

Joint Control and Ancillary Restraints in Turkish Merger Control: The *Canopius* Decision

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1. Introduction

The Turkish Competition Board (the “*Board*”), recently granted unconditional approval to the transaction concerning the establishment of joint control by Samsung Fire & Marine Insurance Ltd. (“*SFMI*”) and Fidentia Fortuna Holdings Ltd. (“*Fidentia*”) over Fortuna Topco Limited (“*Canopius*”), which is currently under the sole control of Centerbridge Partners LP (“*Centerbridge*”) through Fidentia Fortuna Holdings Ltd (the “*Decision*”).² In its decision, the Board scrutinized several key elements, which will be examined in detail in this article, including the parties’ voting rights, governance arrangements, potential horizontal and vertical overlaps between the parties’ activities, as well as provisions in the transaction agreements that may be assessed as ancillary restraints.

2. The Board’s Assessment of the Joint Control Structure

Before delving into the Board’s competitive assessment of the affected markets and the transaction structure, the Board first examined the full-functionality criteria within its analysis of the existence of joint control. In this regard, the Board emphasized that, unlike the establishment of a newly created joint venture, the acquisition of joint control over an existing undertaking constitutes a concentration irrespective of whether the full-functionality criteria is met.

Moreover, in assessing whether joint control exists, the Board highlighted that decisive factors include whether the parent undertakings hold equal voting rights or are equally represented in the decision-making bodies, whether certain parent undertakings retain veto rights despite holding minority shareholdings, and whether the shareholders act in concert in voting. In this context, the Board underlined that the existence of joint control is not determined solely by the

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² Board’s decision dated 25.09.2025 and numbered 25-36/868-512.

shareholding structure, but rather through a qualitative concept of the decision-making process and governance mechanisms, including the existence of veto rights over strategic decisions, the legal or de facto possibility of jointly exercising voting rights, and the absence of a casting vote.

Therefore, the Board examined the pre-transaction shareholding structure and stated that Canopius' shareholding was held by Fidentia, SFMI and Mourant (another minority shareholder), while Canopius was solely controlled by Fidentia, which is controlled by Centerbridge, given that SFMI did not hold any veto rights over strategic decisions of Canopius.

With respect to the post-transaction structure, the Board examined the provisions of the shareholders' agreement governing the establishment of joint control and the envisaged management structure of Canopius. In this context, the Board noted that the board of directors of Canopius could only validly convene with the joint attendance of the representatives appointed by Fidentia and SFMI. Furthermore, the Board stated that SFMI would be granted veto rights over certain strategic decisions, such that the adoption of the relevant key board resolutions would be subject to the written approval of the board members appointed by SFMI. Accordingly, the Board noted that despite becoming a minority shareholder following the transaction, SFMI would be able to exercise decisive influence over the management of Canopius through its veto rights. However, given that the exercise of such veto rights is conditional upon the achievement of the quorum for board meetings, and that such quorum can only be met through the joint participation of Fidentia and SFMI, the Board concluded that, upon clearance of the notified transaction, Canopius, which is currently under the sole control of Fidentia ultimately controlled by Centerbridge, would be jointly controlled by Fidentia and SFMI. Consequently, the Board determined that the transaction would result in the establishment of joint control over Canopius by Fidentia and SFMI.

3. The Board's Assessment of the Affected Markets

For the examination of the parties' activities and affected markets, the Board stated that the activities of the parties potentially overlap at the vertical level in "*the market for non-life insurance services*", while a horizontal overlap arises in "*the market for non-life reinsurance services*". Upon Board's examination of the structure of the affected markets, the Board observed that a potential vertical relationship exists between Canopius which is active in "*the market for non-life insurance services*", and SFMI, which operates in "*the market for non-life reinsurance services*", while a horizontal overlap exists between the parties' activities in "*the market for non-life reinsurance services*", based on the insurance law framework and the

Board's past decisions. In this regard, the Board noted that an examination of the market shares of the undertakings in the relevant affected markets indicated that the transaction parties' market shares in Türkiye were very low and might be considered negligible in both the horizontally and vertically affected markets.

By referring to the market share thresholds set out in paragraph 18 of the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and paragraph 28 of the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions, the Board assessed the horizontal and vertical effects of the transaction and found that the parties' market shares remained below the relevant 20% and 25% thresholds, respectively, thereby indicating that the transaction would not raise competition concerns.

The Board also assessed the potential effects of the concentration at the global level. In this regard, it was noted that the combined market shares of the transaction parties in the global non-life insurance and non-life reinsurance markets remained limited. The Board further observed that the global non-life insurance market is characterised by a competitive structure with the presence of several large players, while the global non-life reinsurance market exhibits a relatively more concentrated structure, as reflected by the significant cumulative market shares of the several leading undertakings. Nevertheless, the Board considered that, in light of the overall competitive dynamics at the global level, the notified transaction did not give rise to any competition concerns.

