THE MERGER CONTROL REVIEW

Eighth Edition

Editor
Ilene Knable Gotts

THE LAWREVIEWS

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TURKEY

Gönenç Gürkaynak and K Korhan Yıldırım[1]

I INTRODUCTION

The national competition agency for enforcing merger control rules in Turkey is the Turkish Competition Authority, a legal entity with administrative and financial autonomy. The Turkish Competition Authority consists of the Competition Board, the Presidency, Service Departments and the Advisory Department. As the competent decision-making body of the Turkish Competition Authority, the Competition Board is responsible for, *inter alia*, reviewing and resolving merger and acquisition notifications. The Competition Board consists of seven members and is based in Ankara. The Service Departments consist of five technical units, one research unit, one leniency unit, one decisions unit, one information management unit, one external relations unit and one strategy development unit. There is a 'sectoral' job definition for each technical unit.

The relevant legislation on merger control is Law No. 4,054 on Protection of Competition and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board. The Competition Board has also issued many guidelines to supplement and provide guidance on the enforcement of Turkish merger control rules. The Guideline on Market Definition 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 (97/C372/03). The Competition Board released five comprehensive guidelines on merger control matters. The first is the Guideline on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions, covering 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. The second is the Guideline on Remedies Acceptable to the Turkish Competition Authority in Mergers and Acquisitions (Remedy Guideline). The Remedy Guideline 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. The third and fourth are the Guidelines on Horizontal Mergers and Acquisitions (Horizontal Guidelines) and the Guidelines on Non-horizontal Mergers and Acquisitions (Non-horizontal Guidelines). These Guidelines are in line with EU competition law regulations and seek to retain harmony between EU and Turkish competition law instruments. Finally, the Competition Board released the Guidelines on Merger and Acquisition Transactions and the Concept of Control, also closely modelled on the respective EC guidelines.

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Turkey 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 Competition 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 on long-term strategic business decisions of a company, and it can be exercised *de jure* or *de facto*.

The Authority has recently introduced Communiqué No. 2017/2 Amending Communiqué 2010/4 on Mergers and Acquisitions Requiring the Approval of the Board. One of the amendments introduced in Communiqué No. 2010/4 is that Article 1 of Communiqué No. 2017/2 abolished Article 7(2) of Communiqué No. 2010/4 which had required that 'The thresholds … are re-determined by the Board biannually'. Through this amendment, the Board no longer has the duty to re-establish turnover thresholds for concentrations every two years. As a result, there is no specific timeline for the review of the relevant turnover thresholds set forth by Article 7(1) of Communiqué No. 2010/4. Secondly, Article 2 of Communiqué No. 2017/2 modified Article 8(5) of Communiqué No. 2010/4. Together with this amendment, the Board will now be in a position to evaluate the transactions realised by the same undertaking concerned in the same relevant product market within three years as a single transaction, as well as two transactions carried out between the same persons or parties within a three year period. Lastly, Communiqué No. 2017/2 introduced a new regulation concerning public bids and series of transactions in securities. This newly introduced provision is similar to Article 7(2) of the European Merger Regulation. It provides that the applicable suspension requirement will not prevent the implementation of a public bid or of a series of transactions in securities on the conditions that (1) the transaction is notified to the Turkish Competition Authority without delay, and (2) the acquirer does not exercise the voting rights or does so only to maintain the full value of the investment based on a derogation granted by the Board. The Board may condition the derogation upon certain remedies to maintain effective competition.

Prior to this amendment, there was no specific regulation on the implementation of public bids and series of transactions. There were, however, certain precedents that laid down the same principles as the new regulation.

The Turkish Competition Authority had heretofore enacted a substantial amendment to the merger control thresholds in Communiqué No. 2010/4. The new turnover thresholds are as follows:

a the total turnover of the parties to a concentration in Turkey exceeds 100 million liras and the respective Turkish turnover of at least two of the parties individually exceed 30 million liras; or

b the Turkish turnover of the transferred assets or businesses in acquisitions exceeds 30 million liras, or the Turkish turnover of any of the parties in mergers exceeds 30 million liras; and the worldwide turnover of at least one of the other parties to the transaction exceeds 500 million liras.

In addition to the changes in turnover thresholds, Communique No. 2010/4 no longer seeks the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement. Prior to the amendment, transactions that did not affect a market did not trigger a pre-merger notification or approval requirement, even if they exceeded the turnover thresholds. Joint venture transactions were the exception to this rule, and they required

pre-merger notification and approval if they exceeded the thresholds, regardless of whether they resulted in an affected market. Now, the existence of an affected market is not a condition to triggering a merger control filing requirement.

