

CLIENT ALERT

COMPETITION LAW | TURKEY |

JANUARY 2020

RECENT DEVELOPMENTS IN THE TURKISH COMPETITION PRACTICE

TCA ANNOUNCES THE M&A OVERVIEW REPORT FOR 2019

The new Mergers and Acquisitions Overview Report for 2019 ("**Report**") was published on the website of the Turkish Competition Authority ("**TCA**") in early January 2020. The Report provides information on the statistics relating to transactions falling within the scope of the Turkish merger control system, while making comparison with previous years.

Number of transactions notified to the TCA

In 2019, the total number of transactions notified to the TCA dropped 7% as compared with 2018 (mainly due to the absence of privatisations), reaching 208 as opposed to 223 last year. This being said, the number of transactions notified in 2019 remains above the average of the last 7 years (202 notifications per year).

Origins of M&A parties

The majority of notifications (115) concerns foreign-to-foreign transactions, similarly to the proportion available in 2018. The number of domestic transactions also remained steady, while the volume of foreign-to-Turkish transactions increased slightly (+5%).

The main difference with last year concerns the value of transactions performed by foreign investors into Turkish companies. The total value of such transactions has indeed doubled as compared with 2018 (circa TRY 36.2 billion¹ as opposed to TRY 14.9 billion²).

Nationality of foreign investors

Japan takes the lead this year with 7 transactions, immediately followed by France with 5 and the Netherlands, the UK and Germany sharing the third rank with 4 transactions each.

¹ Approximately € 5.7 billion based on the 2019 average exchange rate published by the Turkish Central Bank

² Approximately € 2.6 billion based on the 2018 average exchange rate published by the Turkish Central Bank

Transaction markets

In 2019, "*production, transmission and distribution of electrical energy*" is the sector in which the highest number of transactions were completed, whereas the "*monetary intermediaries services*" category ranked #1 in terms of deal value, generating 36.1% of the total value of all M&A transactions notified.

Timing

Pursuant to the Report, the decisions of TCA were issued within an average of 14 days following the date of final notification (as opposed to 14.9 days in 2018). The diligence of the TCA thus continues to help finalise notification processes efficiently, without causing any significant delay to the transactions schedules.

NEW APPOINTMENTS AT THE TURKISH COMPETITION BOARD

With the expiry of the term of duty of three members of the Turkish Competition Board (the "**Board**") on 24 June 2019, the Board has been unable to fulfil certain meeting and decision *quora* since that date. Subsequent appointments were made on 2 November 2019 and 26 December 2019 directly by the President of the Republic of Turkey, as published respectively in Official Gazettes no. 30936 and no. 30990.

Following these appointments, the composition of the Board is currently as follows: Birol Küle (President), Arslan Narin (Vice-President) and Adem Bircan, Şükran Kodalak, Ahmet Algan, Hasan Hüseyin Ünlü and Ayşe Ergezen (members).

INCREASE OF THE MINIMUM ADMINISTRATIVE FINES SPECIFIED IN LAW NO. 4054 ON THE PROTECTION OF COMPETITION

TCA released Communiqué No. 2020/1 published in Official Gazette no. 30995 on 31 December 2019 with regards to the "Communiqué Concerning the Increase of the Minimum Administrative Fines Specified in Paragraph 1 of Article 16 of the Act No 4054 on the Protection of Competition" (the "**Communiqué**"), in force until 31 December 2020.

According to the Article 16/1 of the Law No. 4054 on the protection of competition, the Board may impose administrative fines amounting to:

- 0.1% of turnovers of those undertakings that (i) provide false or misleading information/documentation in exemption and negative clearance applications and in authorisation applications for mergers and acquisitions; (ii) conduct a merger or an acquisition that is subject to the Board's approval without its authorisation; (iii) procure incomplete, false or misleading information/documentation, or the information/documentation is not provided within the appropriate timeline or not provided at all with regard to the implementation of Articles 14 and 15 of Law No. 4054; and
- 0.5% of turnovers of those undertakings that hinder or complicate on-site inspection.

Following the release of the aforementioned Communiqué, the lower limit for fines applicable in 2020 increased from TRY 26.028 to TRY 31.903 (approximately EUR 4.800) based on the re-evaluation rate stated under the General Procedure of Tax Procedural Law, published in Official Gazette No. 30987 on 23 December 2019.

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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 Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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