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EUROPE, MIDDLE EAST AND AFRICA
ANTITRUST REVIEW 2023

The 2023 edition of the *Europe, Middle East and Africa Antitrust Review* is part of the Global Competition Review Insight series, which also covers the Americas and Asia-Pacific. Each review delivers specialist intelligence and research designed to help readers – general counsel, government agencies and private practitioners – successfully navigate the world's increasingly complex competition regimes.

GCR works exclusively with leading competition practitioners in each region, and it is their wealth of experience and knowledge – enabling them not only to explain law and policy, but also to put it into context – that makes this report particularly valuable to anyone doing business in Europe, Africa and the Middle East today.

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Preface

Global Competition Review is a leading source of news and insight on competition law, economics, policy and practice, allowing subscribers to stay apprised of the most important developments around the world.

GCR's *Europe, Middle East and Africa Antitrust Review 2023* is one of a series of regional reviews that deliver specialist intelligence and research to our readers – general counsel, government agencies and private practitioners – who must navigate the world's increasingly complex competition regimes.

Like its sister reviews covering the Americas and the Asia-Pacific region, this report provides an unparalleled annual update from competition enforcers and leading practitioners on key developments in both public enforcement and private litigation. In this latest edition, we have significantly expanded coverage of the European Union, with a specific focus on abuse of dominance and article 102 of the TFEU, a deep dive into the intersection between competition law and joint ventures, and analysis of vertical agreements under the new VBER. This features alongside updates from Angola, Cyprus, Denmark, Egypt, France, Germany, Greece, Israel, Switzerland, Turkey, the United Kingdom and Ukraine.

GCR has worked closely with leading competition lawyers and government officials to prepare this report. Their knowledge and experience – and above all their ability to put law and policy into context – are what give it such special value. We are grateful to all the contributors and their firms for their time and commitment.

Although every effort has been made to ensure that all the matters of concern to readers are covered, competition law is a complex and fast-changing field of practice, and therefore specific legal advice should always be sought. Subscribers to Global Competition Review will receive regular updates on any changes to relevant laws during the coming year.

If you have a suggestion for a topic to cover or would like to find out how to contribute, please contact insight@globalcompetitionreview.com.

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Turkey: merger control in a nutshell

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IN SUMMARY

This article details the key aspects of the Turkish merger control regime. It discusses recent developments and cases in respect to merger control in Turkey, including two important recent decisions.

DISCUSSION POINTS

- Turkish merger control regulations
- Thresholds, notification and investigation
- Recent developments and statistical data on merger control

REFERENCED IN THIS ARTICLE

- Turkish Competition Authority
- Law No. 4054 on Protection of Competition
- Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board
- Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board
- Communiqué No. 2017/2 Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board
- Decision No. 21-30/395-199
- Decision No. 20-37/523-231

The national competition agency for enforcing merger control rules is the Turkish Competition Authority (the Competition Authority), a legal entity with administrative and financial autonomy. The Competition Authority comprises the Competition Board, the presidency and service departments.

As the competent decision-making body of the Competition Authority, the Competition Board is responsible for, among other things, reviewing and resolving merger and acquisition notifications. It comprises seven members and is seated in Ankara.

Turkish merger control regulation

The applicable legislation on merger control is Law No. 4054 on Protection of Competition (Law No. 4054) and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4). On 4 March 2022, the Competition Authority published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (Communiqué No. 2022/2). Communiqué No. 2022/2 introduces certain new regulations concerning the Turkish merger control regime, which will fundamentally affect the notifiabiliy analysis of merger transactions and the merger control notifications submitted to the Competition Authority.

Article 7 of Law No. 4054 authorises the Competition Board to regulate, through communiqués, the mergers and acquisitions that must be notified to be valid. Communiqué No. 2010/4 is the primary instrument in assessing merger cases. It sets forth the types of mergers and acquisitions that are subject to the Competition Board's review and approval.

With a continued interest in harmonising Turkish competition law with EU competition law, the Competition Authority has published various guidelines on merger control that are in line with the EU antitrust and merger control rules.

