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In This Issue...

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Recent Changes in Legislation

New Regulation on Distant Contracts

The new Regulation on Distant Contracts ("**New Regulation**") was published in the Official Gazette on 27 November 2014 to repeal and replace the Regulation Regarding Distant Contracts ("**Repealed Regulation**"). The New Regulation will become effective 3 (three) months following its publication in the Official Gazette (*i.e.,* 27 February 2014); therefore, the Repealed Regulation will continue to be effective until that date.

- The New Regulation envisages additional obligations for sellers/service providers in order to inform consumers. For instance, certain information stated in the advance information forms need to be re-communicated to the consumer just before the consumer assumes any payment obligation and the approval of the consumer for assuming the payment obligation must be obtained separately in accordance with the distant communication medium.
- The scope of the obligation to inform the customer about the total price of the goods/services including all taxes has been expanded under the New Regulation. Accordingly, if the total price cannot be calculated beforehand, inclusion of at least the calculation method of the total price in the advance information forms is required under the New Regulation. If this obligation is not fulfilled by the sellers/providers, the consumer will not be obligated to make payments related to items not mentioned in the advance information forms.
- Consumers may exercise their withdrawal rights in writing or through a device/medium which has permanent data storage capability. The New Regulation provides a withdrawal notification form and stipulates that with respect to sales conducted over the phone, sellers/providers are obligated to send this withdrawal notification form to the consumer at the latest before the delivery of the goods or the performance of the services.

New Environmental Impact Assessment Regulation

The New Environmental Impact Assessment Regulation ("**New EIA Regulation**") was published in the Official Gazette and became effective on 25 November 2014. Although the New EIA Regulation completely repeals the previous EIA regulation, there is no material difference between the New EIA Regulation and the previous EIA regulation regarding the procedures to be followed for fulfilling the EIA requirements. However, the scope of the projects which are subject to EIA requirements has been changed extensively. The New EIA Regulation also includes an Annex 1 which lists the projects subject to an EIA Affirmative Decision, and an Annex 2, which lists the projects subject to an EIA evaluation. The projects which are listed under Annex 2 may be subject to either an EIA is Not Required Decision or an EIA Affirmative Decision in accordance with their potential impact on the environment. Among others, the followings are some of the important changes made in the scope of Annexes 1 and 2:

(i) The provision of the previous EIA Regulation, which provided that the hospital projects with more than 500 beds were subject to EIA requirements, was deleted in the New EIA Regulation. Therefore, the New EIA Regulation exempts health PPP projects from the scope of the EIA requirement.

(ii) The installed capacity threshold regarding hydro-electric power plants subject to an EIA evaluation has been changed to 1-10 MWm instead of 1-25 MWm and hydro-electric power plants with an installed capacity more than 10 MWm has become subject to EIA Affirmative Decision.

(iii) The previous EIA Regulation provided that wind power plants with more than 20 turbines and solar power plants established on an area larger than 20 hectares were subject to EIA affirmative decision. The New EIA Regulation changes these criteria and provides that wind power plants and solar power plants having an installed capacity of more than 50 MWm and 10 MWm respectively are subject to an EIA Affirmative Decision.

Pursuant to Temporary Article 1 of the New EIA Regulation, the projects of which the "information files" or "application files" have already been submitted to the Ministry of Environment or the relevant Governorship will continue to be subject to the previous EIA Regulation except for the provisions of the New EIA Regulation that are more favorable to the applicant.

Electrical Facilities Project Regulation

The new Electrical Facilities Project Regulation ("**New Regulation**") was published in the Official Gazette on 30 December 2014 and repealed the previous regulation on the same issue. The New Regulation made some major changes regarding the approval principles and procedures for the electrical facility projects.

Pursuant to the previous regulation, preliminary project approval (*ön proje onayı*) of an electrical facility project was sufficient to start construction, and project approval (*proje onayı*) was a pre-requisite for acceptance upon completion of the construction. However, the New Regulation requires project approval before the commencement of construction and converts the preliminary project approval into an option viable only for generation facilities. Therefore, preliminary project approval will no longer be necessary for facilities other than generation facilities. The authority to issue the approvals has also been changed under the New Regulation. Accordingly, preliminary project approvals and project approvals will be issued by the authorized institutions listed by the Ministry of Energy and Natural Resources ("**Ministry**") whereas they had been issued by the Project Approval Unit of the Ministry under the previous regulation.

