

## Regulation of Natural Monopoly: The Turkish Electricity Market<sup>1</sup>

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### Doğal Tekelin Düzenlenmesi: Türkiye Elektrik Piyasası<sup>2</sup>

#### Abstract

This study examines the situations that arise when regulating a natural monopoly market by focusing on Türkiye's electricity market. Specifically, this qualitative study investigates the Energy Market Regulatory Authority (EMRA) in terms of capture theory, drawing on various documentary sources, such as electricity sector regulation legislation (constitutions, sector laws, decree-laws, Plan and Budgeting Committee documents of The Grand National Assembly of Türkiye), EMRA official decisions, newspaper reports from 2001 to 2021, and media interviews. The empirical findings discussed throughout the article reveal numerous instances consistent with the capture theory.

**Keywords** : Natural Monopoly Markets, Regulatory Authority, Capture, Electricity Market.

**JEL Classification Codes** : L43.

#### Öz

Bu çalışma, Türkiye'nin elektrik piyasası örneğine odaklanarak doğal tekel piyasasının düzenlenmesinde ortaya çıkan durumları incelemektedir. Bunun için Enerji Piyasası Düzenleme Kurumu'nu (EPDK) elektrik sektörü düzenleme mevzuatı (anayasalar, sektör kanunları, kanun hükmünde kararname, Türkiye Büyük Millet Meclisi Plan ve Bütçe Komisyonu belgeleri), EPDK resmi kararları, 2001'den 2021'e kadar gazete haberleri ve medya röportajları gibi kaynaklardan yararlanarak) ele geçirme teorisi açısından incelemektedir. Makale boyunca tartışılan ampirik bulgular, ele geçirme teorisiyle tutarlıdır.

**Anahtar Sözcükler** : Doğal Tekel Piyasaları, Düzenleyici Kurum, Ele Geçirme, Elektrik Piyasası.

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## 1. Introduction

As a critical component of neoliberal economic policy, privatisation became one of the dominant practices in the 1980s in both early and late capitalist countries. One common feature of privatised industries is that they tend to be natural monopolies, such as water, electricity, natural gas, and telecommunications. The public finance literature has widely discussed the drawbacks of liberalising goods and services markets that are natural monopolies. The state should not privatise the sectors exhibiting the characteristics of a natural monopoly, or if privatisation is deemed necessary, an independent administrative authority should regulate the market. Yet, with the progression of privatisation, it became evident that more liberated markets often necessitate increased rules, regulatory agencies, and regulators (Vogel, 199: 2-3).

Indeed, the number and proliferation of independent regulatory authorities, particularly those operating in telecommunications, electricity, competition, securities and stock exchanges, food safety, pharmaceuticals, and the environment, have rapidly increased. The global count of independent regulatory authorities, which stood at 23 in 1986, surged to 169 by 2002 (Gilardi et al., 2006: 3). Regulation is also defined as the transfer of authority from politicians and ministries to expert and regulatory authorities (Thatcher, 2002: 955); however, the extent of independence in the activities of independent regulatory authorities remains a subject of debate. Over the years, research has demonstrated that the regulatory decision-making processes have not been able to stay insulated from political pressures precisely as intended (Kumar, 2022: 1).

This study examines post-privatization regulation processes in a natural monopoly through the example of electricity market privatisation and the Energy Market Regulation Authority (EMRA) in Türkiye. Under EMRA's control, the new electricity market converged with the global energy market by legally and administratively separating market activities, establishing an energy exchange, setting tariffs, and regulating licensing. However, studies of electricity market regulation in Türkiye show that the government has not been particularly enthusiastic about delegating its electricity ownership rights to an independent authority (Çetin & Oğuz, 2011: 6; Çetin & Yılmaz, 2010: 397). In their study, Çetin and Oğuz (2011) argued that an environment of legal uncertainty without constitutional safeguards has created a legitimacy issue for independent regulators. The state's arbitrary legal and bureaucratic interventions in the regulatory system have damaged the regulation's reputation and show that the government prioritises its political preferences before the market's requirements and efficiency (Çetin & Oğuz, 2011: 3).

Studies of Türkiye's electricity market also reveal several problems. Özel and Atiyas (2011) assessed the efficacy of regulators using regulatory impact analysis. They observed that rather than creating a rational market, the independent regulatory agencies' activities create new forms of interest and benefit that can have significant distributional consequences (Özel & Atiyas, 2011: 52). In their study discussing the feasibility of long-term competition under the new regime within the framework of public choice theory, Çetin and Oğuz (2007)

focus on the relationship between the government, the judiciary, and EMRA and argue that the decisions of the Constitutional Court, the Council of State, the Supreme Planning Council and the Ministry of Energy and Natural Resources politically influence EMRA's regulatory activities by affecting market trends (Çetin & Oğuz, 2007: 1769). The relationship between the government and independent authority has insufficient organisational control to prevent opportunistic behaviour from the government, leaving EMRA vulnerable to political influence (Durakoğlu, 2011: 5586). The conflicting interests of old and new public regulatory agencies have transformed the regulatory setting into "regulatory/institutional chaos", while the presence of multiple players in the bureaucratic structure with de facto or de jure veto power creates political and economic risks as well as higher operating costs for investors (Durakoğlu, 2011: 5586). The government has manipulated EMRA's activities in electricity privatisations to provide opportunities to companies politically linked to the government (Özcan & Gündüz, 2015: 19). In his 2018 study, where he analytically scrutinised the interplay between neoliberalism and energy policies in Türkiye, Erensü contended that the EMRA is a captured independent regulatory body that the influence of policy has co-opted (Erensü, 2018: 154).

In brief, the existing literature on Türkiye predominantly concluded on political intervention within the EMRA. However, Stigler (1971), a seminal figure in regulatory literature, had early on highlighted the risk of regulatory agencies in regulated sectors being captured by capital groups in the market. Against this backdrop, this study aims not only to examine the perspectives asserting the susceptibility of the regulatory institution for political interventions, as summarised above but also to scrutinise whether EMRA is subject to pressure from actors within the sector it regulates, as capture theory claimed. Therefore, the study seeks to determine whether EMRA can operate independently and fulfil its regulatory function of safeguarding the long-term interests of the market and all its actors, i.e., the capital. With this objective in mind, I will conduct an assessment by focusing on the regulatory role of the EMRA in the electricity distribution market, scrutinising the evolving ownership structure within the market, and examining how it manages the divergent demands of the various actors operating within the market. In other words, considering Türkiye as a developing country, this study aims to provide an empirical contribution by examining the example of electricity market regulation in Türkiye within the framework of capture theory.

