THE POLITICS OF REGULATION IN THE TURKISH ELECTRICITY MARKET

Tamer Cetin* and Fuat Oguz**

1. Introduction

The regulatory reform in the electricity industry came to Turkey with its costs. Following other developing countries, Turkey began liberalizing its electricity production and retail segments in 2001. Historical problems and institutional restraints limited the success of the reform. As in many countries (Newbery, 2001), the liberalization has begun with the pressures of IMF and World Bank (Alper and Onis, 2003). The institutional structure of the market was not ready for a competitive environment and the independent regulator had not ample experience and ability to drive the market to a more competitive structure. Under these conditions, many opportunities for a competitive market have been missed. At present, the political authority has more power over the future of the market and the regulator has become a more bureaucratic entity. Moreover, the High Planning Council, the Constitutional Court and Danıştay play a crucial role in the direction of the market.

The goal of this paper is to discuss the new environment in the electricity market after the enactment of the new law. We will address possible problems in terms of the institutional change in the electricity market after the recent change in legal structure. Our aim is to emphasize the importance of conflicts among related bodies of government, judiciary and regulatory authorities with respect to instituting a competitive electricity market.

We argue that the new law, the institutional environment, and ultimately the regulatory process are not satisfactory in providing a competitive electricity industry. While the radical change in the political environment with the last elections created optimism about reforms (Rowley, 2004), the electricity industry was not in line with the macroeconomic success. A

* Uludag University, Turkey
** Visiting Scholar, New York University
disbelief in markets on the side of government is reflected in its actions in the regulated industries, even though their expressed aim is a more competitive market system.\textsuperscript{1}

The government could not find the will to implement the institutional change, even though it has a majority in the parliament. The conflict of interests among the government, the judiciary and the regulatory authority remain to be solved. The indeterminacy across the institutions increases the uncertainty of the future. It also raises the costs of transition to a more competitive market environment.\textsuperscript{2}

In this paper, we follow the public choice approach and focus on the interrelations between Turkey’s institutional endowment and economic performance. From a rent-seeking society perspective, restrictions over competition via regulations and laws create artificial rents and encourage entrepreneurs to spend their sources to obtain and protect these rents. In a rent-seeking society, politicians, bureaucrats and private entrepreneurs are engaged in a political game of creating, extracting and distributing artificially created rents (Mueller, 2003: Gwartney and Wagner, 1988). Deviating from the traditional ‘public interest’ approach, this literature assumes self-interest as the dominant motive for regulators and politicians, as well as private entrepreneurs. The political process has its own supply and demand mechanism and smoothens the wealth transfer across groups. The political authority becomes an instrument used by special groups for their advantages. (Pasour, 1985: 528). The government itself is to be treated, not as a unit, but as a complicated network of individuals, each with an incentive to maximize their own interests (McChesney, 1987).

How regulatory power is, and should be, distributed across government bodies? Regulation is done through a variety of government actors. The Parliament enacts the law and

\textsuperscript{1} In this paper, our emphasis is on the inconsistency between the government’s expressed views and its actions. We assume that actions reflect intentions more truthfully, following the public choice theory.

\textsuperscript{2} The results of democratic decision-making processes, in other words, are a function both of the dimensions of the public choice domain – the constitutional rules that determine the types of decisions that will be made collectively versus those that will be made privately – and of the institutional framework that governs such matters … (Shugart and Tollison, 2005: 9-10).
gives power to the government to appoint the members of the regulatory board. The regulatory body has the power to implement the statute. The courts review appeals from the decision of regulatory authority. The infringements of regulatory commands are prosecuted through judiciary. The efficiency and smooth operation of a regulatory system requires alignment of these three government bodies.

As in the case of Turkish electricity market, the reality almost always is more complex than the simple modeling. Disconnected regulatory authorities may have the power over the same market, based on separate legislations. In addition to de jure problems, there are also de facto powers sharing across government branches. Politics of regulation involves interest groups, bureaucratic entities, and political will with diverse means and ends. The regulatory process may turn into a strategic game of wealth transfers when there is an asymmetry between legal and economic rights (Barzel, 1997).

