrespective of the details of specific projects, it was clear the government's approach to engaging private capital allowed for significant discretion and mechanisms whereby rents could be transferred to favored firms.

The institutional environment of the 1980s and 1990s, then, was suitable to clientelistic dynamics: there was a lot of rent seeking, rules were shaped or attempted to be shaped in such a way so as to allow the transfer of public funds and resources to favored groups and "with the private sector spending much time and resources trying to capture rents".⁸

There were important counter-examples to this overall trend. The first IRA, Capital Markets Board (CMB), was established in 1981 to oversee capital markets. The establishment of CMB was a counter example to the basic institutional trends of the 1980s and 1990s and was probably a result of the need to institute confidence which was shaken due to turbulence especially in non-bank financial institutions (Atiyas and Ersel, 1994).

The second was the enactment of a competition law in 1994 and the establishment of a Competition Authority (CA) in 1997. Developing competition law was one of Turkey's commitments under the Customs Union with the EU in 1996. The nature of Turkish competition policy will be discussed in more detail below, In hindsight, the establishment of the CA proved extremely important because its influence went beyond a straightforward implementation of competition law, which it did quite successfully, but had an impact on privatization and liberalization of network industries as well. These interventions had very significant impact on the degree of competition in many markets, as discussed below.

Institutional change in the last decade⁹

The crisis of 2000-2001 had profound effects on the political and economic development of Turkey. On the economic front, the crisis prompted the launching of a series of important policy and institutional reforms. On the political front, it provided an environment in which the Justice and Development Party (AKP) would run on an anti-corruption basis and win the elections in 2002 and form the first of a series of majority governments. Interestingly, the AKP governments adopted the reform program that was initiated before it came to power and pushed it further in some areas.

The role of economic crises in promoting economic reform is well recognized in the literature. Turkey seems no exception. Economic crises increase the influence of international actors such as the World Bank and the IMF, as well as the hands of reform-minded bureaucrats in the administration. Preparations for many of the reforms were already under way in parts of the bureaucracy and the crisis provided an opportunity to pursue them. Most reform components were explicitly mentioned in the Letter of Intent given to the IMF in 1999. After the crisis hit in 2000-2001, a new economic team launched an economic recovery program. Many of the elements in the recovery program were also consistent with reforms that Turkey would need to undertake as a candidate country in the process of accession to the European Union.

⁸ Airaudo et. al. (2004), quoted in Atiyas, 2012.

⁹ This section draws heavily from Atiyas (2012).

A banking law which was already enacted in 1999 formed the Banking Regulation and Supervision Agency (BRSA) as an independent authority with strong powers over the banking industry. Under the recovery program, BRSA, together with the Savings Deposit Insurance Fund, undertook a massive restructuring of the banking sector and ensured its adequate capitalization. The independence of the Central Bank was established in 2001. In the area of fiscal policy, several laws were adopted that increased the coverage of the budget, imposed transparency and reporting requirements on expenditures and public debt. Public banks were forbidden from engaging in quasi-fiscal activities unless there was an explicit appropriation in the budget.

A new telecommunications law adopted in 2000 established the Telecommunications Authority (later renamed as the Information and Communications Technologies Authority, ICTA) and prepared for the liberalization of the industry. The monopoly rights of Turk Telekom were terminated and Turk Telekom was privatized in 2005. The legal framework for the liberalization and regulation of the industry was very much influenced by that in the European Union. There were provisions for new entry, for various forms of access by the new entrants to the incumbent's network at regulated access rates. In practice, and especially in the early years of the liberalization process, the more competitive elements of the new framework were implemented slowly and half-heartedly, possibly reflecting both Turk Telekom's influence on the Ministry, the limited de-facto independence of the regulatory authority as well as a desire to fetch high revenues out of the privatization of Turk Telekom. Hence, licensing of new entrants was delayed and interconnection rates were too high relative to those in the European Union. The EU adopted a new regulatory framework in 2002 and the legal changes to fully transpose this new framework to the Turkish context were not carried out until 2008 when a new Electronic Communications Law was finally adopted. Nevertheless, some elements of the new EU framework, such as determination of enterprises with significant market power on the basis of market analyses, identification of regulatory obligations in a transparent manner and through public consultations were adopted by the ICTA through secondary legislation at least to some degree. In general, the ICTA's stance in the mobile industry was much more pro-competition relative to its stance in the fixed segment (Atiyas and Doğan, 2010). This is perhaps explained by the fact that Türk Telekom's subsidiary is a new entrant in the mobile telecommunications markets. The interesting point here is that, if the ICTA's more aggressive pursuit of competition in the mobile industry can indeed be explained by political economic factors, this stance was carried out through the established rules of the game (e.g., more aggressive regulation of interconnection rates) rather than by more coarse and discretionary interventions. If that is correct, one must conclude that delegation that the regulatory framework did have an impact after all.

