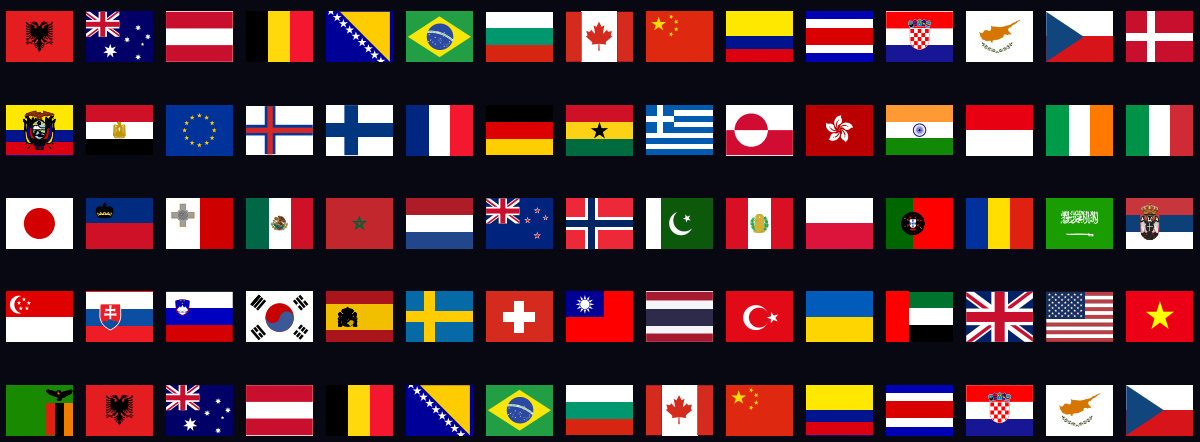
MERGER CONTROL

Turkey



LEXOLOGY
Getting The Deal Through

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Merger Control

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Quick reference guide enabling side-by-side comparison of local insights into legislation and regulators; scope of legislation; thresholds, triggers and approvals; notification and clearance timetable; substantive assessment; remedies and ancillary restraints; involvement of other parties or authorities; judicial review; enforcement record and reform proposals; and recent trends.

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UPDATE AND TRENDS

Key developments of the past year

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LEGISLATION AND JURISDICTION

Relevant legislation and regulators

What is the relevant legislation and who enforces it?

The relevant legislation on merger control is Law No. 4054 on the Protection of Competition , dated 13 December 1994 (the Competition Law) and the communiqué published by the Turkish Competition Authority (the Authority or the Competition Authority). In particular, article 7 of the Competition Law governs mergers and acquisitions.

On 24 June 2020, Law No. 7246 on the Amendment to the Competition Law was published in the Official Gazette and entered into force (the Amendment Law).

Article 7 of the Competition Law authorises the Turkish Competition Board (the Board or the Competition Board) to regulate, through communiqués, which mergers and acquisitions should be notified to the Authority to gain validity. Further to this provision, Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4) was published on 7 October 2010 and replaced Communiqué No. 1997/1 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 1997/1) as of 1 January 2011.

Communiqué No. 2010/4 is now the primary instrument for assessing merger cases in Turkey. It sets forth the types of mergers and acquisitions that are subject to the Board's review and approval, bringing about some significant changes to the Turkish merger control regime. The secondary legislation has not been revised, and new secondary legislation has not been introduced in view of the Amendment Law as at the time of writing.

On 4 March 2022, the Authority published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 (the Amendment Communiqué). The Amendment Communiqué introduced new rules concerning the Turkish merger control regime that fundamentally affect merger control notifications submitted to the Authority.

Pursuant to article 7 of the Amendment Communiqué, the changes introduced by the Amendment Communiqué became effective as of 4 May 2022. One of the most significant developments that the Amendment Communiqué entails is the increase of the applicable turnover thresholds for concentrations that require mandatory merger control filing before the Authority and the introduction of threshold exemptions for undertakings that are active in certain markets or sectors.

The national competition authority for enforcing the Competition Law in Turkey is the Competition Authority, which is a legal entity with administrative and financial autonomy. The Competition Authority comprises the board, presidency and service departments, including six divisions with a sector-specific work distribution that handle competition law enforcement work through approximately 160 case handlers. A research and economic analysis department, a leniency unit, a decisions unit, an information technology unit, an external relations unit, a management services unit, a strategy development unit, an internal audit unit, a consultancy unit, a media and public relations unit, a human resources unit and a cartel and on-site investigation support unit assist the six technical divisions and the presidency in the completion of their tasks.

Law stated - 11 May 2022

Scope of legislation

What kinds of mergers are caught?

The Amendment Law amends article 7 of the Competition Law and introduces the significant impediment of effective competition (SIEC) test, similar to the approach under the EC Merger Regulation. Under this amendment, the Authority may prohibit transactions that could significantly impede competition, along with those that may create a dominant

position or strengthen an existing dominant position in the market.

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

- a merger of two or more undertakings; or
- the acquisition of or 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 of or all its shares, an agreement or other instruments.

Pursuant to article 6 of Communiqué No. 2010/4, the following transactions do not fall within the scope of article 7 of the Competition Law and therefore will not be subject to the approval of the Board:

- intra-group transactions and other transactions that do not lead to change in control;
- temporary possession of securities for resale purposes by undertakings whose normal activities are to conduct transactions with those securities for their own account or for the account of others, provided that the voting rights attached to such securities are not exercised in a way that affects the competition policies of the undertaking issuing the securities;
- acquisitions by public institutions or organisations further to the order of law, for reasons such as liquidation, winding up, insolvency, cessation of payments, concordat or for privatisation purposes; and
- acquisition by inheritance as provided for in article 5 of Communiqué No. 2010/4.

In addition to the above, the Competition Authority has also introduced Communiqué No. 2017/2 amending Communiqué 2010/4. One of the amendments introduced to Communiqué No. 2010/4 is that article 1 of Communiqué No. 2017/2 abolished article 7(2) of Communiqué No. 2010/4, that 'The thresholds . . . are re-determined by the Board biannually'.

Through the aforementioned amendment, the Board no longer bears the duty to re-establish turnover thresholds for concentrations every two years. To that end, there is no specific timeline for the review of the jurisdictional turnover thresholds set forth by article 7(1) of Communiqué No. 2010/4.

In addition, article 2 of Communiqué No. 2017/2 modified article 8(5) of Communiqué No. 2010/4. Together with this amendment, the Board is now in a position to evaluate the transactions realised by the same undertaking concerned in the same relevant product market within three years as a single transaction, as well as two transactions carried out between the same persons or parties within a three-year period.

Finally, article 3 of Communiqué No. 2017/2 introduced a new paragraph to be included in article 10 of Communiqué No. 2010/4. This newly introduced provision is similar to article 7(2) of the European Commission Merger Regulation. At any rate, although there was no similar specific statutory rule in Turkey on this matter, the case law of the Board sheds some light on this matter.

Law stated - 11 May 2022

What types of joint ventures are caught?