Rent-extraction and rent seeking surround electricity markets in many countries. Studies on Canada and United States, for example, show that political preferences and pressures play a dominant role in pricing and other important variables in the industry (Bernard and Roland, 1997: Joskow, 2000). Rent-seeking activities are even more widespread and apparent in developing and less developed countries. Turkey is not exempt from this general trend. Regulatory capture by politicians and private entrepreneurs is, apparently, one of the central problems of the electricity industry in Turkey.

We discuss some of the issues that increase the costs of transition to a freer market in electricity industry. To begin with, we take a glimpse at the current structure of the electricity market. Then, the paper discusses what the electricity market law brings to the market. After giving a brief discussion of the new law, we pay particular attention to public choice issues and viability of long-term competition under the new regime. In the end, we discuss legal and political tensions that may cripple the institution of competition in the future.
2. The Change in the Institutional Climate: Then and Now

Since 1980s, Turkey has had an expressed interest in privatizing electricity industry. The general disposition toward free markets and liberalization played a fundamental role on this view. In addition to fiscal constraints, the constitutional barriers forced governments to introduce private sector participation without full privatization. The constitutional court has accepted electricity as public service, which should be provided by the state. In 1993, the vertically integrated state company, TEK (Turkish Electricity Institution) was unbundled into two segments: generation-transmission (TEAS) and distribution (TEDAS). The structure of the market before the electricity market law is given in Figure 1.

[Figure 1 here]

The first law setting up a framework for private participation in electricity was enacted in 1984 (Law No. 3096). This Law formed the legal basis for private participation through Build Operate and Transfer (BOT) contracts for new generation facilities, Transfer of Operating Rights (TOOR) contracts for existing generation and distribution assets, and the autoproducer system for companies to produce their own electricity. Under a BOT concession, a private company would build and operate a plant for up to 99 years (subsequently reduced to 49 years) and then transfer it to the state at no cost. Under a TOOR contract, the private enterprise would operate (and rehabilitate where necessary) an existing government-owned facility through a lease type arrangement. In 1994, BOT projects were made more attractive with Treasury guarantees and tax exemptions. An additional law for private sector participation in the construction and operation of new thermal power plants through a licensing system rather than concession award, the Build-

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3 Law No. 3996 and Implementing Decree 5907
Operate-Own (BOO) Law, was enacted in 1997 (Law No. 4283), again with guarantees provided by Treasury.

Under the BOO model, investors retained ownership of the facility at the end of the contract period. A typical BOT, BOO or TOOR generation contract, signed between the private party and TEAS or TEDAS, included exclusive “take or pay” obligations with fixed quantities and prices (or price formulas) over 15-30 years. Still, it did not provide a framework for competition in the market but only potentially for competition for the market if the contracts are granted through a competitive process in which lowest cost proposals are accepted.⁴

On the New Law

In February of 2001, the Turkish Electricity Market Law (the Law no. 4628) was enacted. The Law provided a new and radically different legal framework for the design of electricity markets, and established the Energy Market Regulatory Authority (EMRA), an independent regulatory authority. The structure of EMRA has peculiar characteristics. It is a governmental body in some respects, including personnel regime, and its relation to Ministry of Energy and Natural Resources (MENR). It is independent in some other respects, including its incomes, and its authority over licensing and other market related activities. The EMRA board is independent in its decisions and there is no parliamentary committee to oversee its activities.

The main objective of the Law, as stated in the first article, is to establish a financially viable, stable, transparent and competitive electricity market. It is supposed to function as per the provisions of private law and ensure independent regulation and supervision of the market in order to provide sufficient electricity of good quality to consumers at low cost in a reliable and

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⁴ In principle, the main benefits of such private sector participation contracts arise from three factors: first, transferring those risks to the private sector that it is best able to manage (including most commercial risk during the operating phase); second, accessing strong and effective private sector commercial and managerial skills for reduced operational costs and improved service quality; finally, galvanizing adoption of innovation at both design and implementation phases of projects.
environmentally friendly manner. In other words, the Law aims to liberalize electricity market and provide an efficient market regulation.

