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Turkey

MERGER CONTROL

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This country-specific Q&A provides an overview of merger control laws and regulations applicable in Turkey.

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TURKEY
MERGER CONTROL

1. Overview

The governing legislation on merger control is Law No.4054 on Protection of Competition and Communique No.2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (as amended by Communique No.2017/2). In particular, Article 7 of the Law No. 4054 governs mergers and acquisitions, and authorises the Turkish Competition Board (the "Competition Board" or the "Board") to regulate, through communiqués, which mergers and acquisitions require notification to the Turkish Competition Authority ("Competition Authority" or "Authority") to become legally valid.

The national competition authority for enforcing the Law on the Protection of Competition No. 4054 in Turkey is the Competition Authority, a legal entity with administrative and financial autonomy. The Authority consists of the Competition Board, the Presidency and service departments. As the competent decision making body of the Authority, the Competition Board is responsible for, inter alia, reviewing and resolving merger control filings.

Communiqué No.2010/4 defines the scope of the notifiable transactions as follows:

- a merger of two or more undertakings;
- the acquisition of or direct or indirect control over all or part of one or more
- undertakings by one or more undertakings or persons, who currently control at least one undertaking, through: (i) the purchase of assets or a part or all of its shares, (ii) an agreement, or (iii) other instruments.

As explained more fully below, Communique No.2010/4 provides turnover thresholds that a given merger or acquisition must exceed before becoming subject to notification. Within these turnover thresholds, there are also specific methods of turnover calculation for certain sectors. Furthermore, Communique No.2010/4 does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement; foreign-to-foreign transactions (cases where the relevant undertakings do not any physical presence in Turkey) are also caught if they exceed the turnover thresholds.

The notification process is mandatory. If the turnover thresholds are met and there is a change of control on a lasting basis, the transaction is subject to approval by the Competition Board.

For the sake of completeness, if the turnover thresholds are met, foreign-to-foreign transactions would trigger notification requirement so long as the joint venture is a full-function joint venture.

There is no specific deadline for making a notification in Turkey. There is however a mandatory waiting period: a notifiable transaction is invalid unless the Competition Authority approves it.

The Turkish Competition Authority amended the legislation relating to the Turkish merger control regime through the Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 ("Amendment Communiqué"), which has been published on the Official Gazette on March 4, 2022. The Amendment Communiqué entered into force two months after its promulgation on the Official Gazette, falling upon May 4, 2022. The Amendment Communiqué introduced new turnover thresholds for concentrations calling for approval from the Competition Board, which superseded the old turnover thresholds and also introduced a new merger control regime for undertakings active in certain markets/sectors.

2. Is notification compulsory or voluntary?

Turkey is a jurisdiction with a pre-merger notification and approval requirement, much like the EU regime. Concentrations that result in a change of control are subject to the Competition Board's approval, provided they exceed the applicable turnover thresholds.

Pursuant to the presumption regulated under article 5(2)

of Communiqué No. 2010/4, control shall be deemed acquired by persons or undertakings that are the holders of the rights, or entitled to the rights under the agreements concerned, or while not being the holders of the said rights or entitled to rights under such agreements, have de facto power to exercise these rights. Once the thresholds are exceeded, there is no exception for filing a notification. There is no de minimis exception or other exceptions under the Turkish merger control regime, except for a certain type of merger in the banking sector.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

Under Turkish merger control regime there is an explicit suspension requirement. A notifiable merger or acquisition, not notified to, or not approved by, the Board, shall be deemed as legally invalid with all of its legal consequences. If a transaction is closed before clearance, the substantive nature of the concentration plays a significant role in determining the consequences.

As for the filing process for privatisation tenders, Communiqué No. 2013/2 provides that it is mandatory to file a pre-notification with the Competition Authority before the public announcement of tender specifications to receive the opinion of the Competition Board which will include a competitive assessment. 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. Filing can also be performed when the documentation at hand adequately proves the irreversible intent to finalise the contemplated transaction.

The notification process differs for privatisation tenders. According to communiqué entitled Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorisation Applications to be filed with the Competition Authority in order for Acquisitions via Privatisation to Become Legally Valid (Communiqué No. 2013/2) amended by the Communiqué on the Amendment of the Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorisation Applications to be filed with the Competition Authority in order for Acquisitions via Privatisation to Become Legally Valid (Communiqué No. 2013/2), it is mandatory to file a pre-notification before the public announcement of tender and receive the opinion of the Competition Board in cases where the turnover of the undertaking or the asset or service production unit to be privatised exceeds TL 250 million (approximately €23.9.7 million or $28.3 million). Further to that, the Communique promulgates that in order for the acquisitions to become legally valid through privatisation, which requires pre-notification to the Competition Authority, it is also mandatory to get approval from the Competition Board. The application should be filed by all winning bidders after the tender but before the Privatisation Administration's decision on the final acquisition.

There is no normative regulation allowing or disallowing carve-out arrangements. Carve-out arrangements have been rejected by the Board (eg, the Total SA Decision 06-92/1186-355, 20.12.2006, and the CVR Inc Inco Limited Decision 07-11/71-23, 07.02 2007) so far arguing that a closing is sufficient for the suspension violation fine to be imposed and that a further analysis of whether a change in control actually took effect in Turkey is unwarranted. The wording of the Board's reasoned decisions does not analyse the merits of the carve-out arrangements, and takes the position that the "carve-out" concept is found unconvincing. Therefore, methods like carve-out or hold separate would not eliminate the filing requirement and they cannot authoritatively be advised as safe for early closing mechanisms recognised by the Board.

Finally, Turkish merger control rules do not provide the possibility of derogations from suspension.

4. What types of transaction are notifiable or reviewable and what is the test for control?

Turkey is a jurisdiction with a suspensory pre-merger notification and approval requirement.

Much like the European Commission regime, concentrations that result in a change of control are subject to the Competition Board's approval, provided that they reach the applicable turnover thresholds. The turnover thresholds given in Communiqué No. 2010/4 are stated more fully in the upcoming sections.

Communiqué 2010/4 and the Guideline on Cases Considered as Mergers and Acquisitions and the Concept of Control provide a definition of 'control' which does not fall far from the definition included in Article 3 of Council Regulation 139/2004. According to Article 5(2) of Communiqué 2010/4, control can be constituted by rights, agreements or any other means which, either separately or jointly, de facto or de jure, confer the possibility of exercising decisive influence on an undertaking. These rights or agreements have decisive

influence – in particular, in terms of ownership or the right to use all or part of the assets of an undertaking, or rights or agreements which confer decisive influence on the composition or decisions of the organs of an undertaking.

Pursuant to Article 6 of Communiqué 2010/4, the following transactions do not fall within the scope of Article 7, and are therefore exempt from board approval:

- intra-group transactions and other transactions that do not lead to a change in control;
- temporary possession of securities for resale purposes by undertakings whose normal activities involve conducting transactions with such securities for their own account or that of others, provided that the voting rights attached to such securities are not exercised in a way that affect the competition policies of the undertaking issuing the securities;
- acquisitions by public institutions or organisations further to the order of law, for reasons such as liquidation, winding-up, insolvency, cessation of payments, concordat or privatisation; and acquisition by inheritance, as provided by Article 5 of Communiqué 2010/4.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable

Acquisition of a minority shareholding can amount to a notifiable transaction, if and to the extent it leads to a change in the control structure of the target entity. In other words, if minority interests acquired are granted certain veto rights that may influence management of the company (e.g. privileged shares conferring management powers), then the nature of control could be deemed as changed (from sole to joint control) and the transaction could be subject to filing. As specified under the Guidelines on the Concept of Control, such veto rights must be related to strategic decisions on the business policy and they must go beyond normal "minority rights", i.e. the veto rights normally accorded to minority shareholders to protect their financial interests.

The Competition Board's approach to voting and negative control rights is very similar to, if not the same as the European Commission's position. For there to be a change in the target's control structure, the voting and/or veto rights should be sufficient to enable the acquirer to exercise decisive influence on the strategic business behaviour of the target. Under Turkish merger control regime, veto rights on the business plan, appointment of the senior management, budget, and strategic/major investments are typical examples of veto rights that confer joint control (Aksa Akrilik Kimya Sanayi 12-14/410-121, 29.03.2012; Medikal Park, 09-57/1392-361, 25.11.2009; Tarshish, 06-59/780-229, 24.8.2006; ADM-STFA 14.2.2008, 08-15/151-53).

Control can be constituted by rights, agreements or any other means which, either separately or jointly, de facto or de jure, confer the possibility of exercising decisive influence on an undertaking. These rights or agreements are instruments which confer decisive influence; in particular, by ownership or right to use all or part of the assets of an undertaking, or by rights or agreements which confer decisive influence on the composition or decisions of the organs of an undertaking.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

According to the Amendment Communiqué, a transaction would be notifiable in Turkey if one of the following alternative turnover thresholds is triggered:

(a) (i) The total turnover in Turkey of the parties to a concentration exceeds TL 750 million (approximately € 71.9 million, average ex. rate 2021 of € 1 = TL 10.42) **AND**

(ii) the Turkish turnover of at least two parties each exceeds TL 250 million (approximately € 23.9 million, average ex. rate 2021 of € 1 = TL 10.42),

OR

(b) (i) the Turkish turnover of the transferred assets or businesses in acquisitions (as well as joint ventures) exceeds TL 250 million (approximately € 23.9 million, average ex. rate 2021 of € 1 = TL 10.42) **AND** the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (for 2021 approximately € 287.9 million, average ex. rate 2021 of € 1 = TL 10.42)

OR

(ii) the Turkish turnover of any of the parties **in mergers** exceeds TL 250 million (approximately € 23.9 million, average ex. rate 2021 of € 1 = TL 10.42) **AND** the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (for 2021 approximately € 287.9 million, average ex. rate 2021 of € 1 = TL 10.42)

As seen above, the tests provided under Article 7(b) include two separate tests; Article 7(b)(i) is applicable only in cases of acquisition transactions (as well as joint ventures) while Article 7(b)(ii) is applicable only in cases of merger transactions.