The Guideline on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions has also been amended in line with the changes in the jurisdictional thresholds. Before the amendments, a horizontal or vertical overlap between the worldwide activities of the transaction parties was sufficient to infer the existence of an affected market, provided that one of the transaction parties was active in such an overlapping segment in Turkey. Following the recent amendments, existence of an affected market is no longer a requirement for a merger filing to the Competition Authority, and all discussions and explanations on the concept of affected market have been removed from the Guideline altogether.

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 Competition Board. As per Article 13 of Communiqué No. 2010/4, cooperative joint ventures will also be subject to a merger control notification and analysis on top of an individual exemption analysis, if warranted.

The implementing regulations provide for important exemptions and special rules. In particular:

a 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;

b mandatory acquisitions by public institutions as a result of financial distress, concordat, liquidation, etc., do not require a pre-merger notification;

c intra-corporate transactions that do not lead to a change in control are not notifiable;

d acquisitions by inheritance are not subject to merger control;

e 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;

f multiple transactions between the same undertakings realised over a period of two years are deemed a single transaction for turnover calculation purposes. 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 notified before; and

g transactions that are closely connected in that they are linked by conditions or take the form of a series of transactions in securities taking place within a reasonably short period of time are treated as a single concentration (interrelated transactions theory).

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. The Turkish merger control regime does not, however, recognise any *de minimis* exceptions.

Failing to file or closing the transaction before the Competition Board's approval can result in a turnover-based monetary fine. The fine is calculated according to the annual local Turkish turnover of the acquirer generated in the financial year preceding the fining decision at a rate of 0.1 per cent. It will be imposed on the acquiring party. In the case of mergers, it will apply to both merging parties. The monetary fine will, in any event, not be less than 18,377 liras. This monetary fine does not depend on whether the Turkish Competition Authority will ultimately clear the transaction.

If, however, there truly is a risk that the transaction is problematic under the dominance test applicable in Turkey, the Competition Authority may *ex officio* launch an investigation into the transaction; order structural and behavioural remedies to restore the situation as before the closing (restitutio in integrum); and 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 role 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 Turkey.

The Competition Board has so far consistently rejected all carveout or hold-separate arrangements proposed by merging undertakings.[2] 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'. While the wording of the new regulation allows some room to speculate that carveout or hold-separate arrangements are now allowed, it remains to be seen if the Competition Authority will interpret this provision in such a way. As noted above, this has so far been consistently rejected by the Competition 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 Turkey is unwarranted.

II YEAR IN REVIEW

With the introduction of new turnover thresholds and the removal of the affected market requirement, the Competition Board has finally been able to shift its focus from merger control cases to the fight against cartels and cases of abuse of dominance. The new merger control thresholds are solid measures to decrease the number of merger notifications and to lower the number of notifications. The previous merger control thresholds – and the alternative global turnover threshold in particular – proved too low, and the definition of affected market proved too broad to result in the appropriate level of resources being deployed in merger review. The Competition Authority publicly announced a significant increase in the number of merger control filings before the introduction of the new regime. This was the signal that the Competition Board was inclined to modify the thresholds. Consequently, the new thresholds entered into force and have resulted in a significant decrease in the number of merger cases.

Pursuant to the Merger and Acquisition Insight Report of the Authority, the Board reviewed a total of 209 transactions in 2016; these transactions included 200 merger, acquisition or joint venture transactions and nine privatisations. Among these transactions

2 *Total/Cepsa*, 20 December 2006, 06-92/1186-355; *Ajans Press Medya Takip AŞ/İnterpressMedyaHizmetleriTic aret AŞ*, 21 October 2010, 10-66/1402-523.

two concentrations[3] were subjected to Phase II review in 2016. Moreover, one concentration[4] notified and subjected to Phase II review in 2015 was withdrawn in 2016. In 2016, 107 transactions notified to the Board were foreign-to-foreign transactions, which constitutes over half of the concentrations notified within 2016.

The Board's most important merger control decisions in 2016 were as follows.

In *ABI/SABMiller*,[5] concerning Anheuser-Busch InBev's (ABI) acquisition of SABMiller plc, the Board undertook a Phase II review, deeming that the transaction would potentially lead to competitive concerns in the beer market as ABI was also indirectly acquiring a minority interest in Anadolu Efes, which has a dominant position in the beer market in Turkey. However, after its Phase II review, the Board granted an unconditional approval to the relevant transaction.