Finally in its competitive assessment, the Board examined whether the transaction could give rise to a risk of coordination of competitive behaviour within the meaning of Article 4 of Law No. 4054, pursuant to the third paragraph of Article 13 of Communiqué No. 2010/4. In this context, the Board evaluated that, in joint venture transactions, a risk of coordination may arise where the parent undertakings are active to a significant extent in the same market as the joint venture, in upstream or downstream markets, or in closely related neighbouring markets, thereby creating a risk of coordination between the parent undertakings (spillover risk), and where the cooperation resulting directly from the establishment of the joint venture enables the parties to eliminate competition in respect of a substantial part of the relevant goods or services.

When assessing the notified transaction within this framework, the Board observed that SFMI does not operate in the non-life insurance market in Türkiye. Moreover, even assuming the existence of a potential vertical relationship between the parties' activities, the market shares held by the transaction parties in the non-life reinsurance market were found to be negligible.

On this basis, the Board concluded that the notified transaction does not give rise to any competition concerns stemming from coordinated behaviour in the Turkish market.

4. The Board's Competitive Assessment under Ancillary Restraints

The Board further assessed the non-compete and non-solicitation clauses contained in the shareholders' agreement. In this regard, reference was made to paragraph 54 of the Guidelines on the Relevant Undertakings, Turnover and Ancillary Restraints in Mergers and Acquisitions (“*Ancillary Restraints Guidelines*”), which recognises that non-compete obligations with a duration not exceeding three years may generally be considered reasonable. In addition, paragraph 58 of the same Guidelines provides that obligations similar or complementary to non-compete clauses such as commitments not to employ the transferred undertaking's employees or not to disclose or use its trade secrets should be assessed in the same manner as non-compete obligations.

The Board also relied on the Guidelines on Competition Infringements in Labour Markets (“*Labour Market Guidelines*”) which was published on December 3, 2024, which sets out the principles applicable to the assessment of labour-related restrictions under competition law. In this context, the Board further noted that, in order for labour-related restrictions to qualify as ancillary restraints, such restrictions must be directly related and necessary to the implementation of the main transaction and must be limited in scope with respect to their purpose, geographic coverage, duration and the parties concerned.

The Board further stated that labour-related restrictions would fail to satisfy the proportionality requirement where they exceed what is strictly necessary for the implementation of the main transaction, including in cases where the duration of the restriction is not clearly defined or exceeds what is necessary to achieve its intended purpose, where the restriction applies to employees other than key personnel or does not clearly specify the employees concerned, where it extends beyond the geographic scope of the main transaction, or where it covers a broader group of parties than required.

Against this background, the Board examined the provisions of the shareholders' agreement concerning restrictions applicable to key managerial personnel. In this context, the Board noted that the non-compete obligation imposed on certain senior executives for the duration of their involvement in the management of the joint venture was limited to key personnel and applied only for as long as such executives remained engaged in managerial functions within the joint venture. The Board further observed that, when assessed together with the overall governance

framework, the duration of this restriction would not exceed three years. On this basis, the Board concluded that the relevant provision was necessary for the implementation and continuity of the transaction and was compatible with the Ancillary Restraints Guidelines and the Labour Market Guidelines.

The Board also assessed the restrictions applicable following the termination of the relationship between key executives and the company. The Board determined that the non-compete and non-solicitation obligations regulated under the relevant provision were limited to the notified transaction, necessary for the implementation and continuity of the transaction, confined to senior management with respect to the non-solicitation obligation, and reasonable in duration, given that the envisaged twelve-month period was required to safeguard the value expected from the transaction. Accordingly, the Board concluded that these obligations satisfied the criteria of “*direct relevance*”, “*necessity*” and “*proportionality*” under the Ancillary Restraints Guidelines and the Labour Market Guidelines and could therefore be accepted as ancillary restraints.

Taking into account the parties’ low market shares under the broadest and the narrowest possible market definitions, position of competitors and the competitive structure of the markets examined, the Board concluded that the notified transaction would not lead to the creation or strengthening of a dominant position, nor would it result in a significant impediment to effective competition in any goods or services market within the whole or a part of the country. Therefore, the Board granted an unconditional approval to the transaction.

5. Conclusion

The Board’s decision provides a clear example of the Board’s assessment of transactions involving the establishment of joint control by an existing shareholder, demonstrating how such transactions are examined within the framework of joint control and the full-functionality criteria under Turkish merger control. The decision further demonstrates that limited horizontal and potential vertical overlaps do not raise competition concerns where the parties’ market shares remain negligible. Moreover, by subjecting non-compete and non-solicitation obligations concerning key managerial personnel to the tests of direct relevance, necessity and proportionality, the Board signals a heightened scrutiny of labour-related restrictions within merger control. In this respect, the decision offers guidance for future transactions, underscoring that labour market considerations have become an integral part of the Board’s competitive assessment under Turkish merger control regime.

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