IN-DEPTH

Merger Control

TÜRKIYE

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Merger Control

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In-Depth: Merger Control (formerly The Merger Control Review) provides an incisive overview and analysis of the pre-merger competition and notification regimes across key jurisdictions worldwide, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments. Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously.

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Türkiye

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Summary

Introduction

The national competition agency for enforcing merger control rules in Türkiye is the Turkish Competition Authority (the Authority), a legal entity with administrative and financial autonomy. The Authority consists of the Competition Board (the Board), the office of the Presidency, main service units, auxiliary service units and advisory units. As the competent decision-making body of the Authority, the Board is responsible for, inter alia, reviewing and resolving merger and acquisition notifications. The Board consists of seven members and is seated in Ankara. The main service units comprise six supervision and enforcement departments plus the decisions department, the economic analysis and research department, the information technologies department, the external relations and competition advocacy department, the strategy development department, the regulation and budget department, and the cartel and on-site inspections support divisions. There is a 'sectoral' job definition for each of the supervision and enforcement departments.

Turkish merger control regulation

The relevant legislation on merger control comprises Law No. 4054 on Protection of Competition, which was last amended on 29 May 2024 (the Amendment Law) and Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorisation of the Competition Board, which was last amended by Communiqué No. 2026/2 amending the Communiqué 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board, published in the Official Gazette on 11 February 2026 (the Amendment Communiqué).

The Authority has also issued many guidelines to supplement and provide guidance on the enforcement of Turkish merger control rules, including:

1. the Guideline on Market Definition, which applies, inter alia, to merger control matters. It was issued in 2008 and is closely modelled on the Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law;[2]
2. the Guideline on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions, which covers certain topics and questions about the concepts of undertakings concerned, turnover calculations and ancillary restraints. It is closely modelled on Council Regulation (EC) No. 139/2004 on the Control of Concentrations between Undertakings;
3. the Guideline on Remedies Acceptable to the Turkish Competition Authority in Mergers and Acquisitions (the Guidelines on Remedies), which is an almost exact Turkish translation of the Commission Notice on Remedies Acceptable Under Council Regulation (EC) No. 139/2004 and Under Commission Regulation (EC) No. 802/2004; and
4. the Guidelines on Horizontal Mergers and Acquisitions (the Horizontal Guidelines) and the Guidelines on Non-Horizontal Mergers and Acquisitions (the Non-Horizontal Guidelines), which are in line with EU competition law regulations and seek to retain harmony between European Union and Turkish competition law instruments.

The Board also released the Guidelines on Merger and Acquisition Transactions and the Concept of Control, also closely modelled on the respective European Commission (EC) guidelines.

Türkiye is a jurisdiction with a suspensory pre-merger notification and approval requirement. Much like the EC regime, concentrations that result in a change of control on a lasting basis are subject to the Board's approval, provided that they reach the applicable turnover thresholds. 'Control' is defined as the right to exercise decisive influence over day-to-day management or the long-term strategic business decisions of a company, and it can be exercised *de jure* or de facto.

As a significant update, the Competition Authority has introduced significant changes to the rules applicable to transactions that are subject to the Competition Board's approval. The changes have been entered into force with Communiqué No. 2026/2 amending Communiqué 2010/4, published in the Official Gazette on 11 February 2026 (the Amendment Communiqué). The Amendment Communique revised the jurisdictional thresholds. In this context, the Turkish turnover threshold, previously 250 million Turkish lira, has been set at 1 billion Turkish lira; the Turkish turnover threshold, previously 750 million Turkish lira, has been increased to 3 billion Turkish lira; and the global turnover threshold, previously 3 billion Turkish lira, has been increased to 9 billion Turkish lira.

The Amendment Communiqué also revised rules for undertakings operating in the field of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or healthcare technologies, or their related assets. Accordingly, in merger transactions where at least one of the transaction parties is an undertaking resided/located in Türkiye and active in the fields described above or assets related to these, and in transactions involving the acquisition of such undertakings, the 1 billion Turkish lira thresholds set out above shall be applied as 250 million Turkish lira, for the transaction party subject to the acquisition (ie, target).