The law has two main components: general provisions and the rules governing EMRA. The first part describes the working of the market, including market activities and licensing. Details of licensing procedures, market operation, tariffs, vesting contracts, privatization and stranded cost mechanisms have been left to secondary legislation and decisions. The second part covers the responsibilities and authorities of EMRA.

The new law has chosen bilateral contracting between market participants, with a balancing mechanism. While no time frame has been introduced, EMRA would open generation, distribution and wholesale-retail trading to competition in the medium run. The law chooses non-discriminatory regulated third party access to the grid and distribution system. Full privatization was the final goal of the new regulatory regime, with restrictions over the power of foreign investors in the market.

The new market structure, with some modification for the current situation, is shown in figure 2. TEAS is unbundled into three companies responsible for different sub-sectors, namely TEÜAS, (generation), TEIAS, (transmission) and TETAS, (wholesale). TEIAS is and will be the sole transmission and market operator; however, direct participation by the private sector is allowed in all other segments of the industry.

Main Economic Issues

Before discussing legal and political issues in detail, it will be beneficial to address economic constraints of the institutional structure. There are two main burdens on the regulatory reform that may deem it unsuccessful in the long term. The first one is the dependency on natural gas. It is expected to reach 40 percent of the energy production (Arabul, 2002). It is provided by

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5 For more detailed discussions see OECD (2005), Sevaioğlu (2005), Atiyas and Dutz (2005), and Ozkivrak (2005).
one public enterprise, namely BOTAŞ. In May 2001, the natural gas law was enacted and BOTAŞ was required to be unbundled. However, BOTAŞ is still Turkey’s sole natural gas importer and has a de facto monopoly of all gas supply in the country (OECD, 2005: 110; Mazzanti and Biancardi, 2005: 214). There seems to be two adverse consequences of the dependency. First, the natural gas market is not expected to open competition in the near future. Any crisis in natural gas market will reduce competition in electricity market significantly. As in the case of recent California crisis, the transition to competition might be more costly. Second, electricity market regulations must take the natural gas market into account more than in a situation where natural gas market is competitive.6

The second burden is the contracts that were signed before the new legislation.7 Pay or take contracts, signed before EMRA was founded, have increased the costs of opening the market to competition. These contracts include breach and compensation clauses that require payments by the Treasury, if these companies do not get generation licenses. Allowing them to operate, apparently the politically correct behavior increases the price paid by the consumers because of high rates. EMRA and MENR prefer to acknowledge these contracts.

It is impossible to measure the costs of these contracts fully. Some of these costs are observable such as the effects of the difference between local prices and world prices. Some of them are invisible and show themselves as the weakness of entrepreneurial activities in the industry. Technological innovations will not find their way to the industry easily, and current insiders will not be eager to reduce their costs. New entrants will find it difficult to enter the market, because the existing companies have the right to sell all of their generated electricity to the state. They can increase their production capacity and leave no room for potential entrants.

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6 Cross-subsidies continue in natural gas market. BOTAS sells gas to households under its cost. BOT producers pay higher than the cost. These high prices are reflected in electricity prices and distort the market process.
7 The Constitutional Court decisions, with public interest motive in the background, limit EMRA’s control over the market, as discussed below.
3. Legal and Political Issues

The origins of the institutional problems go back to the center-periphery relations of the Ottoman Empire. The state is at the center and local businessmen surround it (Mardin, 2000). This structure creates an informal connection between the state and businessman that create a perfect environment for the rent-seeking society. This tradition makes regulatory capture an organic part of the business-state relations. Bureaucrats play the role of middleman in this system and link the interests of politicians and businessman. Bureaucrats work as the agents of the politicians. This model differs slightly from the traditional public choice model of Niskanen on the role of bureaucrats in the system.

This tradition of doing business changes the ground of economic decision-making. Bureaucracy takes the place of the market by providing an informal ground for equilibrating the market (Bugra, 1995: 126).

