



Merger Control Survey **2015**

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1. REGULATORY FRAMEWORK

1.1 What is the applicable legislation and who enforces it?

The Law 4054 on Protection of Competition 4054 (Competition Law) is the primary legislation. Communiqué 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board is the secondary legislation. The Competition Authority (Authority) is the enforcement authority and the Competition Board (Board) is the decision-making body.

1.2 What types of mergers and joint ventures (JVs) are caught?



Notifiable mergers and JVs include: (i) a merger of two or more undertakings; or (ii) an acquisition of control by an entity or a person of another undertaking's assets or a part or all of its shares or instruments granting the management rights, if they result in a permanent change of control. JVs are subject to notification and deemed as acquisitions.

2. FILING

2.1 What are the thresholds for notification, how clear are they, and are there circumstances in which the authorities may investigate a merger falling outside such thresholds?



The transaction is subject to the Board's approval if the aggregate Turkish turnover of the transaction parties exceeds TL100 million (\$46 million) and the Turkish turnover of at least two of the transaction parties each exceeds TL30 million. Further, the Board's approval is needed in acquisition transactions, where the Turkish turnover of the transferred assets or acquired businesses exceeds TL30 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TL500 million. Finally, it is needed in merger transactions, where the Turkish turnover of any of the parties in the merger exceeds TL30 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TL500 million.

2.2 Are there circumstances in which a foreign-to-foreign merger may require notification, and is a local effect required to give the authority jurisdiction?



Foreign-to-foreign mergers require notification if they exceed the thresholds.

2.3 Is filing mandatory or voluntary and must closing be suspended pending clearance? Are there any sanctions for non-compliance, and are these applied in practice?



Filing is mandatory once the parties' turnovers exceed the thresholds.

If the parties to a notifiable transaction violate the suspension requirement by closing a notifiable transaction without the approval of the Board or do not notify the notifiable transaction at all, a turnover-based monetary fine (0.1% of the local turnover generated in the financial year preceding

the date of the fining decision) will be imposed. The minimum fine in 2015 is TL16,765.

If there is a risk that the relevant transaction might be viewed as problematic under the so-called dominance test, the Authority is entitled to launch an investigation if the transaction is closed before clearance. It may order structural and/or behavioural remedies to restore the situation as to before the closing, and impose a fine of up to 10% of the parties' annual turnover. Executive members who are determined to have a significant role in the infringement may also receive monetary fines of up to five percent of the fine imposed on the undertakings.

A notifiable concentration is also invalid with all its legal consequences, unless and until it is approved by the Board.

2.4 Who is responsible for filing and what, if any filing fee applies? What are the filing requirements and how onerous are these?



Parties can make the filing jointly or solely. There is no filing fee. The notification form is similar to the European Commission's Form CO. Certain additional documents are also required (such as the transaction documents and their sworn Turkish translations, and annual reports.)

3. CLEARANCE

3.1 What is the standard timetable for clearance and is there a fast-track process? Can the authority extend or delay this process?



The Board, upon its preliminary review of the notification decides either to approve or to investigate the transaction further (phase 2). There is an implied approval mechanism where a tacit approval is deemed if the Board does not react within 30 calendar days upon a complete filing. If the information requested in the notification form is incorrect or incomplete, the notification is deemed filed only on the date when this information is completed upon the Board's request for data. If a notification leads to an investigation (phase 2), it mutates into a fully-fledged investigation. Phase 2 takes about six months and may be extended only once for an additional period of up to six months.

3.2 What is the substantive test for clearance, and to what extent does the authority consider efficiencies arguments or non-competition factors such as industrial policy or the public interest in reaching its decisions?



The substantive test for clearance is the dominance test. Efficiencies that result from a concentration may play a more important role in cases where the combined market shares of the parties exceed 20% for horizontal overlaps and the market share of both parties exceed 25% for vertical overlaps. The Board may take into account efficiencies in reviewing a concentration to the extent they operate as a beneficial factor in terms of better-quality production or cost-savings, such as reduced product development costs through the integration, and reduced procurement and production costs.

3.3 Are remedies available to alleviate competition concerns? Please comment on the authority's approach to acceptance and implementation of remedies.



The parties can provide commitments to remedy substantive competition law issues of a concentration. It is at parties' own discretion whether to submit a remedy. The Board will neither impose any remedies nor ex-parte change the submitted remedy. In the event the Board considers the submitted remedies insufficient, the Board may enable the parties to make further changes on the remedies. If the remedy is still insufficient to resolve the competition problems, the Board may not grant clearance.



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4. RIGHTS OF APPEAL

4.1 Please describe the parties' ability to appeal merger control decisions – how successful have such challenges been?



The Board's sanction decisions can be appealed before the administrative courts in Ankara. Appeal in merger control decisions is rare.

About the author

Gönenç Gürkaynak is the managing partner of ELIG, Attorneys-at-Law. He holds an LLM degree from Harvard Law School, and is qualified to practice in Istanbul, New York, and England and Wales (at present a non-practising solicitor). Gürkaynak heads the competition and regulatory department of ELIG and has unparalleled experience in all matters of Turkish Competition Act counselling, with over 16 years' experience dating from the establishment of the Turkish Competition Authority. Before founding ELIG more than 10 years ago, he worked as an attorney at the Istanbul, New York, and Brussels offices of a global law firm for more than eight years. Gürkaynak frequently speaks at conferences and symposia on competition law matters. He teaches undergraduate and graduate level courses at two universities, and gives lectures in other universities in Turkey. He has had many international and local articles published in English and in Turkish, and is the author of a book published by the Turkish Competition Authority.



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Öznur İnanılır is a senior associate at the competition law and regulatory department of ELIG. She graduated from Başkent University, Faculty of Law in 2005 and obtained her LLM degree in European Law from London Metropolitan University in 2008. She is experienced in all areas of competition law, in particular compliance with competition law rules, mergers and acquisitions and cartel investigations conducted by the Turkish Competition Board. İnanılır has represented various multinational and national companies before the Turkish Competition Authority in their mergers and acquisitions filings and cartel investigations concerning various sectors. She has written various international and local articles published in English and in Turkish.