The template notification form is also simplified by removing certain information requirements and reducing the level of detail required where the parties' combined market shares is below 15 per cent in horizontally affected markets and the market share of a transaction party is below 20 per cent in vertical relationships in Türkiye. The Amendment Communiqué also introduces procedural convenience for acquisitions made by venture capital investment trusts, venture capital investment funds and private equity investment vehicles. In particular, for filings including these parties, the scope of information required in the notification form is limited to their activities and turnover in Türkiye. Accordingly, they are not required to submit detailed information regarding their global activities. Where the undertakings confirm that their worldwide turnover exceeds the applicable global threshold, it will be sufficient to provide only their turnover in Türkiye.

The amendment also established a clearer framework for evaluating potential coordination risks among parent companies of a joint venture.

Lastly, the amended Communique 2010/4 entered into force effective immediately with its publication. Ongoing reviews of already notified transactions that fall below the newly determined thresholds or no longer meet the applicable conditions will be terminated by a Board decision.

Thresholds

Article 7 of Communiqué No. 2010/4, amended by Communiqué No. 2026/2, provides that a transaction will be required to be notified in Türkiye if one of the following increased turnover thresholds is met (all currency conversions are based on the Turkish Central Bank's applicable average buying exchange rates for the financial year 2025):

1. (1) the aggregate turnover of the transaction parties generated in Türkiye exceeds 3 billion Turkish lira and (2) at least two of the transaction parties each has a turnover in Türkiye exceeding 1 billion Turkish lira; or
2. (1) for acquisition transactions, the Turkish turnover of the transferred assets or businesses exceeds 1 billion Turkish lira and (2) the worldwide turnover of at least one of the other transaction parties exceeds 9 billion Turkish lira; or
3. (1) for merger transactions, the Turkish turnover of at least one of the parties, exceeds 1 billion Turkish lira and (2) the worldwide turnover of at least one of the other transaction parties exceeds 9 billion Turkish lira.

That being said, Article 7(2) of Communiqué No. 2010/4 indicates that the 'TRY 1 billion Turkish turnover thresholds' under Articles 7(a) and 7(b) will apply as 'TRY 250 million Turkish turnover thresholds' for the transactions concerning the merger of undertakings where at least one of the transaction parties is a technology undertaking based in Türkiye and for transactions concerning the acquisition of a technology undertaking based in Türkiye. Article 4(e) of Communiqué No. 2010/4 defines 'technology undertakings' as 'undertakings that are active in digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies sectors or their assets related to these sectors'.

The new regulation does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement, and if a concentration exceeds one of the alternative jurisdictional thresholds, the concentration will automatically be subject to the approval of the Board.

Foreign-to-foreign transactions are caught if they exceed the applicable thresholds.

Acquisition of a minority shareholding can constitute a notifiable merger if and to the extent that it leads to a change in the control structure of the target entity. Joint ventures that emerge as independent economic entities possessing assets and labour to achieve their objectives are subject to notification to and the approval of the Board. As per Article 13 of Communiqué No. 2010/4, cooperative joint ventures will also be subject to a merger control notification and analysis in addition to an individual exemption analysis, if warranted. Furthermore, as per the Amendment Communiqué, Article 13(4) of Communiqué No. 2010/4 provides that when conducting the assessment under Article 13(3), the Board shall particularly consider whether two or more parties to the transaction have significant activities in the same market as the joint venture or in an upstream, downstream, or closely related neighbouring market where the joint venture operates; whether the coordination resulting directly from the establishment of the joint venture is likely to eliminate competition between the parent undertakings in respect of a substantial part of the products or services in question.

The implementing regulations provide for important exemptions and special rules, in particular:

1. Article 19 of Banking Law No. 5411 provides an exception from the application of merger control rules for mergers and acquisitions of banks; the exemption is subject to the condition that the market share of the total assets of the relevant banks does not exceed 20 per cent;
2. mandatory acquisitions by public institutions as a result of financial distress, concordat and liquidation, etc., do not require a pre-merger notification;
3. intra-corporate transactions that do not lead to a change in control are not notifiable;
4. acquisitions by inheritance are not subject to merger control;
5. acquisitions made by financial securities companies solely for investment purposes do not require a notification, subject to the condition that the securities company does not exercise control over the target entity in a manner that influences its competitive behaviour; and
6. two or more transactions carried out between the same persons or parties or within the same relevant product market by the same undertaking concerned within a period of three years are deemed a single transaction for turnover calculation purposes following the amendments introduced by Communiqué No. 2017/2. They warrant separate notifications if their cumulative effect exceeds the thresholds, regardless of whether the transactions are in the same market or sector, or whether they were previously notified.