- The Guidelines on Market Definition are closely modelled on the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03).
- The Guidelines on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions contain certain topics and explanations about the concepts of undertakings concerned, turnover calculations and ancillary restraints, and are closely modelled on Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

- The Guidelines on Cases Considered as Mergers and Acquisitions and the Concept of Control, the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions were published in 2013.
- The Guidelines on Remedies Acceptable in Mergers and Acquisitions provide explanations on the possible remedies.

Types of transactions

Communiqué No. 2010/4 defines the scope of the notifiable transactions in article 5 as:

- a merger of two or more undertakings; or
- the acquisition of direct or 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.

Turkey is a jurisdiction with a pre-merger notification and approval requirement, much like the EU regime. Concentrations that result in a change of control on a lasting basis are subject to the Competition Board's approval, provided they exceed the applicable thresholds. 'Control' is defined as the right to exercise decisive influence over the day-to-day management or the long-term strategic business decisions of a company and can be exercised de jure or de facto.

Acquisition of a minority shareholding can constitute a notifiable merger if it leads to a change in the control structure of the target entity on a lasting basis. Joint ventures that emerge as independent economic entities possessing assets and labour to achieve their objectives and that do not aim at or effectively result in the restriction of competition among the parties, or between the parties and the joint venture itself, are subject to notification to, and approval of, the Competition Board. In accordance with article 13 of Communiqué No. 2010/4, cooperative joint ventures are also subject to a merger control notification and analysis as well as an individual exemption analysis, if warranted.

Market dominance and significant impediment of effective competition

The Turkish merger control provisions rely on the significant impediment of effective competition (SIEC) test to ascertain whether a merger may be cleared. Pursuant to article 7 of Law No. 4054 and article 13 of Communiqué No. 2010/4, mergers and acquisitions that do not create or strengthen a dominant position and that do not significantly impede effective competition in a relevant product market within the whole or part of Turkey shall be cleared by the Competition Board.

Article 3 of Law No. 4054 defines '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'.

With the SIEC test introduced by the amendment law that was passed through Parliament and entered into force on 24 June 2020, the Competition Board is able to prohibit not only transactions that may result in creating a dominant position or strengthening an existing dominant position but also those that may significantly impede effective competition.

The Competition Board's approval decision will be deemed to also cover the directly related and necessary extent of restraints in competition brought by the concentration (eg, non-competition, non-solicitation and confidentiality). This will allow parties to engage in self-assessment, and the Competition Board will no longer have to devote a separate part of its decision to the ancillary status of all restraints brought with the transaction. Non-competition issues are, in principle, not taken into account.

Thresholds

Communiqué No. 2022/2 introduced threshold exemptions for undertakings active in certain markets and sectors and increased the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Competition Authority.

As per Communiqué No. 2022/2, if a transaction is closed (ie, the concentration is realised) as of or after 4 May 2022, the transaction will be required to be notified in Turkey if one of the following increased turnover thresholds is met (all currency conversions are based on the Turkish Central Bank's applicable average buying exchange rates for the financial year 2021):

- the aggregate Turkish turnover of the transaction parties exceeding 750 million lira and the Turkish turnover of at least two of the transaction parties each exceeding 250 million lira;
- the Turkish turnover of the transferred assets or businesses in acquisitions exceeding 250 million lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion lira; or
- the Turkish turnover of any of the parties in mergers exceeding 250 million lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion lira.

Pursuant to Communiqué No. 2022/2, the '250 million lira Turkish turnover thresholds' mentioned above will not be sought for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if:

- they operate in the Turkish geographical market;
- they conduct research and development activities in the Turkish geographical market; or
- they provide services to Turkish users.

The new regulation does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement, and if a concentration exceeds one of the alternative jurisdictional thresholds the concentration will automatically be subject to the approval of the Competition Board.

The implementing regulations provide for important exemptions and special rules.

