



The Turkish Merger Control Threshold Exemption Rule: Notifiability Requirements In Turkey As Defined By Recent Precedents Of The Turkish Competition Authority

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I. Introduction: A New Merger Control Regime

On 4 March 2022, the Turkish Competition Authority (the “**Authority**”) published a Communiqué (“**Communiqué No. 2022/2**”) which amended the Communiqué concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (“**Communiqué No. 2010/4**”), and introduced certain new rules in the Turkish merger control regime. The Communiqué No. 2022/2 not only hiked the applicable turnover thresholds for concentrations that require mandatory merger control filing with the Authority, but also introduced a local turnover threshold exemption rule (“**Exemption Rule**”) for capturing acquisitions of undertakings active in certain critical sectors.

According to the Exemption Rule under the Communiqué No. 2022/2, the thresholds pertaining to the Turkish turnover of the target undertaking (“TRY 250 million Turkish turnover thresholds”) will not be sought in case of transactions which involve targets that are active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, 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 Turkish users.

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According to the Authority's reasoning, this amendment aims to ensure an *ex ante* review of transactions that are conducted by significant market players in technology-focused markets, and especially digital platforms. The Authority deemed this amendment necessary in light of global developments, especially in digital markets where significant market players acquire newly established entities with a very limited presence in the market such as start-ups or developing joint ventures. The Authority noted that it closely monitored the legislative amendments in the EU countries such as Germany and Austria, and then introduced a Turkiye-specific Exemption Rule. Although the Authority's reasoning refers to technology, the Exemption Rule encompasses a broad range of critical sectors. In addition, the Authority did not limit itself to targets only engaged in these specific activities in Turkiye, but expanded its reach to targets that are active in the Turkish geographic market, have R&D activities in Turkiye or are providing services to customers in Turkiye, as well as operating in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies or have assets related thereto, anywhere in the world.

Since the Exemption Rule entered into force, the Authority has not yet issued specific guidelines regarding the scope and the principles of the Exemption Rule. Hence, the precise scope and framework of the Exemption Rule remain unclear at this stage and must be inferred through the Turkish Competition Board's ("**Board**") precedents.

The Board's reasoned decisions reflect its interpretation and application, as well as the specific elements that it evaluates in terms of the Exemption Rule, and provide valuable insight into its limitations and requirements. Therefore, it is crucial for stakeholders and practitioners to closely monitor the Board's decisions to gain a clearer understanding of how the Exemption Rule is being shaped in practice in order to stay abreast of any potential developments or shifts in the Board's approach.

This article first presents an overview of the amended Turkish merger control regime and the Exemption Rule, then delves into the Board's¹ precedents under the new regime.

¹ The Board is the decision-making body of the Authority.

A. Overview of the Turkish Merger Control Regime

Communiqué No. 2010/4 defines the scope of the notifiable transactions in Article 5(1) as follows:

- (a) a merger of two or more undertakings; or
- (b) the acquisition of direct/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:
 - the purchase of assets or a part or all of its shares;
 - an agreement; or
 - other instruments.

A transaction resulting in a change of control is required to be notified in Türkiye if one of the following alternative turnover thresholds under Article 7(1) of the Communiqué No. 2010/4 is met²:

- (a) The aggregate Turkish turnover of the transaction parties exceeding TL 750 million and the Turkish turnover of at least two of the transaction parties each exceeding TL 250 million, OR
- (b) (i) The Turkish turnover of the transferred assets or businesses in acquisitions exceeding TL 250 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion, or (ii) the Turkish turnover of any of the parties in mergers exceeding TL 250 million and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion.

B. Overview of the Exemption Rule

The Exemption Rule introduced with the amendments under Communiqué No. 2022/2, means that the “TRY 250 million Turkish turnover thresholds” referred in Article 7(1)(a) and 7(1)(b) will not be sought for target undertakings which are active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies or have assets related to these fields, if they;

- (i) operate in the Turkish geographical market,
- (ii) conduct research and development activities in the Turkish geographical market, or
- (iii) provide services to Turkish users.