In *APMT/Grup Maritim*,[6] the Board reviewed the acquisition by APM Terminals BV (APMT) of all of the shares of Grup Maritim TCB, SL (Grup Maritim). TCE EGE, the only subsidiary of Grup Maritim in Turkey, was considered to be the target. There were a considerable number of complaints on the ground that APMT could potentially obtain a dominant position in the market for container terminal services, as TCE EGE was the only competitor of APMT. However, the Board assertively set forth that the transaction does not lead to any significant competitive concerns, and concluded that the number of players in the relevant market and the total capacities of the ports would potentially increase given that Çandarlı Port would start operating right after the planned closing of the transaction. To that end, the Board adopted an unconditional approval to the transaction.

The Board also granted an unconditional approval in *International Paper/Weyerhaeuser*[7] concerning the acquisition of Weyerhaeuser Company's paper pulp business by International Paper Company. In its decision, the Board reckoned with the facts like (1) the absence of paper pulp manufacturing in Turkey and (2) the sales in Turkey with regards to paper pulp are being generated through the way of imports. The Board concluded that the significant impact of the global market dynamics should be taken into account even though the geographical market has not been defined as 'worldwide'. This decision is of importance, as it signals that the Board does in fact test a broader approach in terms of geographical market.

The Competition Authority also enacted substantial revisions in the 'privatisation communiqué'. Communiqué No. 2013/2 replaced Communiqué No. 1998/4 on the procedures and principles to be pursued in pre-notifications and authorisations to be filed with the Competition Authority in order for acquisitions via privatisation to become legally valid.

Communiqué No. 2013/2 brought about several changes in terms of both procedure and substance. Most importantly, it eliminated the market share threshold altogether and increased the turnover threshold. A new feature of Communiqué No. 2013/2 is that the Competition Board's opinions on privatisation deals are valid for a period of three years.

The approach of the Competition Board to market shares and concentration levels is similar to that of the European Commission, and in line with the approach spelled out

3 *ABI/SABMiller*, 1 June 2016, 16-19/311-140,; Group Maritim-APM Terminals, 11 May 2016, 16-16/267-118.

4 Merve Gözlük Camı-Essilor, 23 September 2016, 16-31/520-234.

5 6 June 2016, 16-19/311-140.

6 11 May 2016, 16-16/267-118.

7 23 September 2016, 16-31/519-233.

in the Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings (2004/C 31/03). The first factor discussed under the Horizontal Guidelines is that market shares above 50 per cent can be considered an indication of a dominant position, while the market share of the combined entity remaining below 20 per cent would not require further inquiry into the likelihood of harmful effects emanating from the combined entity. Although a brief mention of the Competition Board's approach to market shares and the Herfindahl-Hirschman Index (HHI) levels is provided, the Horizontal Guidelines' emphasis on an effects-based analysis (coordinated and non-coordinated 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 on the Protection of Competition. Other than market share and concentration level considerations, the Horizontal Guidelines cover the following main topics:

a the anticompetitive effects that a merger would have in the relevant markets;
b the buyer power as a countervailing factor to anticompetitive effects resulting from the merger;
c the role of entry in maintaining effective competition in the relevant markets;
d efficiencies as a factor counteracting the harmful effects on competition that might otherwise result from the merger; and
e conditions of a failing company defence.

The Horizontal Guidelines also discuss 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 Guidelines indicate that efficiencies should be verifiable and that the passing-on effect should be evident.

The Non-horizontal Guidelines confirm that non-horizontal mergers where 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, similarly to the Guidelines on the Assessment of Non-horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings (2008/C 265/07). Other than the Competition Board's approach to market shares and concentration levels, the other two factors covered in the Non-horizontal Guidelines include the effects arising from vertical mergers and the effects of conglomerate mergers. The Non-horizontal Guidelines also outline certain other topics, such as customer restraints, general restrictive effects on competition in the market and restriction of access to the downstream market.

The ongoing legislative activity signals that modernisation of the Turkish merger control regime will remain one of the priorities of the Turkish Competition Authority. The amendment to the notifiability thresholds under Communiqué No. 2010/4 and the fact that the Horizontal and Non-horizontal Guidelines were issued are clear indications that the Competition Authority's agenda will contain similar merger control-related items. This trend is also supported by the recent issuing of the Guidelines on Mergers and Acquisitions and the Concept of Control. With this secondary legislation, the Turkish merger control regime now has more concrete grounds, with the welcome result that undertakings will be able to act more freely (although carefully) when considering a merger or an acquisition. The Turkish

Competition 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.