- Article 19 of Banking Law No. 5411 provides an exception from the application of merger control rules for mergers and acquisitions of banks. The exemption is subject to the condition that the market share of the total assets of the relevant banks does not exceed 20 per cent.
- Mandatory acquisitions by public institutions as a result of financial distress, concordat, liquidation, etc, do not require a pre-merger notification.
- Intra-corporate transactions are not notifiable.
- Acquisitions by inheritance are not subject to merger control.
- Acquisitions made by financial securities companies solely for investment purposes do not require a notification, subject to the condition that the securities company does not exercise control over the target entity in a manner that influences its competitive behaviour.

- Two or more transactions carried out within three years between the same persons or parties, or within the same relevant product market by the same undertaking, are deemed a single transaction for turnover calculation purposes following the amendments brought by Communiqué No. 2017/2, Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board (Communiqué No. 2017/2). If the transactions exceed the notification thresholds individually or cumulatively, all the transactions must be notified, regardless of whether the transactions concerned are related to the same market or sector or whether they were previously notified. The main goal of this regulation is to prevent the conclusion of important mergers or acquisitions without authorisation through the compartmentalisation of mergers and acquisitions originally subject to authorisation.

Another exception pertains to the Turkish Wealth Fund, which was incorporated as a national wealth and investment fund company with Law No. 6741. Transactions performed by the Turkish Wealth Fund and companies established by the Turkish Wealth Fund are not subject to merger control rules. There are also specific methods of turnover calculation for certain sectors, which apply to banks, special financial institutions, leasing companies, factoring companies, securities agents and insurance companies. Communiqué No. 2022/2 also updates the rules that apply to the calculation of turnover of the financial institutions in accordance with the recent changes on the financial regulations. The recent updates of article 9 of Communiqué No. 2010/4 are as follows:

- for the calculation of financial institutions' turnovers, Communiqué No. 2022/2 aligns the wordings and terms in view of the applicable banking and financial regulations – it excludes the term 'participation banks' and refers to the term 'banks' in general, which covers all legal forms of banks; and
- Communiqué No. 2022/2 updates the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board referred to in article 9 of Communiqué No. 2010/4.

Procedure

There is no specific deadline for making a notification in Turkey. There is, however, a suspension requirement (ie, a mandatory waiting period): a notifiable transaction (regardless of whether it is problematic under the applicable dominance test) is invalid, with all the ensuing legal consequences, unless the Competition Authority approves it. It is, therefore, advisable, under normal circumstances, to file the transaction at least 60 calendar days before the projected closing.

The notification is deemed filed when the Competition Authority receives it in its complete form. If the information provided to the Competition Board is incorrect or incomplete, the notification is deemed filed only on the date when the information is completed upon the Competition Board's subsequent request for further data. The notification is submitted in Turkish. Transaction parties are required to provide sworn Turkish translations of the final executed or current version of the transaction agreement.

Notification

In principle, under the merger control regime, a filing can be made by either of the parties to the transaction or jointly. In the case of a filing by one of the parties, the filing party should notify the other party of the filing. It is advisable to file the transaction at least 60 calendar days before closing.

As for the filing process for privatisation tenders or transactions, Communiqué No. 2013/2 provides that it is mandatory to file a pre-notification with the Competition Authority before the public announcement of tender specifications to receive the opinion of the Competition Board, which will include a competitive assessment.

In the case of a public bid, the merger control filing can be performed when the documentation adequately proves the irreversible intention to finalise the contemplated transaction. Filing can also be performed when the documentation at hand adequately proves the irreversible intent to finalise the contemplated transaction.

The notification form is similar to Form CO of the European Commission. One hard copy and an electronic copy of the merger notification form must be submitted to the Competition Board. Recent updates allow notifying parties to submit the notification form via 'e-Devlet', an elaborate system of web-based services, including electronic submission. E-devlet was already made available for submissions, especially during the pandemic period. Now, Communiqué No. 2010/4 explicitly mentions this alternative way of submission to make it official.

The information requested includes data in respect of supply and demand structure, imports, potential competition and expected efficiencies. Some additional documents, such as the executed or current copies and sworn Turkish translations of the documents that bring about the transaction, annual reports (eg, balance sheets of the parties) and, if available, market research reports for the relevant market, are also required.

