GCR Global Competition Review

Europe, Middle East and Africa Antitrust Review

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Türkiye: significant uptick in transaction reviews underscores Competition Authority's stringent approach to merger control

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IN SUMMARY

This article details the key aspects of the Turkish merger control regime. It discusses recent developments and cases regarding merger control in Türkiye, including two important recent decisions.

DISCUSSION POINTS

- Turkish merger control regulations
- Thresholds, notification and investigation
- Recent developments and statistical data on merger control

REFERENCED IN THIS ARTICLE

- Turkish Competition Authority
- Law No. 4054 on Protection of Competition
- Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board
- Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board
- Communiqué No. 2017/2 Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board
- Decision No. 24-11/174-69
- Decision No. 24-07/128-52

The national competition agency for enforcing merger control rules is the Turkish Competition Authority (the Competition Authority), a legal entity with administrative and financial autonomy. The Competition Authority comprises the Competition Board, the presidency and service departments.

As the competent decision-making body of the Competition Authority, the Competition Board is responsible for, among other things, reviewing and resolving merger and acquisition notifications. It comprises seven members and is seated in Ankara.

TURKISH MERGER CONTROL REGULATION

The applicable legislation on merger control is Law No. 4054 on Protection of Competition (Law No. 4054) and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4). On 4 March 2022, the Competition Authority published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (Communiqué No. 2022/2). Communiqué No. 2022/2 introduced certain new regulations concerning the Turkish merger control regime, which fundamentally affected the notifiability analysis of merger transactions and the merger control notifications submitted to the Competition Authority.

Article 7 of Law No. 4054 authorises the Competition Board to regulate, through communiqués, the mergers and acquisitions that must be notified to be valid. Communiqué No. 2010/4 is the primary instrument in assessing merger cases. It sets forth the types of mergers and acquisitions that are subject to the Competition Board's review and approval.

With a continued interest in harmonising Turkish competition law with EU competition law, the Competition Authority has published various guidelines on merger control that are in line with the European Union's antitrust and merger control rules.

The Guidelines on Market Definition are closely modelled on the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03).

The Guidelines on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions contain certain topics and explanations about the concepts of undertakings concerned, turnover calculations and ancillary restraints, and are closely modelled on Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

The Guidelines on Cases Considered as Mergers and Acquisitions and the Concept of Control, the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions were published in 2013.

The Guidelines on Remedies Acceptable in Mergers and Acquisitions provide explanations on possible remedies.

TYPES OF TRANSACTIONS

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

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

Türkiye is a jurisdiction with a pre-merger notification and approval requirement, much like the EU regime. Concentrations that result in a change of control on a lasting basis are subject to the Competition Board's approval, provided they exceed the applicable thresholds. 'Control' is defined as the right to exercise decisive influence over the day-to-day management or the long-term strategic business decisions of a company and can be exercised ***de jure*** or de facto.

Acquisition of a minority shareholding can constitute a notifiable merger if it leads to a change in the control structure of the target entity on a lasting basis. Joint ventures that emerge as independent economic entities possessing assets and labour to achieve their objectives are subject to notification to, and approval of, the Competition Board. In accordance with article 13 of Communiqué No. 2010/4, cooperative joint ventures are also

subject to a merger control notification and analysis as well as an individual exemption analysis, if warranted.

MARKET DOMINANCE AND SIGNIFICANT IMPEDIMENT OF EFFECTIVE COMPETITION

The Turkish merger control provisions rely on the significant impediment of effective competition (SIEC) test to ascertain whether a merger may be cleared. Pursuant to article 7 of Law No. 4054 and article 13 of Communiqué No. 2010/4, mergers and acquisitions that do not create or strengthen a dominant position and that do not significantly impede effective competition in a relevant product market within the whole or part of Türkiye shall be cleared by the Competition Board.

Article 3 of Law No. 4054 defines 'dominant position' as 'any position enjoyed in a certain market by one or more undertakings by virtue of which those undertakings have the power to act independently from their competitors and purchasers in determining economic parameters such as the amount of production, distribution, price and supply'.