Significant regulatory reform also took place in the energy industry. The Electricity Market Regulatory Authority (later Energy Market Regulatory Authority, EMRA) was formed in 2001. The new approach was that instead of relying on contracts and government guarantees to attract private sector into the electricity industry, the industry would be liberalized and firms would be able to participate in competitive segments of the industry (generation, wholesale and retail supply) simply by obtaining a license. Transmission would remain under government ownership. Distribution assets would be privatized by transferring the rights to operate them to the private sector. State owned generation

assets would also be privatized. Progressively larger segments of electricity consumer would be eligible to choose their suppliers and negotiate prices. Wholesale electricity prices would be market determined, as well as retail prices, except for those applying to non-eligible consumers. Prices of monopoly segments such as transmission and distribution would also be regulated by EMRA, in order to ensure that new entrants have access to transmission and distribution services in a non-discriminatory manner and at reasonable prices.

The basic elements of the new regulatory model in electricity are more or less in line with the European Directives. It is important to underline how radically different this regime was relative to the earlier attempts to attract private capital through contracts. Under the new regime entry into generation is done on a competitive basis, which eliminates opportunities for firm-specific deals. Moreover, the government has relinquished at least a part of its authority to manipulate energy prices. As examined in more detail elsewhere (see, for example, Atiyas et. al. 2012) progress under the new regime has not been smooth and competition in the industry is still limited. The government still intervenes in the retail pricing of public enterprises in the energy sector and retail price regulation is not transparent. At the same time, especially in the last few years, the model has been successful in attracting substantial amount of new investment from the private sector.¹⁰

The central role of competition policy

The Law on the Protection of Competition (1994) is modeled after the relevant articles of the Treaty on the Functioning of the European Union and the Merger Regulation of 2004. Hence the law prohibits anti-competitive agreements and concerted practices as well as abuse of dominant position. In addition, the law also regulates mergers and acquisition. Many decisions of the Competition Board, the decision making body of the CA, refer to decisions by the European Commission and /or the decisions of the European Court of Justice. One also sees many references to decisions of competition authorities of member states of the EU. Hence the thinking on competition policy in Europe has a substantial influence on the way competition law is implemented in Turkey.

Similarity of the legal framework and references to European case law by itself does not guarantee that decisions themselves are similar to those in the EU. However, in general the CA is recognized as a substantially independent and professional agency not only by domestic stakeholders by international peers as well. A detailed review of the decisions of the CB until 2008 (Atiyas et. al. 2011) has concluded that on the while the decisions of the CB do follow the European case law. That does not mean that its decisions are always met with approval of the economic and legal community, and that they are not controversial. There are inconsistencies across decisions and across time, some degree of favoritism towards state owned enterprises exist in some decisions. However, it does seem that the implementation of competition law is free of systematic biases and meets a minimum level of quality.

¹⁰ It should be emphasized that the government so far has adopted a much more discretionary and non-transparent approach electricity generation based on nuclear energy. See Atiyas (2011) for an analysis. One should also underline that in the last decade that there are other very important exceptions to the tendency to more rule-based and transparent approach observed in the areas discussed above. A case in point is the construction industry and the role of TOKI, the development agency. See Atiyas (2012) for a discussion.

The existence of a credible institution to enforce competition law in accordance to established global norms should be apparent for transition to a more competitive form of capitalism. The existence of competition law helps ensure that the rules of the game are fair and that economic success relies more on creativity and productivity rather than close access to political influence.

