Turkiye merger control

Produced in partnership with ELIG Gürkaynak Attorneys-at-Law

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NOTE–to see whether notification thresholds in Turkiye and throughout the world are met, see Where to Notify.

1. Have there been any recent developments regarding the Turkish merger control regime and are any updates/developments expected in the coming year? Are there any other 'hot' merger control issues in Turkiye?

On March 4, 2022, the Turkish Competition Authority (Authority) published the 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 (the "Amendment Communiqué"). The Amendment Communiqué introduces certain new regulations concerning the Turkish merger control regime, which will fundamentally affect the notifiability analysis of merger transactions and the merger control notifications submitted to the Authority.

Two of the most significant developments that the Amendment Communiqué entails, inter alia, are the introduction of threshold exemption for undertakings active in certain markets/sectors and the increase of the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Authority.

The Amendment Communiqué does not seek a Turkish nexus in terms of the activities which renders 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 (a) generates revenue from customers located in Turkiye OR (b) conduct R&D activities in Turkiye OR (c) provide services to the Turkish users in any fields other than above-mentioned ones. Accordingly, the Amendment Communiqué does not require (a) generating revenue from customers located in Turkiye OR (b) conducting R&D activities in Turkiye OR (c) providing services to the 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 the Amendment Communiqué altered the scope of the transactions that are notifiable to the Authority. On that note, concentrations related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies, are closely scrutinized by the Authority.

Also, on 17 June 2020, the proposal for an amendment to the Law No. 4054 has been approved by the Turkish parliament, namely the Grand National Assembly of Turkiye. The Amendment Law that has been published in the Official Gazette and entered into force on 24 June 2020 essentially clarifies certain mechanisms in Law No. 4054 which might have led to legal uncertainty in practice to a certain extent, and introduces new mechanisms as to the selection of cases for the Authority to focus on, such as:

- the Significantly Impeding Effective Competition (SIEC) test for merger and acquisitions
- a de minimis principle for agreements concerted practices or decisions of association of undertakings (except hardcore violations)
- behavioral and structural remedies for anti-competitive conduct
- commitments and settlement mechanisms

- clarification on the powers of the Authority in on-site inspections
- clarification on the self-assessment procedure in individual exemption mechanism.

Within this scope, the Authority published its Guidelines on Examination of Digital Data during On-site Inspections on 8 October 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in the electronic media and information systems, during the on-site inspections. Furthermore, the secondary legislation regarding the commitment mechanism and the de minimis mechanism, (Communiqué No. 2021/2 on Remedies for Preliminary Investigations and Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position; and the Communiqué No. 2021/3 on De Minimis Applications for Agreements, Concerted Practices and Decisions of Associations of Undertakings) came into force on 16 March 2021. Moreover, the Authority published the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position on 15 July 2021.

For completeness, Communiqué No. 2021/4 on the Amendments to the Block Exemption Communiqué on Vertical Agreements promulgated in the Official Gazette dated November 5, 2021 and No. 31650 and the threshold regarding the supplier's market share(s) for the market(s) for the contract goods has been lowered to 30%.

Further, as of 16 December 2023, Regulation on Active Cooperation for Detecting Cartels entered into force, 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 program 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.

Certain amendments have been made to the Articles 43 and 45 of the Law No. 4054 governing the investigation process before the Authority within the scope of Articles 4 and 5 of the Law No. 7511 on Amendments to the Turkish Commercial Code and Certain Laws ("Law No. 7511") published on the Official Gazette (May 29, 2024).

Before the amendment, undertakings had the opportunity to submit three different written defenses before the Authority: (i) the "First Written Defense" against the Authority's Investigation Notice, (ii) the "Second Written Defense" against the Authority's Investigation Report, and (iii) the "Third Written Defense" against the Authority's Additional Written Opinion. After the written defences, the undertakings had the opportunity to make an oral defense before the Board. With the amendments, the right to submit the "First Written Defense" against the Authority's Investigation Notice is abolished. Additionally, the right to submit the "Third Written Defense" against the Additional Written Opinion is granted only if the Investigation Committee makes changes in its opinions on the Investigation Report. Finally, the period for submitting the "Third Written Defense," which previously could be extended up to 60 days, is now limited to a maximum of 30 days.

