Turkey

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Overview

The year of 2011, which saw more than 240 M&A (reported) transactions in the energy, retail, e-commerce, food and banking sectors, marked a record in Turkey's history. Approximately 74% of the total value of these deals was led by foreign investors. This success of 2011 also increased the expectations for 2012. As a result of Turkish companies' appetite for further growth, and private equity funds' appetite for the Turkish market, the M&A deals taking place in Turkey during 2012 are expected to be around $15bn in total volume.[1] The foreign direct investment flow into Turkey is now expected to reach $20bn by the end of 2012.[2] Similarly to the last three years, the healthcare, energy, retail and e-commerce, as well as textile and home furniture sectors, seem to close the year as shining M&A sectors.[3]

Along with the various investment opportunities for foreign investors, Turkey has also regained investment grade status after 18 years. On 5 November 2012, Fitch upgraded Turkey's credit note from BB+ to BBB-, i.e. "investment-grade", with a stable outlook, and became the first international credit agency rating Turkey as investable, since 1994.[4] This note upgrade is likely to increase the volume of foreign investments towards Turkey. Economists and analysts forecast that the number of M&A transactions will considerably increase and Turkey will receive the benefits of such upgrade within a timeframe of six months to three years, with a projected/estimated foreign direct investment of $32bn.

The optimistic mood of the Turkish market has further been supported by the increase of the Istanbul Stock Exchange's National 100 Index, up to 71,716 points. This is a record-breaking index rate for the last two years. Throughout the first ten months of 2012, 23 companies, including investment companies, retail and manufacturing enterprises, as well as companies involved in the food and beverage sectors, made initial public offerings and became listed on the Istanbul Stock Exchange (IMKB). Incontestably, the second public offering of Türkiye Halk Bankası, Turkey's second-largest state bank, was the landmark transaction of the year.

Significant Deals and Highlights

Textiles, home furniture and cosmetics

The high quality of Turkish industry in textiles, home furniture and cosmetics attracted the interest of several foreign investors. One of the leading transactions of this year was the sale of 50% share capital of Koton Mağazacılık, a leading and growing Turkish textiles company, to Nemo Apparel BV, a Dutch subsidiary of Turkven Private Equity, for an amount of approximately $500m.

Two other notable acquisitions in the textiles sector were closed in 2012: Investcorp, a private equity fund incorporated in New York and known by its investment in the Gucci luxury retail brand, acquired the minority shares in Orka Group, owner of Damat and Tween textile brands for men's textiles. Eastgate Capital Group, a Dubai-based private equity and real estate investment subsidiary of NCB Capital, made its first investment in Turkey and acquired a 49.8% stake in Fabeks Dış Ticaret, owner of the Silk&Cashmere brand, with 141 retail outlets in 22 countries, including 25 company-owned stores.

In addition to private equity interest in the textiles sector, the cosmetics sector welcomed one of the largest French cosmetic firms, Yves Rocher. The Yves Rocher Group acquired 51% of the shares in Flormar, dominating 30% of the Turkish make-up sector with more than 250 commercial outlets in the world. The total deal value is not disclosed, but it is believed to be between $120m and $150m.

Another remarkable M&A transaction was executed in the home furniture sector: Turkven acquired 50% of Turkey-based largest furniture company, Doğtaş Mobilya, which subsequently acquired a 67% stake in its competitor Kelebek Mobilya, a publicly traded company.[5] Further, Universe Capital Partners LLC, a New York-based private equity and asset management company, invested TL 30m in İdaş, another publicly traded furniture manufacturer, for the purposes of acquiring the shares to be issued following the capital increase.

<u>Retail</u>

The increase of investments in the retail sector continued in 2012. The most notable transaction was Boyner's (a publicly traded and one of the largest retail companies in Turkey) acquisition of 63% of shares in Yeni Karamürsel, known as YKM, and 20.62% shares of Yeni Karamürsel Pazarlama. Boyner and YKM were competitors in the retail sector and the deal was closed following the approval of Turkey's Competition Board. YKM still holds 56.25% of the share capital in Yeni Karamürsel Pazarlama, and Boyner has further acquired 50% of the brand name rights of YKM. The total volume of the transaction is approximately TL 177m.[6]

Following the acquisition of 65% of shares in Toyota Pazarlama, the retailer of Toyota cars in Turkey, from Sabancı Holding in 2009, the Saudi Arabia-based Abdul Latif Jameel (ALJ) further acquired a 25% stake from Toyota Motor Europe and a 10% stake from Mitsu&Co. Consequently ALJ, the world's largest Toyota Group (including Toyota, Daihatsu and Lexus) distributor, became the 100% shareholder of Toyota Pazarlama in Turkey.