² As amended by Communiqué No. 2022/2.

a. The Scope of the Sectors in the Exemption Rule

To clarify the meaning and the scope of these sectors, a non-exhaustive list of the activities that correspond to the exempted sectors is provided below:

(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. For example, in its *DG/DHI*³ decision, the Board considered that DG would fall under the Exemption Rule as it operates in the online platform services market for real estate sales/rental activities. Similarly, in its *BluTV/Warner*⁴ decision, the Board established its jurisdiction by determining that BluTV (*i.e.*, the target) is an entertainment platform and media service provider providing services with real-time data streaming and membership-based on-demand viewing model. In its recent *İkas/MN/RevoCapital/Re-Pie/IFC*⁵ decision, the transaction was found to be subject to the Board's approval on the grounds that "TL 250 million" threshold would not be applicable as the target, İkas, offered a next-generation e-commerce infrastructure, designed primarily for SMEs and entrepreneurs.

(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 customized for gaming purposes. For example, in its *ICRON/Şişecam*⁶ decision, the Board decided that the transaction is subject to approval even though the turnover thresholds were not exceeded, on the grounds that the transaction is subject to the Exemption Rule since the target provides software solutions for advanced scheduling, capacity planning, supply chain planning, optimization solutions and workforce planning. In addition, in its

³ The Board's DG/DHI decision dated 7.09.2023 and numbered 23-41/800-284

⁴ The Board's BluTV/Warner decision dated 14.12.2023 and numbered 23-58/1138-407.

⁵ The Board's İkas/MN/Revo Capital/Re-Pie/IFC decision dated 29.02.2024 and numbered 24-11/197-80.

⁶ The Board's ICRON/Şişecam decision dated 21.12.2023 and numbered 23-60/1161-416.

*LeanIX/SAP*⁷ decision, the Board deemed the target's activities to fall within the Exemption Rule since it was a provider of Enterprise Architecture Management software. In its *Co-One/Maxis*⁸ decision, the Board considered the transaction to be subject to merger filing under the Exemption Rule, and established its jurisdiction due to the target's activities in the field of data labelling for artificial intelligence companies. In *Ace/Playtika*⁹ the Board applied the Exemption Rule assessing that the target was active in the mobile gaming industry as a mobile game developer.

(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. Indeed, in its *Marketspringpad/UNİ/Invstr*¹⁰ decision, the Board evaluated that the joint venture will mainly operate in the fields of banking, crypto and financial investment services and insurance services as an interface provider; in other words, design and develop the application under the agreements to be concluded with banks, electronic money and payment services companies, institutions providing individual investment services. Therefore, the transaction was deemed subject to merger filing in Türkiye due to the Exemption Rule.

(d) **Biotechnology:** Biotechnology refers to technology that utilizes biological systems, living organisms or parts thereof to develop or create different products. In its *Synlab/Cinven V*¹¹ decision, the Board noted that the target is active in medical diagnostic services and specialized in diagnostic services, mainly for the human pharmaceuticals sector which included clinical laboratory testing, anatomical pathology diagnostics, diagnostic imaging, human genetics and value-added services. The Board concluded that Synlab's activities would fall within the

⁷ The Board's *LeanIX/SAP* decision dated 26.10.2023 and numbered 23-50/966-350.

⁸ The Board's *Co-One/Maxis* decision dated 17.08.2023 and numbered 23-39/726-249.

⁹ The Board's *Playtika/Ace Academy* decision dated 08.12.2022 and numbered 22-54/823-336

¹⁰ The Board's *Marketspringpad/UNİ/Invstr* decision dated 23.11.2023 and numbered 23-54/1045-377.

¹¹ The Board's *Synlab/Cinven V* decision dated 23.11.2023 and numbered 23-54/1038-373.

Exemption Rule since its activities concern biotechnology as well as health technologies.

- (e) **Pharmacology:** Pharmacology is a biomedical science that 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 drugs. The study of pharmacology encompasses the sources, chemical properties, biological effects and therapeutic uses of drugs. In the *Amryt Pharma/Chiesi Farmaceutici*¹² decision, where the target was a global biopharmaceutical company focused on developing and commercializing innovative therapies to improve the lives of patients with rare diseases, the Board decided that the transaction is subject to the Exemption Rule as the target's activities encompassed pharmacology and health technologies.
- (f) **Agricultural chemicals:** Agricultural chemicals refer to chemicals used in agriculture to control pests and diseases, or to promote growth; such as pesticides, herbicides, fungicides, insecticides, and fertilizers. Indeed, in its *ETG/SABIC/EIHL*¹³ decision, the Board established its jurisdiction over the transaction due to the fact that the target has activities in the agricultural chemicals sector (*i.e.*, manufacturer and supplier of various (unprocessed/unblended) fertilizer products such as ammonia, urea and phosphates, and certain compound fertilizers).
- (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 blockchain, which may be designed to support healthcare organizations and patients. The Board, in its *Inofab/Clario*¹⁴ decision, established its jurisdiction because the target had activities in health technologies, as well as software.