Electricity is particularly open to this system, being a state-owned industry for a long time. As widely discussed by public choice scholars, this system creates different ways of extracting rent, both pecuniary and non-pecuniary (Tullock, 1993).

In this environment, any regulatory reform will face attempts by bureaucrats, politicians and businessmen to evade the system and keep rents. While it is possible to control variables like electricity prices, costs and capacity, it is impossible to find a measure for the institutional problems. The institutional background may slacken the success of any reform if not taken into account carefully during the reform process.

This traditional understanding of state-citizen relationships in Turkey has been a dominant factor in determining the nature of the regulatory reform. The institutional structure of the bureaucracy and political will creates and supports barriers before any liberalization effort. In a rent seeking society, bureaucrats, politicians and local businessmen have established a rent extracting mechanism (Mardin, 2000). Bureaucrats, as being more policy advocates rather than
implementers, follow the desires of politicians instead of pursuing public interest, which is their legally binding duty (Tusiad, 2002: 145).

As in many other countries, the transition to independent regulatory agencies and competitive markets had the aim of reducing the rent-seeking door. Naturally, governments, and other related bureaucratic entities tried to slow down the regulatory reform in banking, telecommunications and energy in different ways.

The traditional interpretation of ‘public interest’ in bureaucracy and judiciary is another problem in front of regulatory reforms. Appeal courts have usually recourse to public interest notion in their decisions over privatizations. The Constitutional Court embraces a loose definition of public interest. Nullification of many privatization efforts in courts has much to do with this interpretation.

Finally, the conflicts of interests between bureaucracy, politicians and judiciary remain as a major obstacle before the efficient regulatory process. In this section we will discuss the conflicts among institutions in implementing regulatory reform in the electricity market.

a. The Conflict between EMRA and MENR

The conflict between EMRA and MENR originates from the absence of any precedence on the level and degree of EMRA’s independence. According to the law, EMRA has authority over the market and is related to MENR. The law leaves the nature and level of competition in the market to the discretion of EMRA. The law does not clearly describe how competition is introduced. The lack of strong emphasis on competition makes the structure weak and vulnerable in terms of sustaining a competitive market.

MENR has lost its power on the market structure with the law. It can form energy policies but does not have authority over the operation of the industry. The electricity market has long been a tool for political interests and rent seeking. No government wants to lose its grips

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8 See for example, CC decision no. 1995/23.
over the market for political reasons. Moreover, a potential excess demand crisis in the near future and unsuccessful attempts of privatization give support to government’s desire to control the market (Oğuz ve Çetin, 2005).

The use of electricity market for political purposes is another reason why the government does not let its power go. As James Buchanan (1980: 9) says, ‘rent seeking activity is directly related to the scope and range of governmental in the economy’. A recent example of the tension between EMRA and MENR shows the nature of the conflict. In 2003, EMRA was eager to introduce a cost-based regional pricing scheme. The regional pricing would reduce prices in regions where there is little illegal use, mostly western Turkey. However, the prices in southeastern and eastern Anatolia would rise, because of high levels of illegal use. The government did not want this policy to be implemented because of political preferences and budget constraints. In the end, the cost-based pricing was dropped. The current system subsidies illegal use; yet, it provides political support for the government, even though it is against European Directives (OECD, 2005: 131).

Electricity prices include non-industrial additions as well. Prices have been used as a cross-subsidy tool across consumers, notably from industrial consumers to households, and between geographical areas. Insistence on cross subsidies limits the potential for exploiting the advantages of competition (Levy and Spiller, 1996: 6). The future of competition becomes bleaker because of the costs of institutional burdens. The longer the government uses electricity prices for political gains, the harder the competition institutionalized.

Electricity prices are subject to several taxes and levies. Although the electricity market law prohibits of any costs on electricity prices that are not directly related to electricity market, a

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9 As anticipated, members of the parliament from the Southeastern cities were ardent supporters of the current system (Sevaioglu, 2003).

