

Merger control in Turkey: overview

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Country Q&A | Law stated as at 01-Oct-2019 | Turkey

A Q&A guide to merger control in Turkey.

This Q&A is part of the global guide to merger control. Areas covered include the regulatory framework, regulatory authorities, relevant triggering events and thresholds. Also covered are notification requirements, procedures and timetables, publicity and confidentiality, third party rights, substantive tests, remedies, penalties, appeals, joint ventures, inter-agency co-operation, powers of intervention and proposals for reform.

To compare answers across multiple jurisdictions, visit the merger control *Country Q&A tool*.

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Regulatory framework

1. What (if any) merger control rules apply to mergers and acquisitions in your jurisdiction? What is the regulatory authority?

Regulatory framework

The relevant legislation on merger control is:

- The Law on the Protection of Competition No. 4054 dated 13 December 1994 (Competition Law).
- Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué), published on 7 October 2010 by the Turkish Competition Authority (*Rekabet Kurumu*) (Competition Authority). The Communiqué was amended on 29 December 2012 with a revision to the turnover thresholds in Article 7 (see *Question 2, Triggering events*).

In particular, Article 7 of the Competition Law governs mergers and acquisitions, and authorises the Competition Board to regulate through Communiqués which mergers and acquisitions should be notified to gain legal validity. The Communiqué lists the types of mergers and acquisitions that are subject to the Competition Board's review and approval, together with some significant changes to the Turkish merger control regime.

Regulatory authority

The national competition authority for enforcing competition law is the Competition Authority, a legal entity with administrative and economic independence.

The Competition Authority consists of the:

- Competition Board, which in its capacity as the competent body of the Competition Authority, is responsible for, among other things, reviewing and resolving notifications concerning mergers, acquisitions and joint ventures. The Competition Board consists of seven members and is seated in Ankara.
- Presidency.
- Main Service Units, which comprise the following:
 - five supervision and enforcement departments;

- department of decisions;
- economic analyses and research department;
- information management department;
- external relations, training and competition advocacy department;
- strategy development, regulation and budget department; and
- cartel on-the-spot inspections support division.

Each service unit has a sectoral job definition.

Triggering events/thresholds

2. What are the relevant jurisdictional triggering events/thresholds?

Triggering events

The following transactions may be notifiable (*Article 5/I, Communiqué*):

- A merger of two or more undertakings.
- The acquisition of direct/indirect control over all or part of one or more undertakings by one or more undertakings or persons, who currently control at least one undertaking, through:
 - the purchase of assets or a part or all of its shares;
 - an agreement; or
 - other instruments.

Joint ventures are subject to notification to, and approval of, the Competition Board (*see Question 3, [Mandatory or voluntary](#)*).

Concentrations that result in a permanent change of control (either sole or joint control) are subject to the Competition Board's approval, provided that they exceed the applicable thresholds. Acquisition of minority shareholdings that do not confer control are not subject to notification. The Communiqué provides a definition of control, which is similar to the definition of control under Article 3 of Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation). Under Article 5/II of the Communiqué, control can be constituted by rights, agreements or any other means which, either separately or jointly, de facto or de jure, confer

the possibility of exercising decisive influence on an undertaking. These rights or agreements are instruments that confer decisive influence, in particular by:

- Ownership or the right to use all or part of the assets of an undertaking.
- Rights or agreements that confer decisive influence on the composition or decisions of the organs of an undertaking.

Control is deemed acquired by persons or undertakings that (*Article 5/II, Communiqué*):

- Are the holders of the rights.
- Are entitled to the rights under the agreements concerned.
- While not being the holders of the rights or entitled to the rights under agreements, have de facto power to exercise these rights.

The Competition Board's right to impose administrative monetary fines for failure to notify terminates after eight years from the date of infringement. The date of infringement is the date of closing the deal. The fine for failure to notify is the same as the fine for implementation before approval or after prohibition (*see Question 11, Implementation before approval or after prohibition*).