¹² The Board's Amryt Pharma/Chiesi Farmaceutici decision dated 16.03.2023 and numbered 23-14/240-78.

¹³ The Board's ETG/SABIC/EIHL decision dated 19.01.2023 and numbered 23-05/48-18

¹⁴ The Board's Inofab/Clario decision dated 26.10.2023 and numbered 23-50/970-352.

The Exemption Rule is triggered depending on the activities of the target. This means that in order to apply the Exemption Rule, it is not necessary for the acquirers to be active in the exempted sectors. In other words, even if the acquirer operates outside the exempted sectors, the transaction may still be subject to the Exemption Rule as long as the target's activities anywhere in the world fall within the scope of the relevant sectors. The focus remains on whether the target companies' activities are within the sectors specified under the Exemption Rule, rather than the acquirers' activities.

The Exemption Rule also applies even where the target's main area of activities does not concern the exempted sectors, but only a part of its business falls within those sectors. In other words, the relevant legislation does not require the target to be a **pure sector player**. For instance, the acquisition of an investment fund will fall into the scope of the Exemption Rule, even if the investment fund is not primarily focused on or active within the exempted sectors. A mere business unit active in these sectors would meet the relevant conditions. This allows for a broader range of companies to fall under the Exemption Rule, including those with diversified business models, who are only partly operating within the specified sectors.

In the *DG/DHI*¹⁵ decision, the Board assessed that the target was primarily engaged in merging with, financing or management of other businesses and companies. Although the target's main field of activity was not in one of the exempted sectors, since one of its subsidiaries was providing online platform services for real estate sales/rental activities, the Board deemed the Exemption Rule applicable.

C. Turkiye Nexus Condition of the Exemption Rule

According to the Exemption Rule, it would be sufficient for the target to be active in the fields of *digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies* anywhere in the world for the threshold exemption to become applicable, provided that the target (i) operates in the Turkish geographical market, (ii) conducts research and development activities in the Turkish geographical market, or (iii) provides services to Turkish users.

¹⁵ The Board's DG/DHI decision dated 7.09.2023 and numbered 23-41/800-284

The significance of this exemption lies in its inclusive criteria, which expand applicability beyond those companies who generate revenue from customers located within Türkiye. This means that a company does not necessarily need to have a direct financial transaction with Turkish customers to be caught by the Exemption Rule.

a. Target operates in the Turkish geographical market

Under this condition, the Exemption Rule deems it sufficient if the Target (which is active in the exempted sectors anywhere in the world) generates revenue from customers located in Türkiye through any activity or by any means. In this regard, even a limited turnover in the Turkish market would be considered enough to apply the Exemption Rule. The absence of assets, subsidiaries, manufacturing sites or direct sales in Türkiye would be irrelevant for the Exemption Rule to apply to the transactions. Indeed, even the presence of a one-off or nominal revenue inflow will render the Exemption Rule applicable; furthermore, the actual amount of revenue generated from the Turkish market is also irrelevant. As long as there is a turnover in the Turkish market -whether that stems from the activities in the exempted sectors or not- AND the target company has activities in the exempted sectors in Türkiye or abroad, the Exemption Rule will be applicable.

- **No need to have any assets, subsidiaries or manufacturing sites in Türkiye, indirect sales would suffice.**

The Exemption Rule does not limit the element of “being active in” to “manufacturing” for the target. Given that the relevant regulation does not specifically require a manufacturing activity but merely refers to activity in the Turkish geographical market, it should be considered that the toll-manufacturing and wholesale distribution activities, and sales through third parties in Türkiye would also meet the relevant criterion of the Exemption Rule.

Indeed, the Board considered an undertaking active in the wholesale trade of veterinary drugs, veterinary consumables and animal health technologies to fall within the Exemption Rule, in its *Covetrus/CD&R-TPG*¹⁶ decision concerning the acquisition of joint control over Covetrus

¹⁶ The Board’s Covetrus/CD&R-TPG decision dated 07.07.2022 and numbered 22-32/512-209

Inc. by Clayton Dubilier & Rice Fund XI LP, TPG Partners VIII, and TPG Healthcare. In its decision, due to the target's operations in the animal health pharmaceuticals and health technologies sectors, the Board determined that the transaction should be evaluated under the Exemption Rule.

