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The Turkish Competition Board Approves the Acquisition of Koçsistem's E-Transformations Assets Despite Competitive and Data Access Concerns *(Logo / Koçsistem)*

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Reference: Turkish Competition Board, *Logo / Koçsistem*, Case No. 24-24/577-243, Decision, 4 June 2024 (Turkish)

This case summary aims to offer insight into Logo/KoçSistem [1] ("Decision") of the Turkish Competition Board ("Board"). In the Decision, the Board evaluated the acquisition of the intellectual property rights related to e-transformation software products provided by KoçSistem Bilgi ve İletişim Hizmetleri AŞ ("KoçSistem") by Logo Yazılım Sanayi ve Ticaret AŞ ("Logo") within the scope of Software Economic Rights Transfer and License Agreement ("Agreement"). Pursuant to the Agreement, the economic rights pertaining to KoçSistem's in-house (on-premises) e-invoice, e-dispatch note, e-ledger, and e-receipt software integrated with the Turkish Revenue Administration ("GİB"), as well as the "SAP Cloud Connector" software will be transferred, while the moral rights will be licensed on a perpetual and exclusive basis. Following its assessment, the Board unconditionally approved the notified transaction.

Background and Relevant Product and Geographic Markets

The Turkish Competition Board ("Board") first assessed the activities of the acquirer, Logo, as well as the scope of the transferred assets in the context of the transaction.

Logo is a publicly held company engaged in software development and marketing services in Turkiye, Romania, Germany, and India, catering to a broad base of international clients. Logo's primary service offerings include enterprise resource planning, human resources management, customer relationship management, warehouse management systems business analytics, cloud-based document management, budgeting, data analysis, B2B management, sales management, service-oriented architecture, and software as a service. In addition, Logo provides e-transformation services in Turkiye, including e-invoice, e-archive invoice, e-dispatch note, and e-ledger solutions.

Regarding the activities of KoçSistem, the Board noted that the undertaking offers e-transformation services exclusively in Turkiye, including e-invoice, e-dispatch note, e-ledger, and SAP Cloud Connector software.

In its evaluation of the relevant product market within the scope of the Logo / KoçSistem transaction, the Board first addressed the legal framework applicable to the transferred assets, which pertain to e-transformation software. Under Turkish legislation, e-transformation services, such as the issuance, storage, and transmission of electronic documents like e-invoices and e-ledgers, must comply with the technical standards set by the Turkish Revenue Administration ('Gelir İdaresi Başkanlığı' or "GIB"). These services may be provided through one of three methods: the GIB Portal, integration via authorized private integrators, or direct integration with the GIB's systems.

The Board emphasized that both Logo and KoçSistem operate as authorized private integrators and that the transaction entails the transfer of KoçSistem's intellectual property rights related to this software. As such, the Board underlined that authorized private integrators must obtain a license from the GIB, subject to meeting certain technical and administrative requirements, which allows them to function as intermediaries facilitating the generation of electronic records such as e-invoices, e-ledgers, e-archive invoices, and e-tickets by taxpayers.

The Board further highlighted that the transaction gives rise to a horizontal overlap in the market for e-transformation solutions/software, as both Logo and KoçSistem are active in this area in Turkiye. Although in its previous decisions the Board has, on occasion, segmented the market based on the method of service delivery (i.e., GIB Portal, authorized private integrator, or direct integration), in this particular case, it found that these methods are substitutable from the end-user's perspective. Accordingly, the Board opted not to further segment

1. Decision of the Board dated 04.06.2024, and numbered 24-24/577-243

the market and defined the relevant product market broadly as the e-transformation/software market.

As for the relevant geographic market, the Board determined the relevant geographic market as "Turkiye", taking into account that the e-transformation software subject to the transaction, offered by both Logo and KoçSistem, is developed in accordance with local legislation and can be provided across the entire country without any regional limitation.

Assessment of the Nature of the Transaction

Based on the turnover information submitted within the scope of the file, and pursuant to the agreement executed between Logo and KoçSistem, the intellectual property rights related to KoçSistem's e-transformation software will be transferred to the control of Logo. As a result of the transaction, KoçSistem will exit the relevant market, the associated economic rights will be transferred, and the moral rights will be exclusively and perpetually licensed to Logo. However, the transaction expressly excludes KoçSistem's existing customer base, which will remain with KoçSistem and does not form part of the transfer.

