Merger Control 2025

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Overview of merger control activity during the last 12 months

The Turkish merger control regime is primarily regulated by the Law on Protection of Competition No. 4054 ("Law No. 4054") dated December 13, 1994, which was amended on June 24, 2020 ("Amendment Law"), and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("Merger Communiqué") published on October 7, 2010. The Merger Communiqué entered into force on January 1, 2011, and was amended on February 1, 2013. Subsequently, on February 24, 2017, the Merger Communiqué was amended by Communiqué No. 2017/2 on the Amendment of Communiqué No. 2010/4 ("Communiqué No. 2017/2"). Finally, the Merger Communiqué was amended by Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 ("Amendment Communiqué"), which was published in the *Official Gazette* on March 4, 2022.

According to the annual statistics of the Mergers and Acquisitions Status Report for 2024, the Competition Board ("Board") reviewed 311 transactions in total (six of which concerned privatisation, and the rest concerning mergers and acquisitions ("M&A")), including: 293 M&As that were approved unconditionally; and two decisions that are still under the Phase II Investigation. Eight were out of the scope of merger control (*i.e.*, they either did not meet the turnover thresholds or fell outside the scope of the merger control system due to a lack of change in control). None of the notified transactions were rejected in 2024. However, the Authority's Activity Report for the entirety of 2024 is yet to be published at the time of writing.

New developments in jurisdictional assessment or procedure

The Amendment Communiqué, which was entered into force on May 4, 2022, raised the Turkish merger control thresholds.

In accordance with the Amendment Communiqué, transactions that were closed (*i.e.*, the concentration will be realised) as of or after May 4, 2022, are required to be notified in Türkiye if one of the following alternative turnover thresholds is met:

(i) the combined aggregate Turkish turnover of all the transaction parties exceeds TL 750 million (approximately EUR 21.1 million or USD 22.8 million) and the Turkish turnover of each of at least two of the transaction parties exceeds TL 250 million (approximately EUR 7 million or USD 7.6 million); or

(ii) the Turkish turnover of the transferred assets or businesses in acquisitions exceeds TL 250 million (approximately EUR 7 million or USD 7.6 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (approximately EUR 84.5 million or USD 91.5 million), or the Turkish turnover of any of the parties in mergers exceeds TL 250 million (approximately EUR 7 million or USD 7.6 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (approximately EUR 84.5 million or USD 91.5 million).

(All currency conversions are based on the Turkish Central Bank's applicable average buying exchange rates for the financial year 2024.)

Due to rapid developments in the technology industry, the Amendment Communiqué has also introduced a merger control regime for undertakings active in certain markets/sectors. Further to the Amendment Communiqué, the Turkish turnover threshold of TL 250 million mentioned above will not be sought for the acquired undertakings active in the numerous fields or assets related to these fields if they: (i) operate in the Turkish geographical market; (ii) conduct research and development activities in the Turkish geographical market; or (iii) provide services to Turkish users. The fields and related assets include: (i) digital platforms; (ii) software or gaming software; (iii) financial technologies; (iv) biotechnology; (v) pharmacology; (vi) agricultural chemicals; and (vii) health technologies.

In terms of the above threshold exemption for certain undertakings, decisions where the relevant exemption was applied include: *IFGL/Cinven* (22-23/372-157, 18.05.2022), which concerned an undertaking active in the digital platform markets; *Airties/Providence* (22-25/403-167, 02.06.2022), which concerned a programming undertaking; *Affidea/GBL* (22-27/431-176, 16.06.2022), which concerned a biotechnology undertaking; *Clayton/TPG/Covetrus* (22-32/512-209, 07.07.2022), which concerned a pharmacology undertaking; *Astorg/Corden* (22-25/398-164, 02.06.2022), which concerned a pharmacology undertaking; *Biocon Viatris* (22-23/380-159, 18.05.2022), which concerned a pharmacology/molecular medicine undertaking; *Citrix/Tibco* (22-21/344-149, 12.05.2022), which concerned a software undertaking; *Impala Bidco/HG Capital/EQT Fund/TA* (22-21/354-152, 12.05.2022), which concerned technology undertakings; *Scopely, Inc./Saudi Electronic Gaming Holding Company* (23-26/489-167, 07.06.2023), which concerned a gaming software undertaking; *DG INVEST B.V./DHI INVESTMENT B.V.* (2341/800-284, 07.09.2023), which concerned an undertaking active in the digital platform markets; *SCADAfence LTD./Honeywell International Sarl* (23-39/725-248, 17.08.2023), which concerned a software undertaking; *Co-One OÜ/ Maxis Venture Capital* (23-39/726-249, 17.08.2023), which concerned a software undertaking; *Syneos Health Inc./Veritas Capital Fund Management, Elliott Investment Management L.P., Patient Square Capital Holdings LLC* (23-37/707-244, 10.08.2023), which concerned a health technology undertaking; *Pfizer Inc./ Seagan Inc.* (23-32/618-207, 20.07.2023), which concerned a biotechnology undertaking; *Photomath Inc./Google LLC* (23-19/354-121, 28.04.2023), which concerned a software undertaking; *Astellas Pharma Inc./Novartis AG* (23-10/150-45, 23.02.2023), which concerned an undertaking active in pharmacology; *Twitter Inc./ Elon Musk* (23-12/197-66, 02.03.2023), which concerned an undertaking active in the digital platform markets; *Anixe/Hispanitalia/Hellas/Dertour* (24-42/987-426, 18.10.2024), which concerned a software undertaking operating for travel agencies; *Teads/Outbrain* (24-41/975-421, 10.10.2024), which concerned an undertaking active in digital platform markets; and *Croma/Custos* (24-30/711-299, 18.7.2024), which concerned an undertaking active in biotechnology/pharmacology sector.