Communiqué No. 2010/4 also brought a modified notification form that will replace the current notification form as of 4 May 2022. According to the modified notification form, there is also a short-form notification (without a fast-track

procedure) if a transition from joint control to sole control is at stake or if there are no affected markets within Turkey.

In the event that the parties to a notifiable transaction violate the suspension requirement (ie, close a notifiable transaction without having obtained the approval of the Competition Board or do not notify the notifiable transaction at all), the acquiring party (for the formation of a fully functioning joint venture, all the parent companies are separately deemed to be the acquiring party) receives a turnover-based monetary fine of 0.1 per cent of its annual Turkish turnover generated in the financial year preceding the date of the fining decision. In mergers, both merging parties would be fined.

In any event, the minimum amount of the administrative monetary fine is 47,409 lira for 2022 and is revised annually. The fine does not depend on whether the Competition Authority will ultimately clear the transaction; it is a fixed ratio (0.1 per cent). The Competition Board does not have the power to increase or decrease the fine; therefore, the acquirer would automatically incur the fine once the violation of the suspension requirement is detected.

If, however, there truly is a risk that the transaction is problematic under the SIEC test applicable in Turkey, the Competition Authority may:

- launch ex officio an investigation into the transaction;
- order structural and behavioural remedies to restore the situation as it was before the closing (restitutio in integrum); and
- impose a turnover-based fine of up to 10 per cent of the parties' annual turnover.

Executive members and employees of the undertakings concerned who are determined to have played a significant role in the violation (failing to file or closing before the approval) may also receive monetary fines of up to 5 per cent of the fine imposed on the undertakings. The transaction will also be invalid and unenforceable in Turkey.

Thus far, the Competition Board has consistently rejected all carve-out or hold-separate arrangements proposed by merging undertakings. Communiqué No. 2010/4 provides that a transaction is deemed to be 'realised' (ie, closed) 'on the date when the change in control occurs'.

Although the wording allows some room to speculate that carve-out or hold-separate arrangements are allowed, it remains to be seen whether the Competition Authority will interpret this provision in such a way. Thus far, it has been consistently rejected by the Competition Board, arguing that a closing is sufficient for the suspension violation fine to be imposed and that a further analysis of whether change in control actually took effect in Turkey is unwarranted.

The Competition Authority publishes the notified transactions on its official website (www.rekabet.gov.tr), with only the names of the parties and their areas of commercial activity. To that end, once notified to the Competition Authority, the existence of a transaction will no longer be a confidential matter.

Costs

There are no filing fees required under Turkish merger control proceedings.

Investigation

The Competition Board, upon its preliminary review of the notification (Phase I), will decide either to approve or to investigate the transaction further (Phase II). It notifies the parties of the outcome within 30 calendar days of a complete filing. In the absence of any notification, the decision is deemed to be approved in accordance with an implied approval mechanism introduced by the relevant legislation.

While the wording of the law implies that the Competition Board should decide within 15 calendar days whether to proceed with Phase II, the Competition Board generally takes more time to form its opinion on the substance of a notification. It is more sensitive to the 30-calendar-day deadline on announcement. Any written request by the Competition Board for missing information will stop the review process and restart the 30-calendar-day period on the date of provision of that information.

In practice, the Competition Authority is quite keen on asking formal questions and adding more time to the review process; therefore, under normal circumstances, it is recommended that the filing be done at least 60 calendar days before the projected closing.

If a notification leads to a Phase II review, it turns into a fully fledged investigation. Under Turkish competition law, Phase II investigations take about six months. If necessary, the Competition Board may extend this period once by up to six months.

In practice, only exceptional cases require a Phase II review, and most notifications obtain a decision within 60 days of the original date of notification. Neither Law No. 4054 nor Communiqué No. 2010/4 foresee a fast-track procedure to speed up the clearance process. Aside from close follow-up with the case handlers reviewing the transaction, the parties have no available means to speed up the review process.