According to article 5(3) of Communiqué No. 2010/4, joint ventures are also subject to notification to, and approval of, the Board. The provision of article 5(3) stipulates that joint ventures that permanently meet all functions of an independent economic entity (ie, full function) are deemed notifiable.

Article 13/III of Communiqué No. 2010/4 provides that the Board will carry out an individual exemption review on

notified joint ventures that emerge as an independent economic unit on a lasting basis, but have as their object or effect the restriction of competition among the parties or between the parties and the joint venture itself. The wording of the standard notification form also allows for such a review.

Law stated - 11 May 2022

Is there a definition of 'control' and are minority and other interests less than control caught?

Communiqué No. 2010/4 provides a definition of 'control' that does not fall far from the definition of this term in article 3 of Council Regulation No. 139/2004. According to article 5(2) of Communiqué No. 2010/4:

Pursuant to the presumption regulated under article 5(2) of Communiqué No. 2010/4, control shall be deemed acquired by persons or undertakings that are the holders of the rights, or entitled to the rights under the agreements concerned, or while not being the holders of the rights or entitled to rights under those agreements, have de facto power to exercise these rights.

In short, much like the EU regime, under the Competition Law, mergers and acquisitions resulting in a change of control are subject to the approval of the Board. Control is understood to be the right to exercise decisive influence over day-to-day management or on long-term strategic business decisions, and it can be exercised de jure or de facto; therefore, minority and other interests that do not lead to a change of control do not trigger the filing requirement.

However, if minority interests acquired are granted certain veto rights that may influence the management of the company (eg, privileged shares conferring management powers), the nature of control could be deemed as changed (eg, a change from sole to joint control), and the transaction could be subject to filing.

Law stated - 11 May 2022

Thresholds, triggers and approvals

What are the jurisdictional thresholds for notification and are there circumstances in which transactions falling below these thresholds may be investigated?

Further to the Amendment Communiqué, as of 4 May 2022, a transaction must be notified before the Authority if one of the following increased turnover thresholds is met:

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

Accordingly, the Amendment Communiqué increased the previous turnover thresholds of:

- 30 million Turkish lira to 250 million Turkish lira;

- 100 million Turkish lira to 750 million Turkish lira; and
- 500 million Turkish lira to 3 billion Turkish lira.

Furthermore, the Amendment Communiqué introduced a threshold exemption for undertakings that are active in certain markets or sectors. Pursuant to the Amendment Communiqué, the 250-million-Turkish-lira turnover thresholds will not apply to acquired undertakings that are active in, or assets related to, the fields of digital platforms, software or gaming software, financial technology, biotechnology, pharmacology, agricultural chemicals or health technology (target companies), if they:

- operate in the Turkish geographical market;
- conduct research and development (R&D) activities in the Turkish geographical market; or
- provide services to users in the Turkish geographical market.

The Amendment Communiqué does not seek a Turkish nexus in terms of the activities that trigger 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 technology, biotechnology, pharmacology, agricultural chemicals or health technology (the specified fields) anywhere in the world for the threshold exemption to become applicable, provided that the target company:

- generates revenue from customers located in Turkey;
- conducts R&D activities in Turkey; or
- provides services to Turkish users in any fields other than the abovementioned ones.

Accordingly, for the exemption on the local turnover thresholds to become applicable, the Amendment Communiqué does not require revenue to be generated from customers located in Turkey, R&D activities to be conducted in Turkey or services to be provided to Turkish users concerning the specified fields.

The tests provided under article 7(b) of the Competition Law are two separate tests: article 7(b)(i) is applicable only in acquisition transactions (as well as joint ventures), while article 7(b)(ii) is applicable only in merger transactions.

Where the transaction does not meet the relevant thresholds, the transaction is not deemed notifiable. Furthermore, Communiqué No. 2010/4 does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement.

Law stated - 11 May 2022

Is the filing mandatory or voluntary? If mandatory, do any exceptions exist?

Once the thresholds are exceeded, there is no exception for filing a notification cited in the Competition Law or its secondary legislation. There is no de minimis exception, nor are there other exceptions under the Turkish merger control regime, except for a certain type of merger in the banking sector.

Law stated - 11 May 2022

Do foreign-to-foreign mergers have to be notified and is there a local effects or nexus test?

Foreign-to-foreign mergers are caught under the Competition Law to the extent they affect the relevant markets within the territory of Turkey. Sales into Turkey may trigger the notification requirement to the extent the thresholds are met.

Article 2 of the Competition Law provides the 'effects criteria', pursuant to which the criterion to apply is whether the undertakings concerned affect the goods and services markets in Turkey. Even if the undertakings concerned do not have local subsidiaries, branches, sales outlets, etc, in Turkey, the transaction could still be subject to the provisions of the Turkish competition legislation if the goods or services of those undertakings are sold in Turkey and thus have effects on the relevant Turkish market.

Law stated - 11 May 2022

Are there also rules on foreign investment, special sectors or other relevant approvals?

Article 9 of Communiqué No. 2010/4, along with the general items to be taken into account in calculating the total turnover of the parties to the transaction, sets forth specific methods of turnover calculation for financial institutions. Those special methods of calculation apply to banks, financial leasing companies, factoring companies and insurance companies, etc.

Banking Law No. 5411 provides that the provisions of articles 7, 10 and 11 of the Competition Law shall not be applicable on the condition that the sectoral share of the total assets of the banks subject to merger or acquisition does not exceed 20 per cent. The competition legislation provides no special regulation applicable to foreign investments.

The Amendment Communiqué introduced a threshold exemption for undertakings that are active in certain markets or sectors. Pursuant to the Amendment Communiqué, the 250-million-Turkish-lira turnover thresholds will not apply to target companies that are active in, or assets related to, the specified fields if they operate in the Turkish market, conduct R&D activities in the Turkish market or provide services to users in the Turkish market.

If the target company's activities fall into the specified fields, the thresholds that apply are as follows:

- the aggregate Turkish turnover of the transaction parties exceeds 750 million Turkish lira; or
- the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion Turkish lira.

Accordingly, when an undertaking that falls within the definition and criteria above is being acquired, the transaction is notifiable if the aggregate Turkish turnover of the target company and the acquirer exceeds 750 million Turkish lira or the worldwide turnover of the acquirer exceeds 3 billion 750 million Turkish lira.

Law stated - 11 May 2022

NOTIFICATION AND CLEARANCE TIMETABLE

Filing formalities

What are the deadlines for filing? Are there sanctions for not filing and are they applied in practice?

Deadlines for filing

Law No. 4054 on the Protection of Competition, dated 13 December 1994 (the Competition Law) provides no specific deadline for filing; however, based on our experience, in light of the 30-calendar-day review period, it is advisable to file the transaction at least 40 to 45 calendar days before closing.

Owing to the 30-day review period under Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4) a rather complex notification form is required in merger filings; therefore, the time frame required to prepare a notification form may be rather long. It is important that the transaction is not closed prior to the approval of the Turkish Competition Board (the Board).

