



Where to Draw the Line? - Shifting Alliances under Turkish Merger Control Regime

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(1) Introduction

The Turkish Competition Board (“**Board**”) determined that the transaction concerning the acquisition of 51% of the shares in Andar Elektromekanik Sistemler Sanayi ve Ticaret AŞ (“**Andar**”) by H. Ibrahim Bodur Holding AŞ (“**HIB Holding**”) does not constitute a concentration under Turkish merger control regime given that the transaction results in a shifting alliances structure post-transaction. As a result of its assessment under Article 4 of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”), which prohibits anticompetitive agreements, the Board granted negative clearance to the transaction on the grounds that it does not have the object or effect of restricting competition (the “**Decision**”).¹ The Decision is notable for the Board’s analysis of the control structure of Andar post-transaction (in particular, the assessment of a shifting alliances structure).

(2) Legal Background Regarding the Concept of Control and Shifting Alliances under Turkish Merger Control Regime

Pursuant to Article 5(1) of Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (“**Communiqué No. 2010/4**”), which is akin to Article 3(1) of the EU Merger Regulation (“**EUMR**”), a transaction is deemed to be a merger or an acquisition (i.e. a concentration) provided that it brings about a change in control on a lasting basis. Under Turkish merger control regime, control is defined as the possibility to exercise decisive influence over an undertaking. If an acquired undertaking will not be controlled by any of its shareholders after the transaction, such transaction would not result in a change in control

¹ The Board’s decision dated 28.08.2025 and numbered 25-32/760-451.

over the acquired undertaking on a lasting basis and it would not constitute a notifiable concentration within the meaning of Article 5 of Communiqué No. 2010/4.

According to paragraphs 50-66 of the Turkish Competition Authority's (the "**Authority**") Guidelines on Cases Considered as a Merger or Acquisition and the Concept of Control ("**Control Guidelines**"), which are closely modelled on paragraphs 64-80 of the European Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 ("**CJN**"), joint control can be typically established through (i) equality in voting rights or appointment to decision-making bodies, (ii) veto rights, and (iii) joint exercise of voting rights. According to paragraph 48 of the Control Guidelines, joint control over an undertaking exists where two or more undertakings or persons have the possibility of exercising decisive influence over another undertaking. Decisive influence in this sense means the power to block actions which determine the strategic commercial behaviour of an undertaking. Accordingly, joint control is the possibility of a deadlock situation resulting from the power of two or more parent companies to reject proposed strategic decisions. In this respect, the veto rights allowing to exercise decisive influence must be related to strategic decisions on the business policy of the target and must go beyond the veto rights normally granted to minority shareholders that are given in order to protect financial interests of investors.

In terms of the analysis of control structure, the level of shareholdings and representations in certain corporate bodies would not play a decisive role on their own, if they are not accompanied with specific voting rights and/or meeting/decision quorum mechanisms that would allow the relevant parties to exercise decisive influence over an undertaking (i.e. the power to block/reject the actions which determine the strategic commercial behaviour of the undertaking). Accordingly, the analysis for the control structure under Turkish merger control regime will boil down to whether the parties will have the ability to reject the strategic commercial decisions of an acquired undertaking (e.g. the business plan, budget or the appointment/dismissal of senior management) via their voting rights, veto mechanisms or creating a deadlock merely by refusing to attend meetings.

The matters which confer joint control typically include decisions on material issues, such as the appointment of senior management, the budget, the business plan and certain major investments. Apart from these typical veto rights, there may be other veto rights that might come into play in terms of control analysis in the context of the market where the joint venture is active (e.g. if technological investments are crucial for the joint venture's activities, a veto right on technology investment decisions could be considered with this respect). As set forth in

paragraph 54 of Control Guidelines, which is akin to paragraph 68 of the CJN, and also acknowledged by the Board with its precedent on this front, it will be sufficient to have a veto right on only one of the strategic business decisions for there to be joint control. By way of example, the Board consistently resolved that veto rights regarding the appointment and dismissal of high level/senior management (such as the general manager, CEO, CFO etc.) are considered as strategic veto rights and that such rights alone are adequate to conclude that the undertakings in question will be jointly controlled by the relevant transaction parties.²

Similar to the EUMR, under the Turkish merger control regime, paragraphs 66 and 75 of the Control Guidelines indicate that the possibility of changing coalitions/shifting alliances between minority shareholders will exclude the assumption of joint control since in such a case, there is no stable majority in the decision-making procedure and the majority can on each occasion be any of the various combinations possible among the shareholders. In particular, paragraph 66 of the Control Guidelines indicates that in the case of an undertaking where three (3) shareholders each own one-third (1/3) of the share capital and each elect one third (1/3) of the members of the board of directors, the shareholders do not have joint control since decisions are required to be taken on the basis of a simple majority. The decisional practice of the Board also indicates that if a transaction would result in shifting alliances (i.e. none of the parties will acquire control after the envisaged transaction), such transaction would not constitute a concentration under Turkish merger control regime, and it would not require a mandatory merger control filing before the Authority.³