Another exception pertains to the Turkish Wealth Fund, which was incorporated as a national wealth and investment fund company with Law No. 6741. Transactions performed by the Turkish Wealth Fund and companies established by the Turkish Wealth Fund are not subject to merger control rules.

There are also specific methods of turnover calculation for certain sectors. These special methods apply to banks, special financial institutions, leasing companies, factoring companies, securities agents, insurance companies and pension companies.

On 4 March 2022, the TCA published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (Communiqué 2022/2), which was partially amended by the Amendment Communiqué. Communiqué No. 2022/2 updated the rules that apply to the calculation of turnover of the financial institutions in accordance with the recent changes to the financial regulations. This was now amended by the Amendment Communiqué. Communiqué 2022/2 updated Article 9 of Communiqué No. 2010/4 as follows:

1. for the calculation of financial institutions' turnovers, Communiqué No. 2022/2 aligns the wordings and terms in view of the applicable banking and financial regulations, excluding the term 'participation banks' and referring to the term 'banks' in general, which covers all legal forms of banks; and
2. Communiqué No. 2022/2 updates the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board, as referred to in Article 9 of Communiqué No. 2010/4.

Failing to file or closing the transaction before the Board's approval can result in a turnover-based monetary fine, which is imposed on the acquiring party. The fine is calculated according to the annual Turkish turnover of the acquirer generated in the financial year preceding the fining decision at a rate of 0.1 per cent. In the case of mergers, the administrative monetary fine will apply to both merging parties. In any event, the amount of any fine imposed in 2026 will be no less than 302,484.86 Turkish lira. This administrative monetary fine does not depend on whether the Authority will ultimately clear the transaction.

If, however, there truly is a risk that the transaction is problematic under the significant impediment to effective competition (SIEC) test applicable in Türkiye, the Authority may:

1. launch an investigation *ex officio* into the transaction;
2. order structural and behavioural remedies to restore the situation to what it was before the closing (restitutio in integrum); and
3. impose a turnover-based fine of up to 10 per cent of the parties' annual turnover.

Executive members and employees of the undertakings concerned who are determined to have played a significant part in the violation (failing to file or closing before the approval) may also receive monetary fines of up to 5 per cent of the fine imposed on the undertakings. The transaction will also be invalid and unenforceable in Türkiye.

The Board has so far consistently rejected all carve-out or hold-separate arrangements proposed by merging undertakings. Communiqué No. 2010/4 provides that a transaction is deemed to be 'realised' (i.e., closed) 'on the date when the change in control occurs'.

Although the wording allows some room to speculate that carve-out or hold-separate arrangements are now allowed, it remains to be seen whether the Authority will interpret this provision in such a way. This has been consistently rejected by the Board, which argues that a closing is sufficient for the suspension violation fine to be imposed, and that a further analysis of whether change in control actually took effect in Türkiye is unwarranted.

Year in review

Pursuant to the Merger and Acquisition Insight Report of the Authority (the Report) for 2025, the Board reviewed a total of 416 transactions during that year. The number of assessments in 2025 was considerably higher than the average number of assessments made in 2024 (i.e., 311).

The Board's most important merger control decisions during the year were the following.

GT Global/Ideasoft decision[3] concerned the acquisition of sole control over Ideasoft Yazılım Sanayi ve Ticaret AŞ (Ideasoft) by Turgut Nezih Sipahioğlu through GT Global Danışmanlık AŞ (GT Global).

The Board determined that Ideasoft enables payment service providers to be integrated with Ideasoft infrastructure service to facilitate payment collection from consumers through e-commerce websites, while that one of the undertakings controlled by Sipahioğlu, namely Sipay, provides digital wallet, virtual POS, physical POS and various payment services, and is already included among the payment institutions with which Ideasoft has established integration. Therefore, the Board assessed the complementarity between the activities of Sipay and Ideasoft to determine whether Sipay's position in the payment services market could be strengthened by leveraging Ideasoft's position in the e-commerce software and infrastructure services market and whether such strengthening could give rise to conglomerate effects restricting competition in the payment services market. Following its assessment of potential input foreclosure and data-related effects, the Board concluded that, despite the dynamic and fragmented structure of the payment services market, Ideasoft's position in the ready-made e-commerce infrastructure segment and the risk of leveraging in favour of Sipay could lead to foreclosure and data-based competitive advantages. Accordingly, the Board determined that the transaction would significantly impede effective competition in the payment services market within the meaning of Article 7 of Law No. 4054.