Engineers who prepare and sign the projects must now obtain a project expertise certificate, a requirement not present in the previous regulation. The conditions for obtaining this certificate and the context of the required trainings will be published on the Ministry's website. The New Regulation additionally provides that the design and the project of electrical facilities and the equipment to be used in the construction must be in compliance with the standards determined by the Turkish Standards Institute or other internationally accepted standards, such as the European Norms.

The New Regulation became effective on 30 December 2014. However, any ongoing approval applications which had been submitted before the effective date of the New Regulation will be concluded in accordance with the previous regulation. In addition, the certificate requirement regarding the engineers will become effective on 1 January 2016.

Time Extension for Pre-Construction Periods of Wind Power Plant Projects

EMRA, by its decision No. 5317-2 dated 25 November 2014, provided an extension to the pre-construction periods under the licenses of wind power generators ("**Board Decision**"). According to the Board Decision, this extension will be confined to a period of 10 months.

The Board Decision also reveals EMRA's rationale behind adopting this decision. In the Board Resolution, EMRA (i) acknowledges the delays that occurred due to the lack of coordination between the Ministry of Energy and Natural Resources, EMRA, the Scientific and Technological Research Council of Turkey and the Turkish General Staff with respect to approval procedures concerning the impact of wind power projects on communication, navigation and radar systems; and (ii) qualifies the effects such delays on the outstanding permits relating to the project as a "force majeure event" under the electricity market legislation. This additional extension will be granted on top of the "one-time" additional pre-construction period of 6 months under the Licensing Regulation.

License holders that intend to benefit from such extension were required to apply to EMRA by 15 January 2015.

New Eligibilty Threshold in the Electricity Market

EMRA, by its decision No. 5418 dated 15 January 2015, reduced the eligibility threshold in the Electricity Market from 4,500 kwh to 4,000 kwh effective from 15 January 2015. Accordingly, customers whose annual power consumption is more than 4,000 kwh are now considered eligible customers and thus entitled to choose their electricity suppliers.

Draft Legislation

Latest Developments on the Incorporation of EPİAŞ

As noted in the Summer issue of our Newsletter, following the entry into force of the new Electricity Market Law of 2013 and the new Licensing Regulation, the incorporation of Enerji Piyasaları İşletme A.Ş. ("**Energy Markets Operation Co.**" or "**EPİAŞ**") remains as the final outstanding structural change. Although EPİAŞ was originally required to be incorporated by 30 September 2013, it has been postponed to date.

According to an announcement by EMRA on 3 September 2014, a total of 114 applications were filed by license holders to become a shareholder in EPİAŞ following EMRA's invitation in July 2014. 109 license holder market participants were granted the right to become a shareholder, with a minimum of 50,000 shares to a maximum of 412,408 shares.

These selected applicants were required to pay a designated sum to a specific bank account by 18 December 2014. The applicants that did not pay the amount by the determined date lost their chance to become a shareholder in EPİAŞ and the number of shares which corresponds to the amount which were not paid were transferred to Borsa İstanbul A.Ş.'s capital based on its face value.

The next expected step following the payment of the capital contributions is the execution of the articles of association by the shareholders. Once this has been completed, EPİAŞ will be incorporated and registered in the trade registry. Once incorporated, it must submit an application to EMRA to obtain a market operation license. In the meantime, the system applied under the former Electricity Market Law for balancing and settlement will continue to be implemented.

Draft Law on the Protection of Personal Data

The long-awaited Draft Law on the Protection of Personal Data ("**Draft Law**") has been revised for the third time and is expected to be brought to the agenda of the General Assembly for enactment soon. Currently, there is no specific legislative framework in place for the protection of personal data in Turkey and the Draft Law has been on the government's agenda for a quite some time. The Draft Law is modelled after the European Union *acquis communautaire* and Directive 95/46/EC, and it mainly regulates the collection, storage and processing of personal data in accordance with certain principles. The quality principle for the collection of personal data requires the data to be accurate and be kept up-to-date; the principle of clarity of purpose limits the usage of this data to its basic purpose; and finally the principle of individual involvement provides the right to

information for the data subject in every step of the processing. The Draft Law establishes a Data Registry and a Board of Personal Data Protection where persons whose personal rights have allegedly been breached would apply. As well as administrative fines, imprisonment and monetary fines are envisaged as sanctions of the breach of personal rights.

