

Amendments on the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board

Merger and Acquisitions of 2021 Being

309 merger and acquisition notifications were notified to and reviewed by the Turkish Competition Authority ("TCA") in 2021. TCA has granted authorization to 277 of them, conditional authorization to 3 of them, and has found that 29 of them are not subject to an authorization at all. It is seen that 37 of the merger and acquisition notifications examined in 2021, were related to the chemical and mining sectors, 32 of them were related to the information technology sector, and 29 of them were related to the food industry sector. TCA pointed out the need to update the relevant communiqués and guidelines, taking into account both the deficiencies noticed in practice and the current approach as it has announced on March 04, 2022.

In this direction, some important amendments have been made to the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board numbered 2010/4 ("Communiqué") to be effective as of May 04, 2022 by the Communiqué numbered 2022/2 ("Communiqué No. 2022/2") issued by the TCA and published in the Official Gazette dated March 04, 2022.

Merger and Acquisition Notification Thresholds Have Been Raised

First of all, in accordance with the Communiqué No. 2022/2, the threshold of TRY 100,000,000 contained in paragraph (a) of Article 7 of the Communiqué has been updated to TRY 750,000,000 and TRY 30,000,000 to TRY 250,000,000; the threshold of TRY 500,000,000 contained in paragraph (b) of Article 7 of the Communiqué has been updated to TRY 3,000,000,000 and TRY 30,000,000 to TRY 250,000,000. Considering that the thresholds were last updated in 2013, such update was needed and found accurate when the inflation figures were also taken into account.

Accordingly, the final version of paragraph 1 of Article 7 of the Communiqué reads as follows:

“In a merger or acquisition transaction as specified under Article 5 of this Communiqué, authorization of the Board shall be required for the relevant transaction to carry legal validity in case,

(a) Total turnovers of the transaction parties in Turkey exceed seven hundred fifty million Turkish Liras, and turnovers of at least two of the transaction parties in Turkey each exceed two hundred fifty million Turkish Liras, or

(b) 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 two hundred fifty million Turkish Liras and the other party of the transactions has a global turnover exceeding three billion Turkish Liras.”

A Control Model Has Been Introduced for Mergers and Acquisitions in Technology Enterprises

On the other hand, in line with the rapid and global developments in technology-oriented markets, the increase in mergers and acquisitions of technology enterprises has led to the need for these transactions to be subject to the supervision of the TCA. Accordingly, the definition of “technology enterprises” was included in the Communiqué for the first time with the amendments introduced by the Communiqué No. 2022/2. These enterprises are described as “enterprises or related assets operating in the fields of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies.” With the paragraph 2 added to Article 7 of the Communiqué, it is stated that “The thresholds of two hundred and fifty million Turkish Liras contained in subparagraphs (a) and (b) of the first paragraph shall not be sought in the transactions related to the acquisition of technology enterprises operating or having R&D activities in the geographical market of Turkey or providing