The Amendment Communiqué also set out the rules that apply to the calculation of turnover of financial institutions in accordance with changes to financial regulations. The amendments to Article 9 of the Merger Communiqué included the calculation of financial institutions' turnovers. The Amendment Communiqué aligned the wording and terms in view of the applicable banking and financial regulation – namely, it excludes the term "participation banks" and refers to the term "banks" in general, which covers all legal forms of banks; and the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board.

Under the Merger Communiqué, the notification form and its attached documents can be submitted to the Authority's headquarters in Ankara by physical delivery. The Merger Communiqué also allows notifying parties to submit the notification form via e-Devlet, an elaborate system of web-based services, one of which is electronic submission. e-Devlet was already available for submissions, with increased usage during the pandemic period. The Merger Communiqué explicitly mentions this alternative method of submission in order to make it official.

In June 2020, the dominance test applicable to the review of mergers was reformulated from the "creation or strengthening of a dominant position, thereby significantly lessening of competition" test into the significant impediment of effective competition ("SIEC") test. In order to align with this modification in the underlying regulation, the Amendment Communiqué provided that: "Mergers and acquisitions which would result in a significant lessening of effective competition within the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position are prohibited." This reflects the SIEC test, as the wording "one or more undertakings with a view to creating a dominant position" has been replaced with "particularly in the form of creating dominant position".

The Amendment Communiqué also revised the structure and content of the notification form, which is annexed to the Amendment Communiqué. In terms of the definition of "affected markets", the Amendment Communiqué excluded the expression "possibly affected by the transaction subject to the notification"; instead, it provided that "in Türkiye affected markets consist of all the relevant product markets and geographical markets where a) two or more of the parties are engaged in commercial activities in the same product market (horizontal relationship), b) At least one of the parties are engaged in commercial activities in the downstream or upstream market of any product market in which the other operates (vertical relationship)".

The Merger Communiqué provided that the information requested under sections 6, 7 and 8 of the notification form (*e.g.*, import conditions, supply structure, demand structure, market entry conditions and potential competition and efficiency gains) was not required in cases where:

- the aggregate market share of the parties did not exceed 20% in terms of the horizontal relationships; and
- the market share of one of the parties did not exceed 25% in terms of the vertical relationships within the affected markets.

On the other hand, the new template form requires parties to provide some of the detailed information that was sought under sections 6, 7 and 8 of the template form in cases where there are affected markets in Türkiye, irrespective of market shares held by the parties in such markets. Further, the Amendment Communiqué requires that information subject to a request for confidential treatment be highlighted in red, which was not necessary on the previous template notification form. The template form emphasises that the transaction value reflects the value of all assets and pecuniary and non-pecuniary benefits (denominated in Turkish lira) that the acquirer has acquired or will acquire from the seller within the scope of the transaction. In this respect, the transaction value now includes all pecuniary payments to be made within the scope of:

- the transaction;
- voting rights;
- securities;
- movable and immovable assets;
- conditional payments;
- additional payments for non-compete obligations (if any); and
- obligations of the acquirer.