Draft Law on the Ratification of Intergovernmental Agreement and Memorandum of Co-operation for the Sinop Nuclear Power Plant Project

The final days of 2014 witnessed an important development with respect to the Sinop Nuclear Power Plant ("**NPP**") Project, Turkey's second projected nuclear power plant (after the Akkuyu NPP) consisting of 4 nuclear reactors having a total capacity of approximately 4.400 MWe ("**Project**").

On 8 December 2014, the draft law concerning the ratification of the Intergovernmental Agreement ("**IGA**") as well as the Memorandum of Co-operation ("**Memorandum**") between the Turkish and Japanese governments in relation to the Project ("**Draft Law**") was submitted to Parliament for enactment.

By way of background, both the IGA and the Memorandum were executed between these governments, respectively, in May and December 2014. And particularly due to the time-consuming negotiations on the Host Governmental Agreement ("**HGA**"), Turkish Council of Ministers sent the Draft Law to Parliament on 10 November 2014.

The IGA and the Memorandum are designed to create the legal basis for co-operation between these two governments regarding the Project. In a nutshell, the IGA lays out the general framework for such co-operation and the Memorandum provides the undertakings of the parties with respect to their agreement on the content of the HGA. Further, the HGA will be signed between the Turkish government and the Project Company, a consortium where Japanese Mitsubishi Heavy Industries, Ltd. is projected to hold 51% of shares and Turkish state owned Electricity Generation Company (*i.e.,* EÜAŞ) to hold the remaining 49%. The HGA will elaborate on the further commercial, legal, technical and financial details of the Project.

Nevertheless, significant progress has to be made in the Project particularly considering the ambitious agenda of a construction kick-off in 2017, and reaching the operation stage by 2023.

Draft Amendment to the Mining Law

As noted in the Summer issue of our Newsletter, a draft amendment to the Mining Law had been submitted and then withdrawn from the Parliament's agenda for further consideration, especially with regard to work place health and security regulations in the mining sector. The draft had also been criticized by many due to the significant increases in the State royalty amounts.

A new draft has now been prepared, which, in essence, is built upon the former draft but also introduces some new changes. The draft was submitted to Parliament on 30 December 2014. Some of the major changes proposed by the draft are as follows:

- **Supervision of Operation Activities:** A new provision included in the current draft is the supervision of mining operations' compliance with the applicable legislation and the operation plan submitted by the relevant license holders. According to the draft, legal entities will be authorized by the General Directorate of Mining Affairs to conduct such supervisions and prepare technical documents for submission to the General Directorate such as operation plans and projects. These new inclusions were likely introduced during the second review of the draft following the tragic Soma incident. Activity and sales information reports are abolished under the draft; instead, a single report referred to as the "operation activities report" is introduced as a combination of the two.

- **Royalty Agreements:** Another very significant amendment brought by the new draft is the prohibition of operation of underground coal mines by royalty agreements. According to the draft, license holders of underground coal mines, except for public authorities, can no longer have their license areas operated by third parties through royalty agreements. Royalty agreements for other mines, on the other hand, are made subject to the approval of the Ministry of Energy and Natural Resources. According to the draft, all administrative, financial and legal liabilities arising from the relevant legislation, including but not limited to the workplace health and security requirements, will be on the royalty holder whereas the actual license holder will also remain jointly liable for its obligations under the Mining Law. The draft also provides for a temporary provision for existing royalty agreements, stating that these should be submitted to the General Directorate of Mining Affairs within three months upon entry into force of the amendment; otherwise, operations under the relevant royalty agreements will be suspended. According to the same provision, term extension requests by license holders of underground coal mines whose royalty agreements have not been terminated will not be accepted. This prohibition seems to have been introduced as a result of the heavy criticism against subcontracting upon the tragic Soma incident as well.

- **Financial Obligations and Royalty Payments:** Similar to the previous draft, the current draft also introduces a new license fee that is to be calculated based on the relevant license groups and sizes instead of the previously used fixed annual fees. The fees of the existing licenses pursuant to the new draft are required to be submitted within three months starting from the effective date of the amendment. The amount of State Royalties for Group IV mines such as gold, silver and platinum are set forth further in an annex to the Mining Law, and provide for increasing State Royalty percentages (from 2% to 16%) depending on the London Stock Exchange's price per ounce during the relevant production period.