Another significant development in competition law enforcement was the change in the competent body for appeals against the Competition Board's decisions. The new legislation has created a three-level appellate court system consisting of administrative courts, regional courts (appellate courts) and the High State Court. The regional courts will (1) go through the case file both on procedural and substantive grounds and (2) investigate the case file and make their decision considering the merits of the case. The decision of the regional court will be subject to the High State Court's review in exceptional circumstances, which are set forth in Article 46 of the Administrative Procedure Law.

Recent indications in practice show that remedies and conditional clearances are becoming increasingly important in Turkish merger control enforcement. The number of cases in which the Competition Board decided on divestment or licensing commitments or other structural or behavioural remedies has increased dramatically over the past five years. Examples include some of the most important decisions in the history of Turkish merger control enforcement.[8]

In line with this trend, the Competition Authority issued the Remedy Guideline. The Remedy Guideline aims to provide guidance on remedies that can be offered to dismiss competition law concerns regarding a particular concentration that may otherwise be deemed as problematic under the dominance test. The Remedy Guideline sets out the general principles applicable to the remedies acceptable to the Competition Board, the main types of commitments that may be accepted by the Competition Board, the specific requirements that commitment proposals need to fulfil and the main mechanisms for the implementation of such commitments.

III THE MERGER CONTROL REGIME

There is no specific deadline for making a notification in Turkey. There is, however, a suspension requirement (i.e., a mandatory waiting period): a notifiable transaction (whether or not it is problematic under the applicable dominance test) is invalid, with all the ensuing legal consequences, unless and until the Turkish Competition Authority approves it.

The notification is deemed filed when the Competition Authority receives it in its complete form. If the information provided to the Competition Board is incorrect or incomplete, the notification is deemed filed only on the date when such information is completed upon the Competition 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.

The Competition 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 following a complete filing. In the absence of any such notification, the decision is deemed to be an 'approval' through an implied approval mechanism introduced with the relevant legislation. While the wording of the law

8 *AFM/Mars*, 17 November 2011, 11-57/1473-539; *Vatan/Doğan*, 10 March 2008, 08-23/237-75; *ÇimSA/Bilecik*, 2 June 2008, 08-36/481-169; *OYAK/Lafarge*, 18 November 2009, 09-56/1338-341; *THY/HAVAS*, 27 August 2009, 09-40/986-248; *Burgaz/MeyIcкı*, 8 July 2010, 10-49/900-314.

implies that the Competition Board should decide within 15 calendar days whether to proceed with Phase II, the Competition Board generally takes more than 15 calendar days 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 Competition Board for missing information will stop the review process and restart the 30-calendar-day period at the date of provision of such information. In practice, the Competition Authority is quite keen on asking formal questions and adding more time to the review process. Therefore, it is recommendable that the filing be done at least 55 to 60 calendar days before the projected closing.

If a notification leads to a Phase II review, it turns into a fully fledged investigation. Under Turkish law, the Phase II investigation takes about six months. If necessary, the Competition Board may extend this period 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 40 to 45 days after the original date of notification.

The filing process differs for privatisation tenders. Communiqué No. 2013/2 provides that a pre-notification is conducted before the tenders and notifications of the three highest bidders are submitted to the Competition Board following the Privatisation Authority's public privatisation tender. In the case of a public bid, the merger control filing can be performed when the documentation adequately proves the irreversible intention to finalise the contemplated transaction.

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

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 Competition Board may request information from third parties, including the customers, competitors and suppliers of the parties, and other persons related to the merger or acquisition. The Competition 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 related to the merger or acquisition, may request a hearing from the Competition Board during the investigation, subject to the condition that they prove their legitimate interest. They may also challenge the Competition Board's decision on the transaction before the competent judicial tribunal, again subject to the condition that they prove their legitimate interest.

The Competition 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. As noted above, the number of conditional clearances has increased significantly in recent years.

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be submitted for judicial review before Ankara Administrative Court. The appellants may make a submission by filing an appeal within 60 days of the parties' receipt of the Competition Board's reasoned decision. Decisions of the Competition Board are considered as administrative acts. Filing an appeal does not automatically stay the execution of the Competition Board's decision. However, upon 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 damages, and there is a *prima facie* reason to believe that the decision is highly likely to violate the law.

The deadline to appeal the Competition Board's final decisions to Ankara Administrative Court is 60 days starting from receipt of the reasoned decision. The appeal process may take two-and-a-half years or more.