Thresholds

The thresholds are set out in the Communiqué, as amended by Communiqué No. 2012/3. A transaction may be subject to the Competition Board's approval if either (*Article 7, Communiqué*):

- The aggregate Turkish turnovers of the transaction parties exceeds TRY100 million and the Turkish turnovers of at least two of the transaction parties each exceeds TRY30 million. (In calculating the turnover, the Turkish Central Bank's average yearly rate in the year in which the turnover was generated must be used (*Article 8/6, Communiqué*).
- The Turkish turnover of the transferred assets or businesses (or of any of the parties to a merger) exceeds TRY30 million, and the worldwide turnover of at least one of the other parties to the transaction exceeds TRY500 million.

Article 7 of Communiqué does not require the existence of an "affected market" in assessing whether a transaction triggers a notification requirement. The concept of an affected market, however, still carries weight in terms of the substantive competitive assessment and the notification form. Where the jurisdictional turnover thresholds are triggered, the transaction will be notifiable in Turkey, even if the undertakings concerned do not have local subsidiaries, branches and so on in Turkey and/or there is no horizontal or vertical overlap between the parties' activities.

There is no market share threshold in Turkey. If the parties meet the turnover thresholds, the transaction will be notifiable, regardless of the parties' market shares. In addition, the sellers' turnover is not relevant while determining the filing obligations: it is only relevant in joint venture transactions (that is, where the buyer and the seller form a joint venture, both the seller and the buyer will be considered as buyers under Article 5 of the Communiqué).

Notification

3. What are the notification requirements for mergers?

Mandatory or voluntary

Notification is mandatory once the thresholds (*see Question 2, Thresholds*) are exceeded. There is no *de minimis* exception.

Timing

There is no specific deadline for filing, but it is advisable to file the transaction at least 45 calendar days before closing. (A transaction is deemed closed on the date when the change of control occurs (*Article 10, Communiqué*).)

The filing process differs for privatisation tenders. A pre-notification is done before the tender and notifications are submitted to the Competition Board following the tender by the Republic of Turkey Prime Ministry Privatisation Administration. A notification to the Competition Board is done after finalising the tender, but before the final decision of the Privatisation Administration (*Communiqué No. 2013/2*).

A public bid can be notified at a stage where the documentation at hand adequately proves the irreversible intention to finalise the contemplated transaction.

Pre-notification and formal/informal guidance

Pre-notification and formal or informal guidance are not available in the context of merger control filing.

Responsibility for notification

Persons or undertakings that are parties to the transaction in question, or their authorised representatives, can make the filing, jointly or severally (*Article 10, Communiqué*). The filing party must notify the other party of the filing.

Relevant authority

Notification must be made to the Competition Authority.

Form of notification

Standard notification. The notification form is similar to Form CO of the European Commission (Commission). One hard copy and an electronic copy of the merger notification form must be submitted to the Competition Board.

Some additional documents are also required, such as:

- The executed or current copies, and sworn Turkish translations, of some of the transaction documents. It is possible to notify a transaction on the basis of a close-to-final draft version of the transaction agreement instead of a signed agreement. It is also possible to submit the notification form under a memorandum of understanding, letter of intent, term sheet and other such similar documents.
- Annual reports, including balance sheets of the parties.
- If available, market research reports for the relevant market.

Short-form notification. A short-form notification (without a fast-track procedure) is available if either:

- A transition from joint control to sole control is involved.
- The total of the parties' respective market shares is less than 20% in horizontally affected markets and each party's market share is less than 25% in vertically affected markets.

In this case, the information requested in sections 6, 7 and 8 of the notification form regarding the information on affected markets, market entry conditions and potential competition, and efficiency gains, is not required.

Filing fee

There is no filing fee.

Obligation to suspend

There is an explicit suspension requirement. Therefore, completing a notifiable transaction before approval is prohibited.

If a merger or an acquisition is closed before clearance, the substantive nature of the concentration plays a significant role in determining the consequences. If the Competition Board concludes that the transaction creates or strengthens a dominant position and significantly lessens competition in any relevant product market, the undertakings concerned (as well as their employees and managers that had a determining effect on the creation of the violation) are subject to monetary fines and sanctions.

Irrespective of whether the transaction would have been rejected had it been notified, a turnover-based monetary penalty of 0.1% of the turnover generated in the financial year preceding the date of the fining decision in Turkey is also imposed (*see Question 11, Implementation before approval or after prohibition*).

The suspension requirement cannot be waived under any circumstances, as there is no specific regulation allowing or disallowing carve-out arrangements (that is, a hold separate).