To address these concerns, GT Global submitted behavioural commitments, including ensuring fair and non-discriminatory access for payment institutions, preventing preferential treatment in favour of Sipay, maintaining strict data separation and confidentiality measures, conducting IT audits and submitting periodic compliance reports. The Board found these commitments sufficient and conditionally cleared the transaction at Phase I, subject to monitoring and reporting obligations.

In *TSFMI/Fidentia/Canopius*,[4] the transaction concerned the establishment of joint control by Samsung Fire & Marine Insurance Ltd. (SFMI) and Fidentia Fortuna Holdings Ltd. (Fidentia) over Fortuna Topco Limited (Canopius), which was under the sole control of Centerbridge Partners LP (Centerbridge) through Fidentia. The Board first clarified that, unlike newly created joint ventures, the acquisition of joint control over an existing undertaking constitutes a concentration irrespective of the full-functionality criterion. In determining whether joint control would arise, while Canopius had been solely controlled by Fidentia prior to the transaction, the Board found that, following the transaction, SFMI would acquire veto rights over key strategic decisions and that the transaction would result in the establishment of joint control by Fidentia and SFMI.

In its assessment of the affected markets, the Board identified a potential horizontal overlap in the market for non-life reinsurance services and a potential vertical relationship between non-life insurance and non-life reinsurance services. However, it found that the parties' market shares in Türkiye were negligible and remained below the relevant thresholds set out in the Horizontal and Non-Horizontal Merger Guidelines.

Finally, the Board evaluated the non-compete and non-solicitation clauses under the Guidelines on the Relevant Undertakings, Turnover and Ancillary Restraints in Mergers and Acquisitions and the Guidelines on Competition Infringements in Labour Markets and found that the restrictions applicable to key managerial personnel were directly related, necessary and proportionate to the implementation and continuity of the transaction, both during and following their engagement, and therefore qualified as ancillary restraints.

Ultimately, the Board concluded that the transaction would neither create nor strengthen a dominant position nor significantly impede effective competition and therefore granted unconditional approval.

The approach of the Board to market shares and concentration levels is similar to that of the EC and in line with the approach enumerated in the Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings.[5] The first factor discussed under the Horizontal Merger Guideline is that market shares above 50 per cent can be considered an indication of a dominant position, whereas a market share of the combined entity remaining below 20 per cent would not require further enquiry into the likelihood of harmful effects resulting from the combined entity. Although a brief mention of the Board's approach to market shares and the Herfindahl–Hirschman Index (HHI) levels is provided, the Horizontal Merger Guidelines' emphasis on an effects-based analysis (coordinated and uncoordinated effects) without further discussion of the criteria to be used in evaluating the presence of a dominant position indicates that the dominant position analysis still remains subject to Article 7 of Law No. 4054.

Other than market share and concentration level considerations, the Horizontal Merger Guideline covers the following main topics:

1. the approach of the Board to market shares and concentration levels;
2. the anticompetitive effects that a merger would have in the relevant markets;
3. the buyer power as a countervailing factor to anticompetitive effects resulting from the merger;
4. the role of entry in maintaining effective competition in the relevant markets;
5. efficiencies as a factor counteracting the harmful effects on competition that might otherwise result from the merger; and
6. the conditions of a failing company defence.

The Horizontal Merger Guideline also discusses coordinated effects that might arise from a merger of competitors. They confirm that coordinated effects may increase the concentration levels and may even lead to collective dominance. As regards efficiencies, the Horizontal Merger Guideline indicates that efficiencies should be verifiable and that the passing-on effect should be evident. Significantly, the Horizontal Merger Guideline provides that the failing firm defence has three conditions: (1) the allegedly failing firm will soon exit the market if not acquired by another firm; (2) there is no less restrictive alternative to the transaction under review; and (3) it should be the case that unless the transaction is cleared, the assets of the failing firm will inescapably exit the market.

