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The Turkish Competition Authority grants a negative clearance for a shifting-alliances transaction in the brokerage services market (*Midas Corporation / Portage Ventures III Investments / Spark Capital VII / Egem Eraslan*)

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This case summary aims to offer insight into Egem Eraslan/Portage/Spark Capital/Midas ¹ (“**Decision**”) of the Turkish Competition Board (“**Board**”). The transaction was notified as concerning the acquisition of sole control over Midas Corporation and its subsidiaries (“**Midas**”) by Egem Eraslan (“**Egem**”), Portage Ventures III Investments LP (“**Portage Ventures**”) and Spark Capital VII LP (“**Spark Capital**”) (“**Transaction**”).

Following its assessment, the Board concluded that the transaction does not constitute concentration within the meaning of Article 7 of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”), as it would result in shifting alliances- i.e., none of the parties will acquire control after the envisaged transaction. Accordingly, the Board granted a negative clearance pursuant to Article 8 of Law No. 4054, finding that the proposed Transaction does not restrict competition in Türkiye.

Parties to the Transaction

In terms of the Parties’ activities, the Board noted that the Midas economic entity, which includes Midas Technology Corporation, Midas Menkul, Midas Finansal Teknolojiler and Midas Kripto, is active in the field of brokerage services. The Board remarked that the activities of the Midas economic entity are limited to Türkiye, with no operations at the global level.

The Board observed that Egem Eraslan, the current controlling shareholder of Midas, is active in the brokerage services market through Midas, and also

operates in the private education sector in Türkiye through its shareholding in Eraslan Özel Eğitim İşletmeleri A.Ş.

On the other hand, the Board acknowledged that Portage Ventures, who is ultimately controlled by Desmarais Family Residuary Trust (“**Desmarais Trust**”) ², is a Canadian investment fund operating globally in the fields of financial technology and investment, with no subsidiaries or affiliates incorporated in Türkiye. Similarly, the Board noted that Spark Capital is a venture capital investment company incorporated in United States, that establishes and manages funds through the fund management companies operating under Spark Capital structure, with no activities in Türkiye.

Relevant Product and Geographic Markets

Following its review of Parties’ activities, the Board determined that (i) Midas operates in the field of brokerage services, (ii) Egem Eraslan, while operating in the field of brokerage services through its shareholding in Midas, is also have activities in the private education sector, (iii) Desmarais Trust is active in the insurance, pension, fund and assessment management, and investment sectors through its portfolio of alternative asset investment platforms, and that (iv) Spark Partners has activities in the fields of technology, crypto-assets and finance.

Although the Board identified a horizontal overlap

1. Decision of the Board dated 12.09.2024 and numbered 24-37/880-376.

2. The Board stated that Desmarais is a legal entity that cannot be defined within the scope of the terms regulated under Turkish commercial law.

between the activities of Spark Partners and the Desmarais Trust in the fund and asset management market, and although it was recognized that, there would be a horizontal and/or vertical overlap between Midas' activities in brokerage market and those of Spark Partners and the Desmarais Trust in the fund and asset management market, the Board assessed that there the Transaction does not give rise to any affected markets as Spark Partners and the Desmarais Trust conduct their activities concerning fund and asset management market in different geographical regions and that while Spark Partners and the Desmarais Trust operate in the global markets, Midas' activities are limited to the Turkish market only. In this regard, the Board assessed that neither Portage Ventures nor Spark Capital has direct or indirect activities that overlap with Midas' operations in Türkiye.

Accordingly, the Board indicated that the relevant product market may be defined as "*brokerage services market*" and the relevant geographic market may be defined as "*Türkiye*", however, left the relevant product and relevant geographic market definitions open as it was assessed that the Transaction will not lead to any competitive concerns in any plausible market definitions.

The Assessment On the Nature of the Transaction

The Board first delved into the assessment of the nature of the Transaction to determine whether Transaction results in a permanent change of control. The Board observed that following the implementation of the Transaction, the shareholding structure of Midas would be modified, with certain increases and decreases in the share ratios of the existing shareholders. In this context, it was noted that, following the consummation of the Transaction, Egem Eraslan would continue to hold the majority of Midas' shares, while Portage Ventures and Spark Capital would also become shareholders of Midas as a result of the decreases in the shareholding ratios of the existing shareholders of Midas.

In this context, the Board emphasized that it is essential to assess how decisions in the Board of

Directors of Midas will be adopted following the consummation of the Transaction.

The Board noted that Midas' Board of Directors would comprise members separately appointed by Portage, Spark Capital and Egem Eraslan and that appointment of certain number of members by Egem Eraslan ("**Joint Director**") would require the joint written consent of Spark Capital and Portage. Therefore, it was determined that Spark Capital and Portage would have a right to participate in the appointment of the Joint Director in addition to ability to independently appoint the separate members. The Board emphasized that as the appointment of the Joint Director can be exercised only through joint written consent of Spark Capital and Portage, Egem Eraslan would be able to continue nominating candidates until such joint consent is obtained. Moreover, the Board underlined that the provisions of the agreement regulating the functioning of Board of Directors allows the position to remain vacant until the candidate is approved by Spark Capital and Portage. Accordingly, the Board determined that the Board of Directors would be able to adopt decisions even in the absence of the Joint Director and concluded that the fact that the Board of Directors would be able to meet and adopt decisions in the absence of the Joint Director demonstrates that the minority shareholders, Spark Capital and Portage, does not have any veto rights with respect to the appointment of the Board members.

Following its review, the Board evaluated that none of the shareholders attending Board of Directors meeting has an individual veto right over the decisions adopted in the Board of Directors. Accordingly, the Board concluded that, irrespective of whether a Joint Director is appointed, neither Egem Eraslan nor Spark Capital and Portage would have ability to exercise control over the decisions taken by the Board of the Directors. Accordingly, the Board concluded that Midas would be governed through changing alliances, as described under Paragraph 66 of the Guidelines on the Concept of Control.

Accordingly, the Board determined that, after the consummation of the proposed transaction, Midas would not meet the requirement of being jointly controlled by the Transaction Parties, which is essential for joint ventures. Consequently, the Board found that the Transaction Parties cannot be regarded as exercising joint control over Midas, therefore, the

transaction cannot be considered an acquisition within the meaning of Communiqué No. 2010/4, and the agreements concluded between the Parties, which mainly concern the change in Midas' shareholding structure, should instead be assessed as an agreement under Article 4 of Law No. 4054.

The Assessment Under Article 4 of Law No. 4054

In this regard, following the Board's assessment that the transaction does not constitute concentration, the Board proceeded to evaluate the case under Article 4 of Law No. 4054 and concluded that Transaction would not lead to coordination among the Transaction Parties' activities, as the Parties operate in different geographic markets and there is no vertical or horizontal overlap between their activities in Türkiye. Accordingly, the Board determined that the Transaction does not have any object or effect

of restricting competition within the meaning of Articles 4, 6, and 7 of Law No. 4054 and granted a negative clearance for the Transaction pursuant to Article 8 of Law 4054.

Conclusion

The Decision provides a detailed assessment of the contractual provisions governing the target's post-transaction management and control structure, emphasizing the Board's examination of decision-making rights, veto mechanisms and changing alliances among the shareholders. The Board concluded that the transaction does not constitute an acquisition within the meaning of Law No. 4054 and accordingly granted negative clearance. The Decision is particularly noteworthy as it illustrates how the Board analyses the concept of control in transactions that do not result in a permanent/stable change in control, offering valuable insight into how it distinguishes joint control from shifting alliances in its merger control practice.

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