There is no early termination mechanism under the Turkish merger control regime.

Procedure and timetable



4. What are the applicable procedures and timetable?

It is advisable to file the transaction at least 45 calendar days before closing.

The procedure comprises two phases:

- **Preliminary review (Phase I).** The Competition Board, in its preliminary review of the notification, decides either to approve or to further investigate the transaction (*see below*). The Competition Board notifies the parties of the outcome within 30 days following a complete filing. The notification is deemed filed when received in complete form by the Competition Authority. If the information requested in the notification form is incorrect or incomplete, the notification is deemed filed only on the date when this information is completed on the Competition Board's subsequent request for further data.

If the Competition Board fails to notify the parties of its decision, the decision is deemed to be an approval, through an implied approval mechanism.

- **Investigation (Phase II).** If a notification leads to an investigation, it becomes a full-fledged investigation. Phase II must be completed within six months from the date when the Competition Board decides to open an investigation. If deemed necessary, the Competition Board can extend this period only once, for an additional period of up to six months.

During either phase, the Competition Authority can send written requests to the parties, any other party relating to the transaction or third parties such as competitors, customers or suppliers.

If the Competition Authority asks for another public authority's opinion in reviewing a transaction, the applicable time periods for the deemed approval mechanism automatically restart from day one as of the date on which the relevant public authority submits its opinion to the Competition Authority.

For an overview of the notification process, see flowchart, [Turkey: merger notifications](#).

Publicity and confidentiality

5. How much information is made publicly available concerning merger inquiries? Is any information made automatically confidential and is confidentiality available on request?

Publicity

Once notified, the Competition Authority publishes transactions on its official website, including the parties' names and the areas of their commercial activity. All final decisions of the Competition Board are published on the Competition Authority's website after confidential business information is redacted.

The main legislation regulating the protection of commercial information is Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets (enacted in April 2010). Communiqué No. 2010/3 places the burden of identifying and justifying information or documents as commercial secrets on the undertakings. In addition, the Competition Board and personnel of the Competition Authority have a legal obligation not to disclose any trade secrets or confidential information they have acknowledged as such during their service (*Article 25, Competition Law*) (see below, *Confidentiality on request*).

Automatic confidentiality

While the Competition Board can also evaluate the information or documents *ex officio*, the general rule is that information or documents that are not requested to be treated as confidential are accepted as not confidential.

Confidentiality on request

Undertakings must request confidentiality in writing from the Competition Board and justify their reasons for this request.

Rights of third parties

6. What rights (if any) do third parties have to make representations, access documents or be heard during the course of an investigation?

Representations

The Competition Board can interview third parties and request information from third parties, including the parties' customers, competitors and suppliers, and other persons related to the merger or acquisition (*Article 15, Communiqué*).

If the Competition Authority asks another public authority's opinion, the review period re-starts from day one.

Document access

The complainants and other third parties have a right to access the file (*Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets (Communiqué No. 2010/3)*). The right to access the file can be exercised on written request at any time until the end of the period for submitting the last written statement.

Be heard

Third parties can attend the oral hearing and be heard by submitting a petition and presenting information and documents that show their interest in the subject matter of the oral hearing.

Substantive test

7. What is the substantive test?

The substantive test is a typical dominance test. The Competition Board clears mergers and acquisitions that do not create or strengthen a dominant position, and do not significantly impede effective competition in a relevant product market within the whole or part of Turkey (*Article 7, Competition Law* and *Article 13, Communiqué*).

Article 3 of the Competition Law defines a dominant position as any position enjoyed in a certain market by one or more undertakings, by virtue of which those undertakings have the power to act independently from their competitors and purchasers in determining economic parameters, such as the amount of production, distribution, price and supply.

8. What, if any, arguments can be used to counter competition issues (efficiencies, customer benefits)?

The Competition Board can take into account efficiencies in reviewing a concentration, to the extent that they operate as a beneficial factor in terms of better-quality production or cost-savings (such as reduced product development costs through integration, reduced procurement and production costs, and so on).

