

Competition - Turkey

Merger control thresholds revised

Contributed by **ELIG**

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Ever since the Competition Authority amended Communiqué 1997/1 on Mergers and Acquisitions Subject to Competition Board Approval by introducing Communiqué 2010/4 on Mergers and Acquisitions Subject to Competition Board Approval, it had been debated whether the revised jurisdictional thresholds would decrease the authority's workload in relation to merger control cases.

As soon as the figures concerning the total number of merger control cases reviewed by the authority in 2011 (the first year when Communiqué 2010/4 was in force) were revealed, it became clear that the TRY5 million threshold (approximately €2.2 million and \$2.8 million)⁽¹⁾ was too low.

Amendments to the jurisdictional thresholds were made immediately. On December 29 2012 Communiqué 2012/3 (amending Communiqué 2010/4) which amends the turnover thresholds that a merger or acquisition must exceed before becoming subject to notification, was published in the *Official Gazette*. As a result, Article 7 of Communiqué 2010/4 has been amended as follows:

"1) In a merger or acquisition as defined by Article 5 of this Communiqué, it is required to obtain the approval of the Competition Board in order for the relevant transaction to have legal validity where;

a) The aggregate Turkish turnovers of the transaction parties exceeds TL100 million (approximately €44 million and US\$56 million) and the Turkish turnovers of at least two of the transaction parties each exceeds TL30 million (approximately €13 million and US\$17 million), or

b) The Turkish turnover of the assets or businesses subject to the acquisition in the case of acquisition transactions, or the Turkish turnover of at least one of the parties in the case of merger transactions, exceeds TL30 million (approximately €13 million and US 17 million), and the worldwide turnover of at least one of the other transaction parties exceeds TL500 million (approximately € 217 million and US\$279 million)."

Following the amendments, the new regulation no longer seeks the existence of an "affected market" in assessing whether a transaction triggers a notification requirement. This amendment is intended to affect only notifiability analyses. The concept of an affected market still carries weight in terms of the substantive competitive assessment and the notification form. Unless they are amended, the provisions of the guidelines regarding the concept of an affected market and the conditions under which a transaction would result in an affected market under the competition legislation also remain valid and effective.

The first prong of the alternative turnover thresholds remained unchanged. Therefore, a transaction triggers a notification requirement in cases where:

"total turnovers of the transaction parties in Turkey exceed TL100 million (approximately €44 million and US\$56 million), and turnovers of at least two of the transaction parties in Turkey each exceed TL30 million (approximately €13 million and US\$17 million)."

The second prong of the alternative turnover thresholds has been revised as follows:

- The turnover threshold has been raised from TRY5 million (approximately €1.94 million and \$2.8 million, as of December 31 2012) to TRY30 million (approximately €13 million and \$17 million).
- The TRY30 million turnover threshold will now apply to "the transferred assets or businesses in acquisitions, and at least one of the parties to the transaction in mergers". Before the amendment, the threshold could be satisfied provided that

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"one of the transaction parties" had a turnover of more than TRY5 million (approximately €2.2 million and \$2.8 million) in Turkey and the other transaction party had a global turnover of more than TRY500 million (approximately €217 million and \$279 million). Following the amendments, parties to an acquisition will need to check the Turkish threshold for the target asset or business only. For mergers, the regime has not changed apart from the increase in the amount of the Turkish turnover threshold.

- The global turnover threshold has remained the same – that is, TRY500 million (approximately €217 million and \$279 million).

According to a study⁽²⁾ based on the merger control filings handled since the entry into force of Communiqué 2010/4, more than half of the merger control filings would not have been notifiable under the recently revised alternate threshold. To that end, a fall of approximately 50% to 55% in the overall number of merger control filings in Turkey can be expected, which should allow the Competition Authority to focus on those competition law matters which have a more visible nexus with the Turkish markets.

Communiqué 2012/3 will enter into force on February 1 2013. Therefore, businesses could face some strategic timing issues concerning the closing of transactions that are notifiable under the previous threshold, but not under the new threshold.

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Endnotes

(1) Based on the average exchange rate for 2012 determined by the Turkish Central Bank.

(2) Conducted by ELIG.

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