IV OTHER STRATEGIC CONSIDERATIONS

With the recent changes in Law No. 4054, the Competition Board has geared up for a merger control regime focusing much more on deterrents. As part of that trend, monetary fines have increased significantly for not filing or for closing a transaction without the Competition Board's approval. 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. As noted above, the Competition Board is currently rather dismissive of carveout and hold-separate arrangements, even though the wording of the new regulation allows some room to speculate that carveout or hold-separate arrangements are now allowed. Because the position the Competition Authority will take in interpreting this provision is not yet clear, such arrangements cannot be considered as safe early-closing mechanisms recognised by the Competition Board.

Many cross-border transactions meeting the jurisdictional thresholds of Communiqué No. 2010/4 also will require merger control approval in a number of other jurisdictions. Current indications in practice suggest that the Competition Board is willing to cooperate more with other jurisdictions in reviewing cross-border transactions.[9] Article 43 of Decision No. 1/95 of the EC–Turkey Association Council authorises the Turkish Competition Authority to notify and request the European Commission (Competition Directorate-General) to apply relevant measures.

V OUTLOOK & CONCLUSIONS

The two most recent developments in Turkish competition law enforcement are the Draft Proposal for the Amendment of the Competition Law (Draft Law) and the Draft Regulation on Administrative Monetary Fines for the Infringement of Law on the Protection of Competition (Draft Regulation on Monetary Fines).

After a long wait on the sidelines, the Draft Law was submitted to the Presidency of the Grand National Assembly of the Turkish Republic on 24 January 2014. The Draft Law introduces a *de minimis* rule that enables the Competition Board to ignore certain cases that do not exceed a certain market share or turnover threshold (or both), and brings the EU's SIEC (significant impediment of effective competition) test to the Turkish control regime in place of the current dominance test.

The Draft Law proposal became a hot topic when the parliament announced that the Draft Law, containing these amendments, had officially been added to the current drafts

9 The trend for more zealous inter-agency cooperation is even more apparent in leniency procedures for international cartels.

and proposals list. However, it appears that the Draft Law has become obsolete yet again according to the internal regulation of the Grand Assembly. The relevant regulation states that draft laws become obsolete if they are not finalised within the relevant legislative year. Yet, the government or the Grand Assembly is entitled to renew obsolete draft laws. The Draft Law is currently being evaluated by the relevant commissions of the Grand Assembly, and it is expected that the commissions will submit the Draft Law to the Grand Assembly for approval. Subsequent to the enactment of the amendments, the Competition Board is expected to put important implementing regulations in place. The details of these regulations are not yet entirely clear.

Public comment was sought for the Draft Regulation on Monetary Fines. Briefly, the Draft Regulation refers to the new calculation method for administrative monetary fines, which would result in the explicit recognition of the parental liability principle. The upper limit of the administrative monetary fines is 10 per cent of the overall turnover as determined by the Competition Board and generated by the undertaking in the financial year preceding the decision. The Draft Regulation also brings new aggravating and mitigating factors. The content of the Draft Regulation seems to be heavily inspired by the European Commission's guidelines on the method of setting fines imposed under Article 23(2)(a) of Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU (formerly Articles 81 and 82 of the EC Treaty).

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Gönenç Gürkaynak is a founding partner and the managing partner of ELİG, Attorneys-at-Law. He holds an LLM degree from Harvard Law School, and is qualified to practise in Istanbul, Brussels, New York, and England and Wales (at present a non-practising solicitor). Before founding ELİG in 2005, he worked as an attorney in the Istanbul, New York and Brussels offices of a global law firm for more than eight years.

Mr Gürkaynak heads the competition law and regulatory department of ELİG, which currently consists of 36 lawyers. He has unparalleled experience in Turkish competition law counselling issues with more than 19 years of experience, starting with the establishment of the Turkish Competition Authority. Every year Mr Gürkaynak represents multinational companies and large domestic clients in more than 20 written and oral defences in investigations of the Turkish Competition Authority, about 15 antitrust appeal cases in the high administrative court, and over 50 merger clearances of the Turkish Competition Authority, in addition to coordinating various worldwide merger notifications, drafting non-compete agreements and clauses, and preparing hundreds of legal memoranda concerning a wide array of Turkish and EC competition law topics.

Mr Gürkaynak frequently speaks at conferences and symposia on competition law matters. He has published more than 150 articles in English and Turkish by various international and local publishers. Mr Gürkaynak also holds teaching positions at undergraduate and graduate levels at two universities, and gives lectures in other universities in Turkey.

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Mr Yıldırım was promoted to the firm's partnership on 1 January 2014.

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