The Amendment Law, which was officially approved by the Turkish Parliament on June 16, 2020 and entered into force on June 24, 2020, on the day it was published in the *Official Gazette*, aimed to achieve further compliance with the EU competition regime, on which it was closely modelled. The Amendment Law set out the main rules under Article 4 (concerning agreements, concerted practices and decisions restricting competition), Article 6 (concerning abuse of dominant position) and Article 7 (concerning M&A) of Law No. 4054. The amendments introduced: (i) efficient enhancing procedures and mechanisms; and (ii) clarified mechanisms to sustain legal certainty in practice, to a certain extent. To this extent, new mechanisms adopted in relation to a selection of cases include the following: (i) the substantive test applicable to merger control analysis; (ii) behavioural and structural remedies applicable to anticompetitive conduct; and (iii) procedural tools enabling the Board to end its proceedings in certain cases without going through the whole procedure when the parties opt for a commitment or settlement mechanism. Below are the key changes introduced by the Amendment Law:

- *De minimis* principle: The Board can decide not to launch a full-fledged investigation for agreements, concerted practices and/or decisions of associations of undertakings that do not exceed the market share and/or turnover thresholds to be determined by the Board.
- SIEC test: As noted above, in parallel with EU competition law, the dominance test was replaced by the SIEC test. Accordingly, M&A transactions significantly impeding competition can also be prohibited. On the other hand, the SIEC test was regarded to reduce over-enforcement as focus is placed on whether and how much competition is impeded as a result of a transaction.
- Behavioural and structural remedies: In cases where behavioural remedies have failed, structural remedies can be applied for anticompetitive conduct. Application of the remedy mechanism was introduced in Articles 4 and 6 of the Amendment Law and replaced the mechanism previously applicable under Article 7. Accordingly, the new mechanism applicable for all anticompetitive conduct assessments set application/proof of ineffectiveness of behavioural remedies as a precondition for structural remedies.
- Settlement: The Board, *ex officio* or on the parties' request, can initiate a settlement procedure. Parties that admit to an infringement can apply for the settlement procedure up until the official notification of the investigation report.
- Commitment: Undertakings or associations of undertakings can voluntarily offer commitments during a preliminary investigation or full-fledged investigation to eliminate the Authority's competitive concerns in terms of Articles 4 and 6. Depending on the sufficiency and the timing of the commitments, the Board can decide not to launch a full-fledged investigation following the preliminary investigation or to end an ongoing investigation without completing the entire investigation procedure. In any event, the commitments will not be accepted for violations such as price-fixing between competitors, territory or customer-sharing or restriction of supply.
- On-site inspections: This amendment confirms the current practice of case handlers, who inspect and make copies of all information and documents in companies' physical and electronic records.
- Self-assessment procedure: The amendment provided legal certainty to the individual exemption regime, as it is set forth that the "self-assessment" principle applies to certain agreements, concerted practices and decisions that potentially restrict competition.
- Time extension for additional opinions: The 15-day time period for submission of the Authority's additional opinion can be doubled if deemed necessary.

The Authority published its Guidelines on Examination of Digital Data during On-Site Inspections on October 8, 2020, which set forth the general principles regarding the examination, processing and storage of data and documents held in electronic media and information systems during on-site inspections. Most notably, the Turkish Constitutional Court issued a decision (Application No. 2019/40991, 23.04.2023) on

June 20, 2023, which may have an impact on the Authority's on-site inspection processes. The Authority's regular procedure permits its case handlers to perform on-site inspections with a certificate of authority issued by the Board, as stipulated by Law No. 4054. However, the Constitutional Court found that the provision of law that enabled on-site inspections without a court warrant violated Article 21 of the Turkish Constitution, which protects domicile immunity. Therefore, the Authority may have to apply to the Criminal Judgeship of Peace to obtain a warrant before conducting on-site inspections, a process that was already set out under the law but only occasionally applied by the Authority when companies refused to cooperate. Additionally, the secondary legislation (Communiqué No. 2021/3), which provides details on the process and procedure related to application of the *de minimis* principle, came into force on March 16, 2021. Furthermore, the Board enacted secondary legislation through Communiqué 2021/2 on the Commitments to be Offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position, published on March 16, 2021 alongside the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position, published on July 15, 2021.

Furthermore, with the amendment introduced by Communiqué No. 2021/4 on the Amendments to the Block Exemption Communiqué on Vertical Agreements ("Communiqué No. 2021/4"), promulgated in Official Gazette No. 31650, dated November 5, 2021, the threshold regarding the supplier's market share(s) in contract goods market(s) has now been lowered to 30%.