9. Is it possible for the merging parties to raise a failing/exiting firm defence?

The Competition Board can accept the "failing firm" defence. Failing firm means that even where an approval is not granted to the transaction, the level of competition will still decrease. In other words, if the undertaking is not acquired it will still exit the market due to financial difficulties. The failing firm defence is explained in detail in the Guidelines on the Assessment of Horizontal Mergers and Acquisitions (Horizontal Guidelines).

Remedies, penalties and appeal

10. What remedies (commitments or undertakings) can be imposed as conditions of clearance to address competition concerns? At what stage of the procedure can they be offered and accepted?

The parties can provide commitments to remedy substantive competition law issues relating to a concentration under Article 7 of the Competition Law (*Article 14, Communiqué*). The Competition Board is explicitly given the right to secure certain conditions and obligations to ensure the proper performance of commitments. The Competition Authority stipulates that structural and behavioural remedies can be imposed to restore the situation as before the closing (*restitutio in integrum*).

The parties have discretion to offer a remedy (*Guidelines on the Remedies that Would Be Permitted by the Turkish Competition Authority in the Mergers and Acquisitions (Guidelines)*). The parties can submit behavioural or structural remedies (*Guidelines*). Although structural remedies take precedence over behavioural remedies, in some cases, the Competition Board has accepted behavioural remedies.

The Competition Board will neither impose any remedies nor ex parte amend the submitted remedies. If the Competition Board considers the submitted remedies insufficient, it may allow the parties to make further changes to the remedies. If the remedies are still insufficient to resolve the competition concerns, the Competition Board cannot grant clearance.

The form and content of the divestiture remedies vary significantly in practice. The Guidelines set out all of the applicable procedural steps and conditions. The parties must submit detailed information as to how the remedy would be applied and how it would resolve the competition concerns (*Guidelines*).

The parties can submit to the Competition Board proposals for possible remedies either during the preliminary review (Phase I) or the investigation period (Phase II). While the parties can submit the commitments during Phase I, the notification is deemed filed only on the date of the submission of the commitments. In any case, a signed version of the commitments that contains detailed information on their context and a separate summary should be submitted to the Competition Authority. The Guidelines also provide a form that lists the necessary information and documents to be submitted in relation to the commitments.

In terms of monitoring compliance with the remedies submitted, there are no specific time periods for filings with the Competition Authority. The remedies include their own reporting/informing mechanisms, which are approved or altered by the Competition Authority.

11. What are the penalties for failing to comply with the merger control rules?

Failure to notify correctly

If the information requested in the notification form is incorrect or incomplete, the notification is deemed filed only on the date when that information is completed or supplemented.

In addition, the Competition Authority can impose a turnover-based monetary fine if the undertakings or associations of undertakings provide incorrect or misleading information in a notification filed for exemption or negative clearance, or for the approval of a merger or acquisition. This fine amounts to 0.1% of the turnover generated in the financial year preceding the date of the fining decision (or, if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision is taken into account). This fine can be imposed on both the natural persons and the legal entities that qualify as an undertaking or as an association of undertakings, or on members of these associations. The liable parties are the acquirer(s) for acquisitions, and the merging parties for mergers.

Implementation before approval or after prohibition

If the parties to a notifiable merger or acquisition realise the transaction without the approval of the Competition Board, a turnover-based monetary fine of 0.1% of the turnover generated in the financial year preceding the date of the fining decision is imposed. If this is not calculable, the fine is based on the turnover generated in the financial year nearest to the date of the fining decision.

Fines for implementation of a transaction that creates or strengthens a dominant position, and significantly impedes effective competition in a relevant product market within the whole or part of Turkey, range from a mandatory minimum level (TRY26,027 as of 2019) up to 10% of the violator's annual gross income in the preceding year (*Article 16, Competition Law*).

A notifiable merger or acquisition that is not notified to, and approved by, the Competition Board is deemed legally invalid, with all the legal consequences that follow on from that (*Article 7, Competition Law*).

Failure to observe

The provisions for, and legal consequences of, non-compliance with remedies, and with obligations that are associated with remedies, differ (*paragraph 92, Guidelines*).

Where a party fails to comply with a remedy, any clearance will automatically be invalid. In addition, the Competition Board can impose administrative monetary fines under Article 16 of the Competition Law (*see above, Implementation before approval or after prohibition*).