The SIEC test was introduced by the amendment law that was passed through parliament and entered into force on 24 June 2020. This enables the Competition Board to prohibit not only transactions that may result in creating a dominant position or strengthening an existing dominant position but also those that may significantly impede effective competition.

The Competition Board's approval decision will be deemed to also cover the directly related and necessary extent of restraints in competition brought by the concentration (eg, non-competition, non-solicitation and confidentiality). This allows parties to engage in self-assessment, and the Competition Board usually does not devote a separate part of its decision to the ancillary status of all restraints brought with the transaction. Non-competition issues are, in principle, not taken into account.

THRESHOLDS

Communiqué No. 2022/2 introduced threshold exemptions for undertakings active in certain markets and sectors and increased the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Competition Authority.

As per Communiqué No. 2022/2, if a transaction is closed (ie, the concentration is realised) as of or after 4 May 2022, the transaction will be required to be notified in Türkiye if one of the following increased turnover thresholds is met (all currency conversions are based on the Turkish Central Bank's applicable average buying exchange rates for the financial year 2024):

- 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;
- the Turkish turnover of the transferred assets or businesses in acquisitions 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 mergers 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.

Pursuant to Communiqué No. 2022/2, the 250 million lira Turkish turnover thresholds mentioned above will not be sought for the acquired undertakings active in, or assets related to, the fields of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if:

- they operate in the Turkish geographical market;
- they conduct research and development activities in the Turkish geographical market; or
- they provide services to Turkish users.

The new regulation does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement, and if a concentration exceeds one of the alternative jurisdictional thresholds, the concentration will automatically be subject to the approval of the Competition Board.

The implementing regulations provide for important exemptions and special rules, as follows:

- Article 19 of Banking Law No. 5411 provides an exception from the application of merger control rules for mergers and acquisitions of banks. The exemption is subject to the condition that the market share of the total assets of the relevant banks does not exceed 20 per cent.
- Mandatory acquisitions by public institutions as a result of financial distress, concordat, liquidation, etc, do not require a pre-merger notification.
- Intra-corporate transactions are not notifiable.
- Acquisitions by inheritance are not subject to merger control.
- Acquisitions made by financial securities companies solely for investment purposes do not require a notification, subject to the condition that the securities company does not exercise control over the target entity in a manner that influences its competitive behaviour.
- Two or more transactions carried out within three years between the same persons or parties, or within the same relevant product market by the same undertaking, are deemed a single transaction for turnover calculation purposes following the amendments brought by Communiqué No. 2017/2, Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board (Communiqué No. 2017/2). If the transactions exceed the notification thresholds individually or cumulatively, all the transactions must be notified, regardless of whether the transactions concerned are related to the same market or sector or whether they were previously notified. The main goal of this regulation is to prevent the conclusion of important mergers or acquisitions without authorisation through compartmentalisation of mergers and acquisitions originally subject to authorisation.

Another exception pertains to the Turkish Wealth Fund, which was incorporated as a national wealth and investment fund company with Law No. 6741. Transactions performed by the Turkish Wealth Fund and companies established by the Turkish Wealth Fund are not subject to merger control rules. There are also specific methods of turnover calculation for certain sectors, which apply to banks, special financial institutions, leasing companies, factoring

companies, securities agents and insurance companies. Communiqué No. 2022/2 also updates the rules that apply to the calculation of turnover of the financial institutions in accordance with the most recent changes to the financial regulations. The most recent updates of article 9 of Communiqué No. 2010/4 are as follows:

- For the calculation of financial institutions' turnovers, Communiqué No. 2022/2 aligns the wording and terms in view of the applicable banking and financial regulations; it excludes the term 'participation banks' and refers to the term 'banks' in general, which covers all legal forms of banks.
- Communiqué No. 2022/2 updates the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board referred to in article 9 of Communiqué No. 2010/4.