Furthermore, the Amendment Communiqué introduced a threshold exemption for the undertakings active in certain markets/sectors. Pursuant to the Amendment Communiqué, "the TL 250 million Turkish turnover thresholds" mentioned above will not be sought for the acquired undertakings active in or assets related to the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies ("Target Company(ies)"), if they (i) operate in the Turkish geographical market or (ii) conduct research and development activities in the Turkish geographical market or (iii) provide services to the users in the Turkish geographical market.

It is also noteworthy that the Amendment Communiqué does not seek a Turkish nexus in terms of the activities which render the threshold exemption. In other words, it would be sufficient for the Target Company to be active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies anywhere in the world for the threshold exemption to become applicable, provided that the Target Company (a) generates revenue from customers located in Turkey OR (b) conducts R&D activities in Turkey OR (c) provides services to the Turkish users in any fields other than abovementioned ones. Accordingly, the Amendment Communiqué does not require (a) generating revenue from customers located in Turkey OR (b) conducting R&D activities in Turkey OR (c) providing services to the Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

To clarify the meaning and the scope of these sectors exempted from the use of local turnover thresholds, a non-exhaustive list of activities which correspond to the sectors referred to in the definition of the Amendment Communiqué is provided below. The below list reflects a mere effort to provide insight and guidance in identifying this scope, thus the list is not exhaustive:

a. Digital platforms: Digital platforms are systems and interfaces that form a commercial network or market facilitating business-to-business (B2B), business-to-customer (B2C) or even customer-to-customer (C2C) transactions. Digital platforms include but are not limited to social media platforms, knowledge sharing platforms, media sharing platforms, service-oriented platforms, online marketplaces and digital content aggregators.
b. Software and gaming software: Software relates to a set of instructions, data or programs used to operate computers and execute specific tasks, while gaming software concerns software customised for gaming. Software and gaming software include but are not limited to the activities below.
    i. writing and publishing of software and gaming software (including publishing of computer games) (NACE Rev. 2: 58.2)
    ii. wholesale, retail sale, distribution and marketing of software (both customised and non-customised) and gaming software (NACE Rev. 2: 46.51, 47.41)
    iii. reproduction from master copies of software (NACE Rev. 2: 18.2)
    iv. manufacture of electronic games with fixed (non-replaceable) software (NACE Rev. 2: 32.40)
    v. translation or adaptation of software and gaming software (NACE Rev. 2: 58.29)
    vi. computer programming activities (designing the structure and content of, and/or writing the computer code necessary to create and implement systems software (including updates and patches), software applications (including updates and patches), databases, web pages, customising of software (NACE Rev. 2: 62.01)
    vii. software installation services (NACE Rev. 2: 62.09)
c. Financial technologies: Financial technologies refer to technology-enabled innovation in financial services. Undertakings which sit at the crossroads of financial services and technology fall into the scope of this definition. In brief, the term "financial technologies" is used to define software and other technology aiming to modify, enhance or automate financial services for businesses or consumers. Financial technologies include but are not limited to technologies and software developed for the following fields:
    i. financial services activities (monetary intermediation, financial leasing, other credit granting) (NACE Rev. 2: 64.1, 64.9)
    ii. insurance, reinsurance, pension

funding (NACE Rev. 2: 65)

iii. activities auxiliary to financial services, insurance and pension funding (administration of financial markets (futures commodity contracts exchanges, securities exchanges, stock exchanges, stock or commodity options exchanges), security and commodity contracts brokerage (dealing in financial markets on behalf of others (e.g. stock broking) and related activities, securities brokerage, commodity contracts brokerage, activities of bureaux de change etc.), risk and damage evaluation, activities of insurance agents and brokers, fund management activities, financial transaction processing and settlement, investment advisory activities, activities of mortgage advisers and brokers (NACE Rev. 2: 66)

iv. accounting, bookkeeping and auditing activities, tax consultancy (recording of commercial transactions from businesses or others, preparation or auditing of financial accounts, examination of accounts and certification of their accuracy, preparation of personal and business income tax returns, advisory activities and representation on behalf of clients before tax authorities) (NACE Rev. 2: 69.2)

v. digital lending, payments, block chain and digital wealth management.

d. Biotechnology: Biotechnology refers to the technology that utilizes biological systems, living organisms or parts of this to develop or create different products. The sector includes but is not limited to the activities below:

i. research and experimental development on biotechnology (NACE Rev. 2: 72.11)
   - DNA/RNA (genomics, pharmacogenomics, gene probes, genetic engineering, DNA/RNA sequencing/synthesis/amplification, gene expression profiling, and use of antisense technology)
   - proteins and other molecules (sequencing/synthesis/engineering of proteins and peptides (including large molecule hormones); improved delivery methods for large molecule drugs; proteomics, protein isolation and purification, signalling, identification of cell receptors)
   - cell and tissue culture and engineering (cell/tissue culture, tissue engineering (including tissue scaffolds and biomedical engineering), cellular fusion, vaccine/immune stimulants, embryo manipulation
   - process biotechnology techniques (fermentation using bioreactors, bioprocessing, bioleaching, biopulping, biobleaching, biodesulphurisation, bioremediation, biofiltration and phytoremediation
   - gene and RNA vectors: gene therapy, viral vectors)
   - bioinformatics (construction of databases on genomes, protein sequences, modelling complex biological processes, including systems biology)
   - nanobiotechnology (applies the tools and processes of nano/microfabrication to build devices for studying biosystems and applications in drug delivery, diagnostics etc.)

ii. manufacture of biotech

pharmaceuticals such as plasma derivatives (NACE Rev. 2: 21.20)

e. Pharmacology: Pharmacology, a biomedical science, deals with the research, discovery, and characterization of chemicals which show biological effects and the elucidation of cellular and organismal function in relation to these chemicals. In other words, pharmacology refers to the science of how drugs act on biological systems and how the body responds to the drug. The study of pharmacology encompasses the sources, chemical properties, biological effects and therapeutic uses of drugs. Pharmacology includes but is not limited to the biomedical studies and R&D activities conducted in the areas below:
    i. Pharmacodynamics (relationship of drug concentration and the biologic effect (physiological or biochemical)
    ii. Pharmacokinetics (interrelationship of the absorption, distribution, binding, biotransformation, and excretion of a drug and its concentration at its locus of action)
    iii. Clinical Pharmacology and Therapeutics (understanding what a drug is doing to the body, what happens to a drug in the body, and how drugs work in terms of treating a particular disease
    iv. Pharmacotherapy (treatment of a disorder or disease with medication)
    v. Neuropharmacology (understanding how drugs affect cellular function in the nervous system)
    vi. Pyscopharmacology (use of medications in treating mental disorders)
    vii. Cardiovascular pharmacology (understanding how drugs influence the heart and vascular system)
    viii. Molecular pharmacology (investigates the molecular mode of action of drugs, among others using genetic and molecular biology methods)
    ix. Radiopharmacology (study and preparation of radioactive pharmaceuticals),
    x. Manufacture and R&D of pharmaceuticals (antisera and other blood fractions, vaccines, diverse medicaments, including homeopathic preparations), pharmaceutical preparations and medicinal chemicals (manufacture of medicinal active substances to be used for their pharmacological properties in the manufacture of medicaments: antibiotics, basic vitamins, salicylic and O-acetylsalicylic acids etc.); wholesale, retail sale, distribution and marketing of pharmaceuticals, pharmaceutical preparations and medicinal chemicals; growing of drug and narcotic crops (NACE Rev. 2: 21.1 and 21.2

f. Agricultural chemicals: Agricultural chemicals refer to chemicals used in agriculture to control pests and disease or control and promote growth; such as pesticides, herbicides, fungicides, insecticides, and fertilizers. The sector includes but is not limited to the activities below:
    i. mining of chemical and fertiliser minerals (NACE Rev. 2: 08.91)
    ii. support activities for other mining and quarrying (where it relates to agricultural chemicals and fertilizers) (NACE Rev. 2: 09.90)
    iii. manufacture of fertilisers (straight or complex nitrogenous, phosphatic or potassic fertilisers; urea, crude natural phosphates and crude natural potassium salts), nitrogen compounds (nitric and sulphonitric acids, ammonia, ammonium chloride, ammonium carbonate, nitrites and nitrates of potassium) (NACE Rev. 2: 20.15)
    iv. manufacture of organic and inorganic basic chemicals (where it relates to agricultural chemicals and fertilizers) (NACE Rev. 2: 20.13, 20.14)
    v. manufacture of pesticides and other agrochemical products (manufacture of insecticides, rodenticides, fungicides, herbicides, acaricides, molluscicides, biocides, manufacture of anti-sprouting products, plant growth regulators, manufacture of disinfectants (for agricultural and other use) (NACE Rev. 2: 20.2)
    vi. wholesale, retail sale, distribution

and marketing of fertilisers and agrochemical products (NACE Rev. 2: 46.75)

g. Health technologies: Health technologies are the application of organized knowledge and skills in the form of medicines, medical devices, vaccines, procedures and systems developed to solve a health problem and improve quality of life. They refer to any technology, including medical devices, IT systems, algorithms, artificial intelligence (AI), cloud and block chain, designed to support healthcare organizations and patients. Health technologies include but are not limited to technologies and software developed or being developed for the following fields:
    i. human health activities (hospital activities, medical (medical consultation and treatment) and dental practice activities (dentistry, endodontic and paediatric dentistry; oral pathology, orthodontic activities) (NACE Rev. 2: 86)
    ii. residential healthcare activities (residential nursing care activities, residential care activities for mental retardation, mental health and substance abuse, residential care activities for the elderly and disabled) (NACE Rev. 2: 87)
    iii. manufacture of medical and dental instruments (e.g. operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs, surgical appliances) (NACE Rev. 2: 32.5

If the Target Company's activities fall into the above markets/sectors, the thresholds that would be applicable would be: "The aggregate Turkish turnover of the transaction parties exceeding TL 750 million (approx. € 71.9 million or $ 84.9 million)" or "the worldwide turnover of at least one of the other parties to the transaction exceeding TL 3 billion (approx. € 287.9 million or $ 339.7 million)". Accordingly, when an undertaking that falls within the definition and criteria above is being acquired, the transaction would be notifiable if the aggregate Turkish turnover of the Target Company and the acquirer exceeds TL 750 million or the worldwide turnover of the acquirer exceeds TL 3 billion.