Methodologically, this qualitative study used various documentary sources to grasp the issue's complexity completely. EMRA provided the primary data sources along with other documents, such as electricity sector regulation legislation (constitutions, sector laws, decree-laws, Plan and Budgeting Committee documents of The Grand National Assembly of Türkiye), EMRA official decisions, audit reports of the Court of Accounts, newspaper reports from 2001 to 2021, and media interviews.

The paper consists of three parts. The first section reviews the international literature on the independence of independent regulatory authorities in regulating natural monopolies. The following two sections constitute the case study part of the study. The first part describes

the development of Türkiye's electricity market and the new market structure under EMRA's regulation. Here, I explore how the electricity distribution market is concentrated in the hands of only a few large capital groups. The second part evaluates conflicts of interest among market actors and EMRA's regulatory authority on the market. In this part, we investigate governmental involvement in competitive disputes among market participants and the regulatory authority's lack of response. Finally, the paper concludes with a summary of the results discovered and recommendations for further academic research.

## **2. Regulation of Natural Monopoly Market**

By early literary works, natural monopolies require a public economy to avoid disruptions in the market. In addition to the water and gas markets that Mill (1848: 63), the first economist to speak about monopoly (Sharkey, 1982: 14), pointed out, other sectors like telephone networks, electricity, and postal services are also subject to such market disruptions. These prevent their services from being produced and supplied in a competitive, liberal market due to the inherent characteristics of natural monopolies. One reason why natural monopoly markets are not competitive is that they are decreasing-cost industries. They feature increasing returns of scale, whereby average costs decrease as production increases (Stiglitz, 2000: 191). In industries, the larger the firm's production scale, the lower its costs, meaning that a single large firm is more efficient than multiple smaller-scale firms operating with higher costs (Kirmanoğlu, 2009: 168).

Given the potential for natural monopolies, characterised by diminishing costs, to exploit their dominant market positions by imposing elevated prices on consumers, one approach to mitigating such concerns involves the state's assumption of production responsibilities within this market. Alternatively, the state can entrust the sector to the private sector while regulating prices to prevent a single large firm from abusing its monopoly (Stiglitz, 2000: 195) and using public funds to compensate the firm for any losses due to reduced prices (Görgün, 1993: 39). Until the 1980s, the general practice regarding natural monopolies focused on efficiency, with only one firm operating in these sectors managed by public economic units. Since the 1980s, however, growing privatisation and market expansion in line with prevailing approaches and policies means that, in many countries, natural monopolies have private sector firms operating under rules set by regulatory bodies (Kirmanoğlu, 2009: 170).

Derived from this perspective, regulation can be characterised as a form of state intervention without expropriation whereby the state controls a sector's structure, codes of conduct, and performance. This generally requires a regulatory authority that is at least formally independent of politicians while operating within the central government's policy framework and regulatory system. Government intervention is usually limited to cases of market failure that do not fall within the scope of antitrust legislation, such as a natural monopoly or chronic market instability (Bailey, 1995: 312). The ultimate aims are to prevent monopoly companies from gaining excessive profits and combat market instability by

ensuring the sector's supply is at the desired level. Regulators achieve these goals through price controls and licensing to control entry into and exit the sector.

Notwithstanding, within scholarly discourse, there is an acknowledgement of arguments positing that independent regulatory authorities may be susceptible to interventions from both political authorities and the stakeholders within the sectors they supervise. Early studies of the role of independent regulators in regulating natural monopoly markets focused on their effectiveness in preventing market failures as well as the independence of players in the regulated sector and regulatory independence from political influence (Becker, 1983: 371; Bernstein, 1955: 130; Carpenter, 1996: 285; Mahon, 1979: 163 ; Peltzman, 1976: 2-4; Posner, 1968: 548-549; Stigler, 1971: 3; Stigler & Friedland, 1962: 11). For example, in their evaluation of the effects of US regulators' ability to control electricity prices, Stigler and Friedland compared electricity prices in state-regulated and non-regulated states (Stigler & Friedland, 1962: 11). And contrary to the generally accepted opinion, they found that regulation is not a *deus ex machina*<sup>3</sup> that can eliminate market failures; instead, it can cause more resource misallocation than it resolves (Peltzman, 1976: 2). In another early study, Posner reported that regulators and their staff are exposed to interest-group solid pressures because they are intimately involved in the affairs of the particular industry. To the extent that these pressures distort regulation, the emerging economic interests serve private benefits rather than social welfare (Posner, 1968: 624). According to his observations, Stigler argued that regulation is generally acquired by the industry and designed and operated primarily for its benefit (Stigler, 1971: 3). Focusing on the relationship between the central government and the regulator, Peltzman asserted that legislators shape regulatory activity to gain votes from the pressure groups whose support they seek. Accordingly, the legislator attempts to create a regulatory system to minimise consumer sector prices while enabling firms to maximise profitability. This means achieving an adequate level of regulation for both legislator and regulator (Peltzman, 1976: 4). In other words, to secure support from various societal segments, the political authority may attempt to influence the regulator's activities in a manner that simultaneously accommodates the profitability objectives of industry firms and ensures affordable access to the product for consumers.

Within the literature, deliberations also revolve around the question of whether entrusting the government's regulatory authority to an independent regulatory body, as suggested by Thatcher (2002: 954), enhances the reliability of the national economy, as contended by Majone (1996: 30; 1997: 140). Some argue that such delegation may result in the independent regulator being influenced or captured by the private interests of prominent firms within the sector, as articulated by Carpenter (2004: 627; 2014: 171), Laffont and Tirole (1991: 1118), Stigler (1971: 7-8), and Viscusi (1992: 275). The independence of

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<sup>3</sup> *Deus ex machina* (Latin: "god out of the machine") is a person or device that appears suddenly and unexpectedly and resolves a seemingly unsolvable problem. The term comes from ancient Greek and Roman theatre, where actors playing gods were lowered onto the stage using a crane to resolve the conflict.

regulatory bodies from interest groups operating in the market is scrutinised in the literature under the analytical framework of capture theory.