PROCEDURE

There is no specific deadline for making a notification in Türkiye. There is, however, a suspension requirement (ie, a mandatory waiting period): a notifiable transaction (regardless of whether it is problematic under the applicable SIEC test) is invalid, with all the ensuing legal consequences, unless the Competition Authority approves it. It is, therefore, advisable, under normal circumstances, to file the transaction at least 60 calendar days before the projected closing.

The notification is deemed filed when the Competition Authority receives it in its complete form. If the information provided to the Competition Board is incorrect or incomplete, the notification is deemed filed only on the date when the information is completed upon the Competition Board's subsequent request for further data. The notification is submitted in Turkish. Transaction parties are required to provide sworn Turkish translations of the final executed or current version of the transaction agreement or the document that brings about the transaction.

NOTIFICATION

In principle, under the merger control regime, a filing can be made by either of the parties to the transaction or jointly. In the case of a filing by one of the parties, the filing party should notify the other party of the filing. It is advisable to file the transaction at least 60 calendar days before projected closing.

As for the filing process for privatisation tenders and transactions, Communiqué No. 2013/2 provides that it is mandatory to file a pre-notification with the Competition Authority before the public announcement of tender specifications to receive the opinion of the Competition Board, which will include a competitive assessment.

In the event of a public bid, the merger control filing can be performed when the documentation adequately proves the irreversible intention to finalise the contemplated transaction. Filing can also be performed when the documentation at hand adequately proves the irreversible intent to finalise the contemplated transaction.

The notification form is similar to the Form CO of the European Commission. One hard copy and an electronic copy of the merger notification form must be submitted to the Competition Board. Recent updates allow notifying parties to submit the notification form via 'e-Devlet', an elaborate system of web-based services, including electronic submission. E-Devlet was

already available for submissions, especially during the pandemic period. Now, Communiqué No. 2010/4 explicitly mentions this alternative way of submission to make it official.

The information requested includes data in respect of supply and demand structure, imports, potential competition and expected efficiencies. Some additional documents, such as the executed or current copies and sworn Turkish translations of the documents that bring about the transaction, annual reports (eg, balance sheets of the parties) and, if available, market research reports for the relevant market, are also required.

Communiqué No. 2010/4 also brought a modified notification form that replaced the former notification form as of 4 May 2022. According to the modified notification form, there is also a short-form notification (without a fast-track procedure) if a transition from joint control to sole control is at stake or if there are no affected markets within Türkiye.

In the event that the parties to a notifiable transaction violate the suspension requirement (ie, close a notifiable transaction without having obtained the approval of the Competition Board or do not notify the notifiable transaction at all), the acquiring party (for the formation of a fully functioning joint venture, all the parent companies are separately deemed to be the acquiring party) receives a turnover-based monetary fine of 0.1 per cent of its annual Turkish turnover generated in the financial year preceding the date of the fining decision. In mergers, both merging parties would be fined.

In any event, the minimum amount of the administrative monetary fine is 241,043 Turkish lira for 2025 and is revised annually. The fine does not depend on whether the Competition Authority will ultimately clear the transaction; it is a fixed ratio (0.1 per cent). The Competition Board does not have the power to increase or decrease the fine; therefore, the acquirer would automatically incur the fine once the violation of the suspension requirement is detected.

If, however, there truly is a risk that the transaction is problematic under the SIEC test applicable in Türkiye, the Competition Authority may:

- launch ***ex officio*** an investigation into the transaction;
- order structural and behavioural remedies to restore the situation as it was before the closing (***restitutio in integrum***); and
- impose a turnover-based fine of up to 10 per cent of the parties' annual turnover.

Executive members and employees of the undertakings concerned who are determined to have played a significant role in the violation (failing to file or closing before the approval) may also receive monetary fines of up to 5 per cent of the fine imposed on the undertakings. The transaction will also be invalid and unenforceable in Türkiye.