Penalties for not filing

If the parties to a merger or acquisition that requires the approval of the Board realise the transaction without obtaining the approval of the Board, a monetary fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account) shall be imposed on the incumbent undertakings (acquirers in the case of an acquisition, and both merging parties in the case of a merger), regardless of the outcome of the Board's review of the transaction.

The minimum fine is revised annually through a communiqué published each year. For 2022, the minimum fine is 47,409 Turkish lira.

Invalidity of the transaction

Another very important sanction, which is more of a legal than economic character, is set out under article 7 of the Competition Law and article 10 of Communiqué No. 2010/4: a notifiable merger or acquisition that is not notified to and approved by the Board shall be deemed as legally invalid, with all its legal consequences.

Termination of infringement and interim measures

The Amendment Law – article 9(1) of the Competition Law – states that, should the Board find any infringement of article 7, it shall inform the parties concerned, by a resolution, of the behaviour that should be followed or avoided to establish competition and of structural remedies, such as the transfer of certain activities, shareholdings or assets.

The amendment introduces a 'first behavioural, then structural remedy' rule for article 7 violations; therefore, where the behavioural remedies are ultimately considered to be ineffective, the Board will order structural remedies. Undertakings must comply with the structural remedies ordered by the Board within a minimum period of six months.

Termination of the transaction and turnover-based monetary fines

If, at the end of its review of a notifiable transaction that was not notified, the Board decides that the transaction falls within the prohibition of article 7 (ie, the transaction significantly impedes effective competition), the undertakings shall be subject to fines of up to 10 per cent of their turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account). Managers or employees of parties that had a determinant effect on the creation of the violation may also be fined up to 5 per cent of the fine imposed on the respective party.

In determining the monetary fines on the parties, the Board takes into consideration repetition of the infringement, its duration, the market power of the undertakings, their decisive influence in the realisation of the infringement, whether they comply with the commitments given, whether they assisted the examination and the severity of the damage that occurred or is likely to occur.

In addition to the monetary sanction, the Board is authorised to take all necessary measures to terminate the transaction, remove all de facto legal consequences of every action that has been unlawfully taken, return all shares

and assets if possible to the entities that owned these shares or assets before the transaction or, if such measure is not possible, assign these to third parties, and meanwhile forbid participation in control of these undertakings until this assignment takes place and to take all other necessary measures in this regard.

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 the information is completed upon the Board's subsequent request for further data.

In addition, the Competition Authority will impose a turnover-based monetary fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account) on natural persons or legal entities that qualify as an undertaking or as an association of undertakings, as well as the members of those associations in cases where incorrect or misleading information is provided by the undertakings or associations of undertakings in a notification filed for exemption, negative clearance or the approval of a merger or acquisition, or in connection with notifications and applications concerning agreements made before the Competition Law entered into force.

Law stated - 11 May 2022

Which parties are responsible for filing and are filing fees required?

In principle, under the merger control regime, a filing can be made by either one of the parties to the transaction, or jointly. In case of filing by one of the parties, the filing party should notify the other party of the fact of filing.

There is no filing fee required under Turkish merger control proceedings.

Law stated - 11 May 2022

What are the waiting periods and does implementation of the transaction have to be suspended prior to clearance?

The Board, upon its preliminary review (Phase I) of the notification will decide either to approve or to investigate the transaction further (Phase II). It notifies the parties of the outcome within 30 days of a complete filing. In the absence of any such notification, the decision is deemed to be an approval, through an implied approval mechanism introduced by article 10(2) of the Competition Law.

While the timing in the Competition Law gives the impression that the decision to proceed with Phase II should be made within 15 days, the Board generally takes more than 15 days to form its opinion concerning the substance of a notification, and it is more sensitive about the 30-day deadline on announcement. Moreover, any written request by the Board for missing information will restart the 30-day period.

If a notification leads to an investigation (Phase II), it changes into a fully fledged investigation. Under Turkish law, the investigation takes about six months. If deemed necessary, this period may be extended only once, for an additional period of up to six months, by the Board.

Law stated - 11 May 2022

Pre-clearance closing

What are the possible sanctions involved in closing or integrating the activities of the merging businesses before clearance and are they applied in practice?

If a merger or acquisition is closed before clearance, the substantive test is the main issue for determination of the consequences. If the Board reaches the conclusion that the transaction significantly impedes effective competition in any relevant product market the undertakings concerned as well as their employees and directors will be subject to monetary fines and sanctions. In any case, a notifiable merger or acquisition not notified to and approved by the Board shall be deemed as legally invalid with all its legal consequences.

The wording of article 16 of the Competition Law envisages imposing a monetary penalty if merger or acquisition transactions subject to approval are realised without the approval of the Board. The monetary fine is 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision (if this is not calculable, the turnover generated in the financial year nearest to the date of the fining decision will be taken into account) in Turkey.

The liability for fines is on firms that are the acquirers in the case of an acquisition, and on both merging parties in the case of a merger. The minimum fine for 2022 is 47,409 lira.

Law stated - 11 May 2022

Are sanctions applied in cases involving closing before clearance in foreign-to-foreign mergers?

The foreign-to-foreign nature of the transaction does not prevent imposition of any administrative monetary fine (either for suspension requirement or for violation of article 7) in and of itself. In case of failure to notify (ie, closing before clearance), foreign-to-foreign mergers are caught under the Competition Law to the extent they affect the relevant markets within the territory of Turkey.

As an example, in the Sims Metal/Fairless decision (16 September 2009, No. 09-42/1057-269), where both parties were only exporters into Turkey, the Board imposed an administrative monetary fine on Sims Metal East LLC (ie, the acquirer) subsequent to first paragraph of article 16 of the Competition Law, totalling 0.1 per cent of Sims Metal East LLC's gross revenue generated in the fiscal year 2009, because of closing the transaction before obtaining the approval of the Board.

Similarly, the Board's Longsheng (dated 2 June 2011, No. 11-33/723-226), FLIR Systems Holding/Raymarine PLC (17 June 2010, No. 10-44/762-246) and CVRD Canada Inc (8 July 2010, No. 10-49/949-332) decisions are examples whereby the Board imposed a turnover-based monetary fine based on the violation of the suspension requirement in a foreign-to-foreign transaction.

Law stated - 11 May 2022

What solutions might be acceptable to permit closing before clearance in a foreign-to-foreign merger?

Under article 10 of Communiqué No. 2010/4, a transaction is deemed to be 'realised' (ie, closed) on the date when the change in control occurs. It remains to be seen whether this provision will be interpreted by the Competition Authority in a way that allows the parties to a notification to carve out the Turkish jurisdiction with a hold-separate agreement.

This has been rejected by the Board so far (eg, the Board's Total SA decision dated 20 December 2006 No. 06-92/1186-355, and CVR Inc-Inco Limited decision dated 1 February 2007 No. 07-11/71-23), the Board arguing that a

closing is sufficient for the suspension violation fine to be imposed, and that further analysis of whether a change in control actually took effect in Turkey is unwarranted.

Law stated - 11 May 2022

Public takeovers

Are there any special merger control rules applicable to public takeover bids?