10 These cross-subsidies show that political considerations weight more than efficiency issues. Electricity prices have been consistently higher for the industrial consumers in comparison to other IEA member countries. A recent example of the politically triggered policies in the electricity industry is the cancellation of farmers’ electricity debts, against all economic arguments. Thus, wealth is redistributed and future rent-seeking activities are encouraged (Newbery, 2001).
two percent levy for the Turkish Radio and Television Corporation (TRT), the public broadcasting company, is imposed on end-user electricity prices.

A further blow on the authority of EMRA over the market is the recent Higher Planning Council decision (17.03.2004) on the electricity market. The HPC decision provides the legal ground for weakening EMRA’s power. The decision emphasizes the importance of domestic capital investments in electricity and gives the authority over investment issues to MENR and the State Planning Organization. Political preferences have never supported regional pricing in Turkey. MENR will be against regional pricing for some more time. The negative consequences of this decision over the privatization and efficiency in the market are widely known (Sevaioğlu, 2003).

The HPC decision has given the signal that building competition is not in the agenda of the government for some more time. It proposes to begin privatization with distribution segment of the market. The privatization of power plants will follow the distribution privatizations, which are not expected to be completed before mid 2006 (OECD, 2005: 144).11

Another factor that restrains the power of EMRA is its budget is supervised by Prime Ministry. Sayıştay, Turkish Court of Accounts, supervises other regulatory agencies. Thus, the supervision of the regulator is left to a governmental body, rather than an independent court. This limits the strategic power of EMRA over the market and against the political interests.

These developments have created a discrepancy between the design and reality of the law. The HPC decision strengthens the current situation by consolidating monopolies in the industry. The privatizations are postponed and the belief in competition loses its ground in the

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11 The implementation of the HPC decision is already lagging behind schedule. Apparently, the delay in distribution segment will make it more costly to privatize the generation segment.
industry. As a result, the incumbent distribution companies keep their monopoly rights. The HPC
decision does not put forward a privatization model in distribution (Sevaioglu, 2005). These
developments stall the creation of Portfolio GenCos. Thus, distributional licenses could not be
issued and purchasing contracts had to be postponed. These developments make it difficult to
establish a competitive environment in generation and distribution a few more years. In contrast,
TEÜAŞ makes long-term contracts with the state-owned transmission company. According to the
planned market structure, their monopolistic relationships has to end by 2006, which seems
unfeasible. Their relationship will continue for an indeterminate period of time.

On the other hand, as privatizations are deferred to future, TETAŞ continues to dominate
the market. While it was planned as a transitory institution, the failure in the reform made it
permanent. This change in the institutional framework creates additional setbacks on the nature of
competition in the market. TETAŞ will continue to sell electricity to distribution companies. This
creates additional cases of the abuse of dominant position in the market.

The current situation in the electricity market supports the regulatory capture (Stigler,
1971) and rent seeking (Tollison, 1982) theses. The political power of electricity companies and
related holdings forces EMRA to give them licenses. Moreover, the law does not hold back future
integration.

b. Judiciary and the Independence of EMRA

In addition to political body, judiciary also restrains EMRA’s authority over the market.
The absence of a separate court for regulatory issues put EMRA under the pressure of the
dominant ‘public interest’ view of judiciary. The duties and responsibilities of regulatory bodies
demand specific knowledge and expertise concerning regulatory structures (Ogus, 1994). The
constitutional court applies the public interest notion and Danıştay is not well prepared to deal
with newly emerging regulatory issues. Their decisions cannot take into account the changing environment of regulation and all the public choice issues around regulations.

Moreover, the appellation process is open to any strategic games. The indeterminacy of the judicial process about the market makes things more complicated. The direction of the Constitutional Court and Danıştay decisions have not well established yet. The absence of precedents makes things harder for both judiciary and market participants.