There are certain other special merger control rules to be considered in respect of a number of specific sectors.

Communique No. 2017/2 on the Amendment of Communique No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board ("Communique No. 2017/2") which has been published on the Official Gazette on February 24, 2017 and entered into force on the same day abolished Article 7(2) of Communique No. 2010/4 which stated that "The thresholds set out in the first clause of this article are re-determined by the Board biannually". With the abolishment of the relevant clause, the Board is no longer rested with the duty to re-establish turnover thresholds for concentrations every two years. To that end, there is no specific timeline for the review of the relevant turnover thresholds set forth by Article 7(1) of Communiqué No. 2010/4.

In addition, it should be also noted that Article 2 of Communiqué No. 2017/2 modified Article 8(5) of Communiqué No. 2010/4. Together with this amendment, the Board would 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.

There is no market share threshold in Turkey. If the parties meet the turnover thresholds, the transaction would be notifiable, regardless of the parties' market shares. In addition, sellers' turnover is not relevant while determining the filing obligations however it is only relevant in joint venture transactions i.e. where the buyer and the seller form a joint venture, both the seller and the buyer would be considered as buyers pursuant to Article 5 of Communiqué No. 2010/4.

Regardless of the parties' physical presence in Turkey, sales in Turkey may trigger the notification requirement to the extent that the turnover thresholds are met. In terms of acquisition transactions, even if the undertakings concerned have no local subsidiaries, branches or sales outlets in Turkey, the transaction could still be subject to Turkish competition legislation if the goods or services of the participating undertakings are sold in Turkey. In terms of joint venture transactions, the transaction could be subject to mandatory merger control notification in Turkey, regardless of whether the joint venture has a Turkish nexus or generates any Turkish turnover. In other words, whether the joint venture has a Turkish nexus or not, is not be relevant for the notifiability analysis under the Turkish merger control regime. So long as the joint venture is a full-function joint venture and the jurisdictional thresholds provided under Article 7 of Communiqué No. 2010/4 are triggered, the relevant transaction would be subject to mandatory merger control in Turkey. As is also provided in our e-mail message of August 22, 2022, the Board's

precedents illustrate this approach as well (Engie/FCA (21-15/187-79, 18.03.2021), Housing Development/Warburg Pincus (21-13/167-72, 11.03.2021), Astorg/Nordic (21-08/109-45, 18.02.2021), Partners Group/Warburg Pincus (21-05/60-27, 28.01.2021), TransnetBVV GmbH/MHP (21-04/43-18, 21.01.2021), Warner Bros/Universal (20-25/324-152, 21.05.2020), BP/RIL-RBPML (20-21/284-138, 30.04.2020), Warburg Pincus/Archimed-Polyplus (20-19/252-121, 09.04.2020), SGIS/JFE-Baosteel (20-14/180-92, 12.03.2020), Elliott/Apollo-EP Energy (20-13/171-90, 05.03.2020), Toyota/Mitsui-KINTO (20-13/166-85, 05.03.2020), Generali/Apleona-Sansa (20-12/140-77, 27.02.2020), Daimler/Swiss (20-10/105-61, 13.02.2020), Sumitomo/Toyota/Lewis-MMP (20-10/101-59, 13.02.2020), Generali/Union-Zaragoza Properties (20-08/73-41, 06.02.2020), Alpla Holding/PTT Global (20-04/37-19, 16.01.2020), HSI/Hilton Sao Paulo Morumbi (20-04/33-16, 16.01.2020), Mitsubishi Corporation/Wallenius Wilhelmsen (20-04/35-18, 16.1.2020), FSI/Snam-OLT Offshore (20-03/18-8, 09.01.2020), AMG/Shell (20-03/20-10, 09.01.2020), Engie/EDF/CDC/La Poste (19-45/747-321, 19.12.2019), Bamesa/Steel Center (19-44/739-316, 12.12.2019), Astorg/eResearch Technology (19-44/730-310, 12.12.2019), CDC/Total (19-42/700-299, 29.11.2019), BP/Bunge (19-35/526-216, 11.10.2019), Faurecia/Michelin-SymbioFCell (19-33/491-211, 26.09.2019), Leoni/Hengtong (19-08/93-38, 21.02.2019), Daimler/Volkswagen-MT Holding (19-06/61-25, 07.02.2019), DENSO/Aisin Seiki (19-04/32-13, 17.1.2019), Adient/Boeing (18-21/364-180, 28.06.2018), GE/Rosneft (18-14/259-124, 08.05.2018), IBM/Maersk (18-08/138-68, 15.03.2018), Daimler/Volkswagen-AutoGravity (17-28/463-202; 07.09.2017), NIPIgas/Technip/Linde/JV (17-23/366-159, 19.07.2017)).

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

As explained above, the jurisdictional thresholds under Turkish merger control regime are solely based on the turnover figures of the Parties. In other words there are no assets and/or market share based jurisdictional threshold. To that end, turnover consists of “the net sales realized at the end of the financial year preceding the date of the transaction according to the uniform chart of accounts, or if the calculation thereof is not possible, the net sales realized at the end of the closest financial year from the date of the transaction”. Captive/internal sales should be excluded.

Article 8 of Communiqué No. 2010/4 sets out detailed rules for turnover calculation. In short:

- The turnover of the entire economic group, including the undertakings controlling the undertaking concerned and all undertakings controlled by the undertaking concerned, will be taken into account.
- When calculating turnover in an acquisition transaction, only the turnover of the acquired part will be taken into account with respect to the seller.
- The turnover of jointly controlled undertakings (including joint ventures) will be divided equally by the number of controlling undertakings.
- Multiple transactions between the same undertakings realized over a period of two years are deemed as 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 not and whether they were notified before or not.

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).

On the matter of geographic allocation of turnover, unlike the EU legislation (i.e. para. 195-203 of the Consolidated Jurisdictional Notice), the Turkish merger control regime does not include any specific provisions regarding the geographic allocation of turnover. Also, the Board does not have any specific precedent directly on point concerning the geographic allocation of turnover. One decision that discusses geographic allocation of turnover concerns Air Berlin Plc./Intro (4.7.2007, 07-56/661-230) which suggests that “the location of the customer at the time of the transaction” is taken into consideration in assessing whether the revenue is attributable to Turkey.

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 and insurance companies.

8. Is there a particular exchange rate required to be used to convert turnover and asset values?

For converting the annual turnover of an undertaking in foreign currency to TL, average buying rate of exchange

of the Central Bank of Turkey for the financial year the turnover is generated is taken into consideration as the rate of exchange.

For 2021, the applicable Turkish Central Bank average rate for 2021 is € 1 = 10.42 TL and $ 1 = 8.83 TL.

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

The Turkish merger control rules applicable to joint ventures are akin to-if not the same as-the EU rules. Article 5 of the Communiqué 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board ("Communiqué No. 2010/4") provides a definition of joint venture, which does not fall far from the definition used in the EU law.

To qualify as a concentration subject to merger control, a joint venture must be of a full-function character and satisfy two criteria: (i) existence of joint control in the joint venture and (ii) the joint venture being an independent economic entity established on a lasting basis (i.e. having adequate capital, labour and an indefinite duration). Additionally, regardless of whether the joint venture is full function, the joint venture should not have as its object or effect the restriction of competition among the parties or between the parties and the joint venture itself within the meaning of Article 4 of Law No. 4054, which prohibits restrictive agreements. If the parent undertakings of a joint venture operate in the same market or the downstream or upstream or neighbouring market as the joint venture, it could lead to coordination between independent undertakings that restrict competition within the meaning of Article 4 of the Law.

If the turnover thresholds are triggered by the parents, the JV transaction would be notifiable as long as it has a full-function nature. The fact that the JV's products/services are or will not be offered in Turkey would not change the analysis. Indeed, the Competition Board has adopted several clearance decisions whereby JVs that do not involve sales in Turkey, and has considered that they are notifiable as long as the characteristics of the goods and services in question allow for a theoretical possibility that there "could" one day be sales by the JV into Turkey.

As a side note, in case the nature of the JV turns out to be non-full-functional, while the non-full function JVs are not under a mandatory merger control filing, non-full function JVs may fall under Article 4 of Law No 4054, which prohibits restrictive agreements. The parties have the ability to do a self-assessment individual exemption test, which is set out under Article 5 of Law No. 4054, on whether the JV meets the conditions of individual exemption (which are also very similar to, if not the same as EU regime). Notifying the transaction for individual exemption is not a positive duty of the parties, but it is an option granted to them.

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

Article 2 of Communiqué No. 2017/2 modified Article 8(5) of Communiqué No. 2010/4. Together with this amendment, the Board would 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.

Other than the situation mentioned above where the Board evaluate these transactions as a single transaction, there are no other circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable.

11. How do the thresholds apply to "foreign-to-foreign" mergers and transactions involving a target /joint venture with no nexus to the jurisdiction?

Foreign-to-foreign mergers are covered by Law 4054 on Protection of Competition to the extent that they affect the relevant markets within the territory of Turkey. Regardless of the parties' physical presence in Turkey, sales in Turkey may trigger the notification requirement to the extent that the turnover thresholds are met. Article 2 of Law 4054 sets out the effects criterion – that is, whether the undertakings concerned affect the goods and services markets in Turkey. Even if the undertakings concerned have no local subsidiaries, branches or sales outlets in Turkey, the transaction could still be subject to Turkish competition legislation if the goods or services of the participating undertakings are sold in Turkey and the transaction would thus affect the relevant Turkish market. In 2021 a total of 173 out of 309 transactions notified to the Board were foreign-to-foreign transactions.

The likelihood that the Board learns about a transaction is high as the Board vigorously follows mergers and

acquisitions in the local and international press and also closely follows the case practice of the European Commission and other important competition authorities. It may also examine the notifiability of past transactions in the context of a new notification.

The Board has imposed a fine of 0.1% of the undertaking's turnover, for either closing the transaction prior to clearance or not notifying the transaction at all.