The world's largest discount retail chain, Walmart, purchased the Turkish textiles company GAAT, the supply chain manager of Walmart's George brand textiles line. GAAT is a member of the Türkmen Group, one of the largest textile manufacturers in Turkey. The details of the deal have not been disclosed.

Among the private equity investments in the retail sector, İş Private Equity, member of the İş Bank group, the largest private bank in Turkey, acquired 58.5% of the share capital of Toksöz Spor, retailer and supplier for sports equipment, from individual shareholders and through capital increase, for a total approximate amount of TL 24m.[7]

<u>Manufacturing</u>

In 2012, the cement sector welcomed a remarkable M&A transaction as well. Çimsa Çimento, a publicly traded cement manufacturer, acquired a 51% stake in Afyon Çimento from PARCIB SAS, 100% subsidiary of Ciment Français, for approximately TL 58m.[8]

Seventy-five per cent of the share capital of Graniser Granit, a leading manufacturer and owner of the Graniser brand name in the granite and ceramic sectors in Turkey, was sold to Bancroft Private Equity LLP, a British private equity fund, for approximately $74m.

Nitto Denko, a Japanese company producing tapes, vinyl, LCDs, insulation and other products, listed with the Tokyo and Osaka Stock Exchanges since 1962, purchased Bento Bantçılık, producer of industrial tapes for the Turkish market.

Polimer Kauçuk, a Turkish hydraulic and industrial hose manufacturer, was sold to Eaton Corporation, a major diversified industrial manufacturer and power management company quoted with the New York Stock Exchange.

<u>Food</u>

Yıldız Holding closed a considerable deal with Nissin Food, a Japan-based food company, and sold a 50% stake in Bellini Gıda for approximately $24m. Yıldız Holding retains a 50% stake in the company.

Ferrero International S.A., producer of the globally known Nutella brand nut cream and the largest purchaser of Turkish nuts, acquired 100% of natural nut business and a 49.9% stake in semi-processed nut business of Italy-based IF Mariano Stelliferi S.p.A in Turkey. Terms of the transaction are not disclosed.

İş Private Equity, along with its retail sector investments, acquired 61.66% of Numnum, a Turkish food and beverage company with a chain of restaurants under the brand Numnum and the luxury brand Mikla, for TL 27m.[9]

Among the food and beverage sector investments, 2012 was certainly the year of Doğuş Restaurant, Entertainment and Management (D.ream), member of the Doğuş Group involved in various sectors such as banking and finance (owner of Garanti Bankası A.Ş.), real estate, automotive, energy, media (owner of Star TV, the first Turkish private TV channel). D.ream invested in various high grade and luxury restaurants as well as night clubs and other entertainment locations in Istanbul. D.ream most recently acquired a 50% stake of Azumi, owner of globally known luxury restaurant chain Zuma and Roka.

Financial Institutions

2012's largest deal was the sale of Denizbank. The transaction was not unexpected, but the purchaser caused various rumours. Finally, Russia-based Sberbank acquired a 99.85% stake in Denizbank from Dexia Participation Belgique S.A. and Dexia S.A. for approximately TL 6.5bn, subject to post-closing purchase price adjustment up to an approximate amount of TL 500m.[10]

In the banking sector, another acquisition was executed by Burgan Bank, member of Kuwait Investment Projects Company, for Eurobank Tekfen, a mid-size Turkish bank with 60 branches. Burgan Bank entered into agreement with Eurobank EFG, Greece's second largest bank, for the acquisition of its shares in Eurobank Tekfen, corresponding to 70% of the total share capital, and further with Tekfen Holding for its 29.29% stake in Eurobank Tekfen. Upon approval of the transaction by both the Banking Regulatory and Supervisory Agency of Turkey and the authorities in Kuwait, Burgan Bank will acquire the 99.29% of the total share capital of Eurobank Tekfen.

Finally, Türkiye Halk Bankası's second public offering, the largest public offering in the history of IMKB, has been successfully closed and 23.92% of the share capital has been offered to the public for a total consideration of TL 4.51bn. Singapore Investment Corporation, a public fund of the Singapore Government, acquired more than 5%.

