



Turkish Competition Board Clears TAV–Fraport Transaction: A Deep Dive into Control Assessment and Retrospective Scrutiny

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1. Introduction

The Turkish Competition Board (the “**Board**”) granted unconditional clearance for the establishment of a new joint venture dedicated to the operation of food and beverage areas at Antalya Airport, to be formed pursuant to a “*Shareholders’ Agreement*” between Fraport Türkiye Havalimanı Yatırımları A.Ş. (“**Fraport Türkiye**”), a wholly owned subsidiary of Fraport AG Frankfurt Airport Services Worldwide (“**Fraport**”), and BTA Havalimanları Yiyecek ve İçecek Hizmetleri A.Ş. (“**BTA**”), a wholly owned subsidiary of TAV Havalimanları Holding A.Ş. (“**TAV**”).¹ The notified transaction entails the incorporation of a jointly controlled entity that will assume responsibility for the operation of both existing and newly constructed F&B areas within the airport, for a period aligned with the duration of the new concession agreement granted to the TAV-Fraport consortium. However, although formally notified as the establishment of a joint venture, the Board concluded that the transaction, in substance, constitutes a transfer of operational control from the existing concession holders, Fraport TAV Antalya Terminal İşletmeciliği AŞ (“**FTA-1**”) and Fraport TAV Yatırım Yapım ve İşletme AŞ (“**FTA-2**”), to TAV and Fraport themselves, acting through a newly created but non-autonomous vehicle that does not meet the full-functionality criteria under Communiqué No. 2010/4 and the [Guidelines on Cases Considered As a Merger or an Acquisition and the Concept of Control](#) (“**Guideline**”).

In parallel with the review of the notified transaction, the Board also revisited a prior contractual arrangement concluded in 2008 between Fraport IC İtař Antalya Havalimanı Terminal Yatırım ve İşletmeciliği A.Ş. (“**Fraport IC İtař**”) and İtur Yiyecek İçecek Hizmetleri Tur. San. ve Tic. A.Ş. (“**İtur**”), under which İtur had been granted exclusive rights to operate the food and

¹ Board’s decision dated 07.11.2024 and numbered 24-45/1048-449.

beverage areas at Antalya Airport. The Board assessed whether this earlier agreement constituted a notifiable acquisition under the then-applicable merger control rules. While it ultimately found that the 2008 arrangement involved a transfer of control over an economically significant activity and thus should have been notified, no administrative fine was imposed due to the expiration of the statute of limitations under Article 20 of the Law on Misdemeanors No. 5326.

2. The Board's Assessment on Relevant Markets

The Board first defined the relevant product and geographic markets, focusing on the distinct dynamics of airport operations and commercial area management.

Concerning the relevant product market, the Board began by noting that the notified transaction centers around airport operations, with a specific focus on the operation of food and beverage areas. Given the complexity and multifaceted nature of airport operations, the Board emphasized the need to disaggregate the various services provided within an airport when defining relevant product markets.

The Board underlined that airport operations cater to both primary customers (airline companies) and secondary customers (passengers). The services provided can be directed exclusively to one group or to both, depending on their nature. Additionally, while airports may be operated as an integrated entity by a single undertaking, it is also common for various sub-service to be outsourced to specialized third-party operators.

Against this backdrop, the Board identified several distinct sub-markets within the broader scope of airport operations, by referring to its past decisions², namely, (i) airport infrastructure services; (ii) ground handling services; and (iii) commercial services, including the operation of restaurants, cafes, retail outlets, hotels, and car parks located within terminal buildings.

The Board assessed that the transaction at issue falls within this last category, namely the commercial services component, and more specifically, the operation of food and beverage areas within the airport. The Board highlighted that such services differ in both supply and demand characteristics from other commercial services offered within airports. In particular, food and beverage outlets are directly consumer-facing and occupy a unique position in

² Board's decisions dated 29.03.2018 and numbered 18-09/165-83, dated 28.06.2015 and numbered 05 41/578-146, dated 14.12.2011 and numbered 11-61/1629-568, dated 16.05.2007 and numbered 07-41/452-174.

satisfying time-sensitive needs of passengers, especially given the constraints associated with accessing services outside the secured zones of the airport.

Accordingly, the Board defined two separate relevant product markets: (i) the “*airport operation services market*”, and (ii) the “*market for the operation of food and beverage areas within airports.*”

Turning to the geographic market, the Board noted that strict security protocols and early arrival requirements at airports, especially for international flights, limit passengers’ ability to access off-site food and beverage options. In high-traffic airports like Antalya Airport, such services within terminals are not substitutable due to time constraints and restricted access. Citing previous decisions³, the Board reaffirmed that nearby regional airports cannot be considered viable alternatives, given Antalya Airport’s superior infrastructure, traffic volume, and service diversity. Consequently, consistent with its previous precedents, the Board defined the relevant geographic market as limited to “Antalya Airport”.