- **Forfeiture of Deposited License Securities:** Similar to the previous draft, this sanction is being abolished entirely. Instead, administrative fines are being envisaged for license holders breaching their obligations under the Mining Law. Unlike the previous draft, the current draft specifies the amounts of fines for each of the breaches.

- **Cancellation Sanction for Non-Production:** The new draft removes the cancellation sanction for operation license holders who fail to make any production for three years within a period of five years for the first time and subjects such failure to an administrative fine. According to the new draft, the cancellation sanction shall be applied only in the case a license holder fails for the second time to make any production for three years within a period of five years upon application of the administrative fine.

- **Completion of Necessary Permits within Three Years:** The disputed cancellation sanction envisaged for operation license holders that cannot complete, within three years, the environmental permits and surface rights necessary for the issuance of an operation permit and conducting mining operation activities (such as EIA affirmative approval, work place opening and operation permit and surface rights) is contemplated to be abolished as well. Instead of cancellation, an administrative fine is envisaged for the respective license holders and operation licenses for which no operation permit has been obtained (due to failure in obtaining the necessary environmental permits). Further the surface rights will not be extended at the end of their terms.

- **Transfer of Licenses:** The new draft, just as in the previous draft, subjects the transfer of licenses, which are currently within the authority of the General Directorate of Mining Affairs, to the approval of the Minister of Energy and Natural Resources. The license transfer fee is contemplated to be increased as well.

Article

Law on İstanbul Arbitration Center

Av. Erdem Başgül

Introduction

The long-awaited Law on İstanbul Arbitration Center, No. 6570 ("**Law**"), which sets out the rules and principles of the establishment, organization, and operation of the İstanbul Arbitration Center ("**Center**"), was published in the Official Gazette No. 29190 on 29 November 2014 and entered into force on 1 January 2015.

The Center, having a legal personality and being subject to private law provisions, will facilitate the resolution of disputes, including disputes having foreign elements, by way of arbitration or alternative dispute resolution methods. The Center will deal with national and international disputes, and will include separate arbitral tribunals for each. By way of background, the preparations for the Center was initiated with the Turkish Higher Planning Council's *"Strategy and Action Plan for the İstanbul International Finance Center"* in 2009, which aimed at designating İstanbul as the center of international finance. Within this scope, this resolution also envisaged the establishment of an autonomous and independent institutional arbitration center in İstanbul. Subsequent to this, the draft version of the Law was submitted to the Parliament on 25 March 2013 and has been awaiting for its enactment since then.

When compared with its draft version, the revisions at the Parliament level appear to be minimal. Please find below a brief summary of the prominent issues introduced with the Law while highlighting the material revisions made in the course of its enactment procedure.

Brief Analysis of the Law

I. Structure of the Center

According to Article 5 of the Law, the Center will be composed of a general assembly, board of directors, auditor, advisory committee, national and international arbitral tribunals and a secretary general.

The Center's general assembly is arguably the most material body of the Center and has been given the following powers under the Law:

- Appointment of the Center's board of directors, advisory committee and auditors;
- Review of the activity report of the board of directors, balance sheet and auditor reports and issuing a decision on the release of the board of directors;
- Review and approval of (i) the rules concerning arbitration and alternative dispute resolution methods; (ii) procedures and principles regarding the operation of the Center; and (iii) the budget; and
- Determination of the allowances, fees and expenses of the general assembly, board of directors and auditors.

The general assembly will have 25 members. These members will be appointed to serve for a period of 4 years. The Law also requires these members to have at least 10 years of experience in their relevant professions.