Accordingly, the Board assessed whether the transaction qualifies as an acquisition within the meaning of Article 7 of Law No. 4054 on the Protection of Competition ("Law No. 4054") and Article 5 of the Communiqué on Mergers and Acquisitions Requiring the Authorization of the Competition Board ("Communiqué No. 2010/4"). The Board recalled that a transfer of assets may constitute a merger if the transferred assets form part of an undertaking to which a market turnover can be attributed. In this regard, the Board concluded that the e-transformation software subject to the transaction represents a revenue-generating unit and, therefore, qualifies as an attributable part of an undertaking. Consequently, the transfer of the e-transformation software and the associated intellectual property rights from KoçSistem to Logo results in a lasting change of control over part of KoçSistem's business activities.

Furthermore, upon reviewing the turnovers of the transaction parties, the Board determined that sector-specific jurisdictional turnover threshold exception set forth under Article 2/2 of Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Requiring the Approval of the Competition Board, should be applied to KoçSistem's e-transformation software since it falls under the exempted sectors illustrated in Article 4(1)(e) of Communiqué No. 2010/4. Accordingly, the transaction falls within the scope of the exception applicable to certain sectors, whereby the local turnover threshold (i.e. TL 250 million turnover threshold) for the target undertaking does not need to be met. In this context, the Board concluded that the transaction satisfies the relevant notification thresholds and is therefore subject to mandatory notification pursuant to Article 7(1)(a) of Communiqué No. 2010/4.

Assessment of Horizontal and Vertical Overlaps

In assessing the horizontal and vertical aspects of the transaction, the Board first identified that both Logo and KoçSistem are active in the provision of e-transformation solutions/software, offering similar services such as e-invoice and e-dispatch note functionalities. This overlap creates a horizontal overlap between the parties, and the notified transaction was thus found to give rise to an overlap.

Subsequently, the Board examined the existence of any vertical relationship between the parties and concluded that there is a potential for integration between KoçSistem's e-transformation software and Logo's ERP software. This would create a vertical relationship between Logo's upstream activities in the ERP software market and KoçSistem's downstream operations in the e-transformation software market.

With respect to the horizontally overlapping market, the Board analysed the market shares of the parties, the revenue levels of their competitors, the number of active undertakings, and the overall size of the market. Despite Logo's relatively strong position, the Board noted that its market share has remained stable over time and that a significant number of competitors continue to operate in the market. As such, the Board concluded that the transaction is unlikely to give rise to horizontal competition concerns, and does not result in a significant impediment to effective competition.

As to the vertical relationships, the Board assessed the risks of input foreclosure, customer foreclosure, and access to competitively sensitive information. Regarding input foreclosure, the Board is concerned that following the transaction, providers of competitor e-transformation software could not access to Logo's ERP software which may create a market closure effect. With this regard, the Board examined the ERP software services market as well as Logo and its competitors. Thus the Board found the likelihood of concern to be low, as the ERP software market includes a wide array of alternative providers that allow for integration with e-transformation software, thereby mitigating the risk of input foreclosure.

Turning to customer foreclosure, the Board considered whether Logo could limit competition in the upstream ERP software market by restricting the integration of the transferred e-transformation software with ERP products offered by rival undertakings. The Board concluded that, even under a conservative scenario where integration with other ERP systems is limited, numerous alternative e-transformation service providers would remain available in the market. Therefore, the transaction is not expected to lead to customer foreclosure concerns.

Assessment of the Complaints Against Transaction

Lastly, the Board addressed concerns related to access to competitively sensitive information, particularly information regarding competitors operating in the upstream and downstream markets. Upon the notification of the transaction to the Board, an complaint was submitted to the Authority, claiming that business-issued invoices contain sensitive data, such as customer names, addresses, and sales details, that qualify as trade secrets that should not be accessible to competitors will be obtained by the Logo if the transaction is approved. Therefore, it was requested that the transaction be conditionally approved subject to commitments safeguarding such data.

To evaluate these claims, the Board examined the statutory content of invoices under the Tax Procedure Law, the cooperation agreement between Logo and KoçSistem, and KoçSistem's commercial arrangements with its business partners. As a result, the Board found that although KoçSistem possesses certain competitively sensitive customer information, this data is not included in the scope of the transfer and will not be made available to Logo. Accordingly, the Board concluded that the transaction is not expected to result in any significant restriction of effective competition through Logo's access to the sensitive business information of its competitors.

Conclusion

The Decision provides a thorough analysis of the clearance provided for the Transaction. It offers an up-to-date perspective on the assessments on horizontal and vertical overlaps arising in the e-transformation and ERP software markets. It provides a detailed evaluation of input and customer foreclosure risks as well as the likelihood of access to competitively sensitive information post-transaction. Notably, the Decision also reflects the Boards's continued attention to data-related competition concerns in digital transactions, reaffirming its commitment to safeguarding effective competition without impeding legitimate business consolidations in the technology and software sectors.

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