The amendments to the Law No. 4054 which directly relate to merger control are (i) SIEC test and (ii) Board's power to apply behavioral and structural remedies for anti-competitive conduct. The Authority previously based its merger control analysis on the dominance based substantive test and this was replaced with the SIEC test used by the EU. With this new test, the Authority will be able to prohibit not only transactions that may create a dominant position or strengthen an existing dominant position, but also those that could significantly impede competition. The Turkish merger control regime currently utilizes a SIEC test in the concentrations. Pursuant to article 7 of Law No. 4054 and article 13 of Communiqué No. 2010/4, based on the SIEC test, mergers and acquisitions which do not significantly impede effective competition in a relevant product market within the whole or part of Turkiye would be cleared by the Board. The secondary legislation provides further information on SIEC test. The SIEC test aims to allow 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. The Board published a recent decision, the *Marport* Board's Marport decision dated 13.08.2020 and numbered 20-37/523-231 decision, where the Board conducted a detailed competitive assessment based on the

SIEC test regarding the acquisition of sole control of Marport Liman İşletmeleri Sanayi ve Ticaret Anonim Şirketi ("Marport") by Terminal Investment Limited Sàrl ("TIL"). Prior to the proposed transaction Marport is under joint control of TIL and Arkas Group. In its competitive assessment, the Board stated that the transaction led to a horizontal overlap in the port management for container handling services market and a vertical overlap in the container line transportation market. The Board applied the SIEC test rather than solely assessing whether the transaction led to the creation or strengthening of a dominant position in the relevant markets.

2. Under Turkish merger control law, is the control test the same as the EU concept of 'decisive influence'? If not, how does it differ and what is the position in relation to 'minority shareholdings'?

The definition of control under Turkish competition law does not fall far from the definition of this term in Article 3 of the EU Merger Regulation. Pursuant to the presumption regulated under Article 5(2) of Communiqué on the Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4):

> '*control may be acquired through rights, contracts or other instruments which, separately or together, allow de facto or de jure exercise of decisive influence over an undertaking. In particular, these instruments consist of ownership right or operating right over all or part of the assets of an undertaking, and those rights or contracts granting decisive influence over the structure or decisions of the bodies of an undertaking. Control may be acquired by right holders, or by those persons or undertakings who have been empowered to exercise such rights in accordance with a contract, or who, while lacking such rights and powers, have de facto strength to exercise such rights*'.

Under the Turkish merger control regime, 'minority rights', ie the veto rights normally accorded to minority shareholders to protect their financial interests do not confer control. Voting and/or veto rights should be sufficient to enable the acquirer to exercise decisive influence on the strategic business behaviour of the target, thus control over the target. Such rights must be related to strategic decisions on the target's business policy and they must go beyond normal minority rights. The ability to exercise decisive influence on the day-to-day management of the target is not a requisite. What matters is whether the voting and/or veto rights afford the acquirer to decisively influence the target's important strategic business decisions, ie the business plan, appointment of the senior management, privileged shares conferring management powers, and budget and strategic/major investments.

In short, much like the EU regime, under Law No. 4054, mergers and acquisitions resulting in a change of control are subject to the approval of the Competition Board. Against the foregoing, the acquisition of a minority shareholding can constitute a notifiable transaction under Turkish merger control regime if it leads to a change in the control structure of the target entity.

3. Are joint ventures caught by the national merger control provisions (including non-structural, cooperative joint ventures)?

The Turkish merger control rules applicable to joint ventures are akin to—if not the same as—the EU rules. Article 5(3) of Communiqué No. 2010/4 provides a definition of joint venture, which does not fall far from the definition used in EU law. To qualify as a concentration subject to merger control, a joint venture must be of a full-function character and satisfy two criteria:

- existence of joint control in the joint venture, and
- the joint venture being an independent economic entity established on a lasting basis (ie having adequate capital, labor and an indefinite duration).

Additionally, regardless of whether the joint venture is full function, the joint venture should not have as its object or effect the restriction of competition among the parties or between the parties and the joint venture itself within the meaning of Article 4 of Law No. 4054, which prohibits restrictive agreements. If the parent undertakings of a joint venture operate in the same market or the downstream or upstream or neighbouring market as the joint venture, it could lead to coordination between independent undertakings that restrict competition within the meaning of Article 4 of Law No. 4054.

In case the nature of the JV turns out to be non-full-function, while the non-full function JVs are not under a mandatory merger control filing, non-full function JVs may fall under Article 4 of Law No. 4054, which prohibits restrictive agreements. The parties have the ability to do a self-assessment individual exemption test, which is set out under Article 5 of Law No. 4054, on whether the JV meets the conditions of individual exemption (which are also very similar to, if not the same as in the EU regime). Notifying the transaction for individual exemption is not a positive duty of the parties, but it is an option granted to them.