In the case of non-compliance with obligations, the parties can be subject to administrative periodic monetary fines under Article 17 of the Competition Law (*see below*).

Periodic monetary fines can be imposed on the undertakings, associations of undertakings or members of the latter at a rate equivalent to 0.05% (for each day) of their annual turnover generated in the financial year preceding the date of the decision, to comply with:

- The obligations imposed by a conclusive decision.
- A preliminary injunction.
- Commitments undertaken by the entities.

12. Is there a right of appeal against the regulator's decision and what is the applicable procedure? Are rights of appeal available to third parties or only the parties to the decision?

Rights of appeal

The Competition Board's final decisions can be submitted to judicial review before the administrative courts by filing a lawsuit within 60 days of the receipt by the parties of the Competition Board's reasoned decision. Rights of judicial review are available only to the parties to the decision.

Procedure

The final administrative sanction decisions of the Competition Board can be submitted to judicial review before the administrative courts in Ankara (Law No. 6352, which took effect on 5 July 2012). The appeal case must be brought within 60 days of receipt by the parties of the Board's (reasoned) decision. The judicial review period before the administrative court usually takes between 24 to 30 months.

Third party rights of appeal

Third parties can challenge the Competition Board's decision before the competent judicial tribunal, provided that they prove their legitimate interest.

Automatic clearance of restrictive provisions

13. If a merger is cleared, are any restrictive provisions in the agreements automatically cleared? If they are not automatically cleared, how are they regulated?

The Competition Board's approval decision is deemed to also cover the directly related and necessary extent of restraints on competition brought about by the concentration (for example, non-compete, non-solicitation and confidentiality covenants). This allows the parties to engage in self-assessment. If the ancillary restrictions are not compliant, the parties may face an investigation under Article 4 of the Competition Law.

Regulation of specific industries

14. What industries (if any) are specifically regulated?

The provisions of Articles 7, 10 and 11 of the Competition Law are not applicable if the sectoral share of the total assets of banks subject to a merger or acquisition does not exceed 20% (*Banking Law No. 5411*).

In applying the exception of the Banking Law No. 5411, the Competition Board distinguishes between:

- Transactions involving foreign acquiring banks with no operations in Turkey. The Competition Board applies the Competition Law to these mergers and acquisitions.
- Foreign acquiring banks already operating in Turkey. The Competition Board does not apply the Competition Law to these transactions, under the exception in the Banking Law No. 5411.

The competition legislation does not contain specific regulations applicable to foreign investments. However, there are specific restrictions on foreign investment in other legislation, such as in the media sector.

15. Has the regulatory authority in your jurisdiction issued guidelines or policy on its approach in analysing mergers in a specific industry?

The Competition Authority has not issued guidelines or policy on its approach in analysing mergers in a specific industry.

Powers of intervention and foreign investment review

16. What powers does the national government have to intervene in mergers on the grounds of public interest, national security or media plurality?

The Turkish national government does not intervene in mergers on the grounds of public interest, national security or media plurality.

17. Are there any post-closing or foreign investment review filing requirements?

There are no post-closing or foreign investment review filing requirements in Turkey.

Joint ventures

18. How are joint ventures analysed under competition law?

Article 5 of the Communiqué provides a definition of joint venture, which does not fall far from the definition used under EU law.

To qualify as a concentration subject to merger control, a joint venture must be full function and satisfy the following criteria:

- Joint control exists in the joint venture.
- The joint venture is an independent economic entity established on a lasting basis (that is, having adequate capital, labour and an indefinite duration).

Inter-agency co-operation

19. Does the regulatory authority in your jurisdiction co-operate with regulatory authorities in other jurisdictions in relation to merger investigations? If so, what is the legal basis for and extent of co-operation (in particular, in relation to the exchange of information, remedies/settlements)?

The Competition Authority is empowered to get in contact with certain regulatory authorities around the world including the Commission, to exchange information. In this respect, Article 43 of the Decision No. 1/95 of the EC-Turkey Association Council (Decision No. 1/95) authorises the Competition Authority to notify and request

the Commission (Competition Directorate-General) to apply relevant measures if the Competition Board believes that transactions realised in the territory of the EU adversely affect competition in Turkey. This provision grants reciprocal rights and obligations to the parties (EU-Turkey).

