

Antitrust/Competition

Geographic Origin of the Turnover Generated in the Exempted Sectors is Immaterial for Undertakings Operating Any Activity in Turkey

On March 4, 2022, the Turkish Competition Authority increased jurisdictional thresholds under the Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board and introduced an exemption that "the TL 250 million Turkish turnover thresholds" will not be sought for transactions concerning the acquisition of undertakings which are active in digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemical, and health technologies sectors ("**Exempted Sectors**") or their assets related to these sectors if: (i) they operate in the Turkish geographical market or (ii) conduct research and development activities in the Turkish geographical market or (iii) provide services to Turkish users.

Due to the wording of the relevant provision "being active in the Exempted Sectors" should be assessed without any territorial restrictions. That being said - based on the publicly available reasoned decisions of the Turkish Competition Board ("**Board**") - until Berkshire/Alleghany (15 of September/2022, 22-42/625-261) decision, the issue as to how would interpret the sectoral exception if the activity in exempted sector is not carried out in Turkey had not come before the Board. The Board clarified this point in its recent Berkshire/Alleghany decision and confirmed that geographic origin of turnover generated in exempted sectors is immaterial for undertakings operating any activity in Turkey.

In Berkshire/Alleghany decision, the Board did not consider whether or not Alleghany operates in Turkey in the field of "financial technologies" and deemed the fact that any activity of Alleghany in Turkey and operating abroad in the Exempted Sectors are sufficient for the application of the sectoral jurisdictional turnover threshold exception. Hence, Berkshire/Alleghany decision clarifies that the sectoral exception would be applicable even in cases where a target does not conduct any Turkey-related activities concerning the relevant sectors that are

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exempted from the use of local turnover thresholds and only conducts activities in these sectors outside of Turkey.

Accordingly, for the sector-specific jurisdictional turnover threshold exception to be applicable, first, a target should have at least global activities in one of the exempted sectors. Furthermore, the target should also (i) be active in the Turkish geographical market (i.e. generate turnover in Turkey), or (ii) conduct research and development activities in Turkey or (iii) provide services to users in Turkey. These three latter conditions are not cumulative, and the activities of the target would be deemed to fall within the scope of the exception even if the target only satisfies one of these three conditions. The mere fact that a target has only de minimis Turkish turnover, or limited number of customers in Turkey, or no assets and/or subsidiaries/affiliated entities incorporated in Turkey is irrelevant on this front. This article was written with the collaboration of **Can Yıldırım** and **Göksu Kırıbrahim**.



Practice Area News

The Court Held That Requesting Information on Parent Company Is Lawful. Regional Administrative Court held that the Turkish Competition Board's decision concerning the imposition of administrative monetary fines on Turkish subsidiary of Garanti BBVA for failure to provide the requested information, is lawful. The court ruled that the Turkish Competition Authority is allowed to request information from the subsidiary on correspondences of traders of Garanti BBVA who are employed in USA and UK according to the single economic entity principle.

The Board Fines Meta Platforms TL 346.72 million. The Board decided that Meta Platforms held a dominant position in personal social network services, consumer communication services, and online display advertising markets, and fined Meta Platforms TL 346.72 million for obstructing its competitors by merging data collected through its services Facebook, Instagram, and WhatsApp.

Everything Is Timing: Boundaries of Data Deletion. The Board did not fine A101 for hindering on-site inspection, since there is no evidence whether the deletion occurred during or before the on-site inspection by noting that the deletion would have constituted a violation had it been proved that the deletion occurred during the on-site inspection (23 of June/2022, 22-28/464-187).

The Board Fines an e-scooter rental company for Providing False/Misleading Information. The board fines an e-scooter rental company, for submitting false/misleading information in its response to information request (21 of July/2022, 22-33/527-213). The Board noted that the concerned undertaking previously stated that the Board's request for information could not be fulfilled due to lack of available data. However- the requested data was then submitted to the Board in detail with relevant explanations, after the Board has identified an inconsistency in the submitted data. As a result, the undertaking was fined due to providing false/misleading data in the first place.

In the Firm

• ELIG Gürkaynak Attorneys-at-Law

ELIG Gürkaynak represents corporations, business associations, investment banks, partnerships and individuals in wide variety of competition law matters. We also collaborate with international law firms on Turkish competition law matters.

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In addition to our strong Turkish competition law practice, our international experience provides us with a high capability in multinational competition law issues.