In this case the target, Covetrus, a global provider of animal health technology and services primarily to veterinarians and animal health practitioners and those supporting the pet, equine and large animal veterinary fields, as well as a wholesaler of animal health consumables (including its own branded products) had no presence in Turkiye, and its Turkiye-related activities were limited to import sales only. The Board considered Covetrus' fields of activities within the scope of health technologies and pharmacology sectors, and it deemed its limited import sales sufficient for the transaction to be considered within the Exemption Rule. Additionally, in its *Astellas Pharma Inc./Novartis AG*¹⁷ decision, although the target company did not manufacture any portion of its products and was merely active in the sale of an antifungal drug only to hospitals (very limited amount) through an exclusive distributor in Turkiye, the Board assessed that the transaction would fall under the scope of the Exemption Rule.

This means that regardless of the parties' lack of presence in Turkiye, any sales made into the country may trigger the notification requirement under the Exemption Rule. In terms of acquisition transactions, even if the undertakings concerned have no local subsidiaries, branches or sales outlets in Turkiye, the transaction may still be subject to Exemption Rule if the goods or services of the participating undertakings are sold in Turkiye. The revenue does not have to come from direct sales either; revenues generated by third-party distributors and indirect sales are sufficient to satisfy the requirements of the Exemption Rule.

In line with the foregoing, in *Google/Mandiant*,¹⁸ the Board held that Mandiant's software service activities would classify this target as a software company. Even though the target did not have any physical presence or any subsidiaries in Turkiye nor any direct sales, and despite the target's activity in Turkiye being limited to only indirect sales through third party

¹⁷ The Board's *Astellas/Novartis* decision dated 23.02.2023 and numbered 23-10/150-45

¹⁸ The Board's *Google/Mandiant* decision dated 09.06.2022 and numbered 22-26/425-174

distributors, the Board applied the Exemption Rule since the target is active in one of the exempted sectors.

In *Scopely/Saudi Electronic Gaming*,¹⁹ the target did not have any direct activities regarding game development and publication in Türkiye, and its Turkish turnover was generated through in-app purchases and advertisement income. The Board assessed that as the target was active in one of the exempted sectors, the Exemption Rule would apply.

- **The Exemption Rule applies even if the main activity area of the target is outside the exempted sectors.**

The Board's decisional practice explicitly spells out that the Exemption Rule would be applicable even in cases where the target's Türkiye-related activities do not concern the exempted sectors. The Exemption Rule still applies even if the target only conducts such activities outside Türkiye.

Accordingly, the Board addressed the applicability of the Exemption Rule in *Berkshire/Alleghany*.²⁰ The target had no Turkish subsidiaries that are active in the exempted sectors but was exposed to Türkiye through its subsidiaries, which were engaged in non-life reinsurance and trailer manufacturing. The Board's decision highlighted that the target's involvement in the financial technologies sector through software development and sales was sufficient for the Exemption Rule to apply, even though the target's main activities were not in the sphere of exempted sectors.

This decision shows that the Board applies the Exemption Rule even in those cases where the target is active in the exempted sectors abroad but does not carry out such activities in Türkiye. In other words, the decision confirmed that a target company in Türkiye does not necessarily need to operate in the "exempted sectors" in Türkiye for the Exemption Rule to apply, as long as it generated turnover in the "exempted sectors" anywhere in the world.

¹⁹ The Board's *Scopely/Saudi Electronic Gaming* decision dated 7.06.2023 and numbered 23-26/489-167

²⁰ The Board's *Berkshire/Alleghany* decision dated 15.09.2022 and numbered 22-42/625-261

- **Turkish turnover generated in the year before the preceding year, despite the absence of Turkish revenue in the most recent year, has been found to be sufficient for the application of the Exemption Rule.**

There are decisions indicating that the application of the Exemption Rule is not limited to the acquisition of companies that had generated revenues from the Turkish market in the preceding financial year. According to those decisions, the Exemption Rule would still apply as long as the target has activities in the exempted sectors anywhere in the world and has generated revenue in Turkiye, even if the turnover is minimal or there has not been any turnover in recent years.