4. What are the merger control thresholds and would a purely foreign-to-foreign transaction be caught (commenting on any 'effects' doctrine/policy if relevant)?

The Amendment Communiqué introduced certain new rules concerning the Turkish merger control regime, which fundamentally affect merger control notifications submitted to the Authority.

Pursuant to Article 7 of the Amendment Communiqué, the changes introduced by the Amendment Communiqué became effective as of May 4, 2022. One of the most significant developments that the Amendment Communiqué entails, inter alia, is the increase of the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Authority and the introduction of threshold exemption for undertakings active in certain markets/sectors.

Further to the Amendment Communiqué, a transaction is required to be notified before the Authority; if one of the following increased turnover thresholds is met:

- the aggregate Turkish turnover of the transaction parties exceeding TL 750 million (approx. EUR 21.1 million or USD 22.8 million) and the Turkish turnover of at least two of the transaction parties each exceeding TL 250 million (approx. EUR 7 million or USD 7.6 million), or
- (i) the Turkish turnover of the transferred assets or businesses in acquisitions exceeding TL 250 million (approx. 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 (approx. EUR 84.5 million or USD 91.5 million), or (ii) the Turkish turnover of any of the parties in mergers exceeding TL 250 million (approx. 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 (approx. EUR 84.5 million or USD 91.5 million).

Furthermore, the Amendment Communiqué introduced a threshold exemption for the undertakings active in certain markets/sectors. Pursuant to the Amendment Communiqué, "the TL 250 million 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 or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies ("***Target Company(ies)***"), if they (i) operate in the Turkish geographical market or (ii) conduct research and development activities in the Turkish geographical market or (iii) provide services to the users in the Turkish geographical market.

It is noteworthy that the Amendment Communiqué does not seek a Turkish nexus in terms of the activities which render 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 and health technologies anywhere in the world for the threshold exemption to become applicable, provided that the Target Company (a) generates revenue from customers located in Turkiye OR (b) conducts R&D activities in Turkiye OR (c) provides services to the Turkish users in any fields other than abovementioned ones. Accordingly, the Amendment Communiqué does not require (a) generating revenue from customers located in Turkiye OR (b) conducting R&D activities in Turkiye OR (c) providing services to the Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

To clarify the meaning and the scope of these sectors exempted from the use of local turnover thresholds, a non-exhaustive list of activities which correspond to the sectors referred to in the definition of the Amendment Communiqué is provided below. The below list reflects a mere effort to provide insight and guidance in identifying this scope, thus the list is not exhaustive:

- **digital platforms**: Digital platforms are systems and interfaces that form a commercial network or market facilitating business-to-business (B2B), business-to-customer (B2C) or even customer-to-customer (C2C) transactions. Digital platforms include but are not limited to social media platforms, knowledge sharing platforms, media sharing platforms, service-oriented platforms, online marketplaces and digital content aggregators.
- **software and gaming software**: Software relates to a set of instructions, data or programs used to operate computers and execute specific tasks, while gaming software concerns software customised for gaming. Software and gaming software include but are not limited to the activities below.
    - writing and publishing of software and gaming software (including publishing of computer games) (NACE Rev. 2: 58.2)
    - wholesale, retail sale, distribution and marketing of software (both customised and non-customised) and gaming software (NACE Rev. 2: 46.51, 47.41)
    - reproduction from master copies of software (NACE Rev. 2: 18.2)
    - manufacture of electronic games with fixed (non-replaceable) software (NACE Rev. 2: 32.40)
    - translation or adaptation of software and gaming software (NACE Rev. 2: 58.29)
    - computer programming activities (designing the structure and content of, and/or writing the computer code necessary to create and implement systems software (including updates and patches), software applications (including updates and patches), databases, web pages, customising of software (NACE Rev. 2: 62.01)
    - software installation services (NACE Rev. 2: 62.09)