Moreover, the Regulation on Active Cooperation for Detecting Cartels ("Leniency Regulation") entered into force on December 16, 2023, replacing the former leniency regulation, which had been in force since February 15, 2009. The Leniency Regulation, *inter alia*, extended full immunity to both cartel parties and facilitators, including hub-and-spoke cartels, and to establish a clear distinction between the leniency programme and the settlement procedure, it introduced a new requirement of a "document that holds value", obliging applicants to provide documents considered valuable in reinforcing the Authority's ability to establish the cartel. The Leniency Regulation also introduced a time limit, allowing applicants who do not qualify for full immunity but, within three months of the investigation notice and before the receipt of the investigation report, submit the required information and documents that met the relevant conditions, to benefit from may a reduction in fines.

Furthermore, in 2024 the Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position ("Regulation on Fines") was introduced, which was amended with the Official Gazette published on December 27, 2024. With the new Regulation, the distinction between "cartel" and "other violations" in the determination of base administrative monetary fines and lower and upper limits for said base fines determined based on the type of violation (*i.e.*, 2% to 4% for cartels and 0.5% to 3% for other violations) has been revoked. Furthermore, the new Regulation foresees that the base fine will be determined by considering the severity of the harm caused or likely to be caused by the violation and whether the nature of the violation is naked and/or hard-core. It also puts forth specific base fines based on the duration of the violations. Additionally, the new Regulation redefines aggravating factors and mitigating factors. Moreover, while the revoked regulation provided lower and upper limits for the amount of discount to be applicable to cases in consideration of mitigating factors, the new regulation removes these lower and upper limits.

Another major development from 2024 is, on December 3, 2024, the Authority has published the Guideline on Competition Infringements in Labor Markets. The Guideline consists of a general discussion and analysis of the labour markets, the application of Article 4 of Law No.4054 (on the prohibition of agreements, decisions and practices that restrict competition) and the implementation of Article 5 on the application of exemption mechanism, Article 6 regarding abuse of dominance rules, as well as Article 7 on assessment under merger control rules. In terms of implementation of Article 7 of Law No.4054, the

Authority emphasised that to assess whether M&As reduce competition in the labour market, various variables such as the market shares of the parties in the labour market and the concentration level of the market, the similarity of the qualifications of the employees employed by the parties to the transaction, barriers to entry to the relevant market, organisation of labour suppliers in the relevant market, costs of changing jobs, the ability of the competitors of the parties to the transaction to increase capacity or make new investments, potential competitive pressure, whether the transaction increases the opportunities for competitors operating in the market to cooperate, and whether the transaction is a killer acquisition will be taken into account.

Key industry sectors reviewed and approach adopted to market definition, barriers to entry, nature of international competition, etc.

Traditionally, the Authority pays special attention to transactions that take place in sectors where competition infringements are frequently observed and the concentration level is high. Concentrations that concern strategic sectors important to the country's economy (such as automotive, construction, telecommunications, energy, food, health, etc.) also attract the Authority's special scrutiny. The sector reports published annually by the Authority might also be an indicator of the sectors that attract the attention of the Authority.

The last sector reports examined are with a focus on sectors such as fuel oil and online advertising sectors and Fast-Moving Consumer Goods ("FMCG"). The Authority's case handlers are always extremely eager to issue information requests (thereby cutting the review period) in transactions relating to these sectors, and even transactions that raise low-level competition concerns are looked into very carefully. In some sectors, the Authority is also statutorily required to seek the written opinion of other Turkish governmental bodies (such as the Turkish Information Technologies and Communication Authority, pursuant to section 7/2 of the Law on Electronic Communication No. 5809). In such instances, the statutory opinion usually becomes a hold-up item that slows down the review process of the notified transaction.

The consolidated statistics regarding merger cases in 2024 show that transactions were most prevalent in the computer programming, consulting and related activities sector, with 23 notifications, and generation, transmission and distribution of the electrical energy sector, with 13 notifications, followed by travel agencies and tour activities of operators and wholesale trade conducted based on fee or contract, with four and three notifications, respectively.

The Board adopted many significant decisions in the past year, examples of which are summarised below.

Several major merger control reasoned decisions on high-value transactions were issued in 2024.

In the *Param/Kartek* decision (24-16/390-148, 4.04.2024), the Board assessed the acquisition of sole control over Kartek Holding AŞ ("Kartek") by Param Holdings International Coöperatief U.A. ("Param"). Before the transaction, Kartek was controlled by MTS Teknoloji Yatırımları AŞ ("MTS") and Kandilli Teknoloji Yatırımları ve Ticaret AŞ ("Kandilli"). The transaction was subject to mandatory approval of the Authority under Article 7 of Law No. 4054 on the Protection of Competition and Communiqué No. 2010/4, and the Board initiated an investigation to determine whether the transaction had been completed without prior clearance of the Board.

