

Gönenç Gürkaynak and Zeynep Ortaç, ELIG Attorneys-at-Law

1. Regulatory framework

1.1. What is the applicable legislation and who enforces it?

Law 4054 on Protection of Competition 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?



A merger of two or more undertakings; or 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, are notifiable if they result in a permanent change of control. JVs are 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?



A transaction is subject to the Board's approval if the aggregate Turkish turnover of the parties exceeds TL100 million (\$34.7 million) and the Turkish turnover of at least two of the 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 exceeds TL500 million; and 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 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 exceeding the thresholds require notification.

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. The existence of an affected market is not sought in assessing whether a transaction triggers a notification requirement.

If the parties violate the suspension requirement or do not notify the transaction, the Board imposes a turnover-based monetary fine. The minimum fine in 2015 is TL16,765.

If there is a risk that the transaction might be viewed as problematic under the dominance test, and the transaction is closed before clearance, the Authority may launch an investigation. It may order structural and/or behavioural remedies to restore the situation before closing, and impose a fine of up to 10% of the parties' annual turnover. Executive members who 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 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?



The filing can be made 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?



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. A phase 2 review takes about six months and may be extended only 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 may play a more important role in cases where the combined market share of the parties exceeds 20% for horizontal overlaps and the market share of either of the parties exceeds 25% for vertical overlaps. The Board may consider efficiencies to the extent they operate as a beneficial factor in terms of better-quality production or cost savings.



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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 to the remedies. If the remedy is still insufficient to resolve the competition problems, the Board may not grant clearance.

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 on merger control decisions is rare.



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5. Your jurisdiction

5.1. In no more than 200 words outline any merger control regulatory trends in your jurisdiction.

Although the Board prioritises structural remedies in merger control enforcement, behavioural commitments are becoming important too. In *Bekaert/Pirelli* (22.01.2015, 15-04/52-25), a filing that has been handled by ELIG, the Board deemed the sole behavioural commitment concerning uninterrupted supply commitment to local customers of the parties as sufficient, and granted conditional clearance to the transaction. Further, in *Dosu Maya/Lesaffre* (15.12.2014, 14-52/903-411) the Board accepted a series of behavioural remedies along with structural remedies for the removal of competition law concerns. Therefore, it can be said that the Board's reluctance towards behavioural remedies is moderating.

About the author

Gönenç Gürkaynak is a founding partner and the managing partner of ELIG Attorneys-at-Law, a firm of 60 lawyers based in Istanbul, Turkey. He graduated from Ankara University, Faculty of Law in 1997, and was called to the Istanbul Bar in 1998. He received his LLM degree from Harvard Law School, and is qualified to practice in Istanbul, New York, Brussels and England and Wales (currently a non-practising Solicitor). Before founding ELIG in 2005, Gürkaynak worked as a lawyer at the Istanbul, New York and Brussels offices of a global law firm for more than eight years.

Gürkaynak heads the competition law and regulatory department of ELIG which currently consists of 36 lawyers. He has unparalleled experience in Turkish competition law counseling issues with over 18 years of competition law experience, starting with the establishment of the Turkish Competition Authority.

Gürkaynak frequently speaks at conferences and symposia on competition law matters. He has published more than 100 articles in English and Turkish by various international and local publishers. He also holds teaching positions at undergraduate and graduate levels at two universities, and gives lectures in other universities in Turkey.



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Zeynep Ortaç is a senior associate at ELIG Attorneys-at-Law in Istanbul, Turkey. Following her undergraduate studies at Bilkent University School of Law, she began her career at a law firm in Ankara. While completing her legal internship, she also pursued her graduate studies at Bilkent University and obtained an LLM degree in Law & Economics in 2010. Ortaç also received a scholarship from the EU Jean Monnet Scholarship Programme in the field of competition policy and received her second LLM degree from King's College, London. After admission to the Istanbul Bar, Ortaç began working in the competition law and regulatory department of ELIG in 2011.

Ortaç 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. She has also represented various multinational and national companies before the Turkish Competition Authority in their mergers and acquisitions filings and cartel investigations concerning various sectors. Ortaç has various international and local articles published both in English and in Turkish.