



Turkish Competition Board Imposes Administrative Monetary Fine for Gun-Jumping During Phase II Review

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(1) Introduction

The Turkish Competition Board (the “**Board**”) imposed an administrative monetary fine on Yılmaz Family for implementing its acquisition of sole control over Kartek Holding A.Ş. (“**Kartek**”) through Param Holding International Coöperatief U.A. (“**Param**”) before obtaining the Board’s approval.¹ Further to the complaints lodged by third parties before the Turkish Competition Authority (the “**Authority**”) that Param already started to exercise control over Kartek while the Board’s review of the transaction is ongoing, the Authority conducted on-site inspections at the premises of Param, Kartek and their subsidiaries. Based on the evidence obtained during the on-site inspections, the Board determined that the transaction was closed while the Board’s review was ongoing and imposed an administrative fine on Yılmaz Family, who ultimately controls Param. The transaction was eventually conditionally approved by the Board subject to behavioural commitments submitted by Param during Phase II review.² The decision stands out for being a rare case of gun-jumping decision during Phase II review as well as the Board’s thorough analysis of Param’s practices that led to the acquisition of control over Kartek prior to obtaining the Board’s approval.

(2) Background of the Transaction and the Authority’s Review

The transaction involved the acquisition of sole control over Kartek by Param. The transaction was notified to the Authority on 29 August 2023. During the Authority’s review process, Param submitted a set of commitments on 19 February 2024 in an effort to secure approval. The Authority initiated a Phase II review regarding the transaction on 14 March 2024. Meanwhile, multiple third-party complaints were filed with the Authority alleging that Param had already

¹ The Board’s Param/Kartek decision dated 04.04.2024 and numbered 24-16/390-148.

² The Board’s decision dated 27.12.2024 and numbered 24-56/1241-531.

started implementing the transaction. These complaints prompted the Authority to conduct on-site inspections on 29 February 2024 at the premises of Param, Kartek and their subsidiaries.

(3) Decisional Practice of the Board Regarding Actions That Could Amount to Violation of Suspension Requirement

The parties to a transaction could prefer to proceed with certain procedural/preparatory steps prior to obtaining the Board's approval decision to facilitate a swift transition/closing process as long as these steps do not result in the exercise of decisive influence/control prior to the approval decision of the Board. Unlike the decisions of the General Court and the European Court of Justice in Canon³, Altice⁴ and Ernst & Young⁵, the precedent of the Board and/or the Turkish administrative courts does not provide detailed guidance on whether standstill obligation can be extended to actions not contributing to the implementation of a concentration. Although Law No. 4054 on the Protection of Competition ("*Law No. 4054*") or the secondary legislation do not provide an exhaustive or exemplary list of actions that could amount to violation of suspension requirement, the Board's decisional practice involving gun-jumping cases provide guidance on this front. According to the Board's previous decisions, actions like shared infrastructure, board appointments, or customer engagement can be assessed as indicators of violation of suspension requirement.

In Ajans Press/PR Net⁶, the Board determined that Ajans Press acquired control over PR Net before the Board's approval decision on the grounds that (i) PR Net moved to the building where Ajans Press is seated, (ii) Ajans Press intervened in matters such as choosing PR Net's telephone numbers and broadcast subscriptions, (iii) PR Net network worked within Ajans Press' network, (iv) PR Net personnel exchanged correspondences with Interpress, which is within the same economic entity as Ajans Press, (v) PR Net personnel had a meeting at a specific time upon the directive of the owner of Ajans Press, (vi) customer share lists have been prepared and joint studies have been arranged, and (vii) production sources has been shared.

Similarly in Cegedim/Ultima⁷, the Board highlighted that the transaction was realized prior to the Board's approval based on the facts that vice chairman of Cegedim has been appointed to the board of directors of Ultima as the representative of Cegedim before the Board's decision

³ Judgment of the General Court of 18 May 2022, Canon Inc. v European Commission, T-609/19.