As a result of the acquisition, Param had sole control over Kartek, which operates in the electronic payment systems sector, providing card issuance, processing, and fraud detection solutions. The Board examined whether the transaction created competitive concerns due to horizontal overlaps and vertical relationships between the two companies and whether it could result in unilateral or coordinated effects that might reduce competition. Additionally, the Board identified concerns regarding input foreclosure due to Kartek's strong position in the market, particularly because Kartek is one of the few companies offering end-to-end payment solutions, which could make it costly for customers to switch providers.

Another issue raised was Kartek's acquisition of sensitive customer data, which, if transferred to Param, could create a competitive disadvantage for competitors.

During the review process, the Board received anonymous complaints claiming that Param had already acquired Kartek into its operations before the clearance, violating Article 7 of Law No. 4054. These claims cause the Board to conduct on-site inspections at Param, Kartek, and affiliated entities to investigate whether the transaction had been implemented.

The on-site inspections revealed internal correspondence and operational changes that suggested Param had taken control of Kartek before having the Board's approval that was necessary. The key evidence included that Param executives were involved in Kartek's business decisions, influencing financial strategies, pricing, and customer management as if the companies had already been integrated.

The Board determined that these actions constituted gun-jumping, which refers to the premature implementation of a merger or acquisition before receiving clearance. Since the transaction was subject to mandatory merger control notification under Article 7 of Law No. 4054, the Board concluded that Param had violated the Turkish competition law by failing to have official approval of the Board before taking control of Kartek.

Under Article 7 of Law No. 4054, the transaction required prior approval as it involved the acquisition of sole control over Kartek. However, the Board found that Param had already started implementing the transaction, making strategic decisions, and integrating its operations with Kartek before obtaining clearance. As a result, the Board imposed an administrative fine under Article 16 of Law No. 4054.

To address the competitive concerns identified in the review, Param submitted commitments to ensure that Kartek and Param would remain separate legal entities with distinct executive boards. To prevent any anticompetitive advantage, Param agreed to ensure that Kartek's sensitive customer data would be inaccessible to Param or its employees and to maintain agreements with existing and potential customers under certain conditions to ensure market continuity. The Board accepted these commitments and will monitor them for a period of three years.

In *Bupa Türkiye/Compugroup* Decision (24-11/174-69, 29.02.2024), the Board conditionally approved the acquisition of Compugroup Medical Bilgi Sistemleri A.Ş. ("Compugroup Medical") by Bupa Türkiye Sağlık Hizmetleri A.Ş., ("Bupa Türkiye") subject to behavioural commitments.

The Board outlined the activities of both parties, identifying Bupa Türkiye as a subsidiary of Bupa International, a global health insurance and services provider, and Compugroup Medical as an IT and operational support provider focused on the digitalisation of healthcare systems. The Board defined the relevant markets as "information technology systems and operational support for health insurance companies" and "sickness-health insurance", while also considering but ultimately leaving open a narrower segmentation into "complementary" and "private" health insurance.

During the investigation, third parties – including insurance companies and competitors – expressed concerns about Bupa Türkiye potentially gaining indirect access to sensitive commercial and personal data via Compugroup Medical including policy details, pricing strategies, and client portfolios. The Board also highlighted the concerns regarding the lack of alternatives for certain IT services and declining service quality or potential data breaches post-transaction.

Upon providing a detailed analysis of the transaction and activities of the target company, the Board identified Compugroup Medical as a technology undertaking that provides IT support to insurance companies, healthcare institutions, pharmacies, pension funds and as a result, it was indicated by the Board that Compugroup Medical is exempt from the local turnover threshold for the purposes of the notifiability analysis of the transaction.

In its substantive assessment, the Board assessed the transaction under the Guideline on Non-Horizontal Mergers and Acquisitions, and focused on potential anticompetitive effects, including input and customer

foreclosure and coordinated effects. The Board expressed concern that post-transaction, Compugroup Medical might stop supplying its services to competitors of Bupa Acıbadem (Bupa's Turkish insurance subsidiary), potentially leading to input foreclosure by restricting competitors' access to essential software infrastructure. The Board found that Compugroup Medical holds a leading position in the market in terms of both customer base and premium production volumes of insurance companies, and its potential refusal to supply services in the healthcare insurance submarket post-transaction could disadvantage competitors and potentially result in market foreclosure. The Board also 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 and highlighted that the potential for customer foreclosure might become a concern, as it could impede competitors from reaching potential customers. However, following the assessment of the market share, the Board determined that the transaction will not result in significant customer foreclosure or SIEC. Regarding coordinated effects, the Board also raised concerns about Compugroup Medical's potential to share such sensitive data with Bupa Acıbadem, which could create competitive concerns both from a unilateral and a coordination perspective.

