
Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board Has Been Amended

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On 04.03.2022, important amendments/additions has been introduced to the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board (“**Communiqué No. 2010/4**”). With this article, it is aimed to summarize these latest amendments in the Communiqué No. 2010/4.

Communiqué on Amendments Concerning Communiqué No. 2010/4 (“**Communiqué No. 2022/2**”) has been published on 04.03.2022 in the Official Gazette thereby amending the turnover thresholds required for a merger and acquisition transaction to be subject to the Turkish Competition Authority’s (“**TCA**”) approval. Additionally, an exception has been introduced regarding these thresholds for undertakings operating in the technology sector, and the concept of technology undertaking was also defined within Communiqué No. 2022/2. The relevant amendments will enter into force on 04.05.2022, two months after Communiqué No. 2022/2 is published in the Official Gazette.

Amendments Regarding the Thresholds

Prior to the amendment, pursuant to the Communiqué No. 2010/4, a merger/acquisition transaction would be deemed notifiable if:

- Total turnovers of the transaction parties in Turkey exceeding **TRY a hundred million** (approx. EUR 9.6 million^[1] or USD 11.2 million^[2]) and turnovers of at least two of the transaction parties in Turkey each exceeding **TRY thirty million** (approx. EUR 2.9 million or USD 3.4 million), or
- The asset or activity subject to acquisition in acquisition transactions, and at least one of the parties of the transaction in merger transactions have a turnover in Turkey exceeding **TRY thirty million** (approx. EUR 2.9 million or USD 3.4 million) and the other party of the transactions has a global turnover exceeding **TRY five hundred million** (approx. EUR 47.8 million or USD 56.2 million).

As of the date **Communiqué No. 2022/2** is entered into force, a merger/acquisition transaction will be deemed notifiable if:

- The aggregate Turkish turnover of the transaction parties exceeding **TRY seven hundred**

and fifty million (approx. EUR 71.6 million or USD 84.4 million) and the Turkish turnover of at least two of the transaction parties each exceeding **TRY two hundred and fifty million** (approx. EUR 23.9 million or USD 28.1 million), or

- The asset or business subject to acquisition in acquisition transactions, and at least one of the parties of the transaction in merger transactions have a turnover in Turkey exceeding **TRY two hundred and fifty million** (approx. EUR 23.9 million or USD 28.1 million) and the other party of the transactions has a global turnover exceeding **TRY three billion** (approx. EUR 286.5 million or USD 337.5 million).

Furthermore, in line with the amendments brought with the Communiqué No. 2022/2, **transactions regarding the acquisition of technology undertakings operating in the Turkish geographical market or having R&D activities or providing services to users in Turkey shall be subject to approval by the TCA regardless of the aforementioned two hundred and fifty million TRY turnover thresholds. In this regard, technology undertakings are defined as undertakings or related assets operating in the fields of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals and health technology under the relevant communiqué.**

Amendments with the Purpose of Harmonization

With a purpose of harmonization, the provision in the Article 13(2) of Communiqué No. 2010/4 that states “*mergers and acquisitions lead to a significant decrease in competition by creating or strengthening a dominant position shall be prohibited*” is amended as “*mergers and acquisitions lead to a significant decrease in competition particularly by creating or strengthening a dominant position shall be prohibited*”. The purpose of the added phrase “*particularly*” is to emphasize that a merger/acquisition transaction will not be permitted if it significantly restricts competition, even if it does not create a dominant position. In fact, the relevant amendment was included in the Law No. 4054 on the Protection of Competition (“**Competition Law**”) with the Law No. 7246 on the Amendment of the Law on the Protection of Competition, dated 16.02.2020. Therefore, this amendment introduced in the Communiqué No. 2022/2 is merely the harmonization of the secondary legislation with the Competition Law.

Conclusion

The most important amendments introduced with the Communiqué No. 2022/2 are the increases made for the turnover thresholds required for a merger and acquisition transaction to be subject to the TCA’s approval. These increases were seen necessary by many actors, as the exchange rates significantly increased within the last year. With the amendments, transactions that are realized by the undertakings that have relatively small amount of turnover will not be subject to the TCA’s approval.

The amendments on technology undertakings are significant as well. Not only the concept of the technology undertaking is defined for the first time with the Communiqué No. 2022/2, but also the

transactions realized by these undertakings will be subject to the TCA's approval in most cases. These amendments can be seen parallel to the active stance of the TCA on digital markets, especially with the aim of preventing killer acquisitions.

It can be argued that the concerns expressed in this context do not belong solely to the TCA, and that numerous competition authorities around the world have taken or are planning to take comparable measures. The TCA stated in its press release regarding the amendments that the transaction value threshold application, which is in addition to the turnover threshold, has been implemented in Germany and Austria, and that the European Commission and some European Union members have preferred to follow the German and Austrian practices and act accordingly[3]. It was also highlighted in the release that a similar process has occurred in Turkey and that the legislation has been revised; however, unlike the EU practice and the examples of Germany and Austria, in order to eliminate concerns about the acquisition of newly established and developing undertakings, a practice unique to Turkey has been implemented, based on the principle of imposing additional notification obligations specific to transactions involving the acquisition of technology undertakings.

[1] The amounts in EUR for 2021 are converted using the exchange rate EUR 1= TRY 10.47, in accordance with the applicable Central Bank of the Republic of Turkey average buying rate.

[2] The amounts in USD for 2021 are converted using the exchange rate USD 1= TRY 8.89, in accordance with the applicable Central Bank of the Republic of Turkey average buying rate.

[3] The press release can be found in Turkish at:

<https://www.rekabet.gov.tr/tr/Guncel/rekabet-kurulundan-izin-alinmasi-gereken-82269c8a8f9bec11a21c00505685ee05>