Another major investment from Singapore came from Phillip Capital. It acquired Hak Menkul Kıymetler, a brokerage house holding capital market licences in stock and derivative operations for a total value of $20m. The company has been renamed as PhillipCapital Menkul Kıymetler. It recently acquired a licence for leverage operations in capital markets.

As for the insurance sector, UAE-based Oman Insurance Company, US-based Starr Insurance & Reinsurance and Bermuda-based Starr International Investment respectively acquired 50.98%, 48.99%, and 0.01% stakes in Dubai Group Sigorta, the Turkish insurance business of Dubai Holding. Terms of the transaction have not been disclosed.

Cigna's acquisition of 51% shares capital of Finans Emeklilik ve Hayat was among the remarkable deals of this year. Cigna, one of the leading US-based pension and insurance companies, has also been operating in Turkey through its subsidiary Cigna Hayat Sigorta since 2011. The deal exposed an upfront payment of €85m. The parties are expecting Finansbank, the parent company of Finans Emeklilik, to receive an approximate amount of TL 1.4bn in the next 15 years through the exclusive agency agreement for the sale of insurance and pension products.

E-commerce

E-commerce is one of the emerging sectors in Turkey, with 36.5 million internet users and a value of approximately $12.7bn, according to 2011 figures. This great potential pushed General Atlantic, US-based private equity firm invested by Endeavor Global, to acquire an undisclosed minority stake in Yemek Sepeti, the owner and operator of www.yemeksepeti.com, a leading online food ordering service website in Turkey. The total deal value is approximately $44m.

Another interesting deal of the sector was the sale of 51% of www.mackolik.com, the Turkish leader sports news portal, to the Perform Group of UK for a total consideration of TL 40.8m. The Perform Group further plans to acquire the remaining shares by March 2016.

Pharmaceuticals

One of the notable deals was closed in the pharmaceuticals sector. Amgen Inc, the world's largest biotechnology company, acquired 95.6% of the share capital of Mustafa Nevzat İlaç, one of the oldest pharmaceutical companies in Turkey, for a total value of $700m. In the animal pharmaceuticals sector, NBK Capital of Kuwait acquired a 50% stake in Bavet İlaç, a leading distributor of animal pharmaceuticals in Turkey.

Logistics, Infrastructure and Energy

Nemtaş Nemrut Liman, 100% subsidiary of Türkiye İş Bankası A.Ş., executed a share purchase agreement with Yılport Holding for the sale of 54% of the share capital of Gemport Gemlik Liman ve Depolama İşletmeleri, the first privately owned port of Turkey. The financial details of this recently closed deal have not been disclosed yet.

Another deal relating to ports is the acquisition of 20% of Iskenderun Port by Inframed Infrastructure from Limak. Inframed Infrastructure unifies corporate investors such as Cassa Depositie Prestiti from Italy, Caisse des Dépôts et Consignations of France, Caisse de Dépôt et de Gestion from Morocco, EFG Hermes from Egypt and the European Investment Bank. Limak was the winner of the tender for Iskenderun Port in 2011 for $324m and has also undertaken the Çandarlı Port Project, together with Kolin İnşaat.

The total acquisition in the aviation sector is certainly among the leading deals of 2012. Aéroports de Paris from France acquired a 38% stake in TAV Airports Holding, the publicly held leader airport operator of Turkey, for $874m.[11]

Balnak Nakliyat, one of the leading logistics operators in Turkey, has recently agreed with Borusan Lojistik to sell its entire share in Balnak, to Borusan Lojistik. The Turkish Competition Board recently approved the transaction and Borusan became the leader in the Turkish logistics sector.

One of the major actors of Turkish energy sector, Akfen Holding, sold its 40% stake in Karasular Enerji to Aquila HydropowerINVEST, a German-based investment fund, for an amount of approximately €23m. Karasular Enerji is the owner of İdeal Enerji, generating energy through its five operational hydroelectric power plants.

Verbund International transferred its 50% stake in Enerjisa, to E.ON. Enerjisa is now 50%-50% owned by E.ON and Sabancı Holding. The total deal value is estimated to be around €1bn.

The increase of investments in the wind energy sector continued in 2012. Doğan Enerji, a member of Doğan Holding, acquired Akdeniz Elektrik and Galata Wind for a total amount of €240m.

Socar Turkey and Socar International DMCC joint venture acquired the remaining state stake, corresponding to 10.32% of total share capital, in Petkim Petrokimya for approximately €168m.