Under Article 6 of the Law, the following bodies are vested with the right to determine the below number of members of the Center's general assembly:

Appointing Body	Number of Members
The Union of Chambers and Commodity Exchanges of Turkey	**6** (among commercial and industrial, commercial, industrial, maritime chambers and commodity exchanges)
Presidents of the Bar Associations	**4** (among registered attorneys-at-law)
Higher Education Council	**3** (among academicians experienced in the field of arbitration)
Exporters Assembly of Turkey	**2**
Ministry of Justice	**1** (among senior judges who have also worked at administrative assignments)
■ The Banks Association of Turkey ■ Participation Banks Association of Turkey ■ Capital Markets Board ■ Borsa İstanbul ■ Confederation of Merchants and Craftsman ■ Banking Regulation and Supervision Agency ■ Turkish Capital Markets Association ■ Confederation of Employer Associations (having the highest number of members) ■ Confederation of Labor Associations (having the highest number of members)	**9** (each of the adjacent bodies will be entitled to appoint one member)

The Provisional Article 1 of the Law requires (i) the above appointing bodies to notify the Union of Chambers and Commodity Exchanges of Turkey on their appointments of the members within 2 months as of the Law's entry into force; and (ii) convene the first General Assembly within the following two months. The 4-year service period for the members will commence with the convention of this General Assembly.

II. Duties of the Center

Article 4 of the Law lists the duties of the Center in a generic manner. According to this Article, the Center will be responsible for the following:

- Establishment of the rules applicable to arbitration and other alternative dispute resolution mechanisms as well as the provision of necessary services thereof;
- Facilitating promotion of and publications with respect to arbitration and other alternative dispute resolution mechanisms as well as stimulating, supporting, and facilitating the scientific researches in relation to the same; and
- Collaboration with domestic and foreign institutions to promote arbitration.

III. Arbitration Rules

Provisional Article 1 of the Law states that the arbitration rules of the Center will be issued within 6 months upon the appointment of the Center's board of directors. However, the Law does not provide a concrete date for the appointment of the board of directors. It should be noted that, under the draft version of the Law, the said 6 months period was envisaged to commence with the Law's entry into force. With this revision, it appears that law makers aim to provide a more flexible and realistic timeline for the preparation of the arbitration rules and prioritize the formation of the constitutive organs of the Center.

IV. Budget

Unlike its draft version, the Law excludes "donations" as a source of revenue in the Center's budget. On the other hand, Provisional Article 1 of the Law stipulates that the Center's expenses for the first 2 years will be covered through the Prime Ministry's budget, whereas this was designated as 1 year under the draft version of the Law.

Conclusion

The establishment of the Center is an utterly positive step towards the initiatives put forward in terms of the creation of an internationally recognized arbitration center in İstanbul. The Law should be merely as a starting point, since its success will be determined based on several factors such as the preparation of internationally recognized rules of arbitration and the recognition of its impartiality in the field of international arbitration.

Other Recent Developments

Important Court Decisions in the Electricity Market

Electricity Loss and Leakage Fees

Collection of fees from electricity consumers in relation to the electricity loss and leakage has long been a topic of discussion among electricity retailers and consumers. In a number of cases, 3rd Circuit of the Court of Appeals ("**Court**") adopted a more retailer-friendly approach regarding reimbursement of loss and leakage fees. In this vein, a decision of the Court dated 26 June 2013 was recently published in the Official Gazette[1] which includes the following observations:

- The electricity loss and leakage corresponds to the difference between the incoming energy to the distribution system and the outgoing energy chargeable to the consumer. Such difference may occur due to either technical or non-technical reasons. The loss and leakage fee allows bearing of the costs arising therefrom in proportion to the loss and leakage ratios.
- The authority to set the tariff components to appear in the electricity invoices falls with the Electricity Market Regulatory Authority ("**EMRA**"). An EMRA decision determining the loss and leakage fee is within the limits of such authority and in line with the main objectives of the Electricity Market Law. An EMRA decision is a general regulatory act which is binding on everyone.
- The loss and leakage fee appears in electricity invoices as a component of the retail sale tariff as a result of such legal requirement. Retailers are legally required to apply the tariffs determined by EMRA and cannot refrain from applying the tariffs or collecting the loss and leakage fee.

In light of the above reasoning, the Court consistently rejected claims for reimbursement of the loss and leakage amounts to consumers by retailers. Yet, a more recent decision of the General Assembly of the Civil Circuits ("**General Assembly**") which is a higher appeal stage, demonstrates a shift from this approach. In its decision dated 21 May 2014[2], the General Assembly overruled the collection of loss and leakage fees from consumers for the following reasons:

- EMRA's authority to determine basic tariff components for electricity sales covers costs and interest ratios and does not give unlimited authority for setting pricing components.
- Charging non-breaching consumers for technical electricity losses and unlawful use of electricity is against the principles of state of law and equity. This approach would dissuade electricity companies from improving the technical quality of their distribution system and fighting against electricity theft.

