



### ***Coordination Effects: Global Relations Between the Parent Companies Under Review***

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Under the Turkish merger control regime, a specific section in the notification form aims to collect information to assess whether the joint venture will lead to coordination. Pursuant to Article 13(3) of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (the “**Communiqué No. 2010/4**”), “*formation of a joint venture which has the object or effect of limiting competition among undertakings and which would permanently fulfill all of the functions of an independent economic entity shall also be assessed within the framework of Articles 4 and 5 of the Law No. 4054*”. Against this background, the Turkish Competition Board (the “**Board**”) would carry out an individual exemption review on notified joint ventures that have as their object or effect the restriction of competition among the parties or between the parties and the joint venture itself.

Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Requiring the Approval of the Competition Board (the “**Amendment Communiqué**”) which was entered into force on May 4, 2022 introduced an updated sample notification form template. In this respect, in case of any overlaps between the parties concerning Turkey, regardless of their market shares in such market(s), the new sample notification form template not only seeks detailed information on the competitive landscape of the market(s), but also explicitly requests information on the relevant product and geographical market(s) that the Parties to the transactions and the undertakings concerned operate in, affected market(s) and market share data regarding such market(s), on a global scale as well. As opposed to the former sample notification form which essentially requested information concerning Turkey, the updated notification form now requires detailed information (i.e. information about the supply-demand structure, entry barriers, customers-suppliers, new entrants, etc.) on the competitive landscape of the affected markets on a global scale.

Similarly, Section 4 of the notification form is needed to be completed if the notification concerns a joint venture which operates in the same market or in the downstream or upstream market with at least two of its parent undertakings. Section 4 thus relates to the possibility of coordinative effects that could arise from the notified transaction and if and how the transaction fulfills the criteria for individual exemption, in cases where such coordination risks are existent. To that end, while evaluating a proposed transaction and its competitive effects, the Board takes the relation between parent undertakings and the joint venture into consideration within the scope of its assessments regarding the affected market(s). To the extent there is any affected market(s) that would arise as a result of the proposed transaction would, the Board also evaluates coordinated effects between the parent undertakings and joint venture in Turkey while conducting its assessment. However, the Board may opt to evaluate the global coordination effects only between the parent undertakings which a proposed transaction might lead to even

where the proposed transaction does not lead to any affected markets although this information is not explicitly requested within the uniformed notification form.

Recently it has been observed that there has been shift in the focus of the Competition Authority with respect to joint ventures. This shift in focus is reflected on the parties by way of receiving further questions on certain aspects such as the parent companies' worldwide activities and any possible horizontal and/or vertical overlaps between the parent companies' global activities.

In its *KKR/Körber* (22-04/51-21; 19.01.2022) decision, the Board stated that the main concern underlying article 13 of the Communiqué No. 2010/4 was the risk of coordination between parent undertakings through the establishment of a joint venture. In this respect, the Board explained that, for a joint venture to have an anticompetitive purpose or effect, the parent companies should be competitors with *each other* or with the joint venture. Based on this framework, the Board evaluated the transaction concerning the acquisition of joint control over Körber Supply Chain Software Management GmbH by KKR and Körber Group. The Board first stated that there was no overlap between the activities of the parent companies or between the activities of the joint venture and the parent companies in Turkey or *globally*. As there were no relations whatsoever between the joint venture parties, the Board concluded that the transaction would not have any coordination risk that may result in a restriction of competition in a significant part of the relevant market, thereby granting unconditional approval to the transaction.

In *PSA/Stellantis/Total/MBAG* (22-07/106-40; 03.02.2022), the Board stated that no overlap existed within Turkey, given that ACC, the joint venture, did not have any operations in Turkey and those potential horizontal and vertical relationships that may occur globally would not create an affected market in Turkey. The Board further assessed global potential horizontal relationships between the transaction parties Stellantis and Daimler, in the passenger cars, light commercial vehicles and electric vehicles markets. The Board concluded that by taking into account the market shares of the transaction parties in the relevant markets and considering that there would be no significant increase in the total market share of the parties as a result of the transaction, the transaction would not cause anticompetitive effects in the relevant markets. Therefore, the Board ultimately granted unconditional approval to the proposed transaction.

In the Board's *Saudi Arabian Industrial Investments/SeAH Changwon* decision (22-12/182-76; 10.03.2022), concerning the creation of a full-functional joint venture between SEAH and DUSSUR, even before it assessed the affected markets arising out of the proposed transaction between the parent companies and the prospective joint venture, the Board first evaluated the global activities of the parent companies. In this respect, based on the information provided in the merger control filing; SEAH was a South Korean company engaged in the production of stainless steel bars and wires made of high-quality special steel materials while Dussur, was a company engaged in investments in industrial sectors, including the ownership, development, construction, use, maintenance, sale, purchase, leasing and leasing of immovable and tangible and intangible fixed assets for the development of multi-transformation industries. Accordingly, the Board concluded that there was no relation between the parent companies of the joint venture on a global scale and then proceeded with its assessment of the overlaps between the joint venture and its parent companies on a global scale as well. As the Board found that the transaction would not lead to any competitive concerns, the Board unconditionally approved the transaction.

In the Board's *Fractal/Apax/TPG* decision (22-09/131-51;17.02.2022), regarding the acquisition of joint control over Fractal by TPG and AP, the Board first stated that since Fractal did not have any activities or assets in Turkey there was no affected market in Turkey had emerged as a result of the notified transaction. Against this background, the Board further evaluated the activities of the joint venture parents AP and TPG and concluded that there was no horizontal or vertical overlap between the activities of Rodenstock, controlled by AP, and Beaver-Visitec, controlled by TPG, in Turkey or worldwide; both companies operated broadly in the "ophthalmic" sector but focused on different segments of the sector; similarly, there was no horizontal or vertical overlap between the activities of Lutech, controlled by AP, and Digital. ai, controlled by AP and Digital. ai, controlled by TPG, which had activities in the field of Information Technologies. In this respect, the Board found that there was no horizontal or vertical overlap between their activities in Turkey or globally; both companies were found to operate broadly in the "information technologies" sector but focused on different segments of the sector. In line with these assessments, the Board concluded that the transaction would not have any anti-competitive effects and therefore unconditionally approved the proposed transaction.

The Board's *Nippon/Mitsui* decision (21-54/756-377; 04.11.2021) constitutes another example where the Board evaluated global coordination effects between the parent companies. The proposed transaction concerned the acquisition of joint control over Mitsui Bussan by Nippon Steel Trading Corporation and Mitsui&Co., Ltd. The Board evaluated the potential overlap of the parent companies at a global scale for both the textile market, which the prospective joint venture would operate in Turkey, as well as the steel products market. In its evaluation regarding global overlap between the parent companies in the steel products market, the Board looked only at the parent companies' activities and stated that while a horizontal overlap existed between the parent companies' activities, taking into account the combined market share of the undertakings, as well as the number of competitors, the Board decided that no increase in market concentration would occur. The Board concluded that the overlap at the global scale was limited and would not have any negative impact on the Turkish market, thus granting unconditional approval to the proposed transaction.

In light of the recent decisional practice of the Board, one could conclude that while evaluating the coordination effects between the parent undertakings of a proposed joint venture transaction, the Board may take a wider approach and assess the relationship between the parent companies on a global scale although this information is not explicitly requested within the uniformed notification form. All in all, while only time will shed further light on how this approach of the Board will unfold, as of now, based on its recent decisions, in certain instances the possibility that the Board may opt to assess the coordination effects between the parent companies in a wider sense could not be excluded.

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