To date, the Competition Board has consistently rejected all carve-out or hold-separate arrangements proposed by merging undertakings. Communiqué No. 2010/4 provides that a transaction is deemed to be realised (ie, closed) on the date when the change in control occurs.

Although the wording allows some room to speculate that carve-out and hold-separate arrangements are allowed, it remains to be seen whether the Competition Authority will interpret this provision in such a way. To date, it has been consistently rejected by the Competition Board, arguing that a closing is sufficient for the suspension violation fine to be imposed and that a further analysis of whether change in control actually took effect in Türkiye is unwarranted.

The Competition Authority publishes the notified transactions on its official website, with only the names of the parties and their areas of commercial activity. To that end, once notified to the Competition Authority, the existence of a transaction will no longer be a confidential matter.

COSTS

There are no filing fees required under Turkish merger control proceedings.

INVESTIGATION

The Competition Board, upon its preliminary review of the notification (Phase I), will decide either to approve the transaction or to investigate it further (Phase II). It notifies the parties of the outcome within 30 calendar days of a complete filing. In the absence of any notification, the decision is deemed to be approved in accordance with an implied approval mechanism introduced by the relevant legislation.

While the wording of the law implies that the Competition Board should decide within 15 calendar days whether to proceed with Phase II, the Competition Board generally takes more time to form its opinion on the substance of a notification. It is more sensitive to the 30-calendar-day deadline on announcement. Any written request by the Competition Board for missing information will stop the review process and restart the 30-calendar-day period on the date of provision of that information.

In practice, the Competition Authority is quite keen on asking formal questions and adding more time to the review process; therefore, under normal circumstances, it is recommended that the filing be done at least 60 calendar days before the projected closing.

If a notification leads to a Phase II review, it turns into a full investigation. Under Turkish competition law, Phase II investigations take about six months. If necessary, the Competition Board may extend this period once by up to six months.

In practice, only exceptional cases require a Phase II review, and most notifications obtain a decision within 60 days of the original date of notification. Neither Law No. 4054 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.

There is no special rule for hostile takeovers; the Competition Board treats notifications for hostile transactions in the same manner as other notifications. If the target does not cooperate and there is a genuine inability to provide information owing to the one-sided nature of the transaction, the Competition Authority tends to use most of its powers of investigation or information request under articles 14 and 15 of Law No. 4054.

The Competition Board may request information from third parties, including customers, competitors and suppliers of the parties and other persons related to the merger or acquisition. It uses this power to define the market and determine the market shares of the parties. Third parties, including the customers and competitors of the parties and other persons related to the merger or acquisition, may request a hearing from the Competition Board during the investigation, subject to the condition that they prove their legitimate interest. They may also challenge the Competition Board's decision about the transaction before the competent judicial tribunal, again subject to the condition that they prove their legitimate interest.

CLEARANCE

The Competition Board may either render a clearance or a prohibition decision. It may also give a conditional approval. The reasoned decisions of the Competition Board are served on the representatives to the notifying parties and are also published on the website of the Competition Authority.

The Competition Board may grant conditional clearance and make the clearance subject to the parties observing certain structural or behavioural remedies, such as divestiture, ownership unbundling, account separation and right of access.

JUDICIAL REVIEW

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be submitted for judicial review before the administrative courts. The plaintiff may initiate a lawsuit within 60 days of the parties' receipt of the Competition Board's reasoned decision.

Decisions of the Competition Board are considered administrative acts. Filing a lawsuit does not automatically stay the execution of the Competition Board's decision. However, upon request of the plaintiff, the court may decide to stay the execution. The court will stay the execution of the challenged act only if the execution of the decision is likely to cause irreparable damage, and the decision is highly likely to violate the law. The appeal process may take up to two-and-a-half years.

RECENT DEVELOPMENTS

Communiqué No. 2022/2 was published in the Official Gazette on 4 March 2022, and entered into force on 4 May 2022. Communiqué No. 2022/2 raised the jurisdictional turnover thresholds under article 7 of Communiqué No. 2010/4.