Lastly in December 2014, the General Assembly decision was finalized as a result of the revision process whereby the General Assembly insisted on its initial judgment.

The General Assembly decision led to controversies whether the consumers will be able to collect the loss and leakage fees they have paid so far. The above decisions of the Court are, in principle, not of a binding nature except for the specific legal claim for which the court is seized. Yet, the first instance courts will inevitably align their decisions with those of the Court of Appeals. On the other hand, according to the Minister of Energy's statements, it is likely that the issue will be resolved early 2015 by a legislative change, which will possibly create a more solid legal basis for collection of loss and leakage fees.

Council of State decision on the Publication of Eligible Consumers Lists

As per Article 21(1) of the Electricity Market Consumer Services Regulation[3] ("**Consumer Services Regulation**"), distribution companies are required to publish on their website lists of the eligible consumers residing in their distribution region. Leaving aside the reluctance observed in practice, the applicability of this requirement was considered problematic from a legal point of view. Adopting the same view, the Council of State has partially suspended the implementation of Article 21(1) of the Consumer Services Regulation in its injunction relief decision dated 29 September 2014.[4]

According to the provision subject to the injunction, it was *"compulsory to make accessible to retailers contact details of the relevant consumers in the published lists in the absence of a contrary written statement of the customer".* Whilst suspending the implementation of this provision, the Council of State relied on the following legal grounds:

- Personal data includes all information relating to an identified or identifiable individual including but not limited to name, surname, date and place of birth, phone number, social security number, passport number, CV, photo, image or voice records, genetic information, e-mail, IP address. Contact details of the eligible consumers qualify as personal data since they render the relevant consumers identifiable.
- Article 20(3) of the Turkish Constitution recognizes the right of protection of personal data which allows individuals to be informed of their personal data, to request amendment and deletion of such data and to verify that their data is used only for the permitted purposes. As per the same provision of the Constitution, express approvals of the individuals need to be sought for processing personal data and the principles and procedures relating to protection of the personal data can only be set out by law.
- Article 20(3) of the Turkish Constitution aims to protect data privacy also against arbitrary regulations of public authorities by authorizing personal data processing only upon the express approval of the relevant individuals or if permitted by a provision of law.

1 Court of Appeals, 3rd Circuit decision dated 4 July 2014; E: 2013/8530; K. 2013/10841, published in the Official Gazette No. 29175 and dated 14 November 2014.

2 Court of Appeals, General Assembly of Civil Circuits decision dated 21 May 2014; E: 2013/7-2454; K. 2014/679.

3 Published in the Official Gazette No. 28994 and dated 8 May 2014.

4 Council of State, 13th Circuit decision dated 29 September 2014; E: 2014/2595.

In light of the above, the Council of State upheld the request of a distribution company for injunctive relief. The court emphasized that there is no provision in the Electricity Market Law which provides a legal basis for the exception brought by Article 21(1) of the Consumer Services Regulation (from the express approval requirement for personal data processing).

The court has not yet rendered its final decision on the merits of the cancellation request; nevertheless issuance of an injunction can be viewed as an early sign of a cancellation decision as it practically creates the same legal effects with a final cancellation decision for the time being.

Competition Authority Report on Electricity Wholesale and Retail Sale Markets

The Turkish Competition Authority ("**TCA**") completed its sector analysis on Electricity Wholesale and Retail Sale Markets and issued the analysis report ("**Report**") on its website on 15 January 2014. The Report generally sheds light on the workable competition conditions in the electricity wholesale and retail sale markets and aims at raising awareness in stakeholders and consumers against possible anti-competitive activities. The Report summarizes the main stages of the privatization and liberalization process and going forward suggests certain measures to ensure the competitive nature of the electricity wholesale and retail sale markets, some of which are as follows:

- Electricity purchase obligation resulting from BO-BOT plants is one of the key factors in determination of the end user tariffs. The contract terms for most BO-BOT projects will expire around 2018-2019, which is considered as a milestone for the liberalization process of the electricity markets, including the decrease of the eligibility limit, and of the natural gas market as well.
- Going forward, liberalization of both (i) electricity wholesale and retail sale markets, and (ii) electricity and natural gas markets should be organized in a cohesive and coordinated manner.
- In the wholesale market, a market monitoring unit is necessary to mitigate problems which are beyond the capacities of the existing electricity and competition regulators. Certain shortcomings such as transmission shortages and regional market power problems are open to abuses. Mechanisms to mitigate market power should sufficiently deter market players from abusing their market power by withholding capacity or increasing prices.
- As a part of the legal unbundling process, strict guidance should be provided to electricity distribution companies on the public disclosure of information in order to distinguish information which can be disclosed to all market participants from information subject to confidentiality requirements *vis-à-vis* third parties and group companies of the distribution companies without any discrimination.
- Eligible consumers use the last resource supply mechanism as a safe harbor during times of increase in the market interchange price (*piyasa takas fiyatı*) which may undermine formation of a liquid and balanced market. To prevent this, eligible consumers which switch back to the tariff based consumption may be forced to stay there for a certain period of time.
- In the retail sale market, authorized supply companies are in a more advantageous position compared to independent supply companies. Various measures should be taken in order to align them at the same level, including the following: (i) supplier switching costs including contractual, transactional and psychological costs should be decreased; (ii) consumption data should be open to all competitors through various platforms; (iii) distribution and retail sale companies should form independent commercial identities for instance by removing distribution region names in the trade names of the retail sale companies; (iv) consumers should be kept informed about their right to choose their supplier by notifications annexed to invoices; and (v) term of the supply agreements should be restricted.

  The Electricity Market Regulatory Authority ("**EMRA**") and the TCA are both competent to ensure the competition in the electricity markets and established precedents of the Council of State confirm that *ex-ante* regulatory authorities of a sectorial regulatory authority does not remove the *ex-post* monitoring authorities of the TCA. However, complaints regarding distribution and transmission companies need to be dealt with rapidly and in priority by a special department to be established within EMRA following the example under EU 2009 Electricity Directive. This mechanism would minimize the *ex-post* interventions of the TCA.
- The inter-institutional cooperation between EMRA and TCA should be reinforced and participation of the TCA to enactment of the sectorial regulations should be facilitated by way of an official protocol. This protocol could outline the procedural aspects and timing of the cooperation between the two authorities and draw the line between their respective fields of competence.
- The overlap of competence between the EMRA and the Ministry of Energy and Natural Resources regarding supervision of the distribution companies, which result from the conflicting provisions of the Electricity Market Law, should be resolved.

The Report is not a legally binding regulation for electricity market players; yet it will eventually serve as useful guidance for both EMRA and the market players to address competition concerns in the market.

Recent and Upcoming Conferences & Events

- 14 October 2014, İstanbul: Av. Dr. Çağdaş Evrim Ergün, a partner of Çakmak Avukatlık Bürosu, spoke on a panel titled "**Healthcare PPP in Turkey**" organized by the International Project Finance Association (IPFA) and hosted by White & Case.
- 22 October 2014, Ankara: Av. Dr. Cem Çağatay Orak, a partner of Çakmak Avukatlık Bürosu, spoke on the legal issues in the development of geothermal projects at the **U.S. – Turkey Geothermal Workshop**, sponsored by the US Trade and Development Agency.
- 25 November 2014, Ankara: Av. Mustafa Durakoğlu, an associate attorney of Çakmak Avukatlık Bürosu, gave a speech entitled *"Electricity Market Licensing Regulation"* at the **7th International Energy Congress & Expo** organized by EIF.
- 14 – 17 January 2015, İstanbul: **6th Energy Efficiency Forum and Fair**, organized by the Ministry of Energy and Natural Resources General Directorate of Renewable Energy in collaboration with Exportim International Fair Organizations Inc.
- 20 January 2015, Ankara: **Energy Markets Summit**, organized by the Energy Market Regulatory Authority and the Energy Experts Association.
- 22 – 24 January 2015, Ankara: **2nd Hydroelectric Plant Construction, Operation, Technology and Equipment Specialization Fair**, organized by Demos Fuarcılık ve Organizasyon A.Ş.
- 22 – 25 January 2015, Ankara: **2nd Geothermal Energy Technology and Equipment Fair** organized by Demos Fuarcılık ve Organizasyon A.Ş.
- 16 – 17 March 2015, İstanbul: **8th Annual Turkey Energy & Infrastructure Finance Forum** organized by Euromoney.

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