For instance, in *ETG/SABIC/EIHL*,²¹ the target company's activities were in the agricultural chemicals sector, however in the time of the filing, the target did not have any Turkish revenues, was not providing services in Turkiye, nor engaged in any R&D activities there. Furthermore, the target had generated its latest Turkish turnover back in 2020 and had no turnover in the most recent year. Moreover, in the year that the target company generated turnover in the Turkish market, this had been the result of a single transaction. Despite all these, the Board noted that the target still has a commercial presence in Turkiye. The decision noted that "considering EIHL's recent sales/activities in Turkiye along with its potential short- or medium-term activities regarding Turkiye (even in the absence of any plans or intentions in the foreseeable future), there is still a commercial presence of EIHL in Turkiye to a certain extent/degree." Accordingly, the Board concluded that even though the target company had not generated any turnover in Turkiye in the last two financial years, since the target's activities fell under the scope of the exempted sectors, the Exemption Rule was applicable and thus the transaction was subject to the Board's approval. Similarly in *Marketspringpad/UNİ/Invstr*²² decision, the Board considered *Invstr*'s planned activities in Turkiye sufficient for its assessment under Exemption Rule.

Moreover, in its 2023 *Nitro/Cascade*²³ decision, the Board noted that the target did not have any Turkish subsidiaries. In addition, target's latest turnover in Turkiye was generated in 2021. Regardless of the absence of Turkish revenue in the most recent financial year, the Board

²¹ The Board's *ETG/SABIC/EIHL* decision dated 19.01.2023 and numbered 23-05/48-18

²² The Board's *Marketspringpad/UNİ/Invstr* decision dated 23.11.2023 and numbered 23-54/1045-377.

²³ The Board's *Nitro/Cascade* decision dated 05.01.2023 and numbered 23-01/22-9.

evaluated that the requirements for the application of the Exemption Rule were met, as the target had generated revenue from the activities in one of the exempted sectors in the year before the preceding year.

b. Target conducts R&D activities in Turkiye

The Board's precedent shows that the Exemption Rule applies even in cases where (i) the target is only engaged in R&D activities, or (ii) the target has products which have not yet been introduced to the market. Accordingly, in circumstances where the target has ongoing or anticipated clinical trial processes, provides consultation services and outsources activities concerning the provision of clinical trials, or only has registered patents, permits or licenses in Turkiye, the Exemption Rule would remain applicable.

In the *Syneos Health Inc./ Veritas Capital Fund Management, Elliott Investment Management L.P., Patient Square Capital Holdings LLC*²⁴ decision, considering that the target was active in clinical trial processes and certain healthcare solutions (including distribution, communication and consulting services), the Board evaluated that the target is active in the health technologies sector and therefore applied the Exemption Rule.

In *Pharmalex/AmerisourceBergen*,²⁵ the target was engaged in strategic consultation and provision of assistance regarding the relevant regulations. The target was outsourcing pharma consultation services to companies active in the life sciences sector. In light of the foregoing, the Board assessed that the Exemption Rule would be applicable as the target was active in the pharmacology sector.

In *Alvogen Malta (Out-Licensing) /Letterone Investment*,²⁶ the Board stated that the Exemption Rule was applicable as the target company was active in the pharmacology sector. The target was actively engaged in licensing and product supply contracts. They did not have any manufacturing plants in Turkiye or around the globe, and was outsourcing its activities to

²⁴ The Board's Syneos/Veritas/Elliott/Patient decision dated 10.08.2023 and numbered 23-37/707-244

²⁵ The Board's Pharmalex/AmerisourceBergen decision dated 23.11.2022 and numbered 22-52/775-319

²⁶ The Board's Alvogen Malta (Out-Licensing) /Letterone Investment decision dated 02.03.2023 and numbered 23-12/184-60

contractors. The Board deemed the target to be active in pharmacology and health technologies sectors through licensing and product supply contracts and applied the Exemption Rule.

c. Target Provides Services to Turkish Users

The Board's precedent shows that it makes its assessment irrespective of the size of the target's customer base in Türkiye, or the commercial presence of the products or services provided there. As long as the target has a customer base (even a single customer) in Türkiye, the transaction would fall under the scope of the Exemption Rule provided that the target is active in the exempted sectors anywhere in the world.