Although a critical reason for establishing independent administrative authorities is to make the regulated market more reliable by eliminating political influence, central government interventions can affect regulators in various ways. Studies on the administrative autonomy of institutions have shown that the senior management of these institutions interpret frequent structural reforms and legal changes as a form of intervention, which makes them more likely to avoid behaviours and decisions they deem risky (Kleizen et al., 2018: 15; Wynen et al., 2020: 14). Other political interventions that undermine the independence of administrative authorities include activities of ministries in charge of the regulated area (Böllhoff, 2005: 52), central government limits on or cuts to the regulator's budget (Carpenter, 1996: 299), and asymmetrical information problems when political principals who are less well informed than the regulatory agency use informational cues from the media, interest groups, and constituents as a political control tool over regulators (Hopenhayn & Lohmann, 1996: 209). Apart from these considerations, Carpenter (1996: 298-299) delves into examining the stance adopted by bureaucrats within regulatory authorities in response to political interventions. According to him, the actions of government organisations are shaped by political signals, influencing their varied performances in decision-making processes, such as issuing licenses or conducting inspections within their regulatory purview. However, it is essential to acknowledge that political influence can dictate the actions and inactions of an Independent Regulatory Authority (IRA). IRAs may, at times, refrain from taking action or exhibit high receptivity to regulated entities in implementing regulations. In essence, agencies may adjust the stringency of their approach toward the regulated sector based on the signals they receive from political figures. Gordon and Hafer (2014: 237) term this phenomenon "regulatory forbearance".

Up to this point, we have discussed the prominent findings in the international literature regarding the independence of regulatory authorities in regulating natural monopoly markets. In the subsequent section, following an overview of the historical development of the Turkish electricity market, which serves as the empirical case for this study, we will discuss the independence of the independent regulatory authority, EMRA, within this sector. This study represents an empirical attempt to contribute by examining Türkiye's electricity market regulation from the perspective of capture theory, considering Türkiye to be a developing country.

### **3. Regulation in the Electricity Market: The Case of Türkiye**

This part of the study focuses on developing Türkiye's electricity market and prospects for the new market structure under EMRA's regulatory authority. The Turkish energy sector has developed under four time periods: (i) 1923-1984, public ownership; (ii) 1984-1993, liberalisation; (iii) 1993-2001, restructuring and separation; (iv) since 2001, privatisation. Under public ownership, one public administrative body, the Turkish

Electricity Administration (TEK), was tasked with generating, transmitting, and distributing electricity since 1970. TEK maintained its status as the main electricity generator during the liberalisation period. This situation was despite calls for reform and privatisation in response to the two major oil crises during the 1970s, which resulted in continuously rising energy costs alongside rapidly growing energy demand, which the energy investments of the time failed to meet (Bağdadioğlu, 2011: 123; Dubash, 2003: 147).

Following the enactment of Law No. 3096 in 1984, private enterprises have entered the market to generate, transmit, distribute, and trade electricity. Thus, TEK lost its monopoly in the sector. During the following period of restructuring and separation, market activities were separated into electricity generation transmission and distribution. Following a Cabinet decree<sup>4</sup> in 1993, the Turkish government divided TEK into two state-owned enterprises: the Turkish Electricity Generation-Transmission Company (TEAŞ) and the Turkish Electricity Distribution Company (TEDAŞ). The Electricity Market Law 2001 was the first step towards regulating Türkiye's energy market. It aimed to create a financially robust and transparent electricity market operating within the framework of the law, with fully independent regulation and supervision and a competitive environment. Established concurrently with the law, the EMRA was the independent administrative authority regulating the electricity, natural gas, petroleum, and liquefied petroleum gas (LPG) markets. In 2002, after its establishment, EMRA became a member of the Energy Regulators Regional Association (ERRA) and started coordinating with other member countries' energy market regulatory bodies for a more 'convergent'<sup>5</sup> and 'sustainable' market at national and international levels.

In the most recent stage, which refers to privatisation, with the enactment of Electricity Market Law No. 4628 in 2001, the government has separated TEAŞ into three state-owned enterprises responsible for electricity transmission, generation, and trade: TEİAŞ (Turkish Electricity Transmission Company), EÜAŞ (Electricity Generation Company), and TETAŞ (Turkish Electricity Trade and Contracting Company). These steps were followed by the privatisation of power facilities so that, by the end of 2013, all 18 of the electricity distribution facilities were privatised. Privatisation of the generation facilities is still underway (Özelleştirme İdaresi Başkanlığı, 2021).

### **3.1. Privatizations and the New Market Structure**

#### **3.1.1. Privatization of Electricity Distribution Facilities**

The Privatization Administration of Türkiye started privatising electricity facilities in 2004. In preparation, TEK divided electricity facilities across the country into 21

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<sup>4</sup> Decision of the Council of Ministers dated 12.08.1993 and numbered 93/4789.

<sup>5</sup> The term convergence, as used in the contemporary institutional economics literature, considers that an economy's smooth functioning depends on institutions free from interference from political power. It also assumes the ideal of 'convergence' between these institutions governing the exact market through similar administrative rules, forming a perfectly functioning world market.

monopoly zones based on location. The Competition Authority recommended separating distribution and retail sales services before privatisation to ensure fair competition. However, the Privatization Administration has dismissed this recommendation. As a result, the privatisation of distribution facilities led to a few prominent players dominating the electricity distribution sector (Kirmanoğlu & Kahveci, 2016: 443).

As Table 1 shows, just two companies took control of half of Türkiye's electricity distribution: Kolin-Limak-Cengiz consortium, a capital group that grew in strength during the 2000s; Sabancı Holding, a large capital group that had internationalised itself after completing its domestic capital accumulation in the 1980s; its subsidiary, Enerjisa<sup>6</sup>.