(3) The Board's Assessment of Transactions That Result in a Shifting Alliances Structure Post-Transaction

Paragraphs 69 and 70 of the Control Guidelines - which are closely modelled on and akin to paragraph 83 of the CJN - provide that Communiqué No. 2010/4 covers transactions resulting in the acquisition of sole or joint control, including transactions leading to changes in the nature of the control: mere changes in the level of shareholdings of the same controlling shareholders, without changes to the powers they hold in a company and of the composition of the control structure of the company, do not constitute a change in the nature of control and therefore are

² For example, the Board's AMG/Shell-JV decision dated 09.01.2020 and numbered 20-03/20-10; Alcan decision dated 11.12.2014 and numbered 14-50/885 403; Yargıcı decision dated 26.05.2011 and numbered 11- 32/660-205; THY Teknik decision dated 5.6.2008 and numbered 08-37/503-183; Caradon Radiators decision dated 24.7.2008 and numbered 08-47/656-252.

³ For example, the Board's Kayı decision dated 08.12.2016 and numbered 16-43/701-315; Orica Limited decision dated 29.3.2007 and numbered 07-29/268-98; Bain Capital Investors decision dated 9.10.2007 and numbered 07-78/965-366; Silver Lake Partners decision dated 18.11.2009 and numbered 09-56/1337-340.

not a notifiable concentration; and similarly, there is no change in the nature of control if a change from negative to positive sole control occurs.

In this respect, the transactions which result in a shifting alliances/changing coalitions structure post-transaction (i.e. where the acquired entity will not be controlled by any of its shareholders after the transaction) do not qualify as notifiable concentrations within the meaning of Communiqué No. 2010/4. In such cases, the Board typically considers these joint venture transactions as cooperation agreements and analyses these cooperation agreements under Article 4 of Law No. 4054. Indeed, there are various decisions where the Board determined that the joint venture in question will not be solely or jointly controlled by any of its shareholders; there will be a shifting alliances structure as a result of the transaction; therefore, such transaction should be deemed a cooperation agreement rather than a concentration; and the transaction/agreement should be evaluated under Article 4 of Law No. 4054 in order to determine whether it has the object or effect of restricting competition.⁴ Within the scope of these decisions, the Board regarded these transactions as agreements between the parties that fall within the scope of Law No. 4054; conducted a substantive analysis under Article 4 to see whether they lead to any competition law concerns; and typically granted individual exemption or negative clearance on the grounds that the transactions/agreements would not lead to coordination between the parties' activities.⁵

For instance, in its *Turkcell/Anadolu Grubu/Zorlu/Kök Ulaşım/BMC/TOBB* decision,⁶ the Board examined the corporate charter of the joint venture to be established by the parties as well as the shareholders agreement signed between the parties. The Board determined that none of the parents or a fixed combination thereof constituted the majority in the board of directors;

⁴ For example, the Board's Anadolu Güçbirliği/Bellona decision dated 03.07.2025 and numbered 25-24/593-375; Midas/Egem Eraslan/Desmarais/Spark decision dated 12.09.2024 and numbered 24-37/880-376; Artaş/Betatrans decision dated 23.11.2022 and numbered 22-52/795-325; Turkland decision dated 27.08.2018 and numbered 18-29/491-242; Turkland decision dated 27.08.2018 and numbered 18-29/492 243; Turkcell/ Anadolu Grubu/Zorlu/Kök Ulaşım/BMC/TOBB decision dated 26.09.2018 and numbered 18-34/566-279; CMLKK Liman decision dated 31.05.2018 and numbered 18-17/303-152; CMLKK Bilişim decision dated 05.07.2018 and numbered 18-22/376-184; IGA Akaryakit decision dated 02.08.2018 and numbered 18-24/421-199; CMLKK Otopark/CMLKK Döviz/CMLKK Akaryakit decision dated 02.08.2018 and numbered 18-24/426-200; IGA decision dated 16.10.2014 and numbered 14-40/737-329.

⁵ For the sake of completeness, the Board follows the same path when assessing transactions which involve joint ventures that do not meet the full-functionality requirement. In such cases, the Board deems these transactions as cooperation agreements between the parties rather than notifiable concentrations and evaluates their impact in the market under Article 4 of Law No. 4054. For instance, please see the Board's SK/EVE/BTR/Changzhou BTR decision dated 23.06.2022 and numbered 22-28/452-183; Voith/MOOG-JV decision dated 09.04.2020 and numbered 20-19/259-125; ITOCHU/Press Metal decision dated 10.01.2019 and numbered 19-03/20-9; DSM/Evonik decision dated 26.10.2017 and numbered 17-35/573-248; POAŞ/ShellMDH decision dated 05.06.2014 and numbered 14-20/382- 166.