The notification process differs for privatisation tenders. With regard to privatisation tenders, Communiqué No. 1998/4 of the Competition Board was replaced with Communiqué No. 2013/2 , entitled Communiqué on the procedures and principles to be pursued in pre-notifications and authorisation applications to be filed with the competition authority in order for acquisitions via privatisation to become legally valid.

According to Communiqué No. 2013/2, it is mandatory to file a pre-notification before the public announcement of tender and receive the opinion of the Board in cases where the turnover of the undertaking or the asset or service production unit to be privatised exceeds 30 million lira.

Further, the Communiqué promulgates that for the acquisitions to become legally valid through privatisation, which requires pre-notification to the Competition Authority, it is also mandatory to get approval from the Board. The application should be filed by all winning bidders after the tender but before the Privatisation Administration's decision on the final acquisition.

Law stated - 11 May 2022

Documentation

What is the level of detail required in the preparation of a filing, and are there sanctions for supplying wrong or missing information?

Communiqué No. 2022/2 requires a more complex notification form, which is similar to Form CO of the European Commission. One hard copy and one electronic copy of the merger notification form must be submitted to the Board.

Communiqué No. 2022/2 introduces a new sample notification form that aims to make the filings entirely digital. In parallel with the notion that only transactions with a relevant nexus to the Turkish jurisdiction will be notified, there has been an increase in the information requested, including the global relevant product markets that the parties operate in, globally overlapping markets and market-sharing data regarding such globally overlapping activities, data with respect to supply and demand structure, imports, potential competition and expected efficiencies.

Some additional documents are also required, such as the executed or current copies and sworn Turkish translations of some of the transaction documents, and annual reports, including the balance sheets of the parties, detailed organisational structure charts and, if available, market research reports for the relevant market. Bearing in mind that each subsequent request by the Board for incorrect or incomplete information will prolong the waiting period, providing detailed and justified answers and information in the notification form is to the advantage of the parties.

Law stated - 11 May 2022

Investigation phases and timetable

What are the typical steps and different phases of the investigation?

The Board, upon its preliminary review of the notification (ie, Phase I) will decide either to approve or to investigate the

transaction further (ie, Phase II). It notifies the parties of the outcome within 30 calendar days following a complete filing.

In the absence of any such notification, the decision is deemed to be an approval through an implied approval mechanism introduced with the relevant legislation. Any written request by the Board for missing information will stop the review process and restart the 30-calendar-day period at the date of provision of that information.

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 Board may extend this period once by up to six months.

In practice, only exceptional cases require a Phase II review, and based on our firm's experience in over 350 merger control filings, most notifications obtain a decision within 40 to 45 days of the original date of notification.

Neither the Competition Law 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.

Law stated - 11 May 2022

What is the statutory timetable for clearance? Can it be speeded up?

Pursuant to article 10 of the Competition Law, if the Board, upon its preliminary review of the notification, decides to further investigate the transaction, it shall notify the parties within 30 days (from the filing), and the transaction will be suspended, and additional precautionary actions deemed appropriate by the Board may be taken until the final decision is rendered.

Article 13(4) of Communiqué No. 2010/4 states that if the investigation is decided to be further investigated, provisions of articles 40 to 59 of the Competition Law shall be applied to the extent they are compatible with the relevant situation.

Regarding the procedure and steps of such an investigation, article 10 makes reference to sections IV (articles 40 to 55) and V (articles 56 to 59) of the Competition Law, which govern the investigation procedures and legal consequences of restriction of competition, respectively.

Law stated - 11 May 2022

SUBSTANTIVE ASSESSMENT

Substantive test

What is the substantive test for clearance?

The substantive test is a significant impediment of effective competition (SIEC) test under the Law No. 7246 on the Amendment to Law No. 4054 on the Protection of Competition (the Amendment Law) (article 9(1) of Law No. 4054 on the Protection of Competition, dated 13 December 1994 (the Competition Law)), similar to the approach under the European Commission Merger Regulation. With this test, the Competition Authority will be able to prohibit not only transactions that may create a dominant position or strengthen an existing dominant position, but also those that could significantly impede competition.

Although the Board has started to apply the relevant test in its decisions, it has not published detailed assessments pertaining to the implementation of the SIEC test; however, as the guidelines and secondary legislation has not been revise, and new guidelines have not been introduced as a result of the changes in the primary legislation, how the SIEC test will be incorporated remains unclear.

Having said that, in terms of creating or strengthening a dominant position, article 3 of the Competition Law defines

dominant position as:

Market shares of about 40 per cent and higher are considered, along with other factors, such as vertical foreclosure or barriers to entry, as an indication of a dominant position in a relevant product market.

Law stated - 11 May 2022

Is there a special substantive test for joint ventures?

The Turkish Competition Board (the Board) evaluates joint-venture notifications according to two criteria: existence of joint control in the joint venture, and the joint venture being an independent economic entity (ie, having adequate capital, labour and an indefinite duration).

In recent years, the Board has consistently applied the test of 'full-functioning' while determining whether the joint venture is an independent economic entity. If the transaction is found to bring about a full-function joint venture in view of the two criteria mentioned above, the SIEC test will be applied.

Additionally, under the merger control regime, a specific section in the notification form aims to collect information to assess whether the joint venture will lead to coordination. Article 13/III of Communiqué No. 2010/4 provides that the Board will carry out an individual exemption review on notified joint ventures that emerge as an independent economic unit on a lasting basis, but have as their object or effect the restriction of competition among the parties or between the parties and the joint venture itself. The wording of the standard notification form allows for such a review as well.

Law stated - 11 May 2022

Theories of harm

What are the 'theories of harm' that the authorities will investigate?

Unilateral effects have been the predominant criteria in the Competition Authority's assessment of mergers and acquisitions in Turkey. That said, in recent years, there have been a couple of exceptional cases where the Board discussed the coordinated effects under a 'joint dominance test' and rejected the transaction on those grounds (eg, the Board's Ladik decision, dated 20 December 2005 No. 05-86/1188-340).

Those cases related to the sale of certain cement factories by the Savings Deposit Insurance Fund. The Board evaluated the coordinated effects of the mergers under a joint dominance test and blocked the transactions on the ground that the transactions would lead to joint dominance in the relevant market. The Board took note of factors such as structural links between the undertakings in the market and past coordinative behaviour, in addition to entry barriers, transparency of the market and the structure of demand. It concluded that certain factory sales would result in the establishment of joint dominance by certain players in the market whereby competition would be significantly lessened.

Regarding one such decision, when an appeal was made before the Council of State ruled by mentioning, among other things, that the Competition Law prohibited only single dominance and therefore stayed the execution of the decision by the Board, which was based on collective dominance. No transaction has been blocked on the grounds of vertical foreclosure or conglomerate effects. A few decisions discuss those theories of harm.

