

Family ties – Competition Board assesses Akarlılar family's acquisition of Mavi

August 02 2018 | Contributed by [ELIG Gürkaynak Attorneys-at-Law](#)

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On 18 May 2018 the Competition Board published its reasoned decision (18-05/74-40) of 8 March 2018 following its examination of the Akarlılar family's acquisition of negative control in Mavi Giyim Sanayi ve Ticaret AŞ.

The parties

Mavi designs, develops and sells ready-to-wear clothing for men and women, with a particular focus on jeans, shirts and accessories. The Akarlılar family is active in the textiles sector through Eflatun Giyim Yatırım Ticaret AŞ and Erak Giyim Sanayi ve Ticaret AŞ. Erak is controlled by Sait Akarlılar, who is also the founder of Mavi.

The Competition Board noted that during the merger control filing, it was stated that members of the Akarlılar family held shares in Eflatun and that Eflatun was controlled by Mavi. Notably, Eflatun holds shares that represent the capital of Mavi America and Mavi Canada. Eflatun is not active in Turkey and therefore does not generate turnover there.

Blue International Holding BV is the holding company that owns Mavi's Group A shares.

The Competition Board started its assessment by referencing the Turkish merger control filing and the fact that Turkish Private Equity Fund II had sold its shares in Mavi (held via Blue) within Borsa İstanbul to domestic and international investors, which had resulted in the Akarlılar family becoming the sole shareholder of Mavi's Group A shares.

Negative control rights under merger control regime

According to the Guidelines on Cases Considered as a Merger or an Acquisition and the Concept of Control, an undertaking holds sole control where:

- it can render strategically important decisions over the relevant undertaking, a position which is usually obtained by the acquisition of the majority of voting rights; or
- it has the right to veto strategically important decisions without holding majority control to adopt strategically important decisions on its own.

Negative sole control occurs, therefore, where an undertaking that has negative sole control need not cooperate with other shareholders. As this specific shareholder can cause deadlocks within the relevant undertaking, the Competition Board recognises the existence of sole decisive influence over a target.

According to the merger control filing, before the transaction, Mavi's executive board comprised of six members – three were appointed by Group A shareholders and three by Group B shareholders.

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Of the three members appointed by Group A shareholders, two were appointed by the Akarlılar family and one by the Turkish Private Equity Fund II before the transaction. The remaining three members of the executive board were appointed by shareholders of the remaining publicly traded shares. Therefore, pre-transaction, no entity or shareholder group held sole control over Mavi and its control structure was shaped by various alliances.

The Competition Board found that the transaction aimed to give the Akarlılar family the right to appoint three members (Group A shareholders) of Mavi's executive board, which would enable the Akarlılar family to have negative sole control.

Economic unity and family ties

During its investigation, the Competition Board noted that:

- one member of the Akarlılar family was a shareholder in Erak, which manufactures jeans; and
- the husband of said member of the Akarlılar family was Sait Akarlılar, the founder of Mavi, who has sole control over Erak and influence over its strategically important decisions.

The board also found that by excluding Sait Akarlılar from the Akarlılar family, it could not be assumed that Erak was under the family's control. As a result, the board assessed whether the parties enjoyed economic unity.

In order to assess economic unity, the Competition Board had to determine:

- the parties' economic and family ties;
- the foundation, composition and nature of these ties;
- any independent activities; and
- the parties' unity of interest.

Unity of interest is assessed for real persons by examining their motivation to compete, whereas for legal persons it entails examining control.

The Competition Board referenced its *Bilkom* decision,⁽¹⁾ where it accepted that a group of companies owned by siblings had an economic unity that was strengthened by family ties. Similarly, in *Altınparmak Gıda*, companies controlled by brothers were assumed to have economic unity.⁽²⁾ In addition, the assessment of economic unity via family ties in *Altınparmak Gıda* was supported by the fact that the companies were active in the same market. Similarly, in *Misbis* it was decided that two companies were in economic unity, as the Competition Board determined that:

- company one was owned by five siblings with equal shares; and
- company two was fully owned by one of the siblings.

The Competition Board then articulated that strong family ties were evident in the acquisition under review. The board found that Sait Akarlılar was a long-time shareholder in Mavi alongside other family members, whereas Erak, of which Sait Akarlılar had sole control, was active in the production side of the market in which Mavi operated. Therefore, the board found that rather than focusing on the concept of control, which entails an economic unity of interest, a more substantive approach would be required. Accordingly, the board found that Erak was in the same economic unity as the Akarlılar family and decided that the transaction was subject to mandatory merger control filing in accordance with the Article 7 of Communiqué 2010/4.

Competitive analysis

When assessing the overlap between the parties, the Competition Board noted that Mavi was active in retail and wholesale sales, and e-commerce for jean textile products and that through Erak, the Akarlılar family was active in the production of ready-to-wear textiles and provided jeans to many undertakings in the market, including Mavi. Therefore, it was possible to detect a vertical overlap between Mavi and Erak. Conversely, due to the large number of undertakings in the ready-to-wear textiles sector (at both the production and retail level) and the fact that market entry did not require substantial capital and would not change the result of a competitive analysis, the board saw no need

to divide the market into upstream and downstream.

In this context, the board referred to its decision concerning Blue's acquisition of Mavi,⁽³⁾ where no definitive market definition was adopted. However, it was indicated that the market could be defined as the jeans and day-wear products market. In *Koton/Nemo Apparel BV*,⁽⁴⁾ Mavi was assumed to be active in the market for ready-to-wear products. However, irrespective of the market definition accepted, when examining the market shares, the board found that due to the high level of competitiveness and competitors such as LC Waikiki, Koton and Defacto, which have a significant market presence in Turkey, the transaction would not result in the restriction of competition in the market.

The Competition Board granted unconditional clearance to the Akarlılar family's acquisition of Group A shares in Mavi.

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Endnotes

(1) *Bilkom* decision of 9 January 2001 (1-03/10-3).

(2) *Altınparmak Gıda* decision of 31 March 2010 (10-27/393-146).

(3) *Mavi/Blue* decision of 17 July 2008 (d08-45/635-239).

(4) *Koton/nemo Apparel BV* decision of 18 July 2012 (12-38/114-365).

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