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Can “Competition Policy Chapter” be Opened to Negotiation as Prime Minister Of The United Kingdom David Cameron Says?

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Can “Competition Policy Chapter” be Opened to Negotiation as Prime Minister of the United Kingdom David Cameron Says?

At his speech in TOBB (Union of Chambers and Commodity Exchanges of Turkey) on July 27, 2010 David Cameron, Prime Minister of the United Kingdom said that they expect the competition chapter to be opened as the next step in the accession process within the six months during Belgium’s EU presidency that started on July 2010.

During the EU presidency of Spain that ended in July 1, 2010, Spain, who supports Turkey’s EU membership, underlined that they would do their best to open four chapters that is not subject to any political obstacle, namely Public Procurement, Competition Policy, Food Safety, Veterinary and Phytosanitary, and Social Policy and Employment. However, over the first half of 2010, Turkey could be able to fulfil the opening criteria for only the Food Safety, Veterinary and Phytosanitary chapter, which is thus the only chapter that was opened to negotiations.

The opening criteria for the Competition Policy chapter, which relatively has the highest possibility to be opened, are as follows:

1- In order to ensure transparency in the area of state aid by providing a comprehensive inventory of all state aid measures covered by the Association Council Decision No. 1/95 on implementing the final phase of the Customs Union.

There is an inventory work drafted in 2007; but this needs to be revised to be qualified as an inventory. Although Turkey states that in the information and the recent incentive package provided to the European Commission previously can be regarded as an inventory, the EU has not made any assessment to this respect, yet.

2- Providing detailed information on the evolution of capacity in the steel sector and state aid given to each company since 2001.

The information communicated to the EU in the context of the National Restructuring Plan of the Steel Sector is being assessed by the Union. The parties cannot reach consensus on the definition of “state aid” in certain fields.

3- Adopting a state aid law setting out general conditions and rules for authorization, monitoring the implementation and the recovery of state aid, for the purpose of implementing the obligations resulting from existing bilateral agreements between Turkey and the EU.

4- Setting up an operationally independent state aid authority with the powers necessary for the full application of the state aid rules resulting from existing bilateral agreements.

A draft law to correspond to the 3rd and 4th opening criteria was prepared and submitted to the National Assembly (TGNA). The draft, though came to the agenda of the General Assembly, it has not become a law yet. It is argued that in order to be able to open this chapter the draft must become a law before October. Nonetheless, as evident from the case for the Food Safety, Veterinary and Phytosanitary chapter, the relevant Law which was promulgated two weeks before the opening of the chapter, if there is one chapter that can possibly be opened, the EU can be flexible in order to prevent an impression of an absolute ‘deadlock of negotiation process’.

Draft Law on Monitoring and Supervision of State Aids on the agenda of the General Assembly establishes a “State Aids Monitoring and Supervision Board” consisting of representatives of the Ministry of Finance, Ministry of Industry and Commerce, State Planning Organization, Undersecretariat of Treasury, Undersecretariat of Foreign Trade and Competition Board in order to serve as an autonomous state aids authority necessary to fulfil the criterion on state aids. The draft also stipulates the establishment of a Directorate General for State Aids within the auspices of the Undersecretariat of Treasury to govern the aforementioned Board. The Board would be presided by the Director General for State Aids.

TGNA EU Harmonization Committee has already brought forward some concerns about the draft law:

- whether or not the proposed structure of the Board the draft law establishes can secure transparency and functional independency;
- the necessity to reassess in tandem with the practices in other EU member countries whether it is proper to establish the State Aids Monitoring and Supervision Authority within the auspices of the Undersecretariat of Treasury;
- whether or not the participation of representatives of private sector can make a contribution to secure the independence of the Board.

5- Presenting an action plan, accepted by the Commission, with a clear timetable for the alignment of all remaining aid schemes or equivalent measures identified as incompatible with the obligations resulting from existing bilateral agreements between Turkey and the EU.

Turkey argues that when the aforementioned draft becomes a law, the relevant sections of the law would qualify as an 'action plan' that also considers the compliance with EU directives. Nonetheless, the EU has not delivered any opinion in this regard, yet.

6- Adopting all necessary measures to ensure that no steel company benefits from state aid given in breach of the Agreement between the ECSC and Turkey on trade in coal and steel products.

This criterion is assessed by the EU in the context of the National Restructuring Plan of the Steel Sector, first draft of which was submitted to the EU in September 2006 and the parties make effort to reach a consensus on the definition of 'state aid' in some certain fields.

The reasons why the Competition Policy chapter is most likely to be opened compared to the other two chapters that can technically be opened to negotiations can be summarised as follows. Currently, the political milieu in Turkey does not seem suitable to

take a step to repeal accordingly all exemptions to the procurement regime contained in various specific laws, which is one of the opening criteria for the Public Procurement chapter. The number of the mentioned exemptions tended to increase continuously along with law amendments and the number currently stands around 70. The third chapter, Social Policy and Employment necessitates ensuring full trade union rights in line with EU standards and relevant ILO conventions , in particular as regards the right to organise, the right to strike and the right to bargain collectively both in public and private sectors, which seems to be problematic currently. Social parties cannot reach an agreement on the trade union rights in private sector. Moreover, the legal preliminary work to grant the right to strike to public sector employees has not yet been terminated. It is also argued that for this to be accomplished, the public personnel regime must be altered considerably.

As stated above, it is not possible to conclude that the opening criteria for the Competition Policy chapter are fully fulfilled. The most important opening criterion for the EU seems to be the adoption of the Law on Monitoring and Supervision of State Aids which is still a draft over which there are some concerns. We hope and expect that all these obstacles would be overcome and the 'Competition Policy' chapter would be opened to substantive negotiations in 2010 before the end of the EU Presidency of Belgium.