However, the experience of Turkey suggests that the impact of a strong competition authority may go beyond the implementation of competition law per se. One area where competition policy has had an important impact is privatization. The Competition Board decided in 1998 that privatizations by public agencies are to be treated as merger and acquisition transactions and therefore need to be reviewed under the merger provision (Article 7) of the Competition Law. The review of the Competition Authority in privatizations appears in two instances. First, under certain conditions (such as if the being privatized possesses a legal monopoly, or enjoys statutory or de facto privileges not accorded to private firms in the relevant market, or surpasses certain turnover thresholds) then an advance notification needs to be provided to the Board before the tender is announced to the public, so that the Board can provide its views on the proper method of structuring sale of the privatization assets. Second, to become legally effective, the privatization transaction also requires a Board approval. Hence in the first stage, the Competition Board can intervene by stating an opinion on the transaction, while at the second stage it effectively can make binding determinations which effectively puts it in the position of a veto authority.

The review by the Competition Board in principle provides an important safeguard against privatizations that may enhance or create market power in the relevant markets. The interesting point here is that strictly speaking the merger or acquisition-related provisions of competition laws do not provide an efficient instrument against transforming public monopolies into private monopolies because, strictly speaking, they focus on transactions that create or strengthen a dominant position but they are silent on transactions that entail firms that already have a dominant position. In other words, strictly speaking, the transfer of ownership of an existing public monopoly to private interests, a transaction that does not create a dominant position (as one already exists) or enhance an existing dominant position (given that competition law is ownership-blind) should survive under such a review. From an international perspective, the Turkish case is quite unique in that the Competition Authority has created such a role for itself and that the rest of the administration has accepted it.

The involvement of the CA did have effects on privatization policy. Privatization policy in Turkey is primarily driven to maximize revenues, and competition concerns often take a secondary role. In a number of cases, the CA has prevented the purchase of firms by groups that already have market power in the relevant market.¹¹ The CA has some impact in privatizations in network industries as well. For example during the privatization of Turk Telekom the Competition Authority has required that the provision of internet services be organized as a separate legal entity and that the cable TV infrastructure be separated from Turk Telekom. More recently, the Competition Authority has prevented the sale of both gas and electricity distribution companies in the same region to a single investor. During the privatization of electricity distribution companies, the CA involvement has resulted in the requirement that distribution activities be legally vertically separated from generation and retail supply activities, a

¹¹ See Atiyas (2009) for some examples.

measure that is often seen as necessary for the development of competition in generation and retail supply segments of electricity industries.

4. An assessment

Clearly the institutional transformation in Turkey has been uneven both across industries and across time. On the one hand, it is clear that the emergence of IRAs has improved the general economic policy making environment in Turkey. At the same time, it is also clear that compared to benchmark models that exist in EU member states, or against the benchmark of the European Commission itself, the transformation is very incomplete and has some serious deficiencies.

The view from The European Commission's progress reports

It would be useful to present a short review of how various aspects of the regulatory framework is evaluated in the European Commission's (EC) Progress Reports. Regarding telecommunications, EC (2010) drew attention to the fact that rules allow the regulator excessive discretion in authorizations, as well as in the market review process, that is, that the regulator has "discretionary powers to the regulator to decide when and how to impose obligations on operators, notably in the access conditions" (p. 56). The report also raised concerns regarding the transparency and independence of the regulator and stated that "the Framework Law does not provide the necessary conditions and the setting" for independence (ibid.). Concerns about the transparency and independence were also raised in the 2011 report.

Regarding the electricity market, the reports' overall evaluation of progress towards adoption of basic directives is quite positive, although here as well there is frequent mention of the independence issues. Hence the 2012 report states that the "independence and institutional capacity of the regulatory authority need strengthening" (p. 62). More concerns are raised with respect to nuclear energy and attention is drawn to the fact that Turkey does not yet have a "framework nuclear law which would ensure a level of nuclear safety in full compliance with EU standards" and that many regulations are lacking (ibid).

With respect to competition policy, the progress reports are overall quite positive. So the 2010 report states: "The Competition Authority's overall administrative capacity is high. It has a satisfactory level of administrative and operational independence and is committed to providing a high level of training for its staff. The authority has a solid track record on implementing the competition rules." Alignment with the acquis on anti-trust is seen as highly advanced except for a number of issues, for example the fact that some banking mergers are outside the scope of competition law. The more important gaps are seen in the area of state aids. The 2012 report state that even though a law on monitoring and supervision of State aids has been adopted, the implementing legislation has not yet been issued.

