
The Turkish Competition Authority Fines Elon Musk due to Failure to Notify the Twitter Deal

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On 06.03.2023, the Turkish Competition Authority ("TCA") announced its decision to fine Elon Musk due to failure to notify the \$44 billion deal to acquire Twitter. The TCA's reasoned decision is not available for the time being but English version of the TCA's announcement in terms of the fining decision reads as following:

"Result of the examination in relation Elon R. MUSK's Takeover of Sole Control of Twitter Inc. (6.3.2023)

As a result of ex officio examination of the transaction for the acquisition of sole control of Twitter Inc. by Elon R. MUSK in accordance with Article 11 of the Law on the Protection of Competition No. 4054, it was unanimously decided during the meeting of the Competition Board dated 02.03.2023, that;

- the transaction is subject to clearance within the scope of Article 7 of the Law No. 4054 and the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board;*
- clearance must be granted as there is no significant reduction in effective competition as a result of the transaction,*
- however, due to the fact that the transaction was carried out without the clearance of the Competition Board, the transaction party in the position of acquirer, Elon R. MUSK must be imposed with an administrative fine at the rate of one thousandth of its gross income generated from Turkey in accordance with subparagraph (b) of the first paragraph of Article 16 of the Law on the Protection of Competition No. 4054.*

It is possible to appeal before Ankara Administrative Courts within 60 days from the notification of the reasoned decision."

Firstly, Elon Musk taking over the sole control over Twitter was a clearly notifiable transaction under Turkey's merger control regime. For background information, following mergers/acquisitions will require authorization from the TCA under the current Turkish Merger Control Regime;

1. The transactions where total Turkey turnovers of transaction parties exceed **750 million**

TRY (approx. EUR*[\[1\]](#) 43.15 million or USD**[\[2\]](#) 45.28 million for 2022) **and** Turkey turnovers of **at least two of the transaction parties separately exceed 250 million TRY** (approx. EUR* 14.38 million or USD** 15.09 million for 2022).

or

2. In acquisitions; assets or operations that are subject to the acquisition and in mergers; Turkey turnover of **at least one of the transaction parties exceed 250 million TRY and global turnover of at least one of the other transaction parties exceed 3 billion TRY** (approx. EUR* 172.61 million or USD** 181.15 million for 2022, if 2022 turnovers are available).

Turkey's merger control regime, however, stipulates a "*technology undertaking*" provision that was introduced back in March 2022 which stipulates exception to certain thresholds to catch so-called "*killer acquisitions*". According to the exception, the TRY 250 million thresholds that are mentioned under the two tests of the thresholds are not applicable in the acquisitions of technology undertakings that (i) are active or (ii) have R&D activities, in the Turkish geographic market or (iii) that provide services to customers in Turkey. Technology undertakings are defined as undertakings active in areas of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals and health technologies.

In terms of Twitter takeover, it is safe to state that the target is a digital/online platform that falls into "*the technology undertaking*" exception in the Turkish merger control regime; thus, there is no need to check Twitter's (Target) turnover in Turkey for the thresholds analysis. So, the only threshold that needed to be met for the Twitter deal to trigger a notification requirement before the TCA was on the buyer side, globally TRY 3 Billion (approx. EUR* 172.61 million or USD** 181.15 million for 2022).

While assessing the transaction, the TCA must have deemed companies controlled by Musk as a single economic unit and must have concluded that the buyer side notification threshold is met thus the Twitter deal was indeed a notifiable transaction. Consequently, in line with Article 16(b) of the Competition Law, the TCA ordered Musk to pay an administrative fine amounting to %0,1 of Musk's economic unit's gross income generated from Turkey.[\[3\]](#)

Since the TCA's decision considers the acquirer as the economic unit that is controlled by Elon Musk; which consists of companies controlled by Musk, the TCA's fine should not be interpreted as an administrative fine against Musk as an individual. Details of the TCA's assessment in terms of Musk's economic unit is not disclosed within the TCA's announcement. However, (i) global threshold assessment for the buyer side as well as (ii) calculation of fine (based on Musk's economic unit's turnover generated from Turkey) requires the TCA to make an assessment in terms of the companies controlled by Musk. Accordingly, once the reasoned decision is published, the TCA's assessment in terms of the control structure of companies like SpaceX and Tesla led by Musk might be disclosed.

The TCA's failure to notify decision against Musk is an important decision showing once more that the TCA keeps a close eye on digital markets (previously, the TCA also reacted to conducts of Google and Meta and fined these undertakings. The TCA also published a DMA-like draft legislation). This decision is also in line with the TCA's usual practice of fining missed notifications even for foreign-to-foreign mergers. Obviously, the TCA is willing to act ex officio once it has adequate reason to believe that a notifiable transaction was closed without receiving its clearance decision.

Published by Concurrences on March 8, 2023

[1] *The EUR figures are converted using the exchange rate of EUR 1= TRY 17.38, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

[2] **The USD figures are converted using the exchange rate of USD 1= TRY 16.56, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

[3] Article stipulates that in cases of failure to notify, acquirer shall be sanctioned with a monetary fine of 0.1% based on the turnover generated in the financial year preceding the date of the fining decision. In practice, the TCA calculates the fine over the Turkish turnover.