Additionally, the research department of the Turkish Competition Authority makes periodic consultations with relevant domestic and foreign institutions and organisations.

The Commission has been reluctant to share any evidence or arguments with the Turkish Competition Authority in the few cases where the Turkish Competition Authority explicitly asked for them.

Recent mergers

20. What notable recent developments, trends or notable recent mergers or proposed mergers have been reviewed by the regulatory authority in your jurisdiction and why is it notable? Are there any statistics published on annual merger reviews conducted in the jurisdiction?

In the first half of 2019, a total number of 95 transactions were notified to the Turkish Competition Authority resulting in:

- 82 clearances.
- Two conditional approvals.
- 11 out of scope applications.

The most notable recent mergers concerned:

- The Competition Board announced its final decision on the Phase II review regarding the proposed merger of Luxottica Group S.p.A. and Essilor International S.A. (*01.10. 2018, 18-36/585-286*). As the result, the Competition Board decided unanimously that pursuant to the Article 7 of Law No. 4054, as the notified transaction would result in the creation or strengthening of a dominant position within the meaning of the same article and significantly impede competition in the market, it cannot be approved as being in the scope of Article 7. Despite this, the transaction was conditionally approved, in view of proposed commitments. The structural commitments submitted concern the divestiture of an affiliate of Essilor that distributes several brands of sunglasses and optical frames. Further, it is stated within the behavioural commitments submitted that the period that will be applicable for three years following the closing of the transaction. In this regard, the Competition Board concluded that the behavioural commitments will be re-evaluated by the Competition Board at the end of this three-year period.
- The acquisition of sole control over Monsanto Company by Bayer Aktiengesellschaft (*08.05.2018, 18-14/261-126*). The Competition Board considered that the transaction could result in the creation or strengthening of Bayer's dominant position and thus, significantly impede effective competition in the relevant market. It therefore decided to take the transaction into a Phase II review by its decision of 15.05

2017. The Competition Board has conditionally approved the transaction concluding that commitments submitted to the Commission with regards to the vegetable seeds, cotton seeds, corn seeds and insecticide seed dressings for corn seeds that subject to investigation would eliminate horizontal and vertical overlaps occurring in the relevant markets in Turkey.

- The acquisition of all shares and sole control of Hamburg Südamerikanische Dampfschiffahrts – Gesellschaft KG (HSD) by Maersk Line A/S (Maersk). The Competition Board granted unconditional approval to the relevant transaction in May 2017 (04.05.2017, 17-15/210-89). Maersk is the largest container shipping company and the target, HSD is also among the world's largest container shipping companies. The Commission's analysis concluded that the transaction would have resulted in anti-competitive effects on five trade routes and the Commission had cleared the proposed acquisition conditionally upon the withdrawal of HSD from the stated five trade routes. While reviewing the transaction, the Competition Board decided that the commitments submitted before the Commission also contained the routes which could lead to potential competition law concerns in Turkey, specifically with respect to the trade routes from/to Mediterranean Sea. Therefore, the Competition Board unconditionally approved the transaction, deeming the commitments submitted before the Commission sufficient at the conclusion of its Phase I review.
- The transaction concerning the reinstatement of certain minority protection rights granted to Anheuser-Busch InBev (ABI) over Anadolu Efes and the formation of a joint venture between those two undertakings. In November 2017, the Competition Board granted an unconditional approval to the relevant transaction by concluding that the relevant transaction will not result in creation or strengthening of a dominant position and will not significantly impede competition (ABI/Anadolu Efes, 23 November 2017, 17-38/611-267). The transaction is important as it was a cross-border deal between ABI, an important player in the production of beer worldwide, and Anadolu Efes, the largest beer producer in Turkey and a significant player in Eastern Europe where ABI acquired joint control over Anadolu Efes due to reinstatement of certain strategic veto rights.
- In its decision concerning the acquisition of A-Tex Holding A/S's control by Labelon Group Limited (06.12.2016, 16-42/693-311), the Turkish Competition Board ultimately granted an unconditional approval to the transaction but also imposed an administrative monetary fine amounting to 0.1% of Labelon Group Limited's 2015 Turkish turnover, due to the failure to notify as required under Article 16(1)(b) of Law No. 4054 on the Protection of Competition.