**Table: 1**  
**Company Percentage Shares in Electricity Distribution, MWh, 2020**

Corporations that Own Electricity Distribution Companies	Consumption, MWh	Distribution, %
Cengiz-Kolin-Limak	46.513.933,94	26
Enerjisa	42.356.761,71	24
Aydem Enerji	23.987.376,62	14
İşkaya	11.152.888,91	6
Akcez	9.072.350,23	5
Alarko - Cengiz	9.594.630,98	5
IC Holding	6.801.241,32	4
Aksa-Kazancı Holding	6.222.062,51	4
Eti Gümüş	6.334.243,41	4
Çalık	4.962.299,47	3
Kipaş Holding	3.632.786,80	2
Kiler	2.399.788,68	1
Türkerler	2.005.232,65	1
Kayseri Metropolitan Municipality	2.350.184,51	1
TOTAL	177.385.781,74	100

Source: Created by the author based on data provided in the EMRA Sector Report 2020 (EPDK [EMRA], 2021).

These companies are also exclusively authorised to distribute and sell electricity in their respective regions, which gives them a powerful market position. To prevent this problem of 'horizontal concentration', the now-repealed Article 3 of Law No. 4628<sup>7</sup> called for separation in the energy market based on accounting and licensing. Accordingly, each operation or facility requires a separate balance sheet, account, and license. However, the 2008 amendment<sup>8</sup> limited this separation to the legal aspect: "From 1/1/2013 onwards, distribution companies may only carry out generation and retail sales activities under separate legal entities".

In 2013, the new Electricity Market Law No. 6446 separated distribution and retail sale services only in terms of licensing and accounting, mandating individual licensing and

<sup>6</sup> Kolin-Limak-Cengiz Consortium controls four zones (Boğaziçi-Istanbul European Side, Akdeniz, Uludağ, and Çamlıbel); Enerjisa owns three zones (AYEDAŞ-Istanbul Anatolian Side, Toroslars, and Başkent); and Aydem Enerji controls two (Gediz, and Menderes).

<sup>7</sup> Law on the Organization and Duties of the Energy Market Regulatory Authority, published in the Official Gazette No. 24335 dated March 3, 2001.

<sup>8</sup> Law Regarding Amendments to the Electricity Market Law and Other Laws No. 5784, published in the Official Gazette No. 26948 dated July 26, 2008.



record-keeping for each facility. However, more detailed regulation was left to secondary legislation, most of which still needs to be enacted.

Moreover, the Regulation on Electricity Licensing was amended in 2013 to impose organisational and executive separation for generation, distribution, and retail companies operating in the same region. Accordingly, the same individuals may not sit on the boards of directors of distribution companies and retail companies. In addition, the board members of distribution and retail companies may not serve on the boards of directors of the parent groups of these companies.

Nevertheless, despite being legally separated under the Electricity Market Law, retail companies and distribution companies still operate under the ownership of the same legal entity. Since the parent company appoints the managers of the distribution company, the executives may make decisions that serve the interests of the parent company or other entities controlled by it, thereby impeding the achievement of the desired level of effective competition in the market (Üstündağ, 2021: 641-642). Indeed, the same conglomerate may own distribution, retail, and generation facilities. As the issues examined in the following sections demonstrate, the existing legislation must be revised to create a competitive market.

### 3.1.2. Privatization of Electricity Generation Facilities

Since 2006, the events within the electricity generation market have mirrored analogous trends in the electricity distribution market. Privatization Authority privatised electricity generation facilities via asset sale, transfer of operating rights, build-operate-transfer, and build-operate models. In 2020, EÜAŞ generated only 18.9% of Türkiye's total electricity consumption (EPDK [EMRA], 2021: 21), with the remaining 81% supplied by private sector companies, of which 78.2% are independent private generation plants, 2.68% are facilities privatised via transfer of operating rights, and a negligible 0.15% are facilities privatised via build-operate-transfer. A closer look at the electricity generators and the ownership structure within the electricity generation market reveals that certain companies enjoy a significant market share despite regulations for separation. The EMRA Sector Report 2020 provides the names and market shares of the ten largest electricity generators, as seen in Table 2 below.

**Table: 2**  
**Türkiye's Top 10 Electricity Generators and Their Percentage Market Shares, 2020**

Electricity Generator	Parent Group / Holding	Market Share (%)
EÜAŞ	Public	18,97
Eren En.El.Ür.A.Ş.	Eren Holding	6,36
Enerjisa En.Ür.A.Ş.	Sabancı Holding	5,61
Cenal El.Ür.A.Ş.	Cengiz Holding - Alarko Holding partnership	3,51
İskenderun En.Ür.ve Tic.A.Ş.	German Steag - OYAK partnership	3,09
Atlas En.Ür.San.A.Ş.	Diler Holding	2,95
İçdaş El.En.Ür.ve Yat. A.Ş.	Necati Aslan	2,93
Yeniköy Kemerköy El.Ür.ve Tic.A.Ş.	Limak Holding	2,24
Hamitabat El.Ür.ve Tic.A.Ş.	Limak Holding	1,97
Akenerji El.Ür.A.Ş.	Akkök Holding	1,58

Source: Created by the author based on data provided in the EMRA Sector Report 2020 (EPDK [EMRA], 2021).

The list of companies generating electricity in Türkiye contains some familiar names from the distribution and retail sales sectors. Two groups stand out with around 8% despite having entered the market after Enerjisa, namely electricity generation facilities owned by Cengiz Holding and Limak Holding. In summary, the management of the privatisation process in the sector and legal gaps have led to a concentration that empowers a few companies in the industry.

### 3.2. Conflicts in the Market and EMRA's Regulatory Authority

#### 3.2.1. Complaints Regarding the Restriction of Competition

Upon the completion of the privatisation of electricity distribution facilities in 2013, an examination of market functions and activities conducted by the EMRA revealed discontent and objections emerging from within the sector regarding issues related to free competition.