⁶ The Board's decision dated 26.09.2018 and numbered 18-34/566-279.

the required majority to adopt resolutions at the general assembly and the board of directors is established through different coalitions; the joint venture will not be jointly controlled by its shareholders due to the shifting alliances structure; and the transaction cannot be regarded as a concentration. Accordingly, the Board deemed the relevant joint venture to be a joint production agreement between the parent undertakings; evaluated this agreement under Article 4 of Law No. 4054; and granted negative clearance since the agreement did not have the object or effect of restricting competition.

Furthermore, in *Artaş/Betatrans* decision,⁷ the Board evaluated the control structure of Çelik Halat ve Tel Sanayii AŞ (“*Çelik Halat*”) post-transaction and underlined that (i) neither Artaş İnşaat San. ve Tic. AŞ (“*Artaş*”) nor Betatrans Lojistik İnşaat Sanayi ve Ticaret AŞ (“*Betatrans*”) will be able to reach the quorum of meeting for the board of directors, by themselves, (ii) none of the members of the board of directors have privilege in terms of meeting and/or decision quorums, and (iii) neither Artaş nor Betatrans alone will be able to convene the board of directors and they will have to establish alliance/coalition with each other or other members of the board of directors. As a result, the Board concluded that the shareholders will not acquire control over Çelik Halat after the consummation of the transaction and regarded the joint venture in question as a cooperation agreement between the parties. Ultimately, the Board granted negative clearance to the transaction on the grounds that the transaction does not have the object or effect of restricting competition.

(4) The Board’s Assessment of HIB Holding/Andar Transaction:

The transaction concerned the acquisition of 51% of Andar’s shares by HIB Holding. Post-transaction, Andar’s existing shareholders (i.e. Mr. Serkan Kale, Mr. Reşat Hakan Avcı and Mr. Gökhan Koyuncu) will continue to own the remaining shares in Andar. According to the Decision, within the scope of the merger control filing, HIB Holding argued that post-transaction, Andar will be solely controlled by HIB Holding.

Within the scope the Decision, the Board assessed the provisions of the Share Purchase Agreement (“*SPA*”) between HIB Holding and the existing shareholders of Andar. According to the SPA, (i) post-transaction, the shareholders of Andar will be divided into two groups, and HIB Holding will be Group A shareholder while the existing shareholders of Andar will be Group B shareholders, (ii) the board of directors of Andar will consist of five members, and

⁷ The Board’s decision dated 23.11.2022 and numbered 22-52/795-325.

HIB Holding will appoint three directors while Group B shareholders will appoint two directors, (iii) in the event that the members nominated by Group B shareholders are Mr. Serkan Kale, Mr. Reşat Hakan Avcı and Mr. Gökhan Koyuncu, HIB Holding will not have a veto right over the appointment of these members or cannot vote against the dismissal and change of these members, and (iv) ordinary decisions of the board will be adopted by simple majority (i.e. affirmative vote of three members) while important decisions of the board will be adopted by a qualified majority (i.e. affirmative vote of four members).

In line with the quorum of decision stipulated for important decisions of the board of directors, HIB Holding will require the affirmative vote of at least one of the two board members appointed by Group B shareholders. The Board evaluated that decisions related to the significant changes in the annual budget, R&D plans and the three-year business plan as well as the conclusion of R&D (product development) agreements, which are envisaged as important decisions in the SPA, can be considered as strategic commercial decisions. Given that there are no links/ties between Group B shareholders, there are no provisions which stipulate that Group B shareholders will act together, and each Group B shareholder can act individually in the adoption of strategic decisions, the Board evaluated that the required majority related to strategic commercial decisions of Andar can be achieved by different coalitions/alliances in each occasion. As a result, the Board concluded that given that the transaction will result in a shifting alliances structure, the transaction would not be deemed as a concentration within the meaning of Communiqué No. 2010/4.

In accordance with the Board's decisional practice, the Board regarded the transaction as an agreement between the parties and analysed whether it would fall within the scope of Article 4 of Law No. 4054. The Board determined that there are not any horizontal overlaps or vertical relationships between the activities of Andar and HIB Holding Turkiye. Even under the assumption that there is a complementary relationship between Andar's activities in electromechanical motion systems and HIB Holding's activities in the manufacture of turbojet engines, the Board evaluated that such potential relationship would not lead to any competition law concerns given that HIB Holding's only active customer is Roketsan Roket Sanayi ve Tic. A.Ş., local players such as Andar are not able to meet the total demand for electromechanical motion systems, and there are many other strong international suppliers such as Safran S.A., Moog Inc., Maxon International Ltd., Dr. Fritz Faulhaber GmbH & Co. KG and Assun Motors Pte Ltd. The Board also noted that there is no risk of coordination between Group B shareholders and HIB Holding since Group B shareholders do not have any other activities

besides Andar. Against the foregoing, the Board granted negative clearance to the transaction on the grounds that the transaction does not have the object or effect of restricting competition.

(5) Conclusion

The Decision sheds further light on the concept of control and the elements to be taken into consideration when evaluating a shifting alliances structure post-transaction. The Decision is particularly important since it elaborates on the analysis of the transactions that are not deemed as a concentration, and how to examine such transactions under Article 4 of Law No. 4054 as agreements between undertakings.

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