- The highest gun jumping fine so far was approx. 1 million USD (Simsmetal/Fairless, 16.09.2009, 09-42/1057-269). This concerned a foreign to-foreign transaction. It was not discovered by the Authority but was notified by the parties after closing.
- The latest gun-jumping case involving a foreign-to-foreign transaction is BMW/Daimler/Ford/Porsche-Ionity decision of the Turkish Competition Board (28.07.2020, 20-36/483-211).
- There are several other foreign-to-foreign transactions where fines were imposed. See e.g. Brookfield/Johnson, 30.04.2020, 20-21/278-132; Longsheng; 02.06.2011, 11-33/723-226; CVRD Canada Inc., 08.07.2010, 10-49/949-332; Flir Systems Holding/Raymarine PLC, 17.06.2010, 10-44/762-246; Georgia Pacific Corporation, Fort James Corporation, 29.12.2005, 05-88/1219-352.
- In terms of the fining decisions concerning a foreign-to-foreign transaction involving a joint venture/target without activities or turnover in Turkey, BMW/Daimler/Ford/Porsche-IONITY (28.07.2020, 20-36/483-211) case is a recent example. The transaction in question concerned the establishment of IONITY in 2017, a full-function joint venture which is and has only been active in the EEA solely via charge point operation and never had any presence and/or activities in Turkey, between BMW, Daimler, Ford and Porsche (European Commission's decision in Case M.8376 BMW/Daimler/Ford/Porsche/JV). Prior to the formation of IONITY in 2017, the JV partners proceeded without notifying the transaction to the Authority, due to the notion that the formation of IONITY would not fall within the scope of the Authority's jurisdiction from a merger control standpoint due to the absence of any Turkey-related activities of IONITY. Eventually, although the Board unconditionally approved the 2020 transaction (Hyundai-IONITY, 24.07.2020, 20-35/457-203), the Board also rendered a separate decision where it also unconditionally approved the 2017 transaction and imposed administrative monetary fines on each of BMW, Daimler, Ford and Volkswagen corresponding to 0.1% of their annual Turkish turnovers in their 2019 financial years for the violation of the suspension requirement.

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

Not applicable.

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies? Are there different tests that apply to particular sectors?

The Law No. 7246 on the Amendment to the Law No. 4054 on Protection of Competition ("Amendment Law"), which is published on the Official Gazette and entered into force on 24 June 2020, amends article 7 of Law No. 4054 and introduces the significant impediment of effective competition (SIEC) test, similar to the approach under the EC Merger Regulation. This amendment aims to allow a more reliable assessment of unilateral and cooperation effects that could arise as a result of mergers or acquisitions. With this new test, the Turkish Competition Board will be able to prohibit not only transactions that may create a dominant position or strengthen an existing dominant position, but also those that could significantly impede competition. As a matter of Article 7 of Law No.4054 and Article 13 of the Communiqué, mergers and acquisitions which do not create or strengthen a dominant position and do not significantly impede effective competition in a relevant product market within the whole or part of Turkey, shall be cleared by the Board.

There is secondary legislation as of the time of writing as to how the SIEC test will be applied. In terms of creating or strengthening a dominant position, Article 3 of Law No.4054 defines a dominant position as "any position enjoyed in a certain market by one or more undertakings by virtue of which, those undertakings have the power to act independently from their competitors and purchasers in determining economic parameters such as the amount of production, distribution, price and supply".

However, the Board published a recent decision, the

Marport decision (13 August 2020; 20-37/523-231), where the Board conducted a detailed competitive assessment based on the SIEC test regarding the the acquisition of sole control of Marport Liman İşletmeleri Sanayi ve Ticaret Anonim Şirketi ("Marport") by Terminal Investment Limited Sàrl ("TIL"). Prior to the proposed transaction Marport is under joint control of TIL and Arkas Group.

In its competitive assessment, the Board stated that the transaction led to a horizontal overlap in the port management for container handling services market and a vertical overlap in the container line transportation market. The Board applied the SIEC test rather than solely assessing whether the transaction led to the creation or strengthening of a dominant position in the relevant markets.

The Board stated that in cases where the acquiring party is active in the same relevant product market or one of the upstream or downstream markets and has a significant market power in which the target is also active, the transaction may lead to competitive concerns within the scope of Article 7 of the Law No. 4054. In this respect, the Board evaluated TIL's relationship with MSC and Asyaport. MSC is a line container line transporter, which jointly controls TIL with GIP. Asyaport is a transit container port, under joint control of TIL and Ahmet SOYUER.

After examining the sales concerning the local and transit loads made by these undertakings, the Board stated that TIL and Asyaport were joint ventures that rendered services to MSC and MSC had a signifcant influence on these undertakings. Moreover, the activities of TIL and Asyaport could not be separated from MSC's activities as they constituted a part of MSC's activities. MSC was the major customer of Marport and, similarly, Asyaport rendered almost the entire of its services to MSC for local and transit loads. In addition, the Board evaluated the market shares of the undertakings operating in the container handling services concerning local loads in Northwestern Marmara between 2015 and 2019 and found that Marport was the leader in the market followed by Kumport and Asyaport.

Moreover, the Board evaluated the established capacity of the North-west Marmara Region ports combined and Marport and Asyaport separately. Upon its assessment, the Board stated that, bearing in mind that MSC was one of the biggest line operators on a global scale, when evaluated together with its significant presence in the area of line transportation, the fact that MSC would operate a significant part of the container handling capacity of the North-west Marmara Region was likely to create a disadvantage for other line operators that use the ports in the Northern Marmara Region and increased the costs for these line operators. The Board highlighted that this might especially be the case when there was not enough capacity available for other line operators. Despite the fact there was an increasing demand on the market, there was still an existent capacity for other undertakings. However, the Board did not find this mere fact sufficient to eliminate the competitive concerns with regard to the transaction due to the fact that post-proposed transaction; MSC would control 60% of the transit handling services in Northwestern Marmara. The Board stated that this would ultimately cause competitive concerns to arise. ,

Additionally the Board considered the entry barriers and ongoing projects that might create competitive pressure on Marport (i.e. the ongoing project that connects Asyaport to the existing railway line). The Board determined that in the event that the relevant project was materialized, Asyaport would be capable of serving the Northwest Marmara Region as well as Istanbul to a greater extent via the railway line extending into its port. Considering the above mentioned facts, the Board stated that Marport, located at the Ambarlı Port Facilities, handled approximately 90% of the total local load volume in the Northwest Marmara Region. The Board also acknowledged that in the event that the relevant railway line project was actualized, Asyaport would be a substitute to Marport. However, as TIL already held 70% of the shares in Asyaport, and the railway project would make Asyaport a substitute for Marport, the acquisition of Marport by TIL would mean that the two ports that were current competitors and/or future substitutes would be operated by the same undertaking, TIL. In conclusion, taking into account that the transaction was likely to cause significant impediment of effective competition, the Board refused to grant clearance within the scope of Article 7 of the Law No. 4054.

There are certain other special merger control rules to be considered in respect of a number of specific sectors.

First, similarly to the EU, there are specific rules regarding turnover calculation for specific sectors such as banks, financial institutions, leasing companies, factoring companies, securities agents, insurance companies, etc. See Article 9 of Communiqué No. 2010/4.

Second, there are specific merger control provisions for banks and privatisation tenders:

i. Banks: Banking Law No. 5411 provides that Articles 7, 10 and 11 of the Law No.4054 are not applicable if the sectoral share of the total assets of the banks subject to the transaction does not exceed 20%. In practice, the

Competition Board distinguishes between: (i) transactions involving foreign acquiring banks with no operations in Turkey, to which the Law No.4054 is fully applied; and (ii) foreign acquiring banks already operating in Turkey, to which the Law No.4054 is not applied if the conditions for the application of the Banking Law exception are fulfilled.

ii. Privatisation tenders: Communiqué No. 2013/2 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 TL 30 million (approximately € 4.7 million, USD5.2 million). 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 Competition Authority before the public announcement of the tender specifications. The Competition 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 clearance before the Privatisation Administration's decision on the final acquisition.

Third, there are various sector-specific rules alongside the merger control rules for sectors such as media, telecommunications, energy and petrochemicals. For example:

i. Energy: regarding electricity and natural gas, approval is required for share transfers of more than 10% (5% in case of publicly traded company shares) following the Electricity Market License Regulation the Natural Gas Market License Regulation.
ii. Broadcasting: under Law No. 6112, the transfer of the shares of a joint stock company holding a broadcasting licence should be notified to the Turkish Radio and Television Supreme Council.

In addition, it should also be noted that Article 3 of Communique No. 2017/2 introduced a newparagraph to be included to Article 10 of Communique No. 2010/4. This new paragraph reads as follows:

"If the control is acquired from various sellers by way of series of transactions in terms of securities within the stock exchange, the concentration could be notified to the Turkish Competition Board after the realization of the transaction provided that the following conditions are satisfied: (a) the concentration should be notified to the Turkish Competition Board without delay, (b) the voting rights attached to the acquired securities are not exercised or exercised solely to maintain the full value of its investments based on a derogation granted by the Turkish Competition Board. The Turkish Competition Board may impose conditions and obligations in terms of such derogation in order to ensure conditions of effective competition."

This newly introduced provision by Article 3 of Communique No. 2017/2 is similar to Article 7(2) of European Commission Merger Regulation. At any rate, although there was no similar specific statutory rule in Turkey on this matter until the promulgation of Communique No. 2017/2, the case law of the Board were shedding light on this matter.

14. Are factors unrelated to competition relevant?

Non-competition issues are not taken into account.

15. Are ancillary restraints covered by the authority's clearance decision?

Article 13(5) of the Communique provides that the approval granted by the Board concerning the transaction shall also cover those restraints which are directly related and necessary to the implementation of the transaction. The parties may engage in self-assessment as to whether a particular restriction could be deemed as ancillary. In case the transaction involves restraints with a novel aspect which have not been addressed in the Guideline on Undertakings Concerned and the Board's previous decisions, upon the parties' request, the Board may assess the restraints in question. In the event the ancillary restrictions are not compliant, the parties may face an Article 4 investigation.

16. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

The Law No.4054 provides no specific deadline for filing but in light of the 30-calendar-day review period it is advisable to file the transaction at least 40 to 45 calendar days before closing. It is important that the transaction is not closed before the approval of the

Competition Board.

17. What is the earliest time or stage in the transaction at which a notification can be made?

In practice, a filing is seen as a one-sided review by the Authority, once a formal one-shot notification is made. The Authority may of course issue various information requests, but it will only do so after the notification is made.

It is possible to notify a transaction on the basis of a close-to-final draft version of the transaction agreement instead of a signed agreement. It is also possible to submit the notification form under the MoU, letter of intent, term sheet, etc.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

The Turkish merger control rules do not provide a pre-notification mechanism. Therefore, there are no pre-notification discussions with the authority.

19. What is the basic timetable for the authority's review?

The Competition Board, upon its preliminary review (Phase I) of the notification will decide either to approve, or to investigate the transaction further (Phase II). It notifies the parties of the outcome within 30 calendar days following a complete filing. There is an implied approval mechanism introduced with Article 10(2) of Law No. 4054 where a tacit approval is deemed if the Turkish Competition Board (Board) does not react within 30 calendar days upon a complete filing.

While the timing in the Law No.4054 gives the impression that the decision to proceed with Phase II should be formed within 15 calendar days, the Competition Board generally uses more than 15 calendar days to form their opinion concerning the substance of a notification, and it is more sensitive about the 30 calendar days deadline on announcement.

If a notification leads to an investigation (Phase II), it changes into a fully-fledged investigation. Under Turkish law, the investigation takes about six months. In practice, only exceptional cases require a Phase II review, and most notifications obtain a decision within about 45 calendar days from the original date of notification.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

Any written information request by the Competition Board resets the clock and the review period starts again from day one once the responses are provided. As explained more fully in the previous section under Turkish law, the investigation takes about six months but if it deemed necessary, this period may be extended only once, for an additional period of up to six months, by the Competition Board.

If the information requested in the notification form 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.

Pursuant to article 15 of Communiqué No. 2010/4, 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. According to article 11(2) of Communiqué No. 2010/4, if the Competition Authority is required by legislation to ask for another public authority's opinion, this would cut the review period and restart it anew from day one.

While not common practice, it is possible for the third parties to submit complaints about a transaction during the review period.

In addition, in terms of Phase II review, if deemed necessary, it may be extended only once, for an additional period of up to six months by the Competition Board.

21. Are there any circumstances in which the review timetable can be shortened?

Neither Law No. 4054 nor Communiqué No. 2010/4 foresees 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.

22. Which party is responsible for submitting the filing?

Under the Turkish merger control regime, persons or undertakings that are parties to the transaction or their authorized representatives can make the filing, jointly or severally. In case of filing by one of the parties, the filing

party should notify the other party of the fact of filing. In practice, the majority of notifications are “buyer only”. Joint notifications are not uncommon, but “seller only” notifications are relatively rare.

However, it should also be noted that, the acquirer(s) in case of an acquisition and both merging parties in case of a merger are also responsible to ensure that a filing has been made with respect to notifiable transactions. Pursuant to Article 16 of Competition Law, if the parties to a notifiable transaction violate the suspension requirement, a turnover-based monetary fine (based on the local turnover generated in the financial year preceding the date of the fining decision at a rate of 0.1%) will be imposed on the incumbent firms (acquirer(s) in the case of an acquisition; both merging parties in the case of a merger).

23. What information is required in the filing form?

Communiqué No. 2010/4 provides a complex notification form, which is similar to the Form CO of the European Commission. One hard copy and one electronic copy of the merger notification form shall be submitted to the Competition Board. In parallel with the notion that only transactions with a relevant nexus to the Turkish jurisdiction will be notified, a wide range of information is requested by the Turkish Competition Board, including data with respect to supply and demand structure, imports, potential competition, expected efficiencies, etc.

Some additional documents such as the executed or current copies and sworn Turkish translations of some of the transaction documents, annual reports including balance sheets of the parties, and, if available, market research reports for the relevant market are also required. Bearing in mind that each subsequent request by the Competition Board for incorrect or incomplete information will prolong the waiting period, detailed and justified answers and information to be provided in the notification form is to the advantage of the parties.

There is a short-form notification (without a fast-track procedure) if: (i) one of the transaction parties will be acquiring the sole control of an undertaking over which it has joint control; or (ii) there is no affected market in Turkey. To provide further context, if a given transaction would give rise to affected market(s) in Turkey, the new sample notification form requires disclosure of information similar to the ones sought under sections 6, 7 and 8 of the old sample notification form (e.g. import conditions, supply structure, demand structure, market entry conditions and potential competition and efficiency gains). Prior to the Amendment Communiqué, the Communiqué No. 2010/4 did not require the information requested under sections 6, 7 and 8 of the sample notification form (e.g. import conditions, supply structure, demand structure, market entry conditions and potential competition and efficiency gains), if (i) the aggregate market share of the parties did not exceed 20% in terms of the horizontal relationships; and (ii) the market share of one of the parties did not exceed 25% in terms of the vertical relationships within the affected markets. The new sample notification form introduced with the Amendment Communiqué requires the information that was previously required under sections 6, 7 and 8 of the old sample notification on the condition that there is an affected market in Turkey and abolishes the market share thresholds in the affected markets sought for disclosure of such information.

There are no informal ways to speed up the procedure.

In addition, Amendment Communiqué introduces a new sample notification form entailing an increase in the information requested, including global relevant product markets that the Parties operate in, globally overlapping markets and market share data regarding such globally overlapping activities, data with respect to supply and demand structure, imports, potential competition and expected efficiencies, etc. If there is not an affected market arising from a given transaction, the minor differences that new sample notification form entails are as below:

- The new sample notification form explicitly seek disclosure of information on the closing date of the transaction.
- In terms of the value of the transaction the new sample notification form notes that the value of the transaction includes the TL equivalent of all assets, cash and non-cash benefits that the buyer has received or will receive from the seller in the transaction. Accordingly, all cash payments to be made within the framework of the transaction, voting rights, securities, movable and immovable property, contingency annuities, additional payments to be made within the scope of non-compete obligation, if any, and liabilities of the transferee are also evaluated within the scope of the transaction value.
- The new sample notification form seeks explanation on the relation between the control structure of the undertaking concerned (party to the transaction/joint venture) and the transaction party together with its affiliated economic entities with a demonstration via an organizational chart.

- The new sample notification form seeks explanation on the relation between the control structure of the undertaking concerned (acquirer) and the transaction party together with its affiliated economic entities with a demonstration via an organizational chart.
- The new sample notification form explicitly seek information on the relevant product and geographical markets that the Parties (i.e. ultimate parent entities of the parties to the transaction) to the transaction as well as the undertakings concerned (i.e. direct parties to the transaction) operate in, in global terms.

24. Which supporting documents, if any, must be filed with the authority?

In terms of formalities/supporting documents, the parties need to submit the signed or latest version of the transaction document that brings about the concentration along with its sworn Turkish translation. Moreover, a signed, notarized and apostilled power of attorney(s) would be required to be able to represent the notifying party(ies) before the Competition Authority. The signed, notarized and apostilled power of attorney will require local legalization that needs to be performed by the notary public in Turkey (which concerns the notarization of the sworn Turkish translation of the executed, notarized and apostilled power of attorney).

The transaction parties will also need to submit officially approved documents (i.e. approved balance sheets) that show their latest accounts. In addition, where applicable, for the Turkish subsidiaries and/or affiliated entities of the parties, the latest certified balance sheets and/or profit and loss statements (as approved by the relevant Tax Office in Turkey) should be submitted along with the merger control filing. Finally the parties will need to submit organizational (corporate structure) charts or list of subsidiaries demonstrating each person or economic entity directly or indirectly controlled by the Parties. There is no formal requirement applicable for organizational (corporate structure) chart or list of subsidiaries for the parties.

For the sake of completeness, it is not required to submit certification of incorporation and articles of association as annexes to the merger control filing.

All of the required supporting documents should be submitted together with the notification form, otherwise notification form would be incomplete and the notification is deemed filed only on the date when such information is completed upon the Competition Board's subsequent request for further data. Furthermore any written request by the Competition Board for missing information and documents resets the clock and the review period starts again from day one once the responses and documents are provided.

25. Is there a filing fee?

There is no filing fee required under Turkish merger control regime.

26. Is there a public announcement that a notification has been filed?

Once notified to the Authority, the "existence" of a transaction and notification will no longer be a confidential matter. The Authority will publish the notified transactions on its official website with the names of the parties and their areas of commercial activity. Moreover, the reasoned decision of the Board is also published on the Authority's official website upon its finalisation.

The main legislation that regulates the protection of commercial information is Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets (Communiqué No. 2010/3). Communiqué No. 2010/3 puts the burden of identifying and justifying information or documents as commercial secrets on the undertakings. Therefore, undertakings must request confidentiality from the Board in writing and justify their reasons for the confidential nature of the information or documents that are requested to be treated as commercial secrets. While the Board can also ex officio evaluate the information or documents, the general rule is that information or documents that are not requested to be treated as confidential are accepted as not confidential. The reasoned decisions of the Board are published on the website of the Authority after confidential business information is redacted.

Moreover, under Article 25 of the Law No.4054, the Board and personnel of the Authority are bound with a legal obligation of not disclosing any trade secrets or confidential information which they have acknowledged during their service.

27. Does the authority seek or invite the views of third parties?

Pursuant to article 15 of Communiqué No. 2010/4, 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. According to article 11(2) of

Communiqué No. 2010/4, if the Competition Authority is required by legislation to ask for another public authority's opinion, this would cut the review period and restart it anew from day one. Third parties, including the customers and competitors of the parties, and other persons related to the merger or acquisition may participate in a hearing held by the Competition Board during the investigation, provided that they prove their legitimate interest.

Although it is not a common practice; Competition Authority may even invite the views of third parties for a transaction that clearly does not raise competition issues. There is no specific provision that a market testing is carried out in the merger control filing process.