The Non-Horizontal Merger Guideline confirms that non-horizontal mergers in which the post-merger market share of the new entity in each of the markets concerned is below 25 per cent and the post-merger HHI is below 2,500 (except where special circumstances are present) are unlikely to raise competition law concerns, similar to the Guidelines on the Assessment of Non-Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings.[6] Other than the Board's approach to market shares and concentration levels, the other two factors covered in the Non-Horizontal Merger Guideline include the effects arising from vertical mergers and the effects of conglomerate mergers. The Non-Horizontal Merger Guideline also outlines certain other topics, such as customer restraints, general restrictive effects on competition in the market and restriction of access to the downstream market.

The Authority is expected to retain its well-established practice of paying close attention to developments in EU competition law and seeking to retain harmony between EU and Turkish competition law instruments.

In practice, there are indications that remedies and conditional clearances are becoming increasingly important in Turkish merger control enforcement. The number of cases in which the Board decided on divestment or licensing commitments, or other structural or behavioural remedies, has increased dramatically in recent years. Examples include some of the most important decisions in the history of Turkish merger control enforcement.[7]

The aim of the Authority's Guidelines on Remedies is to provide guidance on remedies that can be offered to dismiss competition law concerns regarding a particular concentration that might otherwise be deemed as problematic under the SIEC test. The Guidelines on Remedies set out the general principles applicable to the remedies acceptable to the Board, the main types of commitments that may be accepted by the Board, the specific requirements that commitment proposals need to fulfil and the main mechanisms for the implementation of such commitments.

The merger control regime

There is no specific deadline for making a notification in Türkiye; however, there is a suspension requirement (i.e., a mandatory waiting period). A notifiable transaction (regardless of whether it is problematic under the applicable SIEC test) is invalid, with all the ensuing legal consequences, unless and until the Authority approves it.

The notification is deemed filed when the Authority receives it in its complete form. If the information provided to the Board is incorrect or incomplete, the notification is deemed filed only on the date when the information is completed upon the Board's subsequent request for further data. The notification is submitted in Turkish. Transaction parties are required to provide a sworn Turkish translation of the final, executed or current version of the transaction agreement or the document that brings about the transaction. The notification form is similar to the Form CO of the European Commission. One hard copy and an electronic copy of the merger notification form must be submitted to the Board.

Recent updates allow notifying parties to submit the notification form via 'e-Devlet', an elaborate system of web-based services, including electronic submission. Communiqué No. 2010/4 explicitly mentions this alternative way of submission to make it official.

The information requested includes data in respect of supply and demand structure, imports, potential competition and expected efficiencies. Some additional documents, such as the executed or current copies and sworn Turkish translations of the documents that bring about the transaction, annual reports (e.g., balance sheets of the parties) and, if available, market research reports for the relevant market, are also required.

Amendment Communiqué also brought a modified notification form, which replaced the current notification form as of 11 February 2026. According to the modified notification form, a short-form notification (without a fast-track procedure) is available if either

1. there are no affected markets in Türkiye; or
2.

(1) for horizontal overlaps, the total market share of the transaction parties does not exceed 15 per cent; and (2) for vertical overlaps, the market share of one of the parties does not exceed 20 per cent; or

3. a transition from joint control to sole control is involved.

The Board, upon its preliminary review of the notification (i.e., Phase I), will decide either to approve or to investigate the transaction further (i.e., Phase II). It notifies the parties of the outcome within 30 calendar days of a complete filing. In the absence of any notification, the decision is deemed to be approved through an implied approval mechanism introduced with the relevant legislation.

Although the wording of the law implies that the Board should decide within 15 calendar days whether to proceed with Phase II, the Board generally takes more time to form its opinion concerning the substance of a notification. It is more sensitive to the 30-calendar-day deadline on announcement. Moreover, any written request by the Board for missing information will stop the review process and restart the 30-calendar-day period at the date the information is provided.

In practice, the Authority is quite keen on asking formal questions and adding more time to the review process. Therefore, under normal circumstances, it is recommended that the filing be done at least 60 calendar days before the projected closing.

If a notification leads to a Phase II review, it turns into a full-fledged investigation. Under Turkish competition law, Phase II investigation takes about six months. If necessary, the Board may extend this period, but only once, for an additional period of up to six months.