There is no special rule for hostile takeovers; the Competition Board treats notifications for hostile transactions in the same manner as other notifications. If the target does not cooperate and there is a genuine inability to provide information owing to the one-sided nature of the transaction, the Competition Authority tends to use most of its powers of investigation or information request under articles 14 and 15 of Law No. 4054.

The Competition Board may request information from third parties, including customers, competitors and suppliers of the parties and other persons related to the merger or acquisition. It uses this power to define the market and determine the market shares of the parties. Third parties, including the customers and competitors of the parties and other persons related to the merger or acquisition, may request a hearing from the Competition Board during the investigation, subject to the condition that they prove their legitimate interest. They may also challenge the Competition Board's decision on the transaction before the competent judicial tribunal, again subject to the condition that they prove their legitimate interest.

Clearance

The Competition Board may either render a clearance or a prohibition decision. It may also give a conditional approval. The reasoned decisions of the Competition Board are served on the representatives to the notifying parties and are also published on the website of the Competition Authority.

The Competition Board may grant conditional clearance and make the clearance subject to the parties observing certain structural or behavioural remedies, such as divestiture, ownership unbundling, account separation and right of access. The number of conditional clearances has increased significantly in recent years.

Judicial review

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be submitted for judicial review before the administrative courts. The plaintiff may initiate a lawsuit within 60 days of the parties' receipt of the Competition Board's reasoned decision.

Decisions of the Competition Board are considered as administrative acts. Filing a lawsuit does not automatically stay the execution of the Competition Board's decision. However, upon request of the plaintiff, the court may decide to stay the execution. The court will stay the execution of the challenged act only if the execution of the decision is likely to cause irreparable damage, and the decision

is highly likely to violate the law. The appeal process may take up to two-and-a-half years.

Recent developments

Communiqué No. 2022/2 was published in the Official Gazette on 4 March 2022, and entered into force on 4 May 2022. Communiqué No. 2022/2 raised the jurisdictional turnover thresholds under article 7 of Communiqué No. 2010/4.

Two of the most significant developments that the Communiqué No. 2022/2 entails, inter alia, are the introduction of threshold exemption for undertakings active in certain markets and sectors and the increase of the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Competition Authority.

Communiqué No. 2022/2 does not seek a Turkish nexus in terms of activities that qualify for the threshold exemption. In other words, it would be sufficient for the target company to be active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies anywhere in the world for the threshold exemption to become applicable, provided that the target company (1) operates in the Turkish geographical market; or (2) conducts R&D activities in Turkey; or (3) provides services to Turkish users in the fields listed above. Accordingly, Communiqué No. 2022/2 does not require (1) the generation of revenue from customers located in Turkey; or (2) that the target company conduct R&D activities in Turkey; or (3) the provision of services to Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

The increased turnover thresholds and the exemption on the local turnover thresholds mechanism introduced by Communiqué No. 2022/2 would seem to be altered the scope of the transactions that are notifiable to the Competition Authority. On that note, concentrations related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies, are expected to be more closely scrutinised by the Competition Authority.

The Competition Authority has published the Mergers and Acquisitions Insight Report for 2021. Along with its mission, vision, objectives, priorities and description of its duties and powers, the Competition Authority assessed its activities between 1 January and 31 December 2021 in respect of merger control, with statistical data.

To summarise, the Competition Board assessed 309 transactions in 2021. The number of assessments in 2021 is higher than the average number of assessments made between 2013 and 2020. Only two transactions have been

cleared at Phase II investigation, and only three were conditionally cleared. The Competition Board has not prohibited any transaction in 2021.

A notable decision rendered by the Competition Board in 2021 was the Competition Board's *EssilorLuxottica* decision.[1] The acquisition of shares in HAL Optical Investments BV, a fully controlled subsidiary of Hal Holding NV, in GrandVision NV (Grandvision) by EssilorLuxottica SA (Essi-Lux) was approved by the Competition Board. The Competition Board identified horizontal overlaps between the activities of Essi-Lux and Atasun in the retail sale of optical products, and vertical overlaps in:

- wholesale of stock lenses;
- wholesale of semi-processed lenses (also known as receipt X lenses – 'RX lenses');
- wholesale of branded sunglasses;
- wholesale of frames for branded and optic glasses; and
- manufacture and distribution of ophthalmic machines, equipment and consumables.