- **financial technologies**: Financial technologies refer to technology-enabled innovation in financial services. Undertakings which sit at the crossroads of financial services and technology fall into the scope of this definition. In brief, the term “financial technologies” is used to define software and other technology aiming to modify, enhance or automate financial services for businesses or consumers. Financial technologies include but are not limited to technologies and software developed for the following fields:
    - financial services activities (monetary intermediation, financial leasing, other credit granting) (NACE Rev. 2: 64.1, 64.9)
    - insurance, reinsurance, pension funding (NACE Rev. 2: 65)
    - activities auxiliary to financial services, insurance and pension funding (administration of financial markets (futures commodity contracts exchanges, securities exchanges, stock exchanges, stock or commodity options exchanges), security and commodity contracts brokerage (dealing in financial markets on behalf of others (e.g. stock broking) and related activities, securities brokerage, commodity contracts brokerage, activities of bureaux de change etc.), risk and damage evaluation, activities of insurance agents and brokers, fund management activities, financial transaction processing and settlement, investment advisory activities, activities of mortgage advisers and brokers (NACE Rev. 2: 66)
    - accounting, bookkeeping and auditing activities, tax consultancy (recording of commercial transactions from businesses or others, preparation or auditing of financial accounts, examination of accounts and certification of their accuracy, preparation of personal and business income tax returns, advisory activities and representation on behalf of clients before tax authorities) (NACE Rev. 2: 69.2)

- digital lending, payments, blockchain and digital wealth management.

- **biotechnology**: Biotechnology refers to the technology that utilizes biological systems, living organisms or parts of this to develop or create different products. The sector includes but is not limited to the activities below:
  - research and experimental development on biotechnology (NACE Rev. 2: 72.11)
    - DNA/RNA (genomics, pharmacogenomics, gene probes, genetic engineering, DNA/RNA sequencing/synthesis/amplification, gene expression profiling, and use of antisense technology)
    - proteins and other molecules (sequencing/synthesis/engineering of proteins and peptides (including large molecule hormones); improved delivery methods for large molecule drugs; proteomics, protein isolation and purification, signalling, identification of cell receptors)
    - cell and tissue culture and engineering (cell/tissue culture, tissue engineering (including tissue scaffolds and biomedical engineering), cellular fusion, vaccine/immune stimulants, embryo manipulation
    - process biotechnology techniques (fermentation using bioreactors, bioprocessing, bioleaching, biopulping, biobleaching, biodesulphurisation, bioremediation, biofiltration and phytoremediation
    - gene and RNA vectors: gene therapy, viral vectors)
    - bioinformatics (construction of databases on genomes, protein sequences, modelling complex biological processes, including systems biology)
    - nanobiotechnology (applies the tools and processes of nano/microfabrication to build devices for studying biosystems and applications in drug delivery, diagnostics etc.)
  - manufacture of biotech pharmaceuticals such as plasma derivatives (NACE Rev. 2: 21.20)

- **pharmacology**: Pharmacology, a biomedical science, deals with the research, discovery, and characterization of chemicals which show biological effects and the elucidation of cellular and organismal function in relation to these chemicals. In other words, pharmacology refers to the science of how drugs act on biological systems and how the body responds to the drug. The study of pharmacology encompasses the sources, chemical properties, biological effects and therapeutic uses of drugs. Pharmacology includes but is not limited to the biomedical studies and R&D activities conducted in the areas below:
  - pharmacodynamics (relationship of drug concentration and the biologic effect (physiological or biochemical)
  - pharmacokinetics (interrelationship of the absorption, distribution, binding, biotransformation, and excretion of a drug and its concentration at its locus of action)
  - clinical Pharmacology and Therapeutics (understanding what a drug is doing to the body, what happens to a drug in the body, and how drugs work in terms of treating a particular disease)
  - pharmacotherapy (treatment of a disorder or disease with medication)
  - neuropharmacology (understanding how drugs affect cellular function in the nervous system)
  - pyscopharmacology (use of medications in treating mental disorders)
  - cardiovascular pharmacology (understanding how drugs influence the heart and vascular system)
  - molecular pharmacology (investigates the molecular mode of action of drugs, among others using genetic and molecular biology methods)
  - manufacture and R&D of pharmaceuticals (antisera and other blood fractions, vaccines, diverse medicaments, including homeopathic preparations), pharmaceutical preparations and medicinal

chemicals (manufacture of medicinal active substances to be used for their pharmacological properties in the manufacture of medicaments: antibiotics, basic vitamins, salicylic and Oacetylsalicylic acids etc.); wholesale, retail sale, distribution and marketing of pharmaceuticals, pharmaceutical preparations and medicinal chemicals; growing of drug and narcotic crops (NACE Rev. 2: 21.1 and 21.2)