Two of the most significant developments that the Communiqué No. 2022/2 entails, inter alia, are the introduction of threshold exemption for undertakings active in certain markets and sectors and the increase of the applicable turnover thresholds for concentrations that require mandatory merger control filing before the Competition Authority.

Communiqué No. 2022/2 does not seek a Turkish nexus in terms of activities that qualify for 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 technologies, biotechnology, pharmacology, agricultural chemicals or health technologies anywhere in the world for the threshold exemption to become applicable, provided that the target company operates in the Turkish geographical market, conducts research and development (R&D) activities in Türkiye or provides services to Turkish users in the fields listed above. Accordingly, Communiqué No. 2022/2 does not require the generation of revenue from customers located in Türkiye, that the target company conduct R&D activities in Türkiye or the provision of services to Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

The increased turnover thresholds and the exemption on the local turnover thresholds mechanism introduced by Communiqué No. 2022/2 seemingly altered the scope of the transactions that are notifiable to the Competition Authority. On that note, concentrations related to the fields of digital platforms, software and gaming software, financial

technologies, biotechnology, pharmacology, agricultural chemicals and health technologies are expected to be more closely scrutinised by the Competition Authority.

The Competition Authority published a Mergers and Acquisitions Insight Report for 2024. Along with its mission, vision, objectives, priorities and description of its duties and powers, the Competition Authority assessed its activities between 1 January 2024 and 31 December 2024 in respect of merger control with statistical data. To summarise, the Competition Board assessed 311 transactions in 2024. The number of assessments in 2024 was significantly higher than 2023 and is the highest in the past 12 years. The Competition Board took two cases into Phase II investigation.

A notable decision rendered by the Competition Board in 2024 was the ***Compugroup/Bupa*** decision.[1] The transaction concerned the acquisition of Compugroup Medical Bilgi Sistemleri AŞ (Compugroup) by Bupa Turkey Sağlık Hizmetleri AŞ.

The Competition Board assessed the transaction under the Guideline on Non-Horizontal Mergers and Acquisitions, highlighting two primary anticompetitive risks: input foreclosure and customer foreclosure, as well as the potential for coordinated effects that could restrict competition. Regarding input foreclosure, the Board expressed concerns that, after the transaction, Compugroup might cease providing its software services and operational support to competitors of Bupa Acıbadem Sigorta AŞ (Bupa Acıbadem), a subsidiary of Bupa International in Türkiye. The Board reviewed the market shares of Compugroup and concluded that it holds a significant market share in the relevant sector and is a market leader in terms of both customer base and premium production volumes of insurance companies. Based on this, the Board concluded that Compugroup's potential cessation of services to competitors in the healthcare insurance sub-market could significantly restrict access to essential inputs and potentially result in market foreclosure.

In terms of customer foreclosure, the Competition Board noted that since the merged entity will operate in both the upstream and downstream markets after the transaction, the acquisition could limit the ability of existing and potential competitors in the upstream market to access a significant customer base in the downstream market. However, following an assessment of market shares, the Board concluded that, post-transaction, Compugroup's competitors will still be able to access potential customers, and that the services provided by Bupa Acıbadem will remain largely unchanged. As such, the Board determined that the transaction will not result in significant customer foreclosure or significant impediment of effective competition.

Regarding coordinated effects, the Board assessed that Compugroup Medical's potential to share sensitive data with Bupa Acıbadem could create competitive concerns both from a unilateral and a coordination perspective. The Board also considered that vertical transactions can increase transparency in the market, allowing for access to sensitive information or price monitoring, which could facilitate coordination among undertakings.

To eliminate the potential anticompetitive effects of the transaction, Bupa submitted behavioural remedies on maintaining existing contracts between Compugroup and insurance companies, unless there is just cause for termination or unilateral termination by the customer. It also committed to renewing contracts upon customer request and providing all current and future products and services to other insurance companies under market conditions, without granting an advantage to entities within its own economic unit, such as Bupa Acıbadem. The proposed remedies also include measures to prevent the exchange of

commercial secrets or competitively sensitive information between Compugroup and Bupa Acıbadem.