Although no transaction has been blocked on the grounds of vertical foreclosure or conglomerate effects, in Toyota/ Vive decision (dated 6 April 2017, No. 17-12/143-63), the Board provided an assessment on the main factors that should be considered for the evaluation of the conglomerate concentrations. This decision is significant because the Board did not previously focus on conglomerate effects of transactions, although conglomerate effects were an

important issue for the European Commission in 2017 (eg, Qualcomm/NXP and Bayer/Monsanto).

The transaction concerns the acquisition of sole control over Vive BV by Toyota. While the parties to the transaction submitted that there would not be an affected market since their activities did not horizontally or vertically overlap in Turkey, the Board decided that the transaction would lead to a conglomerate concentration, given that the activities of the parties are complementary and substitute to each other. Accordingly, the Board asserted that foreclosing the market to competitors is realised through unilateral conduct in the form of tying, bundling and other exclusionary behaviours, and in addition to the market shares of the parties, the incentive and the ability to foreclose a market should be considered while assessing the existence of conglomerate effects.

Upon its review process, the Board ultimately decided that the market shares of the transaction parties and the market structures of the two relevant product markets would not give transaction parties the market power and ability to foreclose the market and granted an unconditional approval to the transaction.

Conglomerate effects were also analysed in the scope of the Luxottica/Essilor decision (dated 1 October 2018, No. 18-36/585-286) where the Board examined the possible leveraging effect of Luxottica's market power in the market for sunglasses and optical frames for the market for ophthalmic lenses. At the end of its review, the Board conditionally cleared the transaction based on certain structural commitments.

Further to the Amendment Law (article 9(1) of the Competition Law), the SIEC test allows for a more reliable assessment for unilateral and cooperative effects that might arise as a result of mergers or acquisitions, as it focuses more on whether and how much the competition is impeded as a result of a transaction.

Law stated - 11 May 2022

Non-competition issues

To what extent are non-competition issues relevant in the review process?

Mergers and acquisitions are assessed on the basis of competition criteria rather than public interest or industrial policies. In view of that, the Competition Authority has financial and administrative autonomy and is independent in carrying out its duties. Pursuant to article 20 of the Competition Law, no organ, authority, entity or person can give orders or directives to affect the final decisions of the Board.

Law stated - 11 May 2022

Economic efficiencies

To what extent does the authority take into account economic efficiencies in the review process?

Efficiencies that result from a concentration may play a more important role in cases where the activities of the parties overlap in Turkey, regardless of their combined market shares. Unlike the previous sample notification form, the new form introduced with the Amendment Communiqué does not allow for the omission of relevant sections of the notification form on efficiencies based on the parties' market shares in the affected markets.

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

Law stated - 11 May 2022

REMEDIES AND ANCILLARY RESTRAINTS

Regulatory powers

What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The powers of the Turkish Competition Board (the Board) during the investigation stage are very broad.

Article 9 of Law No. 4054 on the Protection of Competition, dated 13 December 1994 (the Competition Law) provides that if the Board establishes that article 4, 6 or 7 of the Competition Law is infringed, it may notify the undertaking or associations of undertakings concerned of a decision with regard to the actions to be taken or avoided so as to establish competition and maintain the situation before infringement and forward its opinion concerning how to terminate such infringement or the behavioural or structural measures. The new amendment to the Competition Law introduces 'first behavioural, then structural remedy' rule for article 7 violations.

Mergers and acquisitions prohibited by the Board are not legally valid, and the transaction documents are not binding and enforceable even if the 'closing' is done prior to the clearance.

Pursuant to article 13(5) of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4), authorisation granted by the Board concerning the merger and acquisition also covers the limitations that are directly related and necessary to the implementation of the transaction. The principle is that parties to the transaction should determine whether the limitations introduced by the merger or acquisition exceed this framework.

Furthermore, article 13(4) and article 14(2) of Communiqué No. 2010/4 stipulate that in its authorisation decision, the Board may specify conditions and obligations aimed at ensuring that any such commitments are fulfilled.

The Board may at any time re-examine a clearance decision and decide on the prohibition and application of other sanctions for a merger or acquisition if clearance was granted based on incorrect or misleading information from one of the undertakings, or the obligations foreseen in the decision are not complied with. In this case, the transaction shall be re-examined by the Board, which may decide on the prohibition and application of pecuniary sanctions.

Law stated - 11 May 2022

Remedies and conditions

Is it possible to remedy competition issues, for example, by giving divestment undertakings or behavioural remedies?

The Board may grant conditional approvals to mergers and acquisitions, and those transactions may be implemented provided that measures deemed appropriate by the Board are taken, and the parties comply with certain obligations.

In addition, the parties may present some additional divestment, licensing or behavioural commitments to help resolve potential issues that may be raised by the Board. These commitments are increasing in practice and may either be foreseen in the transaction documents or may be given during the review process or an investigation.

The parties can complete the merger before the remedies have been complied with; however, the merger gains legal validity after the remedies have been complied with.

Law stated - 11 May 2022

What are the basic conditions and timing issues applicable to a divestment or other remedy?

Article 14 of Communiqué No. 2010/4 enables the parties to provide commitments to remedy substantive competition law issues of a concentration under article 7 of the Competition Law. The parties may submit to the Board proposals for possible remedies either during the preliminary review or the investigation period. If the parties decide to submit the commitment during the preliminary review period, the notification is deemed filed only on the date of the submission of the commitment.

The commitment can be also served together with the notification form. In such a case, a signed version of the commitment that contains detailed information on the context of the commitment should be attached to the notification form.

Strategic thinking at the time of filing is somewhat discouraged through language confirming expressly that the review periods start only after the filing is made. This is already the current situation in practice, but now it is explicitly stated. The Board is now expressly given the right in Communiqué No. 2010/4 to secure certain conditions and obligations to ensure the proper performance of commitments.

Law stated - 11 May 2022

What is the track record of the authority in requiring remedies in foreign-to-foreign mergers?

There have been several cases where the Board has accepted remedies or commitments (eg, divestments) proposed to, or imposed by, the European Commission, as long as the remedies or commitments ease competition law concerns in Turkey (see, for example, Agilent-Varian , Decision No. 10-18/212-82 of 18 February 2010; Cookson/Foseco , Decision No. 08-25/254-83 of 20 March 2008; Bayer/Monsanto , Decision No. 18-14/261-126 of 8 May 2018; and Synthomer , Decision No. 20-08/90-55 of 6 February 2020).

Law stated - 11 May 2022

Ancillary restrictions

In what circumstances will the clearance decision cover related arrangements (ancillary restrictions)?

The conditions for successfully qualifying a restriction as an ancillary restraint are exactly the same as those applied in EU competition law; therefore, a restriction such as a non-compete obligation should be directly related and necessary to the concentration, should be restrictive only for the parties and proportionate. As a result, for instance, a restriction may be viewed as ancillary if its nature, geographic scope, subject matter and duration is limited to what is necessary to protect the legitimate interests of the parties entering into the notified transaction.

The Board's approval decision will be deemed to cover only the directly related and necessary extent of restraints in competition brought by the concentration (non-compete, non-solicitation, confidentiality, etc). This will allow the parties to engage in self-assessment, and the Board will not have to devote a separate part of its decision to the ancillary status of all restraints brought with the transaction anymore. If the ancillary restrictions are not compliant, the parties may face article 4, 5 and 6 examinations.