Accordingly, the Competition Board conducted its dominant position analysis and evaluated the vertical and horizontal effects of the transaction with regard to the mentioned markets. The behavioural commitments offered by Essi-Lux included the following:

- not engaging the tying sales of branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment;
- not applying discriminatory conditions with respect to sales of branded sunglasses, branded optical frames, ophthalmic lenses and ophthalmic equipment to equal customers, offering reasonable conditions in any case and applying the same sale terms and conditions that Essi-Lux applies to its subsidiaries at the retail level, to all customers of the merged entity (including Atasun) with respect to sales of branded sunglasses, branded optical frames, ophthalmic lenses, ophthalmic equipment as well as the relevant consumables; and
- the total share of value-based purchases from third-party suppliers that Atasun undertakes with respect to branded sunglasses, branded optical frames and RX lenses will be at the same ratio with or more than that realised in 2019.

At this point, it is worth underlining that this commitment did not cover stock lenses, since Atasun had already acquired all of these from Essi-Lux before the acquisition. As a side note, the Competition Board also stated that the role

1 Competition Board, Decision No. 21-30/395-199 (10 June 2021).

of commitments is to maintain the existing competitive structure, and not to establish a more competitive market. The Competition Board further took into account the conditions created by covid-19 while considering the efficiency of the commitments and suggested that 2019 would better demonstrate the competitive structure given the economic and financial implications of the covid-19 pandemic on the market in 2020. In relation to vertical coordination risks, the parties' commitments also included that the commitment that Essi-Lux and Atasun will not share with each other competitively sensitive information that they may acquire from their operations in the vertical markets. To ensure this, the parties' commitments included detailed assurances to not engage in such sharing of information. Upon its review, the Competition Board found the commitments submitted by the parties adequate to address the competitive concerns raised by the Competition Board. Therefore, the Competition Board approved the transaction under behavioural commitments unlike those of the European Union, where the retail footprint of the transaction was lessened through certain structural remedies.

In *TIL/Marport*,[2] the Competition Board refused to grant approval to the acquisition of sole control of Marport Liman İşletmeleri Sanayi ve Ticaret Anonim Şirketi (Marport) by Terminal Investment Limited Sàrl (TIL). The Competition Board stated that the transaction mainly related to the container terminal management sector, while Marport's other activities included temporary storage, pilotage and towage and ancillary port services. The Competition Board defined the relevant product market as 'port management for container handling services' by referring to its *Limar/Mardaş* decision.[3] The Competition Board also made two separate downstream market definitions: (1) port management for container handling services concerning transit traffic; and (2) port management for container-handling services concerning hinterland traffic. As for the relevant geographic market, the Competition Board preferred a narrow definition and defined the relevant geographic market as 'Northwest Marmara' for the markets concerning local loads. However, the geographic market definition for the markets concerning transit loads was left open. In defining the relevant geographic markets, the Competition Board took into consideration various factors such as the location of the ports, the transportation facilities and the customer choices. In its competitive assessment, the Competition Board stated that the transaction led to a horizontal overlap in the port management for container-handling services market and a vertical overlap in the container line transportation market. The Competition Board applied the SIEC test rather than solely assessing whether the transaction led to the creation or strengthening of a dominant position in the relevant markets. In conclusion, taking into account that the transaction was likely to cause significant impediment of effective competition, the Competition Board refused to grant clearance within the scope of article 7 of Law No. 4054.

2 Competition Board, Decision No. 20-37/523-231 (13 August 2020)
3 Competition Board, Decision No. 18-14/267-129 (8 May 2018).

The Competition Board's no-go decisions are very rare. The *Marport* decision is of significant importance as it constitutes a recent example in which the Competition Board decided not to clear a joint-to-sole control transaction further to its detailed competitive assessment, based on the SIEC test, which was recently introduced to Turkish competition law enforcement.