Both Danıştay and the Constitutional Court recognize electricity as public service and take the public interest view. Since 1984, BOT contracts were made as concessions. Along with the rate of return pricing, this type of contracting was open to long-term problems. Thus, the Ministry of Energy decided to sign contracts according to private law in 1993. This was against the constitution and Danıştay’s law. In order to eliminate potential annihilation by Danıştay and the Constitutional Court the government enacted that these contracts were not accepted as concessions.\(^{12}\) However, the Constitutional Court annulled this law.\(^{13}\) Against this decision, the government enacted a similar law,\(^{14}\) which was annulled by the Constitutional Court again\(^{15}\). In order to evade legal intervention Danıştay’s authority was abolished in 1999.\(^{16}\) In 2002, Danıştay decided that it is the first appeal court on BOT contracts.\(^{17}\) Then, it voided the implementation of these contracts following the public interest notion.\(^{18}\)

The Constitution and court decisions do not allow full transfer of ownership of power plants and other electricity assets to private sector. Production contracts are recognized as concessions, and public interest concept requires them to stay state-owned. The judiciary moves very slowly in accepting changes in economic understanding (Ehrlich and Posner, 1974: 279).

\(^{12}\) Law no. 3974, date 22.02.1994.  
\(^{13}\) The Constitutional Court Decision no. 1994/42.  
\(^{14}\) Law no. 3996, date 08.06.1994.  
\(^{15}\) Decision no. 1995/23.  
\(^{16}\) Law no. 4492, date 18.12.1999. Danıştay left with advisory role only with this law. Thus, the process was accelerated. The Law on International Arbitration also aimed to restrain the power of national judiciary over the contracts.  
Turkish judiciary is no exception. When economic change goes far beyond the legal interpretation, the difference between these two would create potential rents and high transaction costs (Barzel, 1997). Interest groups in the Turkish electricity market have benefited from the lag between economic and legal understanding. While the electricity industry becomes more competitive technologically, the united efforts of courts in terms of public interest theory have created new opportunities for rent seeking in the industry.

The above-mentioned HPC decision shows that the government sides with judiciary on the public interest view. The government cannot privatize the industry without full transfer of property rights. Yet, Danıştay annulled some concessions on the basis that they cannot be accepted as concessions unless the state is part of the process.\(^{19}\) The government cancelled 22 concessions following this order.

These developments have slackened the implementation of Electricity Market Law. It was not in congruence with the Constitution to begin with. The Constitutional Court annulled some of the provisional articles of the Electricity Market Law in 2002. And, uncertainty over the authority of EMRA in the market continues. Currently, EMRA only transfers licenses. The ownership remains public and licenses are given at most for 49 years. This limited privatization has not been adequate in attracting foreign investors to the industry.

A potential reason of the reluctance of judiciary on privatization follows the statist position of courts. It takes a long time to transform the institutional background. Many formerly state owned enterprises have confronted similar decisions in courts. Danıştay annulled many privatizations on the public interest grounds. As long as the legal tradition continues to shape modern decisions, it would not help to blame only the Constitutional Court or Danıştay.

\(^{19}\) 1. Circuit, Decision no. 25 (2003).
Seemingly, the transition to a market economy in the electricity market will take more time than previously expected.20

The absence of the constitutional protection of property rights in the industry has opened the door to legislative discretionary via the HPC decision. The executive branch and judiciary lean toward protecting public interest notion, even though they have diverse incentives. Whenever, the executive branch’s views are accepted, regulations become more valuable for rent-seeking entrepreneurs. Transaction costs of rent-seeking through the government are lower than lobbying the judiciary or the independent regulator (cf. Landes and Posner, 1975).

c. The Competition Authority and EMRA: Potential Conflicts

Another problem in the industry is that the boundaries of jurisdictional powers of EMRA and the Competition Authority (CA) are not well defined. Which authority will have the final say on anti-competitive behaviors in the market, for example? The current legislation does not delineate the authority with clarity. Examples from telecommunication industry point to potential conflicts.21 In the future, CA may have to address the discrimination and tariff issues. What will happen, if CA and EMRA reach different conclusions about price fixing, restrictions over competition or the abuse of dominant position in electricity markets? These are open question under the current system.

The policy dimension of the relationship is also important. Antitrust and economic regulation theories differ to a great extent. What may be just from antitrust policy may very well be unfair in terms of economics of regulation.