To mitigate these concerns, Bupa Türkiye submitted a set of behavioural commitments, including maintaining and renewing contracts with third parties, offering services under equal terms without granting an advantage to entities within its own economic unit, such as Bupa Acıbadem, and forcing measure to prevent the exchange of trade secrets and/or competitively sensitive information between Compugroup Medical and Bupa Acıbadem. Upon assessing the proposed remedies, the Board concluded that that these commitments addressed the risks identified, particularly regarding the prevention of sensitive information sharing between Compugroup Medical and Bupa Acıbadem. Therefore, the Board unanimously approved the transaction, subject to the behavioural remedies outlined in the remedy package.

Key economic appraisal techniques applied, e.g., as regards unilateral effects and co-ordinated effects, and the assessment of vertical and conglomerate mergers

The Turkish merger control regime currently utilises a SIEC test in the evaluation of concentrations. In line with EU law, the Amendment Law replaced the dominance test with the SIEC test. Based on the new substantive test, M&As that do not significantly impede effective competition in a relevant product market within the whole or part of Türkiye will be cleared by the Board. This amendment aims to allow for a more reliable assessment of the unilateral and cooperation effects that might arise as a result of mergers or acquisitions. The Board will be able to prohibit not only transactions that may result in the creation of a dominant position or strengthen an existing dominant position, but also those that can significantly impede effective competition.

On the other hand, the SIEC test may also reduce over-enforcement as it focuses more on whether and how much competition is impeded as a result of a transaction. Thus, pro-competitive M&As may benefit from the test even though a transaction leads to significant market power based on, for instance, major efficiencies. Likewise, dominant undertakings contemplating transactions with *de minimis* impact may also benefit from this approach.

The Board has been applying the relevant SIEC test in its decisions. While Article 7 of Law No. 4054 and Article 13 of the Merger Communiqué regulates the implementation of the SIEC test, the Horizontal Merger Guideline outlines the criteria and methodology on the evaluation of the merger and acquisitions that would significantly impede competition.

Within the previous implementation of the Law, pursuant to Article 13/II of the Merger Communiqué, M&As that do not create or strengthen a sole or joint 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 Board. Article 3 of Law No. 4054 defines a dominant position as: "*[T]he power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers.*" The Guideline on the Assessment of Horizontal Mergers and Acquisitions ("Horizontal Merger Guideline") states that market shares higher than 50% may be used as an indicator of a dominant position, whereas aggregate market shares below 20% may be used as a presumption that the transaction does not pose competition law concerns. In practice, market shares of about 40% and higher are generally considered, along with other factors such as vertical foreclosure or barriers to entry, as indicators of a dominant position in a relevant market. However, a merger or acquisition can only be blocked when the concentration not only creates or strengthens a dominant position, but also significantly impedes competition in the whole territory of Türkiye or in a substantial part of it, pursuant to Article 7 of Law No. 4054.

On the other hand, there were a couple of exceptional cases in which the Board discussed the coordinated effects under a "*joint dominance test*" and rejected some transactions on those grounds. For instance, transactions for the sale of certain cement factories by the Savings Deposit Insurance Fund were rejected after the Board evaluated the coordinated effects of the mergers under a joint dominance test and blocked the transactions on the ground that they would lead to joint dominance in the relevant market. The Board took note of factors such as "*structural links between the undertakings in the market*" and "*past coordinative behaviour*", in addition to "*entry barriers*", "*transparency of the market*" and the "*structure of demand*". It concluded that certain factory sales would result in the creation of joint dominance by certain players in the market, whereby competition would be significantly impeded. Nonetheless, the High State Court overturned the Board's decision and decided that the dominance test does not cover joint dominance. This has been a very controversial topic ever since, as the Board has not prohibited any transaction on the grounds of joint dominance following the decision of the High State Court.