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Gönenç Gürkaynak is the founding partner of ELIG Gürkaynak Attorneys-at-Law, a leading law firm of 95 lawyers based in Istanbul, Turkey. Gürkaynak graduated from Ankara University, Faculty of Law in 1997 and was called to the Istanbul Bar in 1998. Gönenç received his LLM degree from Harvard Law School and is qualified to practise in Istanbul, New York, Brussels, and England and Wales (currently a non-practising solicitor). Before founding ELIG Gürkaynak Attorneys-at-Law in 2005, he worked as an attorney at the Istanbul, New York and Brussels offices of a global law firm for more than eight years.

Gönenç heads the competition law and regulatory department of ELIG Gürkaynak Attorneys-at-Law, which currently comprises 47 lawyers. He has unparalleled experience in Turkish competition law counselling issues with more than 25 years of competition law experience, starting with the establishment of the Turkish Competition Authority. Every year, Gönenç represents multinational companies and large domestic clients in more than 35 written and oral defences in investigations of the Turkish Competition Authority, around 15 antitrust appeal cases in the high administrative court and over 85 merger clearances of the Turkish Competition Authority, in addition to coordinating various worldwide merger notifications, drafting non-compete agreements and clauses, and preparing hundreds of legal memoranda concerning a wide array of Turkish and European Commission competition law topics.

Gönenç frequently speaks at conferences and symposia on competition law matters. He has published more than 200 articles in English and Turkish with various international and local publishers.

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K Korhan Yıldırım is a partner at ELIG Gürkaynak Attorneys-at-Law. Korhan graduated from Galatasaray University Faculty of Law in 2005 and was admitted to the Istanbul Bar in 2006.

He has been working at the firm for more than 15 years and has been a partner in the competition law and regulatory department since January 2014.

Korhan has extensive experience in all areas of competition law, including cartel agreements, abuse of dominance, concentrations and joint ventures. He has represented various multinational and national companies before the Turkish Competition Authority, administrative courts and the High State Court.

Korhan has given numerous legal opinions and training sessions in relation to compliance with competition law rules. He has also authored and co-authored many articles on competition law and merger control matters and is a frequent speaker at various conferences and symposia. He is fluent in English and French.

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Görkem joined ELIG Gürkaynak Attorneys-at-Law in 2014. He has extensive experience in merger and acquisition filings, competition law compliance matters and investigations conducted by the Turkish Competition Authority. He has represented various multinational and national companies before the Turkish Competition Authority in various sectors. He is fluent in English.

ELIG Gürkaynak Attorneys-at-Law is committed to providing its clients with high-quality legal services. We combine a solid knowledge of Turkish law with a business-minded approach to develop legal solutions that meet the ever-changing needs of our clients in their international and domestic operations. Our competition law and regulatory department is led by our founding partner Gönenç Gürkaynak, with four partners, eight counsel and 40 associates.

In addition to unparalleled experience in merger control issues, ELIG Gürkaynak has vast experience in defending companies before the Turkish Competition Board in all phases of antitrust investigations, abuse of dominant position cases and leniency handlings and before courts on issues of private enforcement of competition law, along with appeals of the administrative decisions of the Turkish Competition Authority.

ELIG Gürkaynak represents multinational corporations, business associations, investment banks, partnerships and individuals in the widest variety of competition law matters, while also collaborating with many international law firms.

ELIG Gürkaynak has an in-depth knowledge of representing defendants and complainants in complex antitrust investigations concerning all forms of abuse of dominant position allegations, and all forms of restrictive horizontal and vertical arrangements, including price-fixing, retail price maintenance, refusal to supply, territorial restrictions and concerted practice allegations.

In addition to significant antitrust litigation expertise, the firm has considerable expertise in administrative law, and is well equipped to represent clients before the High State Court, both on the merits of a case and for injunctive relief. ELIG Gürkaynak also advises clients on a day-to-day basis on a wide range of business transactions that almost always involve antitrust law issues, including distributorship, licensing, franchising and toll manufacturing issues.

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