Law stated - 11 May 2022

INVOLVEMENT OF OTHER PARTIES OR AUTHORITIES

Third-party involvement and rights

Are customers and competitors involved in the review process and what rights do complainants have?

Pursuant to article 15 of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4), the Turkish Competition Board (the Board) may request information from third parties, including the customers, competitors and suppliers of the parties, and other persons related to the merger or acquisition. According to article 11(2) of Communiqué No. 2010/4, if the Competition Authority is required by legislation to ask for another public authority's opinion, this would cut the review period and restart it anew from day one.

Third parties, including the customers and competitors of the parties, and other persons related to the merger or acquisition may participate in a hearing held by the Board during the investigation, provided that they prove their legitimate interest.

Law stated - 11 May 2022

Publicity and confidentiality

What publicity is given to the process and how do you protect commercial information, including business secrets, from disclosure?

Communiqué No. 2010/4 introduced a mechanism in which the Competition Authority publishes the notified transactions on its official website , including only the names of the undertakings concerned and their areas of commercial activity; therefore, once notified to the Competition Authority, the existence of a transaction is no longer a confidential matter.

If the Board decides to have a hearing during the investigation, hearings at the Competition Authority are, in principle, open to the public. The Board may, on the grounds of protection of public morality or trade secrets, decide that the hearing shall be held in camera.

The main legislation that regulates the protection of commercial information is article 25(4) of Law No. 4054 on the Protection of Competition, dated 13 December 1994 and Communiqué No. 2010/3 on regulation of the right to access to file and the protection of commercial secrets (Communiqué No. 2010/3), which was enacted in April 2010.

Communiqué No. 2010/3 puts the burden of identifying and justifying information or documents as commercial secrets to the undertakings; therefore, undertakings must request confidentiality from the Board and justify their reasons for the confidential nature of the information or documents that are requested to be treated as commercial secrets. This request must be made in writing.

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

Finally, the final decisions of the Board are published on the website of the Competition Authority after confidential business information is taken out.

Under article 15(2) of Communiqué 2010/3, the Competition Authority may not take into account confidentiality requests related to information and documents that are indispensable to be used as evidence for proving the infringement of competition. In those cases, the Competition Authority can disclose such information and documents that could be considered as trade secrets by taking into account the balance between public interest and private

interest, and in accordance with the proportionality criterion.

Law stated - 11 May 2022

Cross-border regulatory cooperation

Do the authorities cooperate with antitrust authorities in other jurisdictions?

Article 43 of Decision No. 1/95 of the EC Turkey Association Council (Decision No. 1/95) authorises the Competition Authority to notify and request the European Commission (the Competition Directorate-General) to apply relevant measures if the Board believes that transactions realised in the territory of the European Union adversely affect competition in Turkey. Such provision grants reciprocal rights and obligations to the parties (EU-Turkey); thus, the European Commission has the authority to request the Board to apply relevant measures to restore competition in relevant markets.

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

Apart from that, the Competition Authority has international cooperation with several antitrust authorities in other jurisdictions. It also develops training programmes for cooperation purposes. In recent years, programmes have been organised for the board members of the Pakistani Competition Authority, top managers of the National Agency of the Kyrgyz Republic for Anti-Monopoly Policy and Development of Competition, members of the Mongolian Agency for Fair Competition and Consumer Protection and board members of the Turkish Republic of Northern Cyprus's Competition Authority.

Similar programmes have also been developed in cooperation with the Azerbaijan State Service for Anti-Monopoly Policy and Consumer Rights Protection, the State Committee of Uzbekistan on De-monopolisation and the Ukrainian Anti-Monopoly Committee. These programmes were held according to the bilateral cooperation agreements.

The Competition Authority's cooperation agreements can be found on its website. In April 2018, it entered into cooperation agreements with Kosovo, Macedonia and Serbia. Furthermore, it signed a cooperation protocol with the competition authorities of Azerbaijan in February 2020 and Morocco on 12 January 2021.

The Competition Authority has also organised the Istanbul Competition Forum in collaboration with the United Nations Conference on Trade and Development (UNCTAD) since 2019 to discuss debate a wide range of key and emerging competition law issues.

In 2021, the Competition Authority participated in the following programmes:

- the 'National Competitiveness Barometer Project' webinar, organised by the Russian Federal Antimonopoly Service Competition Council;
- the ESCWA-UNCTAD-OECD Competition Forum;
- the programme of statistical, Economic and Social Research and Training Centre for Islamic Countries titled 'Increasing the Capacity of Competition Authorities', organised by the Competition Authority and the Tunisian Competition Council;
- a webinar titled 'South-South Sharing of Policy Experiences on Platform Domination', organised by UNCTAD in collaboration with Public Citizen and Third World Network;
- online meetings of the Intergovernmental Expert Group on Competition Law and Policy, organised by UNCTAD;
- a cartel workshop organised by the International Competition Network Cartel Study Group; and
- a 'Global Forum', organised by the Organisation for Economic Co-operation and Development.

Law stated - 11 May 2022

JUDICIAL REVIEW

Available avenues

What are the opportunities for appeal or judicial review?

In accordance with Law No. 6352 , which took effect on 5 July 2012, the administrative sanction decisions of the Turkish Competition Board (the Board) can be submitted for judicial review before the administrative courts in Ankara by filing an appeal case within 60 days of receipt by the parties of the reasoned decision of the Board. Decisions of the Board are considered as administrative acts; thus, legal actions against them shall be taken in accordance with the Administrative Procedural Law .

In accordance with article 27 of the Administrative Procedural Law, filing an administrative action does not automatically stay the execution of the decision of the Board; however, upon request of the plaintiff, the court, by providing its justifications, may decide to stay the execution if the execution of the decision is likely to cause irreparable damages and the decision is highly likely to be against the law.

A significant development in competition law enforcement was the change in the competent body for appeals against the Board's decisions. The new legislation has created a three-level appellate court system comprising administrative courts, regional courts (appellate courts) and the High State Court. The regional courts will go through the case file both on procedural and substantive grounds and investigate the case file and make their decision considering the merits of the case. The decision of the regional court will be subject to the High State Court's review in exceptional circumstances, which are set forth in article 46 of the Administrative Procedure Law.

Law stated - 11 May 2022

Time frame

What is the usual time frame for appeal or judicial review?

The time frame for appeal to the Council of State against final decisions of the Board is 60 days starting from the receipt of the reasoned decision. The judicial review period before the Administrative Court usually takes about eight to 12 months.

After exhausting the litigation process before the Administrative Courts of Ankara, the final step for the judicial review is to initiate an appeal against the Administrative Court's decision before the regional courts. The appeal request for the administrative courts' decisions will be submitted to the regional courts within 30 calendar days of the official service of the justified (reasoned) decision of the administrative court.

Decisions of courts in private suits are appealable before the Supreme Court of Appeals. The appeal process in private suits is governed by the general procedural laws and usually lasts 24 to 30 months.