⁴ Judgment of the Court of Justice of 09 November 2023 - Altice Group Lux v Commission, C-746/21 P.

⁵ Judgment of the Court of Justice of 31 May 2018 - Ernst & Young P/S v Konkurrenserådet, C-633/16.

⁶ The Board's Ajans Press/PRNet decision dated 21.10.2010 and numbered 10-66/1402-523.

⁷ The Board's Cegedim/Ultima decision dated 26.08.2010 and numbered 10-56/1089-411.

and Cegedim intervened to Ultima's invoicing procedures, reviewed the agreements of its employees, collected employee information and considered printing business cards for them.

Following a complaint by third parties, the Board reviewed in Boyner/YKM⁸ whether (i) the target's orders are cancelled, (ii) the acquirer decides to integrate its own organizational structure into the target's stores, (iii) the acquirer obtains the resumes of the target's employees and executives, (iv) the target dismisses its employees upon the acquirer's decision, (v) the target refrained from renting a store in an area where the acquirer and the target competed with each other because the acquirer undertaking was de facto included in the management of the target, (vi) the acquirer telephonically informs shopping malls about the acquisition, and (vii) whether it requests, forces or warrants oral commitments about modifications on store signboards. However, the Board could not obtain any evidence showing that Boyner played a decisive role in YKM's business decisions prior to the Board's approval.

Similarly in Taxim Capital/Doğanay⁹, the Board reviewed whether Taxim Capital had been able to exercise decisive influence over the decisions concerning the determination of the prices of Doğanay's products prior to the Board's approval. Although the Board has detected a price increase of the products in question subsequent to the discussions between the executives/employees of Doğanay and Taxim Capital via WhatsApp, the Board remarked that the findings are not enough to reach a conclusive outcome as to whether Taxim Capital was able to exercise decisive influence over Doğanay's prices.

To that end, based on the decisional practice of the Board, the following actions taken by the transaction parties prior to obtaining the Board's approval might lead to acquisition of control and result in the violation of suspension requirement: (i) essential business decisions of the target being subject to the written or verbal instruction/approval of the acquirer, (ii) ceasing the target's R&D activities or preventing the progress of such activities, (iii) target's assets being used or utilized by the acquirer, (iv) management and operations including offers and discounts to customers and decisions related to employees being handled by the acquirer, (v) contracts to be signed with customers being reviewed and approved by the acquirer, (vi) exchange of sensitive information such as prices, terms of contract and discounts, (vii) combination of sales teams, (viii) transaction parties informing the customers that they are acting on behalf of each other, (ix) representatives of the acquirer being present in the board of directors of the target,

⁸ The Board's Boyner/YKM decision dated 20.09.2012 and numbered 12-44/1359-M.

⁹ The Board's Taxim Capital/Doğanay decision dated 29.04.2021 and numbered 21-24/280-125.

(x) the target's customers being served by the acquirer, (xi) the acquirer intervening with the target's invoices and transactions, (xii) review of employee contracts by the acquirer, and (xiii) payment of due debts by the acquirer.

(4) The Board's Analysis as to Whether Param Acquired Control Over Kartek prior to the Approval Decision

According to the evidence obtained during the on-site inspections, Param was directly involved in the promotion, dismissal, and recruitment of personnel of Paycore (i.e. Kartek's subsidiary) and Param's own evaluation systems were used within Kartek's HR processes. The findings obtained by the Authority also revealed that staff changes and team performance were effectively supervised by Param, and Param executives participated in strategic meetings and exercised influence over financial planning and compensation. Several findings illustrate that Param and Kartek jointly managed customer communications and business offers. In some cases, Param was positioned as the lead entity in communications with third parties. The Board also established that Param employees had full VPN access to Paycore's IT systems, including file servers and internal software. In addition, Paycore's social media and web management were delegated to Param teams. Internal correspondence included explicit references indicating Kartek became a Param company and Param officials attending board meetings of Paycore. It was also understood from the evidence that Param had a say in various business processes including supplier selection, financial approvals, and even promotional budget allocations.