- **agricultural chemicals**: Agricultural chemicals refer to chemicals used in agriculture to control pests and disease or control and promote growth; such as pesticides, herbicides, fungicides, insecticides, and fertilizers. The sector includes but is not limited to the activities below:
  - mining of chemical and fertiliser minerals (NACE Rev. 2: 08.91)
  - support activities for other mining and quarrying (where it relates to agricultural chemicals and fertilizers) (NACE Rev. 2: 09.90)
  - manufacture of fertilisers (straight or complex nitrogenous, phosphatic or potassic fertilisers; urea, crude natural phosphates and crude natural potassium salts), nitrogen compounds (nitric and sulphonitric acids, ammonia, ammonium chloride, ammonium carbonate, nitrites and nitrates of potassium) (NACE Rev. 2: 20.15)
  - manufacture of organic and inorganic basic chemicals (where it relates to agricultural chemicals and fertilizers) (NACE Rev. 2: 20.13, 20.14)
  - manufacture of pesticides and other agrochemical products (manufacture of insecticides, rodenticides, fungicides, herbicides, acaricides, molluscicides, biocides, manufacture of anti-sprouting products, plant growth regulators, manufacture of disinfectants (for agricultural and other use) (NACE Rev. 2: 20.2)
  - wholesale, retail sale, distribution and marketing of fertilisers and agrochemical products (NACE Rev. 2: 46.75)

- **health technologies**: Health technologies are the application of organized knowledge and skills in the form of medicines, medical devices, vaccines, procedures and systems developed to solve a health problem and improve quality of life. They refer to any technology, including medical devices, IT systems, algorithms, artificial intelligence (AI), cloud and block chain, designed to support healthcare organizations and patients. Health technologies include but are not limited to technologies and software developed or being developed for the following fields:
  - uman health activities (hospital activities, medical (medical consultation and treatment) and dental practice activities (dentistry, endodontic and paediatric dentistry; oral pathology, orthodontic activities) (NACE Rev. 2: 86)
  - ii. residential healthcare activities (residential nursing care activities, residential care activities for mental retardation, mental health and substance abuse, residential care activities for the elderly and disabled) (NACE Rev. 2: 87)
  - manufacture of medical and dental instruments (e.g. operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs, surgical appliances) (NACE Rev. 2: 32.5)

If the Target Company's activities fall into the above markets/sectors, the thresholds that would be applicable would be: 'The aggregate Turkish turnover of the transaction parties exceeding TL 750 million (approx. EUR 21.1 million or USD 22.8 million)" or 'the worldwide turnover of at least one of the other parties to the transaction exceeding TL 3 billion (approx. EUR 84.5 million or USD 91.5 million)'. Accordingly, when an undertaking that falls within the definition and criteria above is being acquired, the transaction would be notifiable if the aggregate Turkish turnover of the Target Company and the acquirer exceeds TL 750 million or the worldwide turnover of the acquirer exceeds TL 3 billion. In 2024 a total of 311 out of 164 transactions notified to the Board were foreign-to-foreign transactions.

In terms of foreign-to-foreign transactions, there is no exemption granted under the Turkish merger control regime and in case one of the turnover thresholds is triggered, a foreign-to-foreign transaction will be notifiable as well. Foreign-to-foreign mergers are caught under Competition Law regardless of whether the transaction parties have Turkish nexus or generate any Turkish turnover. In other words, whether transaction parties have Turkish nexus is not relevant for the notifiability analysis under the Turkish merger control regime. Additionally, according to Communiqué No. 2010/4, whether an 'affected market' exists will not be considered in assessing whether a transaction triggers the notification requirement. However, the concept of affected market carries weight in terms of the substantive competitive assessment and the notification form.

To see whether thresholds in Turkiye are met, see Where to Notify.

5. Are there any specific issues parties should be aware of when compiling and calculating the relevant turnover for applying the jurisdictional thresholds?

Article 8 of Communiqué No. 2010/4 states that in the calculation of the turnover of each transaction party, total turnovers of the following are taken into account:

- undertaking concerned
- persons or economic units in which the undertaking concerned:
  - holds more than half of the capital or commercial assets
  - holds the power to exercise more than half of the voting rights
  - holds the power to appoint more than half of the members of the board of supervisors, board of directors or the bodies authorised to represent the undertaking, or
  - holds the power to manage operations
- persons or economic units which hold the rights and powers listed in the second point above over the undertaking concerned
- persons or economic units over which those listed in the third point above hold the rights and powers described
- persons or economic units over which those listed in all the points above jointly hold the rights and powers described.