In terms of joint venture transactions, to qualify as a concentration subject to merger control, a joint venture must be of a full-function character, satisfying two criteria: (i) existence of joint control in the joint venture; and (ii) the joint venture being an independent economic entity established on a lasting basis (*i.e.*, having adequate capital, labour and an indefinite duration). If the transaction is a full-function joint venture, the standard SIEC test is applied. Additionally, regardless of whether the joint venture is full-function, it should not have as its object or effect the restriction of competition among the parties or between the parties and the joint venture itself.

Furthermore, economic analysis and econometric modelling has been seen more often in the last few years. For instance, in the *AFM/Mars Cinema* case (11-57/1473-539, 17.11.2011), the Board used the OLS and 2SLS estimation models in order to define the price increases expected from the transaction. It also employed the *Breusch/Pagan*, *Breusch-Pagan/Godfrey/Cook-Weisberg*, *White/Koenker* NR2 tests and the *Arellano-Bond* test on the simulation model. Such economic analyses are rare, but increasing in practice. Economic analyses that are used more often are the Herfindahl-Hirschman Index ("HHI") and CRN indices to analyse concentration levels. For instance, in the *iData* case (24-26/629-262,12.6.2024), the Board used the HHI test to establish the concentration levels of the concerned transaction. In 2019, the Board also published the *Handbook on Economic Analyses Used in Board Decisions*, which outlines the most prominent methods utilised by the Authority (*e.g.*, correlation analysis, SSNIP test, *Elzinga-Hogarty* test).

Approach to remedies (i) to avoid second stage investigation, and (ii) following second stage investigation

Pursuant to Article 10 of Law No. 4054, once the formal notification has been made, the Board, upon its preliminary review (Phase I) of the notification, will decide either to approve or to investigate the

transaction further (Phase II). The Board notifies the parties of the outcome within 30 calendar days of a complete filing. Regarding the procedure and steps of a Phase II review, Law No. 4054 makes reference to the relevant articles governing the investigation procedures for cartel and abuse of dominance cases.

The Board may grant conditional clearances to concentrations. In the case of a conditional clearance, the parties comply with certain obligations such as divestments, licensing or behavioural commitments to help overcome potential competition issues. The Guidelines on Remedies that are Acceptable by the Authority in Merger/Acquisition Transactions provide guidance regarding remedies. The parties can close the transaction after the clearance and before the remedies have been complied with; however, the clearance becomes void if the parties do not fully comply with the remedy conditions.

As is evident from the above, the Merger Communiqué enables the parties to provide commitments to remedy substantive competition law issues that may result from a concentration. The parties may submit to the Board proposals for possible remedies either during the preliminary review (Phase I) or the investigation period (Phase II). If the parties decide to submit the commitment during the preliminary review period (Phase I), the notification is deemed to be filed only on the date of the submission of the commitment. The commitment can also be submitted together with the notification form. In such a case, a signed version of the commitment containing detailed information on the context of the commitment should be attached to the notification form.

According to the Guidelines on Remedies, structural remedies take precedence over behavioural remedies, as they produce preferable and concrete results. Although there are few decisions in which behavioural remedies are accepted (see, for example: *Potas/Antalya Airport* (23-22/426-142, 12.05.2023); *EssilorLuxottica/Hal Holding* (21-30/395-199, 10.06.2021); *Bekaert/Pirelli* (15-04/52-25, 22.01.2015); *Obilet/Biletal* (21-33/449-224, 01.07.2021); *Essilor/Luxottica* (18-36/585-286, 01.10.2018); or *Migros/Anadolu Industry Holding* (29/420-117, 09.07.2015)), the majority of conditional clearance decisions are based on structural remedies (see, for example: *ÇimSA/Bilecik* (08-36/481-169, 02.06.2008); *Mey İçki/Diageo* (11-45/1043-356, 17.08.2011); *Burgaz Rakı/Mey İçki* (10-49/900-314, 08.07.2010); *Essilor/Luxottica* (18-36/585-286, 01.10.2018); *Lesaffre/Dosu Maya* (18-17/316-156, 31.05.2018); or *Compugroup/Bupa* (24-11/174-69; 21.11.2024)).

The Authority does not have a clear preference on any particular type of remedies. The assessments are made on a case-by-case basis in view of the specific circumstances surrounding the concentration. Nevertheless, divestitures are the most common commitment procedure in the Turkish merger control regime.

Key policy developments

The Amendment Communiqué, *inter alia*, raised the Turkish merger control thresholds and introduced sector-specific turnover thresholds. During that period, the exchange and inflation rates increased significantly. Based on the USD and EUR equivalents of the applicable thresholds at the time of their introduction, the update will serve as an equaliser, as the new USD and EUR thresholds are close to the levels that were applicable when the previous updates were enacted. The previous update on notification thresholds was made in February 2013, which means that the national competition law enforcement regime used the same thresholds for more than nine years. Before the February 2013 amendments, the older figures had remained in use for only a little more than two years.

