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The Turkish Competition Authority adopts a dual approach to substantive merger clearance and gun jumping enforcement within the scope of a transaction in the computer games sector (*AutoAttack / MTG*)

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I. Introduction and Background

This case summary aims to offer insight into AutoAttack/MTG decision ¹ of the Turkish Competition Board (the “**Board**”) (the “**Decision**”). In the Decision, the Board evaluated the acquisition of all assets and sole control of AutoAttack Games Ltd. (“**AutoAttack**”), a company active in the development and publishing of computer games, by Modern Times Group MTG AB (“**MTG**”) through its wholly owned subsidiary Ninja Kiwi Ltd., within the framework of Law No. 4054 on the Protection of Competition (“**Law No. 4054**”) and Communiqué No. 2010/4 Concerning Mergers and Acquisitions Calling for the Authorization of the Competition Board (“**Communiqué No. 2010/4**”).

The transaction was closed on April 1, 2024 pursuant to an asset purchase agreement, under which MTG acquired all assets necessary for AutoAttack to independently carry out its economic activities, including intellectual property rights, software, source codes, IT infrastructure, and other operational assets related to its flagship game *Legion TD 2*. Although the transaction resulted in a permanent change of control and was subject to mandatory notification, it was completed without prior notification to or approval from the Board.

Although the transaction was subsequently notified, since it had been completed prior to obtaining the Board’s approval, the Board initiated an ex officio review pursuant to Article 11 of Law No. 4054. In this context, the Board examined, first, whether the transaction was subject to approval and whether it raised any competition law concerns under Article 7 of Law No. 4054, particularly with respect to the creation or strengthening of a dominant position or a significant impediment to effective competition. Second, the Board assessed whether the failure to notify a notifiable transaction gave rise to administrative monetary liability under Article 16 of Law No. 4054.

Following its assessment, the Board concluded that the transaction qualified as a notifiable acquisition, notably in light of the special merger control regime applicable to technology undertakings, and that it did not give rise to any substantive competition concerns. Accordingly, the Board granted clearance for the transaction under Article 7 of Law No. 4054. However, the Board also determined that MTG had infringed its procedural obligations by completing the transaction without prior approval and therefore imposed an administrative monetary fine on MTG pursuant to Article 16 of Law No. 4054.

II. Board’s Assessment

A. Assessment under Article 7 of Law No. 4054

a) *Qualification of the transaction and notifiability*

The Board first assessed whether the transaction constituted a concentration within the meaning of Law No. 4054 and the Communiqué No. 2010/4. The transaction was based on an Asset Purchase Agreement executed on April 1, 2024, under which MTG acquired all assets enabling AutoAttack to independently carry out its business activities.

Referring to the Communiqué No. 2010/4 and the Guidelines on Cases Considered As a Merger or an Acquisition and the Concept of Control (“**Guidelines on the Concept of Control**”), the Board reiterated that an asset transaction qualifies as an acquisition if the transferred assets represent a business to which turnover can be attributed. Since the transaction covered all core assets of AutoAttack, including its flagship game *Legion TD 2*, related IP rights, software, servers, and IT infrastructure, the Board concluded that the transaction resulted in a permanent change of control and therefore constituted an acquisition within the scope of Article 7 of Law No. 4054.

The Board further examined whether the transaction was subject to mandatory merger control filing. AutoAttack was active in the development and publishing of computer games and thus qualified as

1. Decision of the Board dated 25.09.2025 and numbered 25-36/858-506.

a “*technology undertaking*” under Article 4 of Communiqué No. 2010/4. As a result, the transaction fell within the scope of the special notification regime, under which the Turkish turnover threshold of TL 250 million does not apply to technology undertakings.

In determining the relevant turnover year, the Board emphasized that, in cases of non-notified transactions, the assessment must be based on the financial year preceding the closing date, as this best reflects the market structure at the time the transaction produced effects. Since the transaction closed on April 1, 2024, the Board relied on the parties’ 2023 turnover figures.