Between 2000 and 2023, 30 out of 91 complaints submitted to the Competition Authority regarding restraint of competition and abuse of dominant position in the market pertained to the electricity market. Within these 30 unique complaints, the activities of a total of 39 electricity distribution companies were brought into question with allegations of restricting competition. The Board, after evaluating these complaints, unanimously decided that only one of them involved obstructing competition and abusing the dominant market position. This case resulted in fines imposed on AYEDAŞ, Toroslar, and Başkent electricity distribution companies operating under the Sabancı Holding's Enerjisa group in 2018 (Rekabet Kurumu [Competition Authority], 2023).

Apart from distribution companies, Çukurova Electric Inc., under Uzan Holding, engaged in electricity market activities and faced complaints in 2003 and 2007, resulting in penalties. Gediz Electric Retail Sales Inc. was another company penalised in 2018 following a complaint. As shown in Table 3 below, numerous complaints regarding competition constraints and abuse of dominant positions are observed in the sector. However, the Competition Authority rejected most of these complaints without requiring an investigation and referred only three to the EMRA.

**Table: 3**  
**Complaints to Competition Authority and Decisions, 2000-2023**

No	Decision Date	Decision No	Complaint Company	Decision
1	20.06.2000	00-23/232-125	ABB Electric Industry Inc. Alstom Electric Industry Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
2	30.04.2002	02-26/262-102	TEİAŞ Başkent Electric Distribution Inc. BEDAŞ Boğaziçi Electric Distribution Inc. Aktaş Electric Trade Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
3	27.02.2003	03-13/140-67	Ministry of Energy and Natural Resources EMRA TETAŞ	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
4	10.11.2003	03-72/874-373	Çukurova Electric Inc.	The complaint has been found justified, and a monetary penalty has been imposed.

5	4.05.2004	04-32/370-93	Türkiye Radio Television Corporation	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
6	8.02.2007	07-13/101-30	Çukurova Electric Inc.	The complaint has been found justified, and a monetary penalty has been imposed.
7	16.06.2011	11-37/773-241	ELKO Electric Trade Inc. OSEL Electric Industry Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
8	26.01.2012	12-03/91-30	Çamlıbel Electric Distribution Inc. Uludağ Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
9	4.07.2012	12-36/1039-327	Akdeniz Electric Distribution Inc	The unanimous decision is not to initiate an investigation, and the complaint has been rejected. (Referral to EMRA)
10	31.05.2012	12-29/847-248	Enerjisa Başkent Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
11	1.11.2012	12-53/1491-519	Çalık Yeşilirmak Electric Distribution Inc	MAJORITY VOTE has decided to reject the complaint and not initiate an investigation.
12	29.08.2013	13-49/698-296	Osmangazi Electric Distribution Inc. Akedaş Electric Distribution Inc. Aydem Electric Distribution Inc	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
13	6.11.2013	13-62/857-365	Başkent Electric Distribution Inc. Enerjisa Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
14	6.11.2013	13-62/856-364	Sakarya Electric Distribution Inc. Sakarya Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
15	29.01.2014	14-05/83-36	Boğaziçi Electric Distribution Inc. CLK Boğaziçi Electric Retail Sales Inc. Akdeniz Electric Distribution Inc. CLK Akdeniz Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
16	25.06.2014	14-22/426-190	Başkent Electric Distribution Inc. Enerjisa Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
17	24.09.2014	14-35/683-300	Çoruh Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
18	22.10.2014	14-42/762-338	Boğaziçi Electric Distribution Inc. CLK Boğaziçi Electric Retail Sales Inc. Akdeniz Electric Distribution Inc. CLK Akdeniz Electric Retail Sales Inc.	MAJORITY VOTE has decided to reject the complaint and not initiate an investigation.
19	3.12.2014	14-47/860-390	Gediz Electric Distribution Inc. Gediz Electric Retail Sales Inc. AYDEM Electric Distribution Inc. AYDEM Electric Retail Sales Inc.	MAJORITY VOTE has decided to reject the complaint and not initiate an investigation.
20	12.02.2015	15-07/89-34	Dicle Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected. (Referral to EMRA)
21	18.03.2015	15-12/169-79	Akdeniz Electric Distribution Inc. Boğaziçi Electric Distribution Inc. Çamlıbel Electric Distribution Inc. Uludağ Electric Distribution Inc. Trakya Electric Distribution Inc. Çoruh Electric Distribution Inc. Fırat Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected. (Referral to EMRA)
22	24.02.2016	16-06/120-54	Çamlıbel Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
23	2.03.2016	16-07/134-60	Meram Electric Distribution Inc.	MAJORITY VOTE has decided to reject the complaint and not initiate an investigation.
24	30.03.2016	16-12/186-81	Trakya Electric Distribution Inc. Trakya Electric Retail Sales Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
25	8.08.2018	18-27/461-224	Enerjisa Energy Inc. AYEDAŞ Electric Distribution Inc. Başkent Electric Distribution Inc. Toroslar Electric Distribution Inc. Enerjisa İstanbul Anatolian Side Electric Retail Sales Inc. Enerjisa Başkent Electric Retail Sales Inc. Enerjisa Toroslar Electric Retail Sales Inc.	It has been unanimously decided that AYEDAŞ, Başkent, and Toroslar have abused their dominant market positions, and fines have been imposed.
26	1.10.2018	18-36/583-284	Bereket Energy Group Inc. Gediz Energy Investment Inc. Aydem Electric Retail Sales Inc. ADM Electric Distribution Inc. Gediz Electric Retail Sales Inc. GDZ Electric Distribution Inc.	It has been unanimously decided that Gediz Electric Retail Sales Inc. and Aydem Electric Retail Sales Inc. have abused their dominant positions in the market, and fines have been imposed.
27	14.11.2019	19-40/669-287	Meram Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
28	16.01.2020	20-04/41-23	Meram Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.

29	24.07.2020	20-35/467-206	Boğaziçi Electric Distribution Inc. CK Boğaziçi Electric Retail Sales Inc. CK Energy Partnership Wholesale Electricity Sales Inc. Hipar Trade Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.
30	30.03.2023	23-16/281-97	Uludağ Electric Distribution Inc.	The unanimous decision is not to initiate an investigation, and the complaint has been rejected.