The Amendment Law changed the substantive test by replacing the dominance test with the SIEC test. Accordingly, M&A transactions significantly impeding competition are prohibited. Having said that, the secondary legislation, which should be providing further insight into the application of the new SIEC test, is yet to change. Apart from the Amendment Law, the following guidelines promulgated prior to such Amendment Law are still in effect and serve as the most important documents in relation to the assessment of concentrations: (i) the Guideline on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions ("Guideline on Undertakings Concerned"); (ii) the Horizontal Merger Guideline; and (iii) the Guideline on the Assessment of Non-Horizontal Mergers ("Non-Horizontal

Merger Guideline"). These Guidelines are in line with EU competition law regulations and seek to retain harmony between EU and Turkish competition law instruments.

The Board's approach to market shares and concentration levels is similar to the approach taken by the European Commission and enumerated in the Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings (2004/C 31/03). As the first factor discussed under the Horizontal Merger Guideline, market shares above 50% can be used as evidence of a dominant position. If the market share of the combined entity remains below 20%, this would not lead to a need for further investigation into the likelihood of harmful effects resulting from the combined entity. Although a brief mention of the Board's approach to market shares and HHI levels is provided, the Horizontal Merger Guideline's emphasis on an effects-based analysis (coordinated/non-coordinated effects), without further discussing the criteria to be used in evaluating the presence of dominant position, indicates that the dominant position analysis still remains subject to Article 7 of Law No. 4054.

Other than the market share and concentration level discussion, the Horizontal Merger Guideline covers the following main topics: the anticompetitive effects that a merger would have in the relevant markets; buyer power as a countervailing factor in anticompetitive effects resulting from the merger; the role of entry in maintaining effective competition in the relevant markets; efficiencies as a factor counteracting the harmful effects on competition which might otherwise result from the merger; and conditions of the failing company defence. The Horizontal Merger Guideline also discusses coordinated effects in the market that may arise from a merger of competitors via increasing concentration in the market and may even lead to collective dominance. In its discussion of efficiencies, the Horizontal Merger Guideline indicates that the efficiencies should be verifiable and should provide a benefit to customers. Significantly, the Horizontal Merger Guideline provides that the failing firm defence has three conditions: (i) the allegedly failing firm will soon exit the market if not acquired by another firm; (ii) there is no less restrictive alternative to the transaction under review; and (iii) it should be the case that unless the transaction is cleared, the assets of the failing firm will inescapably exit the market.

The Non-Horizontal Merger Guideline confirms that non-horizontal mergers, where the post-merger market share of the new entity in each of the markets concerned is below 25% and the post-merger HHI is below 2,500 (except where special circumstances are present), are unlikely to raise competition law concerns, similar to in the Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings (2008/C 265/07). Other than the Board's approach to market shares and concentration levels, the other two factors covered in the Non-Horizontal Merger Guideline include the effects arising from vertical mergers, and the effects of conglomerate mergers. The Non-Horizontal Merger Guideline also outlines certain other topics, such as customer restraints, general restrictive effects on competition in the market, and restriction of access to the downstream market.

Apart from the foregoing, the below communiqués and guidelines are the recent key legislative developments:

- The Guidelines on Examination of Digital Data during On-Site Inspections were accepted on October 8, 2020.
- Communiqué No. 2021/2 on the Commitments to be offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position came into force on March 16, 2021.
- Communiqué No. 2021/3 on *De Minimis* Applications for Agreements, Concerted Practices and Decisions of Associations of Undertakings came into force on March 16, 2021.
- Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position entered into force on July 15, 2021.

- Communiqué No. 2021/4 promulgated in the *Official Gazette* dated November 5, 2021.
- The Amendment Communiqué was published in the *Official Gazette* on March 4, 2022 and entered into force on May 4, 2022.
- The Leniency Regulation was published in the *Official Gazette* on December 16, 2023 and entered into force on the same day.
- The Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position was published in the *Official Gazette* on December 27, 2024 and entered into force on the same day.

Reform proposals

The Authority is currently considering legislative measures pertaining to digital markets, anticipating the introduction of new obligations for undertakings with significant market power. The proposed amendments are expected to incorporate regulations on gatekeepers, potentially integrating them into Article 6 of Law No. 4054 or as a distinct article, though the timeline for adoption remains uncertain.

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