In light of the documents obtained during the on-site inspections, the Board found that (i) a senior executive at Kartek was appointed by Param, (ii) Param participated in Kartek's internal management meetings, (iii) Param played a significant role in decisions concerning employee promotions, salary increases, and the selection of Kartek's payroll bank, acting as the final decision-maker on such matters, (iv) the two companies jointly managed employee transfers, (v) Param and Kartek jointly developed marketing and sales strategies, (vi) Param took part in Kartek's customer meetings, and both undertakings acted as though they belonged to the same economic unit before customers, (vii) Param was involved in Kartek's day-to-day business operations, including invoice processing, procurement, social media management, and debt-related payment planning, (viii) Param personnel held active user accounts on Kartek's internal systems, and (ix) Param provided employees to Kartek in support of systemic and operational processes.

To that end, the Board determined that these practices are aimed at exercising decisive influence over Kartek and therefore Yılmaz Family (i.e. the ultimate controller of Param) acquired de facto control over Kartek. The Board further assessed that given that Yılmaz Family realized/closed the transaction before obtaining the Board's approval, Yılmaz Family should be subject to an administrative monetary fine for the violation of suspension requirement. As a result, the Board imposed an administrative monetary fine on Yılmaz Family corresponding to 0.1% of Yılmaz Family's annual Turkish turnover in its 2022 financial year for closing the transaction before obtaining the approval decision of the Board as per Article 16(1) of Law No. 4054.

(5) Practical Takeaways for Pre-Closing Conduct

Param/Kartek provides a practical reference point for future transactions where the parties may seek to engage in certain pre-closing transaction steps. In the absence of an exhaustive list of practices under Turkish merger control regime, even indirect actions such as shared employee access, technical assistance, or marketing coordination may be considered as evidence of exercising decisive influence over the strategic business decisions of target entities.

While the Param/Kartek decision does not address board-level appointments, it illustrates how the Authority may assess the pre-closing nomination of key executives/senior officers as potential indicators of gun-jumping. Where such appointments are made unilaterally by the acquiring party rather than through the target's existing governance mechanisms, they may be viewed as a violation of the suspension requirement. Based on the Board's reasoning and past practice, transaction parties should be mindful of the following when managing pre-closing behaviour:

Transaction parties should refrain from any conduct that may indicate premature integration, including granting access to internal systems or infrastructure (such as VPN, file servers, or planning tools); intervening in HR matters like promotions, evaluations, or dismissals; managing operational or financial decisions (including budgeting, pricing, procurement, or contracts); initiating joint branding or customer communication efforts; referring to the target as part of the acquiring group in any internal or external correspondence; unilaterally appointing key personnel before clearance, or informing the target's clients about the transfer of its contracts to the acquirer.

Generally acceptable steps include non-operational integration planning (e.g. for IT systems or branding), regulatory and due diligence preparations that do not concern business conduct, and

controlled project coordination efforts overseen by clean teams with strictly limited access and compliance documentation. In order to protect the value of the target entity until closing, the transaction parties may also agree that contracts to be entered into by the target prior to closing whose value exceed a certain threshold and which fall outside the ordinary course of the business of the target are subject to the approval of the acquirer. However, the parties should be cautious about determining an adequate monetary threshold/value for such contracts based on the business parameters of the target to make sure this arrangement only covers the contracts that fall outside the ordinary course of the business of the target.

(6) Conclusion

Param/Kartek decision will likely serve as a foundational reference point in future cases dealing with early implementation of notifiable transactions in Türkiye. Transaction parties, legal advisors, and investors should take note of the enforcement risk posed by seemingly informal or practical integration steps during pending reviews. The decision is a clear call for heightened compliance discipline during the standstill period, especially in sensitive and fast-evolving sectors such as financial technologies which are closely scrutinized by the Board.

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