3. The Board’s Competitive Assessment

A) Assessment of the 2008 Agreement between Fraport IC İtař and İtur

As part of its overall assessment, the Board revisited the agreement signed on 25 June 2008 between Fraport IC İtař and İtur under which İtur was granted exclusive rights to operate the food and beverage areas at Antalya Airport.

The Board noted that Fraport IC İtař, a joint venture formed in 2007 by Fraport AG and IC Holding, had been awarded the concession to operate Antalya Airport until 31 December 2024, later extended to 2026. Pursuant to its concession agreement with the General Directorate of State Airports Authority, Fraport IC İtař began operating various commercial areas at the airport, including food and beverage outlets. However, through the 2008 lease agreement, these rights were transferred to İtur on an exclusive basis for the remaining concession period. The agreement was renewed in 2014, extending İtur’s rights until 2026.

The Board evaluated whether this transaction qualified as an acquisition under the applicable Communiqué No. 1997/1 concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (“*Communiqué No. 1997/1*”) in force at the time.

³ Board’s decision dated 21.05.2024 and numbered 24-23/544-227 and decision dated 10.12.2021 and mubered 21-60/854-419.

Citing both the Communiqué and its Merger Guidelines, the Board concluded that the 2008 lease agreement constituted a change of control over an economically significant activity with attributable turnover and therefore qualified as a notifiable acquisition transaction within the meaning of Article 7 of Law No. 4054.

The Board underlined that despite this, the agreement was not notified to the Board. Under normal circumstances, failure to notify such a transaction would warrant the imposition of an administrative fine pursuant to Article 16 of Law No. 4054. However, the Board held that due to the expiration of the eight-year statute of limitations as set forth in Article 20 of the Law on Misdemeanors No. 5326, no administrative fine could be imposed in relation to the failure to notify.

Importantly, even though the Board refrained from sanctioning the parties, it proceeded to assess the competitive effects of the transaction ex post under Article 7 of Law No. 4054. The Board examined whether the 2008 transfer gave rise to competitive concerns, particularly in terms of market structure and potential market power.

Upon evaluating the market positions of the parties, the Board found that Fraport IC İtař operated the airport under its concession rights and İtur became the exclusive operator of the food and beverage areas. The parties did not overlap horizontally, as İtur operated only in food and beverage services, while Fraport IC İtař was active in airport operation services. Although a vertical relationship was identified between the two undertakings, the Board concluded that the transaction did not result in a structural change in the relevant markets, nor did it lead to the creation or strengthening of a dominant position or a significant lessening of effective competition.

Accordingly, the Board permitted the transaction, albeit retroactively, emphasizing that while the failure to notify was technically a violation, the statutory time bar precluded any sanctions.

B) Assessment of the Establishment of a Joint Venture Subject to Notification

While the assessment of the 2008 agreement primarily concerned the retrospective evaluation of a previously unnotified transaction, the notified transaction giving rise to the present review pertained to a prospective structural change involving the future operation of food and beverage areas at Antalya Airport. Although structured as the establishment of a new joint venture between TAV and Fraport, the transaction constitutes, in essence, a transfer of operational control from the existing concession holders, FTA-1 and FTA 2, to TAV and Fraport, acting

through a newly established but non-autonomous vehicle. As per Article 81 of the Guidelines should have economic autonomy from an operational standpoint. For a joint venture to meet the full functionality criteria, it should have sufficient resources to operate independently, should have activities beyond one specific function to serve its parent companies, independence from its parent undertakings in terms of its sales and purchase activities and should operate in the market on a lasting basis.

Although the proposed transaction was submitted as an establishment/formation of a joint venture between TAV (through its subsidiary BTA) and Fraport (through its subsidiary Fraport Türkiye), the Board assessed that the proposed entity did not meet the full -functionality criteria with respect to Communiqué No. 2010/4 and the Guidelines.

The Board found out that the joint venture to be established by TAV, through its wholly owned subsidiary BTA, and by Fraport, acting through its wholly owned subsidiary Fraport Türkiye, is envisaged to take over the operation of newly constructed food and beverage areas as of 2025 (currently under the operational rights of FTA-1), and from 2027 onward, all existing and future food and beverage areas at the airport for a 25-year term, aligning with the duration of the new airport concession awarded to FTA-2. However, the Board assessed that the joint venture is considered a fully functional entity under the standards set out in Communiqué No. 2010/4 and the Merger Guidelines. Rather, it will function more as a special purpose vehicle (“*SPV*”) through which the transfer of operational rights will be effected.