Proposals for reform

21. Are there any proposals for reform concerning merger control?

The Draft Competition Law, which was issued by the Turkish Competition Authority back in in 2013 and was officially submitted to the Presidency of the Turkish Parliament on 23 January 2014, was rendered null and void following the beginning of the new legislative year of the Turkish parliament. To re-initiate the parliamentary process, the draft law will need to again be proposed and submitted to the presidency of the Turkish Parliament. At this stage, it remains unknown whether the Turkish Parliament or the government will renew the draft law.

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Areas of practice. Regulatory and compliance; competition law; white collar irregularities; internet law; general corporate/contracts; litigation.

Recent transactions

- Represented Sahibinden Bilgi Teknolojileri Paz. ve Tic. A.Ş. (Sahibinden) in an investigation conducted by the Turkish Competition Authority in order to determine whether Sahibinden has violated Article 6 of Law No. 4054 by excessive pricing conducts in the markets for online platform services towards vehicle and estate sale / rental services.
- Merger control filing with the Competition Board for the merger of Luxottica Group S.p.A. and Essilor International (Compagnie Générale d'Optique) S.A.
- Merger control filing with the Competition Board for the acquisition of sole control of Time Warner Inc. by AT&T Inc.

Languages. English

Professional associations/memberships. Istanbul Bar Association (since 1998); New York Bar Association (since 2002); American Bar Association (since 2002); Law Society of England and Wales (since 2004); Brussels Bar Association (since 2003).

Publications

- *"Testing Justification for Segment Based Relevant Product Market Definition in Merger Control: Evidence From Turkey"*, by Gönenç Gürkaynak, Esq. and Dr. Ekrem Kalkan, *Journal of Competition Law and Economics*, Oxford University Press, June 2017.
- *"Shady Contours of Cartel Liability of Service Providers"*, by Gönenç Gürkaynak, Esq., Ceren Özkanlı, Su Şimşek and Nazlı Ceylan Mollaoğlu, *IBA Competition Law International*, Volume 13, No. 1, April 2017.

- *"Multisided markets and the challenge of incorporating multisided considerations into competition law analysis" (Article by Gönenç Gürkaynak, Esq., Öznur İnamlır, Sinan Diniz and Ayşe Gizem Yaşar), doi: 10.1093/jaenfo/jnw007, Journal of Antitrust Enforcement, Oxford University Press, 30 June 2016.*
- *"Call for unified anti-corruption law and competition law compliance programme: Why compliance programmes should be viewed as a mitigating factor", (Article by Gönenç Gürkaynak, Esq., C#. Olgu Kama, Ceren O'zkanlı and Burcu Ergü'n), Journal of Business Compliance 01/02 2016 – Special Issue.*
- *"Most-favored-nation Clauses in Commercial Contracts: Legal and Economic Analysis and Proposal for a Guideline", by Gönenç Gürkaynak, Esq., Ayşe Güner, Esq., Sinan Diniz and Janelle Filson, Esq., European Journal of Law and Economics, 27 October 2015.*

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Professional qualifications. Istanbul, 2005

Areas of practice. Compliance with competition law rules; cartel agreements; abuse of dominance; mergers and acquisitions; incorporation of joint ventures.

Recent transactions

- Represented Media Saturn İstanbul İç ve Dış Tic. Ltd. Şti., the Turkish subsidiary of Media-Saturn-Holding GmbH, in an investigation conducted by the Turkish Competition Authority against seven companies active in the consumer electronics market.
- Merger control filing with the Competition Board for the acquisition of sole control by The Walt Disney Company over certain businesses of Twenty-First Century Fox, Inc. including its film and television studios, cable entertainment networks, and international television businesses.
- Merger control filing with the Competition Board for the acquisition of Gemalto N.V. by Thales S.A.

Languages. English, German

Professional associations/memberships. Istanbul Bar Association (since 2005).

Publications

- *"Complainant's Position in Competition Law Investigations: Considerations on the Balance Between Parties' Interests and Finding the Truth", by Gönenç Gürkaynak, Esq., Hakan Özgökçen, Esq., Sinan Diniz and Zeynep Ortaç, Rekabet Derneği, Rekabet Forumu, Issue 72, March 2013.*
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