Source: The author has compiled the information from the following address: <<https://www.rekabet.gov.tr/tr/Kararlar>>.

What stands out here is the frequent complaints lodged against the electricity distribution companies under the partnership of Cengiz Holding and Koloğlu Holding (Bedaş 6 times, Çamlıbel 3 times, Uludağ 3 times, Akdeniz 4 times). These complaints, however, have been cases deemed unnecessary for investigation by the Competition Authority. In July 2015, representatives of operators from six electricity distribution regions filed a formal complaint with EMRA, claiming that the Cengiz-Limak-Kolin consortium and the IC İÇTAŞ and AKSA companies were preventing free competition<sup>9</sup> by exclusively signing subcontracts with their subsidiaries for new investment and service procurement tenders. The claim was that these distribution companies, rather than issuing transparent and competitive tenders for investment and service procurement, issued mock tenders by invitation that only listed the name and amount of the work procured without announcing tender dates or conditions. In response, EMRA referred the case to the Competition Authority, claiming that the matter fell under the scope of the Competition Law. After examining the case, the Competition Authority ruled that signing subcontracts with subsidiaries was not illegal under the Competition Law. However, it also noted that such transactions may be deemed objectionable and harmful to the electricity market as its law regulates it. It then referred the case back to EMRA, claiming it fell under EMRA's jurisdiction (Rekabet Kurumu [Competition Authority], 2015: 3).

The file remains open as EMRA has yet to rule on the case. Given that the Cengiz-Limak-Kolin consortium, one of the groups named in the complaint, controls 26% of the electricity distribution sector, EMRA has likely avoided making any decision that would harm a strong actor with significant capital in its regulated field. In short, its behaviour supports the captured regulator theory explained at the beginning of this paper.

### 3.2.2. Complaints Regarding Eligible Consumer Limit

Another objection from sector players concerns regulation on the eligible consumer limit. The Electricity Market Supply Security Strategy Document, published by the High Planning Council in 2009, called for a gradual annual reduction in the eligible consumer limit<sup>10</sup>. The document also stated that the goal was to make all electricity consumers eligible in the future, specifying 2015 as the year when EMRA would remove the eligible consumer

<sup>9</sup> The companies and electricity distribution zones named in the complaint were Akdeniz, Boğaziçi, Çamlıbel, and Uludağ, controlled by the Cengiz-Limak-Kolin consortium; Trakya owned by IC Holding; and Çoruh and Fırat controlled by AKSA.

<sup>10</sup> To become an eligible consumer, an electricity consumer's annual consumption must exceed the limit set by EMRA each year. Eligible consumers, natural persons, or legal entities who consume more than the limit can choose electricity suppliers.

limit, allowing all consumers to select their electricity suppliers. However, by 2024, EMRA was behind schedule in meeting this objective, so the eligible consumer limit, although still being gradually reduced, remains in place at 950 kW for 2024<sup>11</sup>.

Those electricity distribution companies are less potent than the Cengiz-Kolin-Limak consortium, and Enerjisa has complained about this delay because of the unfair competitive advantage offered to larger distribution companies. Companies currently the sole distributors in their respective zones gain a continuous and profitable revenue stream because all zones are dominated by non-eligible consumers (mostly households) with low electricity consumption who pay higher prices than eligible consumers. Table 4 shows the total number of electricity subscribers in Türkiye (eligible and non-eligible) and the share of companies.

**Table: 4**  
**Electricity Subscribers and Percentage Share of Distribution Companies, 2020**

Owner of the Distribution Company	Number of Subscribers (eligible and non-eligible)	Share of the Company (%)
Cengiz-Kolin-Limak	11.864.497	26
Enerjisa	11.446.176	25
Aydem	5.545.608	12
Aksa-Kazancı Holding	2.443.193	5
Alarko-Cengiz	2.227.181	5
Çalık	2.206.997	5
Akecz	1.963.823	4
Eti Gümüş	1.888.406	4
İşkaya	1.993.050	4
IC Holding	1.168.941	3
Kiler	1.059.704	2
Türkerler	745.985	2
Kipaş Holding	758.175	2
Kayseri Met. Mun.	770.120	2
TOTAL	46.081.856	100

Source: Created by the author based on data provided in the EMRA Sector Report 2020 (EPDK [EMRA], 2021).

According to 2020 data, Türkiye has 46,081,856 electricity subscribers, of whom around 80% are supplied by the six largest distributors (see Table 4). Despite benefitting from being one of the two most prominent players, Enerjisa supports the removal of the eligible consumer limit. For instance, Yetik Mert, Former CEO of Enerjisa, argued that this would create a more competitive market (Enerji Günlüğü, 2015). However, in its 2008 sectoral report as part of its energy strategy series, the Turkish Industry and Business Association (Türk Sanayicileri ve İş İnsanları Derneği -TÜSİAD) showed no strong demand for removing the limit. Instead, it argued that uncertainties over market liberalisation should be eliminated to enable accurate long-term predictions. It called for a definite, regulated schedule for when and to what extent EMRA will liberalise the market (TÜSİAD, 2008: 68-70).

Despite these demands from the sector to remove the consumer limit, the practice is still in place. As long as almost all consumers are non-eligible, removing the limit would reduce major distributors' subscriber base and profitability by enabling non-eligible consumers to select the distribution companies they want to buy electricity. Thus, the delay

<sup>11</sup> EMRA Resolution published in Official Gazette No. 32415 dated December 30, 2023.

reflects the market's current condition and power relations. Consequently, removing the limit is a straightforward test of EMRA's capacity as an independent regulator.

### **3.3. Independent Regulation**

#### **3.3.1. Transparency and Audit**

As mentioned earlier, frequent structural reforms and legislative changes to regulating a natural monopoly threaten the regulator's independence (Kleizen et al., 2018: 15; Wynen et al., 2020: 14). Türkiye's energy market has followed this trend through legal changes and delegation of audit and control powers.

Between 2001 and 2012, Electricity Market Law No. 4628 was amended 12 times, inevitably turning it into a patchwork of legislation. After large capital owners complained, the Cabinet ratified Electricity Market Law No. 6446 in 2013. During this period, electricity market licensing regulations were also amended 20 times<sup>12</sup>, thereby introducing heightened probabilities of uncertainty within the sector and adversely impacting the reputation and reliability of EMRA.