28. What information may be published by the authority or made available to third parties?

The main legislation that regulates the protection of commercial information is Article 25(4) of the Law No.4054 and Communiqué No. 2010/3 on Regulation of Right to Access to File and Protection of Commercial Secrets (Communiqué 2010/3), which was enacted in April 2010. Communiqué No. 2010/3 puts the burden of identifying and justifying information or documents as commercial secrets to the undertakings. Therefore, undertakings must request confidentiality from the Competition Board and justify their reasons for the confidential nature of the information or documents that are requested to be treated as commercial secrets. This request must be made in writing.

While the Competition Board can also ex officio evaluate the information or documents, the general rule is that information or documents that are not requested to be treated as confidential are accepted as not confidential. Turkish Competition Authority publishes the parties' notification on its official website (www.rekabet.gov.tr), including only the names of the undertakings concerned and their areas of commercial activity. Lastly, the final decisions of the Competition Board are published on the website of the Competition Authority after confidential business information is taken out.

Pursuant to the Article 12(4) of Communiqué 2010/3, information that has been published, made public, or included in official registers or balance sheets as well as annual reports, together with information that has lost its trade significance due to causes such as the fact that it is five years old or more, may not be deemed trade secret.

Further to that, under article 15(2) of Communiqué 2010/3, the Competition Authority may not take into account confidentiality requests related to information and documents that are indispensable to be used as evidence for proving the infringement of competition. In such cases, the Competition Authority can disclose such information and documents that could be considered as trade secrets, by taking into account the balance between public interest and private interest, and in accordance with the proportionality criterion.

Moreover, under Article 25 of Law No.4054, the Board and personnel of the Authority are bound with a legal obligation of not disclosing any trade secrets or confidential information they have acknowledged during their service.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

The Authority is empowered to contact with certain regulatory authorities around the world to exchange information, including the European Commission. In this respect, Article 43 of Decision No. 1/95 of the EC-Turkey Association Council (Decision No. 1/95) authorises the Authority to notify and request the European Commission (Competition Directorate-General) to apply relevant measures if the Board believes that transactions realised in the territory of the European Union adversely affect competition in Turkey. Such provision grants reciprocal rights and obligations to the parties (EU-Turkey), and thus the European Commission has the authority to request the Board to apply relevant measures to restore competition in relevant markets.

Moreover, the research department of the Authority makes periodic consultations with relevant domestic and foreign institutions and organisations. The Commission has been reluctant to share any evidence or arguments with the Authority, in a few cases where the Authority explicitly asked for them.

Apart from those, the Competition Authority has international cooperation with several antitrust authorities in other jurisdictions. Additionally, the Competition Authority develops training programmes for cooperation purposes. In recent years, programmes have been organised for the board members of Pakistani Competition Authority, top managers of the National Agency of the Kyrgyz Republic for Anti-Monopoly Policy and Development of Competition, members of the Mongolian Agency for Fair Competition and Consumer Protection, and board members of the Turkish Republic of Northern Cyprus's Competition Authority. Similar programmes have also been developed in cooperation with the Azerbaijan State Service for Antimonopoly

Policy and Consumers' Rights Protection, the State Committee of the Republic of Uzbekistan on De-monopolisation and Ukrainian Anti-Monopoly Committee. These programmes were held according to the bilateral cooperation agreements.

In April 2018, it entered into cooperation agreements with Kosovo, Macedonia and Serbia. Furthermore, the Turkish Competition Authority signed a cooperation protocol with the competition authorities of Azerbaijan in February 2020 and Morocco on 12 January 2021.

The Competition Authority has also organised the Istanbul Competition Forum in collaboration with UNCTAD (the United Nations Conference on Trade and Development) since 2019 to discuss debate a wide range of key and emerging competition law issues.

In 2021, the Competition Authority has participated the following programmes; (i) "National Competitiveness Barometer Project" Webinar organized by the FAS Competition Council, (ii) 2. ESCWA-UNCTAD-OECD Competition Forum, (iii) the program of the Statistics, Economic and Social Research and Education Center of Islamic Countries (SESRIC) titled "Increasing the Capacity of Competition Authorities" organized by the Competition Authority and the Tunisian Competition Council, (iv) webinar titled "South-South Sharing of Policy Experiences on Platform Domination" organized by UNCTAD in collaboration with Public Citizen and Third World Network, (v) online meetings of the "Intergovernmental Expert Group on Competition Law and Policy" organized by UNCTAD, (vi) Cartel Workshop organized by ICN Cartel Study Group, and (vii) forum titled "Global Forum" organized by OECD.

30. What kind of remedies are acceptable to the authority?

As per the Guideline on Remedies Acceptable in Mergers and Acquisitions the parties can submit behavioural or structural remedies. The Remedies Guideline explains acceptable remedies such as:

- divestment;
- ending connections with competitors;
- remedies that enable undertakings to access certain infrastructure (eg, networks, intellectual property and essential facilities); and
- remedies on amending a long-term exclusive agreement.

The board conditions its clearance decision on the application of the remedies. Whether the parties may complete the merger before the remedies have been complied with depends on the nature of the remedies. Remedies may be either a condition precedent for the closing or an obligation post-closing of the merger. The parties may complete the merger if the remedies are not designed as a condition precedent for the closing.

Under Turkish merger control regime the structural remedies take precedence over behavioural remedies. To that end, the behavioural remedies can be considered in isolation only if (i) structural remedies are impossible to implement and (ii) behavioural remedies are beyond doubt as effective as structural remedies (Remedy Guideline, paragraph 77).

While there are few decisions (see e.g. Bekaert/Pirelli, 15-04/52-25, 22.01.2015), Migros/Anadolu Endüstri Holding, 29/420-117, 09.07.2015) where behavioural remedies were recognized, a great majority of the conditional clearance decisions rely on structural remedies (see e.g.; Luxottica/Essilor, 18-36/585-286, 01.10.2018; AFM/Mars, 12-59/1590-M, 22.11.2012; ÇimSA/Bilecik, 08- 36/481-169, 02.06.2008; Mey İçki/Diageo, 11-45/1043-356, 17.08.2011; Burgaz Rakı / Mey İçki, 10- 49/900-314, 08.07.2010). In some of these cases (see e.g. Bekaert/Pirelli, 15-04/52-25, 22.01.2015; Migros, 15-29/420-117, 09.07.2015; Cadbury/Schweppes, 07-67/836-314,23.08.2007), the parties initially proposed purely behavioural remedies, which ultimately failed.

For example, in February 2018, the Board concluded its Phase II review regarding the transaction concerning the acquisition of Ulusoy Deniz Taşımacılığı A.Ş, Ulusoy Gemi İşletmeleri A.Ş., Ulusoy Ro-Ro İşletmeleri A.Ş., Ulusoy Ro-Ro Yatırımları A.Ş., Ulusoy Gemi Acenteliği A.Ş., Ulusoy Lojistik Taşımacılık ve Konteyner Hizmetleri A.Ş. and Ulusoy Çeşme Liman İşletmesi A.Ş. ('Ulusoy Ro-Ro') by U.N. Ro-Ro İşletmeleri A.Ş. ('U.N. Ro-Ro'). The Phase II review initiated in March, 2017 lasted approximately 7 months and several behavioral commitments have been proposed to eliminate the competition concerns that may arise in the relevant market. That said, as a result of Phase II review, the Board decided not to approve the transaction and held that that the transaction will strengthen U.N. Ro-Ro's dominant position in the market for Ro-Ro transport between Turkey and Europe and U.N. Ro-Ro will be dominant in the market for port management concerning Ro-Ro ships and therefore the competition in these markets will decrease significantly.

Furthermore, the Board conditionally approved the transaction regarding the acquisition of sole control by Harris Corporation over L3 Technologies, Inc. (19-22/327-145, 20.06.2019) upon a Phase I review. The Board held that the commitments have completely eliminated the overlap between the parties and thus, the

transaction did not result in the creation or strengthening of a dominant position and did not significantly impede competition. In line with the commitments submitted to the Commission, Harris has submitted that it would divest its businesses for night vision devices and image intensifier tube Technologies used in these devices to eliminate the vertical overlap.

The form and content of the divestment remedies vary significantly in practice. Examples of the Board's pro-competitive divestment remedies include divestitures, ownership unbundling, legal separation, access to essential facilities, obligations to apply non-discriminatory terms, etc.

As per the Remedy Guideline, in the case of a divestiture, a monitoring trustee is appointed by the parties to control the divestment process, and such an appointment must be approved by the Authority (e.g. AFM, 12-41/1164-M, 09.08.2012).

As set out within the Remedy Guideline, the aimed effect of the divestiture will take place only and only if the divestment business is assigned to a suitable purchaser which is capable of creating an effective competitive power in the market. To make sure that the business will be divested to a suitable purchaser, the proposed remedy must include the elements that define the suitability of the purchaser in a way to cover the following requirements as well.

The decision of the Board within the framework of the commitments is also based on the presumption that a business that is viable in the market will be transferred to a suitable purchaser in a defined period of time. In terms of remedies that involve the divestiture of a business, it is the responsibility of the parties to find the suitable purchaser for the said business and to submit the said purchaser, together with an agreement to be signed with it, to the approval of the Board. Therefore, unless the parties commit that they will not carry out the transaction that is covered in the remedy with a purchaser that has not been approved by the Board; the Board shall not authorize the acquisition.

Approval of a possible purchaser by the Board is basically dependent on the following requirements:

- The purchaser must be independent of and not connected to the parties.
- The purchaser must have the financial resources, business experience, and the ability to become an effective competitor in the market through the divestment business.
- The transfer transaction to be carried out with the purchaser must not cause a new competition problem. In case such a problem exists, a new remedy proposal shall not be accepted.
- The transfer to the purchaser must not cause a risk of delay in the implementation of the commitments. Therefore, the purchaser must stand capable of obtaining all the necessary authorizations from the relevant regulatory authorities as concerns the transfer of the divestment business.

The above-mentioned conditions may be revised on a case-by-case basis depending on the particularities of the situation. For instance, in some cases an obligation may be imposed such that the purchaser is not one that seeks financial investment but that is active in the sector.