Pursuant to the Guideline on Undertakings Concerned, Turnover and Ancillary Restraints in Mergers and Acquisitions, the net sales generated as of the end of the financial year preceding the date of the notification, or, if this cannot be calculated, of those generated as of the end of the financial year closest to the date of notification are taken into account. To that end, the net sales must be calculated in accordance with the uniform accounting plan.

The aforementioned guideline further states that turnover generated from sales among the persons or economic units listed in the first paragraph of Article 8 of Communiqué No. 2010/4 will not be taken into account. The guideline explains that the purpose of not taking into account intra-group sales is to be able to evaluate the real economic weight of the parties in the market with respect to the transaction at hand.

In addition to this, the overseas sales of the aforementioned persons or economic units will not be taken into consideration while calculating the said persons or economic units' turnover figures in Turkiye.

The amendment brought to Article 8/5 of Communiqué No. 2010/4 on 24 February 2017 aims at revising the scope

of the special regulation concerning staggered transactions. Accordingly, the required time period related to transactions between the same persons or parties that are considered as a single transaction for the calculation of turnover thresholds has been extended to three years instead of two. The amended provision also defines as a single transaction the previous transactions carried out by the same acquirer in the same relevant product market within a period of three years.

Finally, there are specific methods of turnover calculation for certain sectors, which apply to banks, special financial institutions, leasing companies, factoring companies, securities agents and insurance companies. The Amendment Communiqué also updated the rules that apply to the calculation of turnover of the financial institutions in accordance with the recent changes on the financial regulations. The recent updates of Article 9 of Communiqué No. 2010/4 are as follows: (i) for the calculation of financial institutions' turnovers, the Amendment Communiqué aligned the wordings 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, (ii) the Amendment Communiqué updated the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board referred in Article 9 of Communiqué No. 2010/4.

6. Where the jurisdictional thresholds are met, is notification mandatory and must closing be suspended pending clearance?

In case one of the turnover thresholds stipulated under Article 7 of Communiqué No. 2010/4 is triggered, the transaction would be subject to a mandatory filing before the Authority. Once the thresholds are exceeded, there is no exception for filing a notification cited in the Competition Law or its secondary legislation. There is no de minimis exception or other similar exceptions under the Turkish merger control regime.

Pursuant to Article 16 of Law No. 4054, if the parties to a notifiable transaction violate the suspension requirement (ie close a notifiable transaction without the approval of the Turkish Competition Board or do not notify the notifiable transaction at all), a turnover-based monetary fine will be imposed on the undertakings concerned. These penalties are applied very frequently in practice.

Following the amendment to Communiqué No. 2010/4 on 24 February 2014, the exception to the stand-still obligation provided under Article 7(2) of EU Merger Regulation which applies to series of transactions in securities has also been introduced to the Turkish merger control regime. Pursuant to the new Article 10(6) of Communiqué No. 2010/4, in series of transactions in securities, by which control is acquired from various sellers in a stock exchange, the transaction could be notified before the Competition Board after the implementation of the transaction provided that:

- the notification is submitted to the Board without delay, and
- the acquirer does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of its investments based on a derogation which would be granted by the Competition Board.

The Competition Board may grant such derogation subject to conditions and obligations in order to ensure conditions of effective competition.

A notifiable concentration will also be invalid with all its legal consequences, unless and until it is approved by the Competition Board. The implementation of a notifiable transaction is suspended until clearance by the Competition Board is obtained. Therefore, a notifiable merger or an acquisition shall not be legally valid until the approval of the Competition Board, and such notifiable transaction cannot be closed in Turkiye before the clearance of the Competition Board.

The consequences of violating the suspension requirement are discussed further below under question 11.

7. Is there any discretion to review transactions that fall below the notification thresholds?

Article 7 of Law No. 4054 on Protection of Competition prohibits all concentrations leading to a significant impediment of competition in a product market. As a matter of fact, while the question on whether the transaction is subject to the Competition Board's approval should be taken into consideration within the scope of secondary legislation (ie the notification thresholds specified under Communiqué No. 2010/4), the question on whether the same transaction creates competition law sensitivities should be assessed within the scope of the primary legislation (ie. Article 7 of Law No. 4054).