As to delegation of audit, firstly, under the Electricity Market Law of 2008, the authority to monitor and achieve energy supply security was transferred from TEİAŞ to the Ministry of Energy and Natural Resources and the Cabinet<sup>13</sup>. This legal interference carries a risk of damaging EMRA's independence. Secondly, a statutory decree<sup>14</sup> issued by the Cabinet in 2011 has made eight independent regulators, including EMRA, subordinate to the ministries in charge of their respective areas. As a result, the Ministry of Energy and Natural Resources now has audit power over EMRA, which may cause one to question EMRA's independence. During the same period, the then Deputy PM, Ali Babacan, clarified the government's position by stating, 'The powers of EMRA and the Tobacco Authority may be revised. It has gone overboard. Some of their powers have to be transferred to the government. Many issues require political intervention. Sometimes, the burden falls on the Minister of Energy, subject to unfair criticism. A certain amount of power must be transferred to the government' (Akşam, 2011).

In addition, audit and control power over privatised electricity distribution facilities was transferred to the Ministry of Energy and Natural Resources under an amendment in 2013<sup>15</sup>, which suggests a likelihood of political interference in the jurisdiction of an independent regulatory authority. This change authorised the Ministry to audit distribution

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<sup>12</sup> *Electricity Market Licensing Regulation published in the Official Gazette No. 28809 dated November 2, 2013.*

<sup>13</sup> *Law No 5784 on The Amendments to Law on The Electricity Market and Certain Laws, published in the Official Gazette dated 26.07.2008 and numbered 26948, Article 6.*

<sup>14</sup> *Decree-Law Numbered 649, published in the Official Gazette dated August 17, 2011, on the Organization and Duties of the Ministry of European Union, and Decree-Law on Making Amendments to Some Laws and Decree-Laws, Article 45.*

<sup>15</sup> *Communiqué on Inspection and Audit of the Activities of Electricity Distribution Companies, published in the Official Gazette No. 28617 dated April 13, 2013.*

companies and their investment activities, customer services, product and service procurement and sales, work and maintenance, financials, legal processes, general disclosures, information technologies and grid operations, and other aspects of their operation as deemed necessary by the Ministry. This delegation of authority harbours the inherent risk of compromising the autonomy and administrative prowess of EMRA. The Ministry then prepared a secondary Electricity Distribution Companies Audit Regulation, which abolished 'yearly audits in March' and replaced it with the phrase at least once per year, thereby introducing a certain degree of arbitrariness<sup>16</sup>. In addition, during both these periods, the Ministry delegated its audit power to TEDAŞ.

However, according to the Ministry and Natural Resources 2018 Audit Report published by the Court of Accounts in 2019 (Sayıştay Başkanlığı [Turkish Court of Accounts], 2019: 24-25), TEDAŞ did not use this audit power effectively. It even failed to audit 10 of the 21 electricity distribution companies. Although the report does not name the unaudited companies, the fact that the audit authority was taken from the independent regulator and given to a state-controlled enterprise highly susceptible to political influence represents a significant problem regarding EMRA's independence and control of the market.

On the other hand, the audit reports on electricity distribution companies prepared by TEDAŞ for the years 2017-2018 and submitted to EMRA by the Ministry include findings related to the procurement processes of electricity distribution companies. Accordingly, parallel to the complaints alleging competition violation submitted to the Competition Authority, some distribution companies have been identified as acting contrary to fundamental principles such as competition, transparency, equality, and reliability in their procurement, service acquisition, and construction tenders. Court of Accounts found that these companies did not comply with the tender announcement conditions (Sayıştay Başkanlığı [Turkish Court of Accounts], 2020: 12). In addition, the 2020 EMRA report by the Court of Accounts noted that companies managing these distribution companies, which have separate legal entities, participate in the tenders (Sayıştay Başkanlığı [Turkish Court of Accounts], 2021: 14). This situation underscores the need for creating a healthy competitive environment (Sayıştay Başkanlığı [Turkish Court of Accounts], 2021: 18). Furthermore, the 2021 EMRA report by the Court of Accounts reiterated the same observation, suggesting that for the establishment of a more robust competitive environment, EMRA should make regulatory amendments in the Regulation on Procurement and Sales Transactions of Electricity Distribution Companies (Sayıştay Başkanlığı [Turkish Court of Accounts], 2022: 24).

### **3.3.2. Administrative Fines and EMRA's Authority**

Administrative fines are one of the most crucial punitive measures ensuring the authorities' control in the markets regulated by supervisory institutions. When examining

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<sup>16</sup> *Electricity Distribution Companies Audit Regulation published in the Official Gazette No. 30258 dated December 2, 2017.*

the activities of the EMRA in this regard, one can say that out of the total administrative fines amounting to 3,755,109,540.94 Turkish Lira imposed between 2013 and 2017, EMRA could collect only 2.67% (Sayıştay Başkanlığı [Turkish Court of Accounts], 2018: 14). Within this total amount, Court of Accounts identified that companies that received administrative fines paid only 100 out of 207 fines issued within the scope of electricity market regulation (Sayıştay Başkanlığı [Turkish Court of Accounts], 2018: 17).

One reason for the low collection of administrative fines at this level is that 60% of the companies appeal and initiate legal proceedings against the penalties imposed on them. In the same report, the Turkish Court of Accounts stated that 96.4% of the cases resulted against EMRA and most of the annulments were due to procedural issues (Sayıştay Başkanlığı [Turkish Court of Accounts], 2018: 22-23). Those who do not file lawsuits and do not pay their fines within the maximum period specified are also subject to having their documents sent to the tax offices to which the companies are affiliated. Therefore, after this stage, the collection of administrative fines becomes the responsibility of the Ministry of Treasury and Finance.

