

client alert

COMPETITION | TURKEY |

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AMENDMENTS OF COMMUNIQUÉ NO. 2017/2 ON MERGER & ACQUISITION CONTROL

Communiqué No. 2017/2 amending the Communiqué concerning the Mergers and Acquisitions Calling for the Approval of the Competition Authority No. 2010/4 (hereinafter the "**Communiqué**") was published in the Official Gazette No. 29989 dated 24 February 2017, and entered into force on the same date. This Client Alert summarises certain amendments made by the Communiqué.

Under Article 7/2, the provision stating that the thresholds listed in the same Article shall be re-established every 2 (two) years by the Competition Authority was abrogated. In other words, the obligation lying on Competition Authority to review thresholds every two years has been abolished. The Competition Authority shall re-establish the thresholds under the Article 7 of the Communiqué at any time by virtue of the fact that Competition Authority is already authorised to determine which mergers and acquisitions are subject to the approval of the Competition Authority pursuant to Article 7 of Competition Law No. 4054.

Article 8/5 of the Communiqué relating to calculating turnover was amended by Communiqué No. 2017/2. According to the amendment, under paragraph 2 of Article 8 of the Communiqué, two or more transactions carried out between the same persons or parties or by the same undertaking in the same relevant product market within a period of 3 (three) years, shall be considered as a single transaction for the calculation of turnovers as listed in Article 7 of the Communiqué. Please note that the previous text of Article 8/2 under Communiqué 2010/4 indicated that transactions carried out by the same persons or parties within a period of only 2 (two) years were considered as a single transaction for the purpose of calculating turnovers. The relevant period of time has therefore been increased.

A new paragraph added to the sixth subparagraph of Article 10 introduces new terms and conditions with respect to changes of control on series of transactions in securities. The drafting of this paragraph was clearly based on Article 7/2 of the European Commission Merger Regulation No. 139/2004, which the Turkish Competition Authority has referred to in previous case-law. An antitrust clearance can be obtained when the majority of shares in a company are acquired, and therefore change of control, subject to certain conditions prescribed under Article 10/6.

Where an acquisition of control is a consequence of security purchases from different vendors via serial stock exchange operations, notification can be made to the Competition Authority once the transaction is complete, on condition that the following are fulfilled:

- the transaction is notified to the Competition Authority without any delay; and
- the voting rights attached to the acquired securities are not exercised, or are exercised only based on a Competition Authority decision that grants a derogation for the purpose of protecting the full value of the investments.

In principle, notification should be made immediately after such acquisition of control and voting rights should not be exercised within the time period between the date of acquisition and the date of notification. However, the Competition Authority may allow the exercise of the voting rights upon the existence of a request in this respect as derogation until the date of its final decision. Any other obligation and/or condition may be imposed on the parties to a transaction on decisions made by the Competition Authority as regards derogation requests, in order to uphold the conditions of effective competition.

In compliance with Turkish bar regulations, information relating to Turkish law matters which are included in this client alert is given by Özdirekcan Dündar Şenocak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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