After assessing the proposed remedies, the Competition Board concluded that the commitment package sufficiently addresses the identified competitive concerns, and unanimously approved the transaction, subject to the behavioural remedies outlined in the remedy package.

In ***Tat Gıda/Memişoğlu***,[2] the transaction concerned acquisition of 49.04 per cent of the shares in and sole control over Tat Gıda Sanayi AŞ (Tat Gıda) by Memişoğlu Tarım Ürünleri Ticaret Ltd Şti (Memişoğlu). The Board made a comprehensive analysis on whether the acquisition of a minority shareholding by Memişoğlu would lead to de facto sole control over Tat Gıda.

The Board examined the participation rates in Tat Gıda's shareholders' meetings between 2013 and 2023, the lowest rate of affirmative vote in these meetings as well as the rate of affirmative vote outside Koç Group. The Board determined that Memişoğlu's shareholding of 49.04 per cent will represent a significant majority based on the participation rates at Tat Gıda's shareholders' meetings in the past 11 years. The Board also found that it is highly likely that Memişoğlu's shareholding of 49.04 per cent at the shareholders' meeting will allow Memişoğlu to establish a stable majority at Tat Gıda's shareholders' meeting in the future. The Board concluded that Memişoğlu will acquire de facto sole control over Tat Gıda as a result of the transaction.

After settling that the transaction results in a change in control over Tat Gıda on a lasting basis, the Board found that there is a horizontal overlap between the activities of Tat Gıda and Memişoğlu in Türkiye in the market for instant soup. However, due to very low market shares of the transaction parties, limited market share increase as a result of the transaction, absence of any legal barriers to entry and the existence of a high number of national and local brands active in this market, the Board evaluated that the transaction will not lead to any competitive concerns in this market.

The Board also determined that there is a vertical relationship between Tat Gıda's activities in the downstream market for convenience food and Memişoğlu's activities in the upstream market for dried legumes. In terms of whether the transaction would lead to input foreclosure concerns, the Board examined whether the merged entity's competitors in the downstream market would be unable to access to sufficient alternative sources of supply in case Memişoğlu supplied its entire produce of dried legumes to Tat Gıda. The Board analysed the sales of dried legumes made by Memişoğlu to its customers in Türkiye and found that Tat Gıda is not the only buyer of Memişoğlu's dried legumes. Furthermore, the Board determined that there are many large and small players in the upstream market for dried legumes, Memişoğlu's existing customers would still have access to alternative suppliers even if Memişoğlu ceased to supply, there are no barriers to import and there are many alternative sources of supply both in and outside Türkiye. As such, the Board concluded that the transaction will not result in any input foreclosure concerns.

In terms of any potential customer foreclosure concerns, the Board examined the purchases of dried legumes made by Tat Gıda and found that Memişoğlu is not the only supplier from whom Tat Gıda procured dried legumes. Furthermore, the Board considered that there are no barriers for export in the market for dried legumes and therefore the undertakings active in this market have alternative customers both in Türkiye and abroad. To that end, the Board

assessed that suppliers of dried legumes will have alternative buyers even if Tat Gıda stopped purchasing dried legumes from them, and therefore the transaction will not lead to any customer foreclosure concerns.

Against the foregoing, the Board unconditionally cleared the transaction. Through this decision, the Board provided further guidance to acquirers when it comes to the question of whether an acquisition of a minority shareholding could confer control on a lasting basis and thus result in a notifiable concentration from a merger control perspective due to specific governing procedures and mechanisms of target entities.

Endnotes

1 Competition Board, Decision No. 24-11/174-69 (29 February 2024). ^ Back to section

2 Competition Board, Decision No. 24-07/128-52 (8 February 2024). ^ Back to section

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