As per Remedy Guideline there are two methods that are accepted by the Board. The first method is for a purchaser fulfilling the abovementioned conditions to acquire the divestment business, within a limited period of time following the authorization decision, upon the approval of the Board. The second method is the signing of a sales contract with a suitable purchaser before the authorization decision (fix-it-first).

Determination of the method depends on uncertainties relating to the implementation of the remedy proposal and the divestiture of the business, i.e. the nature and scope of the divestment business, the risk of the business to lose its value during the transition period up to the divestiture, the risk that a suitable purchaser may not be found.

31. What procedure applies in the event that remedies are required in order to secure clearance?

The parties may submit to the Board proposals for possible remedies either together with the notification form, during the preliminary review or the investigation period. If the parties decide to submit the commitment during the preliminary review period, the notification is deemed filed only on the date of the submission of the commitment. In any case, a signed version of the commitment text that contains detailed information on the context of the commitment and a separate summary should be submitted to the Authority.

As per the Remedy Guideline, it is at the 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 that 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.

There have been several cases where the Competition Board has accepted the remedies or commitments (such as divestments) proposed to, or imposed by, the European Commission as long as these remedies or commitments ease competition law concerns in Turkey (see, for example, Cookson/Foseco, 08-25/254-83, 20.03.2008). In this regard, a notable transaction concluded in 2019 was the Board's Nidec/Embraco decision regarding the transaction concerning the acquisition of sole control of Embraco, the compressor manufacturing business of Whirlpool Corporation, by Nidec Corporation (19-16/231-103, 18.04.2019). As a result of the Phase I review, the Board took the transaction into Phase II review due to the potential competition law concerns arising from the transaction. Notwithstanding the foregoing, the transaction was approved pursuant to the commitment package submitted to the EU Commission about the divestment of Nidec's own light commercial compressor and household compressor businesses as the Board concluded that the relevant commitments eliminate the horizontal and vertical overlaps in Turkey regarding the sales of household type reciprocating hermetic cooling compressors, reciprocating hermetic light commercial cooling compressors and sales of condenser units..

The Board conditions its clearance decision on the application of the remedies. Whether or not the parties may complete the merger before the remedies have been complied with depends on the nature of the remedies. Remedies may either be a condition precedent for the closing or may be designed as an obligation post-closing of the merger. The parties may complete the merger if the remedies are not designed as a condition precedent for the closing.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

Monetary fines for failure to notify or close before the Board's approval

In the event that the parties to a merger or an acquisition which requires the approval of the Board realise the transaction without the approval of the Board, a turnover-based monetary fine of 0.1 per cent of the turnover generated in the financial year preceding the date of the fining decision would be imposed on the incumbent firms, regardless of the outcome of the Board's review of the transaction.

In December 2021, the minimum amount of the monetary fine to be imposed as a result of a violation of a suspension requirement for the year 2022 has been amended. In the case of the violation of the suspension requirement, a turnover-based monetary fine (based on the local turnover generated in the financial year preceding the date of the fining decision at a rate of 0.1%) will be imposed on the incumbent firms (acquirer(s) in the case of an acquisition; both merging parties in the case of a merger). A monetary fine imposed as a result of a violation of suspension requirement shall in any event not be less than TL 47.409 for 2022 – approximately €2,862 or USD$ 3, 0040 at the time of writing – (rather than the former minimum amount of 34.809 – approximately € 2,101 or $ 2,205) as amended by the Communiqué No: 2022/1 on the Increase of the Lower Threshold for Administrative Fines Specified in Paragraph 1, Article 16 of the Law No 4054 on the Protection of Competition, to be Valid until December 31, 2022. It should also be noted that the wording of Article 16 of Law No. 4054 does not give the Board discretion on whether to impose a monetary fine in case of a violation of suspension requirement (i.e. once the violation of the suspension requirement is detected, the monetary fine will be imposed automatically). On a side note, the legal consequences of the violation of a suspension requirement are also applicable for foreign-to-foreign transactions since there is no exemption for foreign-to-foreign transactions.

Invalidity of the transaction

A notifiable merger or acquisition which is not notified to (and approved by) the Board would be deemed as legally invalid with all of its legal consequences.

Termination of infringement and interim measures

As per the Law No. 7246 on the Amendment to the Law No. 4054 on Protection of Competition (Amendment Law), which is published on the Official Gazette and entered into force on 24 June 2020, Article 9(1) of the Competition Law now states that, should the Board find any infringement of article 7, it shall order the parties concerned, by a resolution, the behaviours which should be followed or avoided in order to establish competition, and the structural remedies such as transfer of certain activities, shareholdings or assets. However, the relevant amendment introduces "first behavioural, then structural remedy" rule for Article 7 violations; therefore, in cases where the behavioural remedies are ultimately considered to be ineffective, the Board will order structural remedies. Undertakings shall comply with the structural remedies ordered by the Board in minimum of six months.

Termination of the transaction and turnover-based

monetary fines

If, at the end of its review of a notifiable transaction that was not notified, the Board decides that the transaction falls within the prohibition of Article 7, the undertakings could be subject to fines of up to 10 per cent of their turnover generated in the financial year preceding the date of the fining decision. Employees and managers (of the undertakings concerned) that had a determining effect on the creation of the violation may also be fined up to five per cent of the fine imposed on the undertakings as a result of implementing a problematic transaction without the Board's approval.

In addition to the monetary sanction, the Board is authorised to take all necessary measures to terminate the transaction, remove all de facto legal consequences of every action that has been taken unlawfully, return all shares and assets (if possible) to the places or persons where or who owned these shares or assets before the transaction or, if such measure is not possible, assign these to third parties; and meanwhile to forbid participation in control of these undertakings until this assignment takes place and to take all other necessary measures. Under Turkish merger control regime there is no criminal liability and/or imprisonment for failure to notify and implementation ahead of Board's approval decision.

If the parties to a notifiable transaction violate the suspension requirement, the statute of limitation regarding the sanctions for infringements is eight years pursuant to Article 20(3) of Law on Misdemeanours No. 5326.

As explained above in detail, foreign-to-foreign mergers are covered by Law 4054 on Protection of Competition to the extent that they affect the relevant markets within the territory of Turkey. Regardless of the parties' physical presence in Turkey, sales in Turkey may trigger the notification requirement to the extent that the turnover thresholds are met. To that end, penalties for failure to notify, late notification and breaches of a prohibition on closing do not differ in terms of foreign-to-foreign mergers.

The foreign-to-foreign nature of the transaction does not prevent imposition of any administrative monetary fine (either for suspension requirement or for violation of article 7) in and of itself. In case of violation of suspension requirement (i.e. closing before clearance or not notifying the transaction at all), foreign-to-foreign mergers are caught under Law No. 4054 so long as one of the alternate thresholds is exceeded (which is the case for our transaction at hand).

There have been many cases where companies have been fined for failing to file a notifiable transaction (BMW/Daimler/Ford/Porsche-Ionity, 28.07.2020, 20-36/483-211, Brookfield/Johnson, 30.04.2020, 20-21/278-132; Tex Holding/Labelon Group 16-42/693-311, 06.12.2016; Tekno İnşaat, 12-08/224-55, 23.02.2012; Zhejiang/Kiri, 11-33/723-226, 02.06.2011; Ajans Press Medya Takip A.Ş.-İnterpress Medya Hizmetleri Ticaret A.Ş./Mustafa Emrah Fandaklı/ Ziya Açıkça, 10-66/1402-523, 21.10.2010, etc). In a very few of these cases, the notifiable transaction also raised substantive competition law concerns as it was viewed as being problematic under the dominance test applicable in Turkey (Ro-Ro, 05-69/959-260, 19.10.2005 – the seller incurred a fine of 5% of its annual Turkish turnover.).

For the sake of completeness, in the Simsmetal/Fairless decision (09-42/1057-269, 16.09.2009), where both parties were only exporters into Turkey, the Board imposed an administrative monetary fine on Simsmetal East LLC (i.e., the acquirer) subsequent to first paragraph of article 16 of Law No. 4054, totalling 0.1 per cent of Simsmetal East LLC's gross revenue generated in the fiscal year 2009, because of closing the transaction before obtaining the approval of the Competition Board. Similarly, the Competition Board's BMW/Daimler/Ford/Porsche-Ionity (28.07.2020, 20-36/483-211), Longsheng (11-33/723- 226, 02.06.2011), Flir Systems Holding/Raymarine PLC (10-44/762-246, 17.06.2010) and CVRD Canada Inc. (10-49/949-332, 08.07.2010,) decisions are examples whereby the Board imposed a turnover based monetary fine based on the violation of the suspension requirement in a foreign-to-foreign transaction.

Irrespective of the national scope of transaction (whether foreign-to-foreign, Turkish to Turkish or foreign to Turkish – vice versa), pursuant to Article 16 of Law No. 4054, if the parties to a notifiable transaction violate the suspension requirement (i.e., close a notifiable transaction without the approval of the Board or do not notify the notifiable transaction at all), a turnover based monetary fine (based on the local turnover generated in the financial year preceding the date of the fining decision at a rate of 0.1 per cent) will be imposed on the acquirer in straight forward acquisitions. The wording of Article 16 of Law No. 4054 does not give the Board discretion on whether to impose a monetary fine in case of a violation of suspension requirement. In other words, once the violation of the suspension requirement is detected, the monetary fine will be imposed automatically.

33. What are the penalties for incomplete

or misleading information in the notification or in response to the authority's questions?

As per Article 10(3) of Communiqué 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board, if any change occurs during the Competition Board's review of a transaction regarding the information submitted in the filing, the parties have a legal duty to inform the board immediately. As a general rule, the parties are obliged to file correct and complete information with the Competition Authority. If the information requested in the notification form is incorrect or incomplete, the notification is deemed to have been filed only on the date when such information is completed following the Competition Board's request for further data. In addition, the authority will impose a turnover-based monetary fine of 0.1% of the Turkish turnover generated in the financial year preceding the date of the decision (if this is not calculable, the turnover generated in the financial year closest to the date of the decision will be taken into account) on natural persons or legal entities which qualify as an undertaking or an association of undertakings, as well as the members of these associations, in cases where incorrect or misleading information is provided by the undertakings or associations of undertakings in a filed notification.