In practice, only extremely exceptional cases require a Phase II review, and most notifications obtain a decision within 60 days of the original date of notification. Neither Law No. 4054 nor Communiqué No. 2010/4 foresee a fast-track procedure to speed up the clearance process. Aside from close follow-up with the case handlers reviewing the transaction, the parties have no available means to speed up the review process.

The filing process differs for privatisation tenders and transactions. Amendment Communiqué No. 2026/3 on the Amendment of Communiqué No. 2013/2 on the Procedures and Principles to be Pursued in Pre-Notification and Authorization Applications to be Filed with the Turkish Competition Authority in order for Acquisitions via Privatization to Become Legally Valid (Amendment Communiqué No. 2026/3) prescribes an additional pre-notification process. This only applies to privatisations in which the turnover of the undertaking or asset or unit intended for production of goods or services to be privatised exceeds 1 billion Turkish lira. For this calculation, sales to public institutions and organisations including local governments made on the basis of a legislative provision should not be taken into account. If the threshold is met, a pre-notification should be filed with the Authority before the public announcement of the tender specifications. The Board will issue an opinion that will serve as the basis for the preparation of the tender specifications. This opinion does not mean that the transaction is cleared. Following the tender, the winning bidder will still have to make a merger filing and obtain approval before the Privatisation Administration's decision on the final acquisition.

There is no special rule for hostile takeovers; the Board treats notifications for hostile transactions in the same manner as for other notifications. If the target does not cooperate, and if there is a genuine inability to provide information because of the one-sided nature of the transaction, the Authority tends to use most of its powers of investigation or information request under Articles 14 and 15 of Law No. 4054.

The Board may request information from third parties, including the customers, competitors and suppliers of the parties, and other persons connected with the merger or acquisition. The Board uses this power especially to define the market and determine the market shares of the parties. Third parties, including the customers and competitors of the parties, and other persons concerned with the merger or acquisition, may request a hearing from the Board during the investigation, subject to the condition that they prove their legitimate interest. They may also challenge the Board's decision on the transaction before the competent judicial tribunal, again subject to the condition that they prove their legitimate interest. The Board may grant conditional clearance and make the clearance subject to the parties observing certain structural or behavioural remedies, such as divestiture, ownership unbundling, account separation and right of access.

Final decisions of the Board, including its decisions on interim measures and fines, can be submitted for judicial review before administrative courts. The plaintiff may initiate a lawsuit within 60 days of the parties' receipt of the Board's reasoned decision.

Decisions of the Board are considered as administrative acts. Filing a lawsuit does not automatically stay the execution of the Board's decision; however, at the request of the plaintiff, the court may decide to stay the execution. The court will stay the execution of the challenged act only if execution of the decision is likely to cause irreparable damage and there is a prima facie reason to believe that the decision is highly likely to violate the law.

The appeal process may take two and a half years or more.

Other strategic considerations

With the changes in Law No. 4054, the Board has geared up for a merger control regime that focuses much more on deterrents. As part of that trend, monetary fines for not filing, or for closing a transaction without the Board's approval, have increased significantly. It is now even more advisable for the transaction parties to observe the notification and suspension requirements and avoid potential violations. This is particularly important when transaction parties intend to put in place carve-out or hold-separate measures to override the operation of the notification and suspension requirements in foreign-to-foreign mergers. The Board is currently rather dismissive of carve-out and hold-separate arrangements, even though the wording of the new regulation allows some room to speculate that carve-out or hold-separate arrangements are now allowed. Because the position the Authority will take in interpreting this provision is not yet clear, such arrangements cannot be considered as safe early closing mechanisms recognised by the Board.

Many cross-border transactions meeting the jurisdictional thresholds of Communiqué No. 2010/4 will also require merger control approval in a number of other jurisdictions. Current indications suggest that the Board is willing to cooperate more with other jurisdictions in reviewing cross-border transactions.[8] Article 43 of Decision No. 1/95 of the EC–Türkiye

Association Council authorises the Authority to notify and request the EC (the Competition Directorate-General) to apply relevant measures.

The Turkish merger control regime currently utilises an SIEC test in the evaluation of concentrations. In line with EU law, the Amendment Law has replaced the dominance test with the SIEC test. Based on the new substantive test, mergers and acquisitions that do not significantly impede effective competition in a relevant product market within the whole or part of Türkiye would be cleared by the Board.

