

CLIENT ALERT

COMPETITION | TURKEY

MARCH 2022

NEW TURNOVER THRESHOLDS AND RULES FOR M&A NOTIFICATIONS IN TURKEY

Communiqué No. 2022/2 on Amendment of Communiqué No. 2010/4 (the "**Communiqué No. 2010/4**") on the Mergers and Acquisitions Subject to the Approval of the Turkish Competition Board (the "**Amendment Communiqué**") was published in the Official Gazette on 4 March 2022.

You may find below a brief description of the amendments brought by this new legislation which will be effective starting from 4 May 2022.

INCREASED MERGER CONTROL THRESHOLDS

The Amendment Communiqué raised the Turkish merger control thresholds. According to the revised Article 7 of Communiqué No. 2010/4, a transaction now requires the prior approval of the Turkish Competition Authority ("**TCA**") if one of the following alternative turnover thresholds is triggered:

- The aggregate Turkish turnover of the transaction parties exceeds TRY 750 million (approximately USD 84.3 million or EUR 71.6 million) and the Turkish turnovers of at least two of the parties each exceed TRY 250 million (approximately USD 28.1 million or EUR 23.8 million).
- The Turkish turnover of the transferred assets or business in acquisitions or the Turkish turnover of any of the parties in mergers exceeds TRY 250 million (approximately USD 28.121.485 or EUR 23.877.746) and the worldwide turnover of at least one of the transaction parties exceeds TRY 3 billion (approximately USD 337.457.818 or EUR 286.532.951)¹.

In short, the formerly applicable TRY 30 million thresholds have been increased to TRY 250 million, the TRY 100 million threshold has been increased to TRY 750 million and the TRY 500 million threshold has been increased to TRY 3 billion.

As the previous thresholds had been in force without any increase since February 2013, the updates enacted today mostly strive to align the thresholds with the currency fluctuations that have taken place over the past few years and to set the notification criteria to more reasonable levels in terms of turnover values in USD or EUR.

SPECIFIC MERGER CONTROL REGIME FOR "TECHNOLOGY UNDERTAKINGS"

The Amendment Communiqué also introduced a new merger control regime for "technology undertakings". The revised Article 4(1)(e) defines technology undertakings as "*undertakings that are active in the areas of digital*

¹ All currency conversions are based on the exchange rates USD 1 = TRY 8.89 and EUR 1 = TRY 10.47, in accordance with the Turkish Central Bank's applicable average buying exchange rates for the 2021 financial year.

platforms, software and game software, financial technologies, biotechnology, pharmacology, agriculture chemicals and health technologies, or assets related thereto". The Amendment Communiqué regulates that the TRY 250 million Turkish turnover thresholds will not be sought for transactions involving technology undertakings active in the Turkish geographical market, which conduct research and development activities or provide services to Turkish users. In other words, merger or acquisition transactions of companies engaged in the aforementioned activities will be subject to the approval of the TCA, without seeking any turnover threshold. only because of their field of activity.

In the announcement made on 4 March 2022 on the TCA's website (the "**Announcement**") related to this change, the TCA explained that rapid developments in technology-oriented markets, especially in digital platforms, bring along some innovations in competition law, as in many areas. The TCA added that the goal with the new merger control regime for technology undertakings is to make transactions regarding the acquisition of technology companies subject to the supervision of the Turkish Competition Board (the "**Board**"), and therefore catch killer acquisitions.

NEW RULES FOR THE CALCULATION OF TURNOVER OF FINANCIAL INSTITUTIONS

In line with the recent changes made to the regulations issued by the Banking Regulatory and Supervisory Agency, the Capital Markets Board of Turkey and the Insurance Regulatory and Supervisory Agency, the TCA updated the rules that apply to the calculation of turnover of financial institutions. Accordingly, the names and references of the relevant regulations referred to in Article 9 of Communiqué No. 2010/4 were updated and certain terms were aligned with the applicable banking and finance regulations.

ELECTRONIC SUBMISSION OF THE NOTIFICATION FORM

Under Communiqué No. 2010/4, submission of the notification form and its attachments to the TCA's headquarters in Ankara were required to be physically delivered. The Amendment Communiqué explicitly regulated the electronic submission option of the notification form via "e-Devlet" (Turkey's online governmental service platform). Although this alternative submission method had been already implemented in practice since 2018, it was not separately regulated in Communiqué No. 2010/4.

As the next step, the TCA announced that, in the near future, it will be possible to complete and submit the notification form completely through a specific electronic platform.

REVISION OF THE NOTIFICATION FORM TEMPLATE

Last but not least, the TCA revised the structure and content of the notification form template, attached to Communiqué No. 2010/4.

In particular, transaction parties are now allowed to submit a short form filing which does not require detailed information regarding the affected markets, provided that (i) there is a joint to sole control case; or (ii) there are no affected markets in Turkey. By doing so, the TCA removed the previously applicable 20% (for horizontal overlaps) and 25% (for vertical overlaps) market share thresholds for a mandatory "long form" filing. As another result, when the Amendment Communiqué enters into force, any filings which led to affected markets will require a "long form filing" and the submission of a wide range of detailed information on the relevant markets, even if the transaction parties' market shares are very low.

As regards the definition of the affected markets, the Amendment Communiqué provides that "*affected markets consist of all the relevant product markets and geographical markets in Turkey where (i) two or more of the parties are engaged in commercial activities in the same product market (horizontal relationship), (ii) at least one of the parties is engaged in commercial activities in the downstream or upstream market of any product market in which the other operates (vertical relationship)*".

CONCLUSION

Thanks to the long-awaited increase in merger control thresholds the workload of the TCA is expected to be lighter and the processing of applications smoother, thus also positively impacting the transaction agenda of parties to domestic or international M&A deals. This being said, the new exemption introduced for technological companies is a strong indicator of the importance given to the related sectors, and it can be expected that the TCA will review with even more scrutiny the applications relating to these particular transaction.



In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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