34. Can the authority's decision be appealed to a court?

As per Law No. 6352, the administrative sanction decisions of the Board can be submitted for judicial review before the administrative courts in Ankara by the filing of an appeal case within 60 calendar days upon receipt by the parties of the justified (reasoned) decision of the Board. Third parties can challenge the Competition Board's decision on the transaction before the competent administrative courts on the condition that they can prove a legitimate interest.

As per Article 27 of the Administrative Procedural Law, filing an administrative action does not automatically stay the execution of the decision of the Board. However, upon request by the plaintiff, the court, providing its justifications, may decide the stay of the execution of the decision if such execution is likely to cause serious and irreparable damage; and if the decision is highly likely to be against the law (i.e. the showing of a prima facie case).

The judicial review period before the Administrative Court usually takes about eight to 12 months. After exhausting the litigation process before the Administrative Courts of Ankara, the final step for the judicial review is to initiate an appeal against the Administrative Court's decision before the regional courts. The appeal request for the administrative courts' decisions will be submitted to the regional courts within 30 calendar days of the official service of the justified (reasoned) decision of the administrative court.

Administrative litigation cases will be subject to judicial review before the regional courts (appellate courts), creating a three-level appellate court system consisting of administrative courts, regional courts (appellate courts) and the High State Court.

The regional courts will go through the case file both on procedural and substantive grounds. The regional courts will investigate the case file and make their decision considering the merits of the case. The regional courts' decisions will be considered as final in nature. In exceptional circumstances laid down in Article 46 of the Administrative Procedure Law, the decision of the regional court will be subject to the High State Court's review and therefore will not be considered as a final decision. In such a case, the High State Court may decide to uphold or reverse the regional courts' decision. If the decision is reversed, it will be remanded back to the deciding regional court, which will in turn issue a new decision to take account of the High State Court's decision.

Decisions of courts in private suits are appealable before the Supreme Court of Appeals. The appeal process in private suits is governed by the general procedural laws and usually lasts 24 to 30 months.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment

In 2021, the Board has overall assessed 309 transactions and took only two transactions into Phase II review. Only 2.5% of the 309 transactions were decided to be either outside of the scope of Article 7 of Law No. 4054 or not notifiable.

Generally, the Competition Authority pays special attention to those transactions in sectors where infringements of competition are frequently observed and the concentration level is high.

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 Board decided on divestment or licensing commitments or other structural

or behavioural remedies has increased dramatically over the past years. Examples include some of the most important decisions in the history of Turkish merger control enforcement such as PSA/FCA, 17 July 2020; 20-34/441-M; Bekaert/Pirelli, 22 January 2015, 15-04/52-25, Migros/Anadolu, 9 July 2015, 29/420-117; Luxottica/Essilor, 1 October 2018, 18-36/585-286; 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/Mey Icкı, 8 July 2010, 10-49/900-314.

Separately, in 2021, major merger control decisions concerning high-value transactions were taken by the Competition Authority.

A notable transaction concluded in 2021 was the Board's Danfoss ve Eaton Phase II Review Decision (Board's decision dated 04.05.2021 and numbered 21-25/313-144). The transaction concerns the acquisition of sole control over Eaton Corporation plc's (Eaton) hydraulic business by Danfoss A/S (Danfoss). The Board defined the following product markets, where the competitive concerns are concentrated: "automation and control systems market", "hydraulic mobile valves market", "hydraulic mobile pumps market", "components for power steering for off-road vehicles market ", "orbit motors market", " orbit engine market excluding hydraulic motors ". Following the preliminary examination, the Board decided to conduct a final examination in accordance with the first paragraph of Article 10 of the Law No. 4054 regarding the proposed transaction. The transaction was taken into Phase-II review by many authorities, including the EU Commission. Subsequently, the parties presented the commitment package containing the solution proposals, which were stated to resolve the competitive concerns, and as a result, the transaction was conditionally approved by the Commission. In addition, the parties submitted the letter containing the explanations about the commitments and the effects of these commitments in Turkey to the Authority. As per the Board's assessment on the letter, the Board concluded that:

- There is technical substitutability between the hydraulic steering units models, which are planned to be divested within the scope of the commitments and the models that Danfoss will retain,
- It is proposed that existing buyer agreements will also be transferred to the buyer of the Divested Business in a way that would enable it to compete with the combined entity's product range,
- The market share increment would be minimal in the market for hydraulic steering units as a result of the divestment in comparison to the increment in absence of the commitments,
- The hydraulic steering units market in Turkey is in fact import-based and there are no significant entry barriers with respect to imports,
- It is determined that there is a countervailing buyer power in the market,
- It is evaluated that global competitive pressure will increase after the divestment.

As a result of the commitments submitted by the parties to the Commission, it has been decided that there is no possibility of impeding effective competition in the relevant markets within the framework of Article 7 of the Law No. 4054, and the Board approved the transaction.

In Aon/WTW (the Board's decision dated 14.07.2021 and numbered 21-35/503-246), which is another Phase II decision, the Board approved the transaction concerning transfer of all shares of Willis Towers Watson Public Limited Company (WTW) to Aon plc. (Aon). After the preliminary examination, the Board decided to take the transaction into Phase II review in accordance with the first paragraph of Article 10 of the Law No. 4054.

In the "non-commercial reinsurance distribution market", which is one of the affected markets within the scope of the transaction, it is deemed that two of the three largest undertakings will merge as a result of the transaction, the market in question is subject to the highest concentration concerning the transaction at hand, and a significant competitive power will be lost from the market following the transaction. Thus, the Board evaluated that the transaction may cause significant competitive restrictions.

While the Phase II review was in progress, the parties submitted to the European Commission the text of commitment to transfer WTW's global non-commercial reinsurance business, including the treaty and discretionary reinsurance businesses, to a third party. The Board evaluated that the commitments submitted by the parties to the Commission essentially cover Turkey. Following the realization of the commitments, it is deemed that there will be no possible anti-competitive effects in the relevant market concerning the transaction in Turkey, and the Board approved the transaction.

Lastly, in EssilorLuxottica/Hal (the Board's decision dated 10.06.2021 and numbered 21-30/395-199), the Board reviewed the acquisition of Hal Holding N.V.'s (Hal) shares indirectly owned in GrandVision N.V. (Grandvision) by EssilorLuxottica S.A. (EssilorLuxottica).

EssilorLuxottica is active in Turkey in the following relevant markets: “manufacturing and wholesales of stock lenses”, “wholesales of RX lenses”, “wholesales of branded sunglasses”, “wholesales of branded prescription optic glass frames”, “manufacture and distribution of ophthalmic machinery, equipment and consumables” and “retail sales of optic products”, while Grandvision is active in Turkey in the market for “retail sales of optic products”. Accordingly the activities of the Parties horizontally overlap in the market for “retail sales of optic products”, while other activities of the Parties vertically overlap in terms of the remaining markets. The Board determined that EssilorLuxottica was in dominant position in the markets for wholesales of branded sunglasses and wholesales of ophthalmic lenses, while holding a significant market power in the remaining markets that it operates in and following the consummation of the proposed transaction it would have a strong and leading position in the retail level as well with a vertically integrated structure. The transaction was approved by the Board based on the behavioral remedies submitted to alleviate the competitive concerns that may arise in the respective relevant markets.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

With respect to legislative reforms, the newly introduced Amendment Law, which entered into force on 24 June 2020, aims to embody the Authority’s more than 20 years of enforcement experience and bring Turkish competition law closer to EU competition law. It is designed to be more compatible with the way the law is being applied in practice and aims to further comply with EU competition law, The most prominent changes introduced by the Amendment Law are as follows, the Amendment Law also brings about certain mechanisms:

- de minimis principle for agreements, concerted practices or decisions of association of undertakings;
- SIEC test for merger and acquisitions
- behavioral and structural remedies for anti-competitive conduct;
- commitments and settlement mechanisms.
- Clarification on the powers of the Authority in on-site inspections
- Clarification on the self-assessment procedure in individual exemption mechanism

Since the introduction of the Amendment Law, the majority of the newly introduced mechanisms and investigation methods were clarified via the enactment of secondary legislation. The Competition Authority published its Guidelines on Examination of Digital Data during On-site Inspections on 8 October 2020, which set forth the general principles with respect to the examination, processing and storage of data and documents held in electronic media and information systems during on-site inspections. Moreover, the Competition Authority published the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position on 15 July 2021, which set forth rules and procedures concerning the settlement process for undertakings which admit to the existence of a violation. Furthermore, the Authority published the Communiqué on the Commitments to be offered in Preliminary Inquiries and Investigations Concerning Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position on 16 March 2021, which set out principles and procedures in relation to commitments submitted by undertakings in order to eliminate competition problems. The Authority also published the Communiqué on Agreements, Concerted Practices and Decisions and Practices of Associations of Undertakıngs That Do Not Significantly Restrict Competition on 16 March 2021, which set out the principles regarding criteria to be used to identify the practices of the undertakings which can be excluded from the scope of the investigation.

Lastly, with the new amendment introduced by Communiqué No. 2021/4 on the Amendments to the Block Exemption Communiqué on Vertical Agreements (Communiqué No. 2021/4), which was promulgated in the Official Gazette dated 5 November 2021, No. 31650, the threshold regarding the supplier’s market share of the market(s) for the contract goods has now been lowered to 30%. Pursuant to Communiqué No. 2021/4, a six-month transition period will be implemented to ensure compliance with the new market share threshold, which would prevent Article 4 of the Competition Law applying to vertical restraints that currently benefit from the block exemption, based on the 40% market share threshold. These vertical restraints will continue to be exempted until 5 May 2022, after which the parties may need to modify the agreement to comply with the new regulation. Accordingly, only agreements of undertakings that have market shares below 30% in the relevant product markets qualify for the block exemption under Block Exemption Communiqué No. 2002/2 on Vertical Agreements. Thus, if the relevant market shares of the undertakings in question exceed the 30% threshold, the agreement automatically falls outside the scope of the block exemption rules. In that case, the relevant suppliers may not impose any kind of direct or indirect vertical restraints on buyers with respect to the

goods or services covered by the agreements, unless an "individual exemption" is granted by a decision of the Board.

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