Article 3 of Law No. 4054 defines a dominant position as 'the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers'. The Horizontal Merger Guideline states that market shares of more than 50 per cent may be used as an indicator of a dominant position, whereas aggregate market shares below 20 per cent may be used as a presumption that the transaction does not pose competition law concerns. In practice, market shares of about 40 per cent and higher are generally considered, along with other factors such as vertical foreclosure or barriers to entry, as an indicator of a dominant position in a relevant market. However, a merger or acquisition can be blocked only when it significantly impedes competition in the whole territory of Türkiye or in a substantial part of it, pursuant to Article 7 of Law No. 4054.

There have been exceptional cases in which the Board used a joint dominance test to discuss the coordinated effects arising out of transactions. In this regard, transactions concerning the sale of certain cement factories by the Savings Deposit Insurance Fund were rejected by the Board on the grounds that the relevant transactions would lead to joint dominance of the market. The Board considered factors such as structural links between the undertakings in the market, past coordinative behaviour, entry barriers, transparency of the market and the structure of demand.

Economic analysis and econometric modelling have also been seen more often in recent years. For example, in the *AFM/Mars Cinema* case (11-57/1473-539, 17.11.2011), the Board employed the ordinary, least-squared and the two-staged, least-squared estimation models to determine price increases that would be expected as a result of the transaction. The Board also used the Breusch–Pagan, Breusch–Pagan/Godfrey/Cook–Weisberg and White/Koenker NR2 tests and the Arellano–Bond test on the simulation model. Economic analyses such as these are rare but are increasing in practice. Economic analyses that are used more often are the HHI and concentration ratio indices to analyse concentration levels. For instance, in iData case (24-26/629-262,12.6.2024) the Board used HHI test to establish the concentration levels of the concerned transaction. In 2019, the Board also published the 'Handbook on Economic Analyses Used in Board Decisions', which outlines the most prominent methods used by the Authority (e.g., correlation analysis, the small but significant and non-transitory increase in price test, and the Elzinga–Hogarty test).

Outlook and conclusions

As can be seen from the Competition Authority's Mergers and Acquisitions Insight Report for 2024–2025, (1) there has been a significant increase in the Competition Authority's scrutiny of transactions, and (2) the introduction of a threshold exemption for undertakings active in certain markets and sectors may be one of the reasons for this considerable increase. We have yet to see the effects of the Amendment Communiqué on the number of transactions that trigger a mandatory merger control filing requirement in Türkiye.

Endnotes

1 Gönenç Gürkaynak is the founding partner, K Korhan Y ld r m is a partner and Görkem Yard m is a counsel at ELIG Gürkaynak Attorneys-at-Law. ^ Back to section

2 97/C372/03. ^ Back to section

3 Competition Board, Decision No. 25-14/336-158 (10 April 2025). ^ Back to section

4 Competition Board, Decision No. 24-07/128-52 (8 February 2024). ^ Back to section

5 2004/C 31/03. ^ Back to section

6 2008/C 265/07. ^ Back to section

7 *Potas/Antalya Airport* (23-22/426-142, 12 May 2023); *EssilorLuxottica/Hal Holding* (21-30/395-199, 10 June 2021); *Bekaert/Pirelli* (15-04/52-25, 22 January 2015); *Obilet/Biletal* (21-33/449-224, 01 July 2021); *Essilor/Luxottica* (18-36/585-286, 01 October 2018); or *Migros/Anadolu Industry Holding* (29/420-117, 09 July 2015), the majority of conditional clearance decisions are based on structural remedies. See, for example: *ÇimSA/Bilecik* (08-36/481-169, 02 June 2008); *Mey İçki/Diageo* (11-45/1043-356, 17 August 2011); *Burgaz Rakı/Mey İçki* (10-49/900-314, 08 July 2010); *Essilor/Luxottica* (18-36/585-286, 01 October 2018); *Lesaffre/Dosu Maya* (18-17/316-156, 31 May 2018); *Compugroup/Bupa* (24-11/174-69; 21 November 2024). ^ Back to section

8 The trend for more zealous inter-agency cooperation is even more apparent in leniency procedures for international cartels. ^ Back to section

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