Law stated - 11 May 2022

ENFORCEMENT PRACTICE AND FUTURE DEVELOPMENTS

Enforcement record

What is the recent enforcement record and what are the current enforcement concerns of the authorities?

According to the Merger and Acquisition Status Report of the Competition Authority (for 2019), the Turkish

Competition Board (the Board) reviewed a total of 208 transactions. The transactions included 204 merger and acquisition transactions and one privatisation, three cases beyond the scope of merger control (ie, they either did not meet the turnover thresholds or fell outside the scope of the merger control system owing to lack of change in control) and two information notes. Among those transactions, two concentrations were taken into Phase II review, whereas three transactions were granted clearance after the submission of remedies.

With regard to 2020 , the Competition Board reviewed 220 transactions in total, including 190 mergers and acquisitions that were approved unconditionally, one decision that was approved conditionally, and one decision that was not approved. Twenty-eight were out of the scope of merger control (ie, they either did not meet the turnover thresholds or fell outside the scope of the merger control system owing to a lack of change in control).

With regard to 2021 , the Competition Board reviewed 309 transactions in total, including 277 mergers and acquisitions that were approved unconditionally, and three decisions that were approved conditionally. Twenty-nine were out of the scope of merger control (ie, they either did not meet the turnover thresholds or fell outside the scope of the merger control system owing to a lack of change in control).

Generally, the Competition Authority pays special attention to transactions in sectors where infringements of competition are frequently observed, and the concentration level is high. Concentrations that concern strategic sectors (eg, automotives, construction, telecommunications and energy) are under particular scrutiny.

The consolidated statistics regarding merger cases in 2021 show that transactions in the chemical and mining sector took the lead with 37 notifications, followed by the information technology and platform services sector with 32 notifications. The sector reports published annually by the Competition Authority also indicate concentration trends.

The Competition Authority handles transactions and possible concentrations in the Turkish cement and aviation sectors with particular scrutiny. There are a number of ongoing investigations in this sector.

It would also be accurate to report that the Competition Authority has a particular sensitivity to markets for construction materials; in addition to cement, markets for construction iron, aerated concrete blocks and ready-mixed blocks were investigated, and the offenders were fined by the Competition Authority.

To the extent that these decisions were also supported by worries over high levels of concentration, it would be prudent to anticipate that the Competition Authority will scrutinise notifications of transactions leading to a concentration in any one of the markets for construction materials.

Additionally, the Competition Authority published a sector inquiry in 2018 for the hazelnut sector and in 2019 for the fair organisation and hosting sector. The Competition Authority also made the following publications on the following dates:

- 5 February 2021 – its preliminary report on its sector inquiry on the fast-moving consumer goods sector;
- 7 May 2021 – its preliminary report on its sector inquiry on e-marketplace platforms;
- 9 December 2021 – its review report on financial technology in payment services;
- 11 March 2022 – its final report on the review regarding the fresh vegetable and fruit sector; and
- 14 April 2022 – its final report on the review regarding the e-marketplace platforms sector.

Law stated - 11 May 2022

Reform proposals

Are there current proposals to change the legislation?

Law No. 7246 on the Amendment to Law No. 4054 on the Protection of Competition (the Amendment Law) (article 9(1) of Law No. 4054 on the Protection of Competition) aims to embody the Competition Authority's more than 20 years of

enforcement experience and bring Turkish competition law closer to EU competition law. It is designed to be more compatible with how the law is being applied in practice and aims to further comply with EU competition law.

The most prominent changes introduced by the Amendment Law are:

- the SIEC test for mergers and acquisitions;
- behavioural and structural remedies for anticompetitive conduct;
- the de minimis principle for agreements, concerted practices or decisions of associations of undertakings;
- commitments or settlement mechanisms;
- clarification on the powers of the authority in on-site inspections; and
- clarification on the self-assessment procedure in the individual exemption mechanism.

Law stated - 11 May 2022

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

Amendment Law

Law No. 7246 on the Amendment to Law No. 4054 (the Amendment Law) introduces certain significant substantive and procedural changes to Law No. 4054 on the Protection of Competition (the Competition Law). It introduces new provisions related to the de minimis principle, on-site inspection powers, behavioural and structural remedies, and commitment and settlement mechanisms.

Among other provisions, the Amendment Law replaces the dominance test taken into consideration in merger control assessments under article 7 of the Competition Law with the SIEC test, clarifies the self-assessment procedure applied to individual exemption cases under article 5 of the Competition Law and grants the Competition Authority 15 more days to prepare its additional opinion in response to undertakings' second written defence in a fully fledged investigation under article 45 of the Competition Law.

Since the introduction of the Amendment Law, the majority of the newly introduced mechanisms and investigation methods have been clarified via the enactment of secondary legislation. The Competition Authority published:

- the Guidelines on the Examination of Digital Data during On-site Inspections on 8 October 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in electronic media and information systems during on-site inspections;
- the Regulation on the settlement procedure applicable in investigations on agreements, concerted practices and decisions restricting competition and abuses of dominant position on 15 July 2021, which set forth rules and procedures concerning the settlement process for undertakings that admit to the existence of a violation;
- the Communiqué on the commitments to be offered in preliminary inquiries and investigations concerning agreements, concerted practices and decisions restricting competition and abuse of dominant position on 16 March 2021, which set out principles and procedures in relation to commitments submitted by undertakings in order to eliminate competition problems; and
- the Communiqué on agreements, concerted practices and decisions and practices of associations of undertakings that do not significantly restrict competition on 16 March 2021, which set out the principles regarding the criteria to be used to identify the practices of the undertakings that can be excluded from the scope of the investigation.

Finally, with the new amendment introduced by Communiqué No. 2021/4 on Amendments to the Block Exemption Communiqué on Vertical Agreements, which was promulgated in the Official Gazette dated 5 November 2021, No. 31650 , the threshold regarding the supplier's market share of the markets for the contract goods has been lowered to 30 per cent.

Pursuant to Communiqué No. 2021/4, a six-month transition period will be implemented to ensure compliance with the new market share threshold, which would prevent article 4 of the Competition Law from applying to vertical restraints that currently benefit from the block exemption, based on the 40 per cent market share threshold. These vertical restraints were exempted until 5 May 2022, after which the parties may need to modify the agreement to comply with the new regulation.

Accordingly, only agreements of undertakings that have market shares below 30 per cent in the relevant product markets qualify for the block exemption under the Block Exemption Communiqué No. 2002/2 on Vertical Agreements; thus, if the relevant market shares of the undertakings in question exceed the 30 per cent threshold, the agreement automatically falls outside the scope of the block exemption rules. In that case, the relevant suppliers may not impose any kind of direct or indirect vertical restraints on buyers with respect to the goods or services covered by the agreements, unless an individual exemption is granted by a decision of the Board.

Merger control decisions

Danfoss/Eaton

In 2021, major merger control decisions concerning high-value transactions were taken by the Competition Authority.