The assessment on whether a transaction creates competition law sensitivities is independent from the question on whether the transaction is subject to the Competition Board's approval within the scope of Article 7 of Communiqué No. 2010/4. As per the hierarchy of norms, the fact that a transaction is not subject to the Competition Board's approval would not have an effect on the assessment of the same transaction in terms of its merits.

Under Article 7 of Law No. 4054 regulating the control of mergers and acquisitions, any mergers by one or more undertakings or acquisitions by any undertaking from another undertaking, which would result in a significant impediment of competition in a market for goods or services within the whole or a part of the country are prohibited.

Therefore, Law No. 4054 deems mergers and acquisitions which would result in significant impediment of competition as illegal, regardless of the question whether the relevant turnover thresholds have been exceeded or not. The jurisdictional threshold provided under Communique No. 2010/4 acts as a filter by excluding some transactions from the notification obligation; as such transactions do not attain a certain economic size.

8. Is it possible to close the deal globally prior to local clearance?

Although there are rare cases where methods like carve-out or hold separate arrangements were recognized by the Competition Board, these transactions have all very distinct and unique models or there is certain necessities arising from foreign laws and regulations and in fact, hold separate arrangements have consistently been rejected by the Competition Board to date, 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 Turkiye is not necessary.

9. Is there a deadline for filing a notifiable transaction and what is the timetable for review of a notifiable transaction?

Under the Turkish merger control regime, there is no specific deadline for filing. However, there is an explicit suspension requirement (ie the transaction cannot be closed before obtaining the approval of the Competition Board), which is set out under Article 11(1)(a) of Law No. 4054 and Article 10(5) of Communiqué No. 2010/4.

Once the formal notification has been made, the Competition Board, upon its preliminary review (Phase 1) of the notification, will decide either to approve, or to investigate the transaction further (Phase 2). The Competition Board notifies the parties of the outcome within 30 calendar days following a complete filing. The deadline starts running from the day after notification.

There is an implied approval mechanism where a tacit approval is deemed if the Competition Board does not react within 30 calendar days upon a complete filing. However, in practice, the Competition Board almost always reacts within the 30 calendar-day period by either sending a written request for information or—very rarely—by already rendering its decision within the original 30 calendar-day period.

In addition, Article 11 of Communiqué No. 2010/4 provides that any written request by the Competition Board for

missing information will restart the 30 calendar-day period from day one upon the submission of the requested additional information/document.

If a notification leads to an investigation (Phase 2), it becomes a full-fledged investigation. Phase 2 must be completed within six months from the date when the Competition Board decides to open an investigation. If deemed necessary, the Competition Board can extend this period only once, for an additional period of up to six months.

10. Who is responsible for filing a notifiable transaction (noting also whether there is a specific form/document used and an applicable filing fee)?

Pursuant to Article 10 of Communiqué No. 2010/4, the merger notification may be made jointly by the parties or by any of the parties. However, the notifying party shall be required to inform the other relevant party concerning the situation.

The notification must be submitted based on the sample notification form, which is provided attached to Communiqué No. 2010/4 as amended by the Amendment Communiqué. The Amendment Communiqué requires a more complex notification form. The information requested in the amended form includes global relevant product markets that the Parties operate in, globally overlapping markets and market share data regarding such globally overlapping activities, data with respect to supply and demand structure, imports, potential competition and expected efficiencies, etc. Some additional documents such as the executed or current copies and sworn Turkish translations of some of the transaction documents, balance sheets of the parties, detailed organizational structure charts and, if available, market research reports for the relevant market are also required. Bearing in mind that each subsequent request by the Competition Board for incorrect or incomplete information will prolong the waiting period, detailed and justified answers and information to be provided in the notification form is to the advantage of the parties.

There is no filing fee in Turkiye.

11. Please confirm/comment on the penalties for failing to notify or suspend transactions pending clearance and the Authority's record/stance in terms of pursuing parties for failing to notify relevant transactions (commenting, if relevant, on any statute of limitations regarding sanctions for infringements of the applicable law).