20 While we expect some domestic private interests benefit from these decisions, at least theoretically, the lack of any empirical work in this area leaves us only with crude speculations, even if they seem true intuitively.

21 CA decision no: 04/32, date. 05/04/2004. In another decision about the telecommunications industry (n. 04/27, d. 04/22/2004), CA Board followed the view of the Telecommunication Regulatory Authority, at its discretion.
In the electricity market, EMRA has a wide-ranging authority over the issues of competition. However, CA retains the right to approve any merger or acquisitions in the electricity market. In practice, mergers and other competition issues are closely related. The relevant legislation neglects these potential issues.

In a recent decision, CA sided with MENR and EMRA. Ere Electric, a Turkish electricity generation company, filed a complaint against MENR and EMRA to CA. It argued that MENR and EMRA prohibited it from selling its excess production to market participants and forced it to sell it to TETAS, the state owned company. It also argued that TETAS offered very low prices for its electricity and thus abused its dominant position. CA decided that it has no jurisdictional power over this issue. According to the electricity law, private power plants can contract with private distribution companies (Electricity Manual, 2002: 9). This decision brings about the issues of regulatory commitment and credibility over EMRA.

4. Summary

Setting up EMRA is an important step toward a more liberal electricity market. However, the economic, political and judicial environment limits competition to be institutionalized. In this paper, we have raised a number of legal, bureaucratic and political issues that restrict a sound and competitive market. As the incumbent government takes a more active stance toward the market, privatization of the industry is deferred to the future. Imperfections in the natural gas market, problems of existing contracts and integration and the absence of a belief in competition supports rent seeking and rent extracting activities.

22 Electricity Market Law, article 1: The purpose of this Law is to ensure the development of a financially sound and transparent electricity market operating in a competitive environment under provisions of civil law and the delivery of sufficient, good quality, low cost and environment-friendly electricity to consumers and to ensure the autonomous regulation and supervision of this market.
23 CA decision no: 03/13, date. 27.02.2003.
24 The electricity market law does not conform to European directives and regulations as well. For example, EMRA may impose fines to companies without giving them any chance to defend themselves (Electricity Law, 11/a). This is clearly against the European Human Rights Court’s decisions. This is a consequence of establishing a regulatory environment without considering relevant legal structure.
In the Turkish electricity market, EMRA has the authority by law. However, many other institutions have become *de facto* participants in a strategic game over the regulatory issues. Not all of these institutions have inclined to follow regulatory reform or liberalization of the industry. The Constitutional Court, Danıştay, the Higher Planning Council and MENR are among the judiciary and political offices that influence the direction of the market. There are conflicts of interests across these institutions, which divert regulatory policy from efficiency considerations. The policies are the outcome of interactions among the institutional actors. Moreover, efficient policies can only be implemented if the institutional structure supports cooperation (Spiller and Tommasi, 2003).

In the end, entrepreneurs in the industry, domestic or foreign, do not believe the expressed views of regulatory authority and politicians. The direction of the industry is toward a more centralized structure. This slows the speeds of regulatory reform. Generation and distribution segments are particularly vulnerable to these interventions.

On the other hand, the uncertainty that surrounds the legal environment damages regulatory commitment. The inability to make long-term plans discourage entrepreneurs from taking risks and limits the role of any sensible policy (Baron, 1995: 16).

EMRA should define the regulatory agenda very clearly. A timetable for liberalization is a necessity, at least to keep itself under control. Otherwise there is a tendency to create another huge government office that commands the market and becomes a predicament before the liberalization.

A potential path forward is to provide constitutional protection to regulatory authorities to restrain the influence of politics. This may also be a way to change the judiciary’s approach to the regulatory issues and can solve the regulatory commitment problem.
References


Figures

Figure 1. The Structure of the Electricity Market before Law No: 4628
Figure 2. The *Materialized* New Structure of the Electricity Market by the Law no. 4628

**Source:** Modified from the New Law (2001) and Electricity Market Implementation Manual (2003).