A notable transaction concluded in 2021 was the Danfoss/Eaton Phase II Review decision of the Turkish Competition Board (the Board) (Decision No. 21-25/313-144 of 4 May 2021). The transaction concerns the acquisition of sole control over Eaton Corporation PLC's (Eaton) hydraulic business by Danfoss AS (Danfoss). The Board defined the following product markets in which the competition concerns are concentrated: the automation and control systems market, the hydraulic mobile valves market, the hydraulic mobile pumps market, the components for power steering for off-road vehicles market, the orbit motors market and the orbit engine market excluding hydraulic motors.

Following the preliminary examination, the Board decided to conduct a final examination in accordance with the first paragraph of article 10 of the Competition Law. The transaction was taken into a Phase II review by many authorities, including the EU Commission.

Subsequently, the parties presented a commitment package containing proposals for solutions, which were stated to resolve the competitive concerns. As a result, the transaction was conditionally approved by the Commission.

In addition, the parties submitted a letter containing explanations about the commitments and the effects of those commitments in Turkey to the Competition Authority. In accordance with the Board's assessment on the letter, the Board concluded that:

- there is technical substitutability between the hydraulic steering units models, which are planned to be divested within the scope of the commitments and the models that Danfoss will retain;
- it has been proposed that existing buyer agreements will also be transferred to the buyer of the divested business in a way that would enable it to compete with the combined entity's product range;
- the market share increment would be minimal in the market for hydraulic steering units as a result of the divestment in comparison with the increment in the absence of the commitments;
- the hydraulic steering units market in Turkey is import-based, and there are no significant entry barriers with regard to imports;
- there is a countervailing buyer power in the market; and

- global competitive pressure will increase after the divestment.

As a result of the commitments submitted by the parties to the Commission, it was decided that there is no possibility of effective competition being impeded in the relevant markets within the framework of article 7 of the Competition Law, and the Board approved the transaction.

Aon/WTW

In Aon/WTW (Board Decision No. 21-35/503-246 of 14 July 2021), which is another Phase II decision, the Board approved the transaction concerning the transfer of all shares of Willis Towers Watson Public Limited Company (WTW) to Aon PLC (Aon). After the preliminary examination, the Board decided to take the transaction into a Phase II review, in accordance with the first paragraph of article 10 of the Competition Law.

In the non-commercial reinsurance distribution market, which is one of the affected markets within the scope of the transaction, it was determined that two of the three largest undertakings will merge as a result of the transaction, the market in question is subject to the highest concentration in respect of the transaction at hand, and significant competitive power will be lost from the market following the transaction; thus, the Board evaluated that the transaction may cause significant competitive restrictions.

While the Phase II review was in progress, the parties submitted to the European Commission a text committing to transfer WTW's global non-commercial reinsurance business, including the treaty and discretionary reinsurance businesses, to a third party. The Board evaluated that the commitments submitted by the parties to the Commission essentially cover Turkey.

Following the realisation of the commitments, it was deemed that there would be no possible anticompetitive effects in the relevant market concerning the transaction in Turkey, and the Board approved the transaction.

EssilorLuxottica/HAL

In EssilorLuxottica/HAL (Board Decision No. 21-30/395-199 of 10 June 2021), the Board reviewed the acquisition by EssilorLuxottica SA (EssilorLuxottica) of the shares indirectly owned by HAL Holding NV(HAL) in GrandVision NV (GrandVision).

EssilorLuxottica is active in Turkey in the markets regarding the manufacture and wholesales of stock lenses, wholesales of RX lenses, wholesales of branded sunglasses, wholesales of branded prescription optic glass frames, the manufacture and distribution of ophthalmic machinery, equipment and consumables, and retail sales of optic products. GrandVision is active in Turkey in the market for retail sales of optic products. Accordingly, the activities of the parties horizontally overlap in the market for retail sales of optic products, while the other activities of the parties vertically overlap in terms of the remaining markets.

The Board determined that EssilorLuxottica was in a dominant position in the markets for wholesales of branded sunglasses and wholesales of ophthalmic lenses, and held significant market power in the remaining markets in which it operates. It determined that following the consummation of the proposed transaction, it would have a strong and leading position at the retail level, as well in respect of a vertically integrated structure. The transaction was approved by the Board on the basis of the behavioural remedies submitted to alleviate the competitive concerns that may arise in the respective relevant markets.

Law stated - 11 May 2022

Jurisdictions

Albania	Wolf Theiss
Australia	Allens
Austria	Freshfields Bruckhaus Deringer
Belgium	Freshfields Bruckhaus Deringer
Bosnia and Herzegovina	Wolf Theiss
Brazil	TozziniFreire Advogados
Bulgaria	Boyanov & Co
Canada	McMillan LLP
China	Freshfields Bruckhaus Deringer
Colombia	Posse Herrera Ruiz
Costa Rica	Zurcher Odio & Raven
Croatia	Wolf Theiss
Cyprus	Antoniou McCollum & Co LLC
Czech Republic	Nedelka Kubáč advokáti
Denmark	Kromann Reumert
Ecuador	Bustamante Fabara
Egypt	Zulficar & Partners
European Union	Freshfields Bruckhaus Deringer
Faroe Islands	Kromann Reumert
Finland	Roschier, Attorneys Ltd
France	Freshfields Bruckhaus Deringer
Germany	Freshfields Bruckhaus Deringer
Ghana	Bentsi-Enchill Letsa & Ankomah
Greece	Vainanidis Economou & Associates
Greenland	Kromann Reumert

India	Shardul Amarchand Mangaldas & Co
Indonesia	ABNR
Ireland	Matheson
Italy	Freshfields Bruckhaus Deringer
Japan	Freshfields Bruckhaus Deringer
Liechtenstein	Sele Frommelt & Partner Attorneys at Law
Malta	Camilleri Preziosi
Mexico	Castañeda y Asociados
Morocco	UGGC Avocats
Netherlands	Freshfields Bruckhaus Deringer
New Zealand	Russell McVeagh
Norway	Wikborg Rein
Pakistan	Axis Law Chambers
Peru	Payet Rey Cauvi Pérez Abogados
Poland	WKB Wiercinski Kwiecinski Baehr
Portugal	Gomez-Acebo & Pombo Abogados
Romania	Wolf Theiss
Saudi Arabia	Freshfields Bruckhaus Deringer
Serbia	Wolf Theiss
Singapore	Drew & Napier LLC
Slovakia	Wolf Theiss
Slovenia	Wolf Theiss
South Korea	Bae, Kim & Lee LLC
Spain	Freshfields Bruckhaus Deringer
Sweden	Mannheimer Swartling

Taiwan	Yangming Partners
Thailand	Weerawong, Chinnavat & Partners Ltd
Turkey	ELIG Gurkaynak Attorneys-at-Law
Ukraine	Asters
United Arab Emirates	Freshfields Bruckhaus Deringer
United Kingdom	Freshfields Bruckhaus Deringer
USA	Davis Polk & Wardwell LLP
Vietnam	Freshfields Bruckhaus Deringer
Zambia	Corpus Legal Practitioners