Critical for the EMRA is the provision under Article 16 of Law No. 6446 on the Electricity Market, which allows EMRA to request 25% of the administrative fines collected by the Ministry of Treasury and Finance as an institutional share. However, despite the EMRA requesting information from tax offices regarding the collection of administrative penalties in 2014, 2016, and 2017, healthy feedback has not been possible (Sayıştay Başkanlığı [Turkish Court of Accounts], 2018: 22).

Regulatory and supervisory institutions are autonomous bodies responsible for making independent regulations in their respective fields and have the authority to oversee compliance with these regulations through laws. Undoubtedly, administrative fines are the most potent enforcement tool for these institutions. The Turkish Court of Accounts emphasised in its audit report on the EMRA that the effective implementation of administrative fines also determines the effectiveness of the overarching institutions' core responsibilities. Accordingly, 97.33% of the administrative fines imposed between 2013 and 2017 have yet to be collected, which poses a risk to the EMRA's independent regulatory function (Sayıştay Başkanlığı [Turkish Court of Accounts], 2018: 20). EMRA's inability to collect administrative fines imposed based on the law, regardless of the cause of the delay, raises questions about the institution's authority over the regulated sector.

### **3.3.3. Licenses, Capital Fractions and Political Power**

Under the Electricity Market Law, all private sector facilities must obtain a license from EMRA based on the nature of their operations. EMRA is the only institution with the power and authority to grant this license. However, as the case discussed below shows, EMRA could not act as an independent administrative authority.



In 2007, Doğan Holding, a large conglomerate and TÜSİAD member, applied to EMRA for a license to establish an oil refinery in the Ceyhan region, granted in June 2007. EMRA also announced the approval publicly. Soon after, Diler Holding<sup>17</sup> filed a license application to build an electricity generation facility in the same region. Subsequently, EMRA postponed the permit procedures involving Doğan Holding, which had already been granted a license, for 14 months without any reasonable justification.

In 2008, EMRA finally made a regulatory change that clarified the situation with Doğan Holding. This stated that if an application for a refinery production license is made within 15 days for an electricity generation license in the electricity market or a refinery and/or storage license in the oil market involving the same region, EMRA may prioritise the electricity generation license application if local natural resources are available in the region and if one of the applicants is proposing to use the resources as part of the license<sup>18</sup>.

Soon after this change, Diler Holding was granted an electricity generation license in Ceyhan. Two other companies applied for a refinery license in the same region, namely POAŞ and SOCAR-TURCAS, which EMRA also turned down. However, another individual capital owner, Çalık Holding, also applied for a refinery license in the same region, which was granted. One key point about Çalık Holding is that, at the time, the company's CEO was Berat Albayrak, who went on to serve in the Cabinet of the 64th and 65th governments as Minister of Energy and Natural Resources while Çalık Holding has close ties to the AKP government.

Furthermore, Aydın Doğan, owner of Doğan Holding, claimed that he raised the issue of bureaucratic red tape hindering his company's refinery development in Ceyhan despite being granted a license, to which Erdoğan reportedly said, 'No, Çalık wants that region, and we promised it to him' (Doğan, 2008). This demonstrates that Türkiye's government has embraced a highly politicised economic management that favours the short-term interests of a particular capital group above the broader, long-term interests of the Turkish capital. Moreover, companies that have won privatisation tenders or obtained licenses under the oversight of this government have secured financing using either large long-term loans extended by public banks (Sözcü, 2016) or through incentives (Milliyet, 2010).

#### **4. Conclusion**

The literature acknowledges that independent regulatory authorities may face susceptibility to interventions from political authorities and stakeholders within their sectors. Early studies primarily focused on the effectiveness of independent regulators in preventing market failures, the independence of players in the regulated sector, and regulatory independence from political influence. Contrary to the widely accepted belief, some studies

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<sup>17</sup> *There are clear indicators about the political affiliation of Diler Holding as the group is neither a member of TÜSİAD nor of associations with known ties to the government, such as MÜSİAD or ASKON.*

<sup>18</sup> *Regulation Regarding Amendments to the Electricity Market Licensing Regulation published in the Official Gazette No. 27077 dated December 7, 2008.*

found that regulation does not eliminate market failures but can lead to resource misallocation. Interest-group pressures on regulators were identified, indicating a potential distortion of regulation serving private benefits rather than social welfare.

Debates centre around whether entrusting regulatory authority to an independent body enhances the reliability of the national economy or risks being influenced or captured by private interests within the sector. While establishing independent regulatory authorities aims to eliminate political influence, central government interventions can impact regulators in various ways. These interventions include structural reforms, legal changes, ministries' activities, budget constraints, and asymmetrical information problems. The influence of political figures can sometimes lead IRAs to refrain from taking action and remain silent on matters they regulate rather than actively intervening.

The literature on electricity market regulation in Türkiye concentrates on the perception of EMRA as an administrative authority susceptible to political interference and manipulated by the government. This study aligns with the Turkish literature, demonstrating how EMRA is a politicised institution in line with the political signal theory due to its lack of authority to oversee companies in the sector, its regulation, frequent legislative changes in licensing, and vulnerability to political intervention.

However, the empirical findings discussed throughout the article also reveal numerous instances consistent with the capture theory. Accordingly, despite legal separation regulations, companies operating in the electricity distribution, retail, and production sectors are associated with a few significant holdings or consortia, with their managements appointed by the parent company; complaints about distribution companies related to these significant holdings preferring companies within the same structure in infrastructure tenders, and EMRA remaining silent as a regulatory authority despite complaints; only two holdings hold half of the electricity distribution sector; EMRA staying far behind the planned schedule for resetting the consumer limit despite complaints from small firms in the sector; and the fact that EMRA has not collected 97% of the administrative fines imposed by EMRA so far, all indicate that large firms in the sector have captured EMRA.

Nevertheless, what makes Türkiye unique as an example of a developing country is the insufficient institutionalisation of regulatory and administrative authority in the electricity market and the visible interventions of the political authority occurring parallel to the interests of significant capital groups in the sector. In other words, political power is integrated with specific capital segments operating in the sector and behaves almost like one of these capital fractions. Here, the political authority, rather than acting in line with the long-term interests of the national capital in Türkiye, tends to protect the short-term interests of specific capital fractions and intervenes in EMRA accordingly.

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