

Turkish Competition Authority Scrutinizes the Single Economic Entity Concept and Family Ties - Hızlıpara Decision

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Introduction

The Turkish Competition Board (“**Board**”) cleared the acquisition of joint control over Hızlıpara Ödeme Hizmetleri ve Elektronik Para A.Ş. (“**Hızlıpara**”) by the Savaş Family and the venture capital investment funds established and managed by Re-Pie Portföy Yönetimi A.Ş. (“**Re-Pie**”) through a capital increase.¹

Hızlıpara, which was solely controlled by the Savaş Family pre-transaction, is a payment and electronic money undertaking established to mediate all kinds of money transfers and payment transactions. On the other hand, Re-Pie is a portfolio management company which operates with the objective to establish and operate mutual funds, real estate investment funds and venture capital investment funds.

Reportability Assessment

The Board evaluated that the transaction concerning the formation of a joint venture is deemed an “acquisition” under Communiqué No. 2010/4 Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (“**Communiqué No. 2010/4**”). Active in the financial technologies in Turkey, Hızlıpara was considered to fall in the scope of the local threshold exception under Article 7(2) of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board. Accordingly, the transaction was considered reportable under Turkish Competition Law, as “*the TRY 250 million Turkish turnover threshold*” was not sought for Hızlıpara.

¹ Board’s decision dated 08.12.2022 and numbered 22-54/842-347

Another point worth noting was that the Board did not assess whether Hızlıpara meets the full-functionality criteria, a condition usually sought for identifying whether a structural change takes place in the market. Referring to its precedents, the Board emphasized that, if the joint venture is to be established over an already active business unit, it does not require such criteria to be satisfied.

Control Structure and Family Ties

With respect to the control structure, the Board identified a clear change from sole control to joint control, after concluding that the strategic commercial decisions and the structure of the company management would require the affirmative vote of both parties. The Board then went on to consider the economic positions of the parties to the transaction. While there was no question mark over Re-Pie's economic position, the Board carried out an in-depth assessment of the Savaş Family, and provided insight into its position on economic unities tied by family links, more specifically the economic integrity between the individuals having a marital relationship.

Hızlıpara's pre-transaction control structure involved only two shareholders, namely Mahmut Savaş and Selin Savaş, tied via a marital relationship, and both shareholders would remain shareholders in Hızlıpara together with Re-Pie. As Mahmut Savaş and Selin Savaş were tied via a marital relationship, the Board held that there is a unity of interest between them. However, referring to its MGS decision, it emphasized that family ties may not suffice to conclude that there is a single economic entity, in some cases. The Board suggested the following points should be considered in identifying a single economic entity:

- Firstly it should be assessed whether there are economic or family ties between individuals and/or groups,
- Subsequently, the basis, characteristics, and size of the economic ties should be compared with the independent activities, if any.
- Finally, based on these findings, it should be identified whether these persons are in a unity of interest.

In light of the above, the assessment of the Board proved that the aforementioned two shareholders, Mahmut Savaş and Selin Savaş, were part of a single economic entity. Therefore, the target in question, Hızlıpara, was deemed to be solely controlled by the Savaş Family pre-transaction.

The Board previously rendered a large number of decisions involving the circumstances where individuals are considered as a single economic entity, and in fact adopted a consistent approach so far. It considered many of such precedents in its assessment:

- In *Çimentaş*² and *ParıltıSofra*³ decisions, the persons who bear the same surname were considered a single group, thus forming a single economic entity.
- In *Misbis*⁴ decision, a company jointly controlled by five equal shareholders of the same family and the companies solely controlled by one among such individuals were considered a single economic entity.
- In *Altıparmak*⁵ decision, even though all of the three undertakings subject to the investigation were standalone legal entities, they were deemed to be a single economic entity due to family ties among their shareholders and the sole decision-making mechanism.
- In *Bilkom*⁶ decision, even if the individuals were not sharing the same surname, the economic relations and family ties between these individuals sufficed to identify a single economic entity.
- In *Sançim*⁷ decision, the acquirers also acting together in their family business were considered to share a unity of interest. Therefore, their family business, which also involved other family members, was considered as a single economic unit.

Conclusion

² Board's decision dated 07.08.2001 and numbered 01-39/391-100

³ Board's decision dated 04.10.2002 and numbered 02-61/759-307

⁴ Board's decision dated 08.11.2007 and numbered 07-85/1039-401.

⁵ Board's decision dated 31.03.2010 and numbered 10-27/393-146.

⁶ Board's decision dated 9.01.2001 and numbered 01-03/10-3.

⁷ Board's decision dated 10.10.2022 and numbered 22-46/675-286.

All in all, after establishing that Hızlıpara and its parents had no vertical links or horizontal overlaps with each other, the Board noted that the transaction would not lead to the significant impediment to effective competition in any product markets.

Providing insight into the single economic entity concept and family ties in control structures, the decision illustrates the criteria considered by the Board in assessing family ties. It is also noteworthy that the full-functionality criteria were not evaluated because the target was a business unit already active in the market, hinting that the Board will continue to scrutinize transactions involving non-fully-functional joint ventures if the joint venture includes an already operational business unit.

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