The Board's decisional practice confirms that the extent of the activities in the exempted sectors in Türkiye is irrelevant to the application of the Exemption Rule. For example, in *Cinven/IFGL*,²⁷ where the target is active in the life-insurance sector and provides life-insurance services to its customers in Türkiye by using digital platforms, the Board concluded that the target's activities fell under the exempted sectors even if its "digital platform" provided service to a very limited number of customers. IFGL did not have any subsidiaries or affiliates in Türkiye. However IFGL, while being a minor player in the Turkish life insurance sector, also offered digital services to customers through the use of online platforms. In Türkiye, there were only 230 users registered with the relevant digital services. Based on the relevant digital activities offered on the online platforms, the Board held that IFGL is active in the exempted sectors outlined in the Communiqué.

The *Good Job Games/Moon Active*²⁸ decision demonstrated that the Exemption Rule is applicable even if the target provides services to only a limited number of customers. The transaction concerned the transfer of the "Zen Match" game and certain assets. Even though the subject of the acquisition had a very limited customer base in Türkiye, the Board stated that the target is active in the exempted sectors. Against this background, the size of the customer base in Türkiye is irrelevant in the application of the Exemption Rule, so long as the target is active in Türkiye to some extent.

²⁷ The Board's Cinven/IFGL decision dated 18.05.2022 and numbered 22-23/372-157

²⁸ The Board's Good Job Games/Moon Active decision dated 22.12.2022 and numbered 22-56/881-364

In the *Amryt Pharma/Chiesi Farmaceutici*²⁹ decision, the target was active in the sale of one drug, and supplied another drug under a free-access program in Turkiye. In other words, the target company generated its Turkish turnover only through sale of one single product via a distributor. Nevertheless, the Board evaluated that the target is operating in the pharmacology sector and also active in Turkiye, thus decided that the Exemption Rule would apply to the transaction.

- **The Exemption Rule applies even if the Target's Turkish revenue is very limited**

The target companies' revenue size, whether generated from exempted sectors or from other activities, does not preclude the application of the Exemption Rule. Indeed, even the presence of a one-off or nominal revenue inflow is sufficient for the Exemption Rule to be applicable. The applicability of the Exemption Rule is unrelated to the amount of revenue generated from Turkiye. As long as there is any amount of turnover in the Turkish market -whether from the activities in the exempted sectors or not- and the target has activities in the exempted sectors anywhere in the world, the Exemption Rule will be applicable.

In *Pharmalex/AmerisourceBergen*,³⁰ the Board decided that the transaction was notifiable since the target was active in one of the exempted sectors. Although the target's activities were limited in the Turkish market, the Board applied the Exemption Rule.

In the earlier enforcement of the Exemption Rule, in its *Citrix/Tibco* decision³¹ concerning the acquisition of joint control over two software companies, Citrix and Tibco by Vista and Elliott, where the targets had very limited Turkish turnovers, the Board took into consideration the area of activities of the targets and ruled that the transaction triggered a mandatory merger control filing in Turkiye pursuant to the Exemption Rule.

Most recently, in its *Kahoot!/Goldman Sachs* decision,³² the Board assessed that the transaction was notifiable in Turkiye due to the target Kahoot! being active in online learning software. Kahoot! only had a minimal Turkish revenue via direct sales through online platforms. The

²⁹ The Board's *Amryt Pharma/Chiesi Farmaceutici* decision dated 16.03.2023 and numbered 23-14/240-78

³⁰ The Board's *Pharmalex/AmerisourceBergen* decision dated 23.11.2022 and numbered 22-52/775-319

³¹ The Board's *Citrix/Tibco* decision dated 12.05.2022 and numbered 22-21/344-149

³² The Board's *Kahoot!/Goldman Sachs* decision dated 14.09.2023 and numbered 23-48/817-289

Board considered the minimal market presence of Kahoot! in the Turkish market to be sufficient and applied the Exemption Rule.

II. Conclusion

The Board's precedents demonstrate how broadly it applies the Exemption Rule to targets active in the exempted sectors, *i.e.* digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or healthcare technologies. It frequently rules that it has jurisdiction to assess the transactions even where the targets have an insignificant presence in Turkiye. This stance and broad interpretation take on extra importance with no official guidelines on the Exemption Rule. This wide application emphasizes the necessity for parties involved in transactions, regardless of their size, to carefully assess whether they would fall under the merger filing requirement in Turkiye. This more expansive interpretation will act as a *de facto* standard, until the Board gives a clearer guidance with its precedents or introduces official guidelines which shed light on the grey areas.

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