Based on this assessment, the Board concluded that the acquisition was subject to mandatory merger control filing under Article 7 of Communiqué No. 2010/4, as MTG’s worldwide turnover exceeded TL 3 billion and the transaction concerned the acquisition of a technology undertaking.

b) Substantive competition assessment

Having established that the transaction was notifiable, the Board proceeded to assess whether it would significantly impede effective competition, particularly through the creation or strengthening of a dominant position.

The Board identified the parties’ activities as overlapping in the broad area of digital game development and publishing. While MTG was active across mobile, PC, and console games through multiple studios, AutoAttack was focused solely on PC games. The Board noted that its decisional practice allows for different market definitions in the gaming sector, however, it considered that game development and publishing could be assessed within the same relevant market.

The Board found that the parties overlapped horizontally in the market for the development and publishing of computer games in Türkiye. However, based on sales value data for the 2021–2023 period, the Board observed that both MTG’s and AutoAttack’s individual and combined market shares were very low and remained well below the 20% threshold indicated in the Horizontal Merger Guidelines as a safe harbour.

The Board further emphasized the fragmented structure of the gaming market, the presence of

numerous competitors, low barriers to entry, and the strong competitive constraint exerted by global players such as Tencent, Sony, Microsoft, and NetEase. No vertical overlap was identified, as the parties did not operate at different levels of the same supply chain.

In light of these factors, the Board concluded that the transaction would not lead to the creation or strengthening of a dominant position and would not significantly lessen effective competition within the meaning of Article 7 of Law No. 4054. Accordingly, the transaction was cleared on substantive grounds.

B) Assessment under Article 16 of Law No. 4054

The second part of the Board’s assessment concerned the failure to notify the transaction prior to closing. The Board recalled that, pursuant to Article 10 of Communiqué No. 2010/4, a merger or acquisition is deemed completed on the date control changes hands. Since control transferred on April 1, 2024, the transaction should have been notified and cleared before that date.

However, the notification was submitted to the Authority only on August 19, 2025, well after the closing. The Board therefore found that MTG had completed a notifiable acquisition without obtaining prior approval, thereby committing an infringement under Article 16(1)(b) of Law No. 4054.

MTG argued that it had not been aware of the special notification regime applicable to technology undertakings and had assumed that the transaction fell below the standard turnover thresholds. The Board rejected this argument, emphasizing that the relevant amendment to Communiqué No. 2010/4 had entered into force in May 2022, before the transaction was completed. Lack of awareness of the applicable legal framework was therefore not considered a valid justification.

The Board reiterated that, under Article 16 of Law No. 4054, administrative fines for failure to notify are imposed on all parties in the case of mergers, but only on the acquirer in the case of acquisitions. Since the transaction qualified as an acquisition, MTG, as the acquiring party, was identified as the sole addressee of the fine.

In determining the fine, the Board distinguished between the turnover year relevant for assessing notifiability and the turnover year relevant for

calculating the fine. Pursuant to Article 16, the fine must be calculated on the basis of the undertaking's gross revenue generated in the financial year preceding the decision.

Accordingly, the Board based the fine on MTG's 2024 Turkish turnover and applied the statutory rate of one per thousand while calculating the fine. As the calculated amount was lower than the updated statutory minimum introduced by Communiqué No. 2025/1, the Board imposed an administrative monetary fine on MTG at that statutory minimum level (i.e. TL 241,043).

III. Conclusion

The Decision provides a concise yet comprehensive

analysis of both the substantive and procedural aspects of merger control in the context of technology undertakings under Turkish competition law. It clarifies the application of the special notification regime for technology-focused transactions, confirms the Board's effects-based approach under Article 7 of Law No. 4054, and at the same time underscores the enforcement of procedural obligations through the imposition of administrative fines under Article 16. In doing so, the Decision serves as a clear reminder that transactions lacking competitive concerns may nevertheless trigger liability if completed without prior clearance, particularly in dynamic and innovation-driven markets.

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