In its assessment, the Board noted that although the transaction is formally presented as the establishment of a new undertaking, the joint venture would not operate independently from its parent companies in the sense required under the fully functional joint venture standard set out under Communiqué No. 2010/4 and the Merger Guidelines and will not operate with the strategic or operational independence characteristic. The Board assessed that while TAV and Fraport will jointly control the new entity, several operational and strategic decisions, such as major investments, franchise agreements, procurement processes, and key software and system integrations, will remain subject to the direct control and coordination of the parent undertakings. The Board noted that the joint venture lacks sufficient autonomy in its governance, financial independence, and day-to-day decision-making capabilities. Moreover, it will not have its own personnel, internal systems, or customer-facing operations independent from those of its parents.

Accordingly, the Board determined that the notified transaction should be assessed as an acquisition by TAV and Fraport of the food and beverage operations currently conducted under FTA-1 and, from 2027 onward, FTA-2. In doing so, the Board emphasized that the joint venture is not taken as a transaction party in its own right for the purposes of the Article 7 analysis, since it merely acts as a conduit through which the control and operation of the relevant activities are assumed by the parent companies. Given the joint venture's lack of full functionality, the Board did not treat the transaction as a typical joint venture case under Article 7. Instead, the substantive merger control assessment focused on the change of control in the operation of food and beverage services at Antalya Airport. Therefore, the transaction amounts to an acquisition of the food and beverage operations previously held by FTA-1/FTA-2 by TAV and Fraport directly. The joint venture, lacking full functionality, acts only as a formal intermediary in this transfer of control.

In its substantive assessment under Article 7 of Law No. 4054, the Board concluded that the transaction does not give rise to a structural change that would create or strengthen a dominant position or significantly impede effective competition in the relevant markets. This conclusion was based on the continued franchise-based operational model, the limited vertical integration, and the absence of horizontal overlaps.

The Board further observed that although a vertical relationship exists, since TAV and Fraport already operate Antalya Airport via FTA-1 and FTA-2 and will also indirectly operate the food and beverage services via the joint venture, no horizontal overlap arises, as neither parent is currently active in food and beverage operations at Antalya Airport. BTA, a subsidiary of TAV, operates food and beverage services under the "Cakes & Bakes" brand at other airports (e.g., Ankara Esenboğa and İzmir Adnan Menderes), but not at Antalya Airport. Fraport has no independent activity in food and beverage or airport operations in Türkiye outside the joint ventures with TAV.

In its substantive assessment under Article 7 of Law No. 4054, the Board emphasized that the transfer of operations to the new joint venture would not result in a structural change in the relevant markets, nor would it lead to the creation or strengthening of a dominant position. The Board highlighted that the food and beverage areas at Antalya Airport are currently operated under franchise agreements with globally recognized brands (e.g., Burger King, Starbucks, Popeyes), and that the post-transaction framework would maintain this structure.

Given the continuation of franchise-based operations, the absence of horizontal overlaps, and the limited vertical integration effect, the Board concluded that the transaction would not significantly impede effective competition in the relevant markets.

Accordingly, the Board approved the transaction unconditionally, recognizing that while the newly established joint venture would not be fully functional, the transaction qualifies as a notifiable acquisition under Communiqué No. 2010/4 and satisfies the relevant turnover thresholds.

4. Conclusion

The Board's decision is notable in that it addresses two legally and practically significant issues under Turkish merger control: the consequences of failure to notify a past transaction and the assessment of transactions involving layered operational structures and non-fully functional joint ventures. The decision illustrates the Board's commitment to looking beyond formal legal classifications and assessing the substantive reality of control. Although the transaction was notified as the establishment of a joint venture, the Board rightly emphasized that the entity lacked the operational and strategic autonomy required to be considered a fully functional undertaking. Consequently, the transaction was assessed as a direct acquisition of operational control by TAV and Fraport over the food and beverage areas previously held under FTA-1 and FTA-2. Importantly, the Board's approach reinforces the principle that substance prevails over form in determining whether a transaction qualifies as a notifiable concentration under Communiqué No. 2010/4.

In parallel, the Board's ex post assessment of the 2008 agreement between Fraport IC İtař and İtur demonstrates its willingness to retrospectively scrutinize unnotified transactions where control has been transferred over a marketable economic activity. While the Board refrained from imposing sanctions due to the expiration of the statute of limitations, its determination that the 2008 agreement should have been notified serves as a reminder of the durability of notification obligations and the risk of procedural violations being revisited years later.

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