Independence, transparency and accountability

A detailed study by Zenginobuz (2008) has concluded that the degree of formal independence of the IRAs is generally quite high. Indeed, most IRAs meet the formal requirements of independence, which generally consist of the following: First, independence means that the IRA can act without the approval of the ministry and that the ministry cannot overturn a regulation or decision handed over by the IRA. Second, regulators cannot be dismissed by ministers at will, except on the basis of wrongdoing or incapacity. Typically regulators are appointed (or in some jurisdictions elected) for a fixed term. The third condition emphasized in the literature is financial independence. This usually means that the budget of the authority should not be at the discretion of the government. This condition is often implemented through earmarked taxes or special revenues earmarked to the agency such as license fees or penalties. On the basis of these criteria, IRAs in Turkey are quite independent.

Of course, international experience has clearly shown that formal independence does not guarantee de-facto independence, and the degree of actual independence of IRAs have been questioned in several studies.¹² Recent developments cast additional doubt about the government's intentions about respecting the IRAs' independence.¹³ In what is seen as a crucial development, in August 2011, the government passed a new law, which authorized line ministries to "inspect" the activities of the agencies associated with them. This clause has been interpreted by the media and many independent observers as another way of weakening the financial and administrative independence of IRAs. The clause does not give ministries the authority to change or overturn IRAs' decisions, or to intervene in their management. However, it does give ministries the ability to intimidate or exert moral suasion on the agencies by subjecting them to inspections.

Relative to the traditional bureaucracy, the IRAs in Turkey operate in a more transparent manner. Public consultations have become routine. Most IRAs have to make their decisions public, by placing them on their websites, or by publishing them in the Official Gazette. Another interesting issue is how the decisions are published. The Board of the CA has had to publish their decisions with justifications, i.e. they have had to make public the reasoning behind their decisions as well. This must have increased the quality of their decisions. This requirement has recently been imposed on the ICTA as well, but is implemented in a very formal manner. Apart from the CA, IRAs make very little of their reasoning transparent. They also do not disclose the details of any technical models they use. In that sense, they are quite a distant apart from, say, their counterparts in the UK.

There are several measures that can be undertaken to improve the IRAs' accountability. For example, significant improvements may be made in the area of public consultations: Documents presented for public consultations may be accompanied by the background technical studies. Second opinions presented by stakeholders themselves may be made available to the public as well. IRAs regularly publish annual reports, but their performances are rarely audited by the parliament. In fact, their audit is often limited to a financial audit (Sosay 2009).

¹² For example, see Atiyas and Doğan (2010) for telecommunications and Çetin and Oğuz (2007) for electricity.

¹³ See Özel (2012) for a discussion about the tendency to de-delegate regulatory authority away from IRAs..

5. Concluding remarks

The history of delegation in Turkey reveals many shortcomings but it is also clear that compared to a counterfactual where all the relevant regulatory authority is centralized in ministries, delegation of authority to relatively independent bodies, be it in the area of monetary policy, competition policy or sectoral regulation, has introduced much improvement to the institutions of economic governance. The review suggests that competition policy and anti-trust played a central role in the transformation.

The review of delegation in Turkey's context leads one to re-visit the questions asked in the introduction, what were the main drivers of delegation in the first place? The review above suggests that delegation was not a result of a thoroughly calculated decision by the political elite. Rather, it was the result of a confluence of factors, including an economic (and political crisis) and the process of EU accession. Most likely the crisis explains the initial decisions to delegate and the EU accession process explains the maintenance the new institutional format in the 2000s. What about the political sustainability of the new institutional framework? As discussed above, the transformation is not complete and recent signs may reflect a desire of reversal and to de-delegate. This chapter has tried to draw attention the link between the institutional transformation and the transition to a more competitive and rule-based economy. It is not clear whether this link is clearly seen at the political level. While the political elite weighs the pros and cons of delegation, a weakening of the EU perspective at the political level may actually increase the attractiveness of politization of regulatory authority and strengthen clientelistic tendencies.

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