A notifiable concentration will be invalid with all its legal consequences, unless and until it is approved by the Competition Board. If the parties to a notifiable transaction violate the suspension requirement, a turnover-based monetary fine (based on the local turnover generated in the financial year preceding the date of the fining decision at a rate of 0.1%) will be imposed on the undertakings concerned. Article 16 of Law No. 4054 does not give the Competition Board discretion on whether to impose a monetary fine in case of a violation of a suspension requirement. In other words, once the violation of the suspension requirement is detected, the monetary fine will be imposed automatically. It is also notable that a monetary fine imposed as a result of a violation of a suspension requirement shall in any event not be less than TL 241,043 Turkish Liras as amended by the Communiqué No: 2025/1 on the Increase of the Lower Threshold for Administrative Fines Specified in Paragraph 1, Article 16 of the Law No 4054 on the Protection of Competition, to be valid until 31 December 2025.

Furthermore, if the Competition Board finds a violation of the Article 7 after reviewing said notifiable transaction under the SIEC test, further monetary fines and sanctions against the undertakings concerned will be in question. In such case, as defined in Article 16/4 of Law No. 4054, the Competition Board shall impose an additional monetary fine of up to 10% of the annual Turkish turnover of the undertakings concerned.

Moreover, each of the executive members of the incumbent parties who are determined to have played a significant

role in the infringement may also receive monetary fines up to 5% of the fine imposed on the incumbent parties as a result of implementing a problematic transaction without obtaining approval of the Board.

If the transaction in question is found to be problematic, the Board may deem it necessary to take interim measures such as the transfer of certain activities, shareholdings or assets to protect the competition in the relevant market. It should also be noted that if the parties do not comply with the measures the Board has taken, as per Article 17 of the Law No. 4054, the Board may, impose a daily administrative fine of 0.05% of annual gross revenues of the relevant undertakings, until the Parties comply with the Board's decision. The minimum fine for 2025 is 241,043 Turkish liras and the minimum fine is revised annually through a communiqué published each year.

Since there is no exemption for foreign-to-foreign transactions, the legal consequences of the violation of a suspension requirement are also applicable for foreign-to-foreign transactions. In other words, the foreign-to-foreign nature of the transaction does not prevent the imposition of an administrative monetary fine (for violation of either the suspension requirement or Article 7), in and of itself. In case of failure to notify (ie, closing before clearance), foreign-to-foreign mergers are caught under Law No. 4054 to the extent that they have effects on the relevant markets within the territory of Turkiye.

In terms of the Authority pursuing parties for failing to notify relevant transactions, there is a high likelihood of detecting missed notifications. The Competition Board analyses former mergers and acquisitions in the course of each notification and will, therefore, scrutinize earlier transactions if it detects a notification requirement. Moreover, the Competition Board vigorously follows information in the press with regard to mergers and acquisitions and actively questions transactions which were not notified to the Competition Board. Furthermore, the Competition Board closely follows the practice of the other competition authorities such as the European Commission. Consequently, if a transaction involving multi-jurisdictional notifications is notified to the European Commission or other competition authorities, there is the likelihood that the Competition Board might then actively question the transaction.

Overall the statute of limitation regarding the sanctions for infringements is eight years pursuant to Article 20(3) of Law on Misdemeanors No. 5326.

12. Are there any other 'stakeholders' other than the Authority (for example, any 'sector regulators' who might have concurrent powers)?

- The Capital Markets Board of Turkiye (CMB) regulates and supervises the securities markets in Turkiye. The CMB ensures transparency, fairness and effectiveness in the capital markets and protects the rights and interests of the investors.
- The Radio and Television Supreme Council (RTSC) regulates and supervises the radio and television broadcast sector in Turkiye. The RTSC is the main authority for policy making within radio and television sectors.
- The Banking Regulation and Supervision Agency (BRSA) regulates and supervises the banking sector. The BRSA is the policy maker in terms of facilitating the credit system and protecting the rights of depositors.
- The Energy Market Regulatory Authority (EMRA) regulates and supervises the energy market in Turkiye, namely the electricity market, the natural gas market, petroleum market and the LPG market.
- The Information and Communications Technologies Authority (ICTA) regulates and supervises the electronic communications sector. Mergers/acquisitions between authorised operators in the telecommunications sector are subject to the approval of the ICTA as well as the Authority.
- Personal Data Protection Authority protects fundamental rights and freedoms of persons, particularly the right to privacy, with respect to processing of personal data and to set forth obligations, principles and

procedures which shall be binding upon natural or legal persons who process personal data. On the October 26,2023 cooperation and information sharing protocol was signed between the Authority and Personal Data Protection Authority. It was stated in the announcement that considering the competitional concerns caused by the big data technologies, cooperation was inevitable and maintaining effective competition and raising awareness particularly in the digital markets are the key targets of the protocol.

End of Document