Other Services

Various remarkable deals were concluded in the services sector. In accommodation services, Büyük Otel sold its 50% stake in Efes Prenses to Meeting Point International GmbH.

As for the exhibition sector, UK-based UBM purchased part of the shares of NTSR, a leading exhibition and event organisation company operating in Turkey for 30 years, and NTSR and UBM created a joint venture for their cooperation in the Turkish market. Furthermore, Tarsus Group PLC, based in UK, subsequently acquired majority IFO Istanbul Fuar Hizmetleri and Life Media Fuarcılık (70% for TL 30m) and CFY Fuarcılık A.Ş. (75% for $10m).

Cinven, a European leading private equity, acquired a majority stake in Pronet Güvenlik, a leading Turkish security electronic alarm services provider. The value of the deal is estimated to be between €300m and €350m.

Key Legal Developments

Turkey has gone through a legislative reform in the past decade. Major codes, such as the Turkish Civil Code, the Turkish Criminal Code and finally the Turkish Commercial Code and Turkish Code of Obligations, have been replaced with the new ones. New codes result in a change of secondary legislation as well, in order to create a coherent legal environment. In particular, the New Turkish Commercial Code, together with its secondary legislation, as well as the recent change of the Capital Markets Law, will certainly impact M&A deals in the near future.

New Turkish Commercial Code

The New Turkish Commercial Code (TCC), which was enacted on 1 January 2011, entered into force on 1 July 2012 with the intention of providing legislation that meets the requirements of modern-day commerce. The TCC was amended just prior to its entering into force, i.e. on 30 June 2012. These changes mainly moderate the requirements and restrictions with respect to external auditing, public disclosures through the website of the companies, and shareholders borrowing from the company.

Nevertheless, the TCC aims to create easier and more efficient corporate governance structures. The introduction of single-member companies, in line with Single Member Company Directive (2009/102/EC), intends to provide a transparent business environment.

Among other novelties, the TCC for the first time in Turkish corporate law introduces a squeeze-out mechanism in two circumstances: In the first scenario, the majority shareholder(s) owning 90% of the share capital of a company may acquire the shares of the minority shareholder(s) hindering the operations of the company. Another squeeze-out transaction may be triggered in the case of merger. The key part of the second method is that the merger agreement must be approved by the shareholders, who hold at least 90% of the voting rights in the non-surviving company.

There are also important improvements regarding the rights of shareholders, such as interim dividend distribution. In addition, the TCC now allows single-member boards of directors and enables legal entities to become board members. In an effort to adapt to new technological developments and to create an environment facilitating wide and easy participation, the TCC introduced virtual general assembly and board meetings.

Furthermore, the TCC sets forth the group company concept, and regulates the dynamics and elements of corporate groups in detail to avoid abuse of subsidiaries. Furthermore, to ease the process, the TCC now grants the option of fast-track merger procedures for companies of the same group. However, not every innovation of TCC is helpful. The TCC introduced strict financial assistance rules with no white-wash regime, which will negatively affect the scope of the security packages in leverage buyout deals in Turkey.

Capital Markets Law

The new Capital Markets Law (New CML) is enacted by the Turkish National Assembly and entered into force on 30 December 2012. The New CML introduces many changes in capital market legislation in order to comply with the changes to the major codes, such as TCC and Turkish Code of Obligations, as well as the EU Directives. The New CML shows the intention of the legislator to provide a safer platform for the investors. Together with the New CML, the institutions and the platforms of the capital markets will substantially change. Among others, "Borsa Istanbul" will be established through merger and further restructuring of IMKB and the Istanbul Gold Exchange.

The issuance of securities is more straightforward and hassle-free as compared to the existing legal regime of the Capital Markets Law. The New CML replaces the registration system with the prospectus system, which will enable companies to issue consecutive securities under the same prospectus for a period of 12 months. This new system will certainly reduce the costs and bureaucracy related to securities transactions, and hence incentivize issuers to issue securities in Turkish capital markets and further encourage investors to invest and trade securities.

The New CML empowers the Board to regulate a variety of transactions ranging from delisting to mandatory tender offers, and from mergers to acquisitions. The New CML classifies such transactions as "material transactions" and provides additional rules to govern their mechanics. In addition to imposing fines, the Board will be also entitled to request the cancellation of corporate resolutions which are not in compliance with its regulations. Subject to certain conditions, the shareholders will also have an exit right in case they dissent from the general assembly resolution pertaining to certain material transactions.

The New CML adopts the current approach to mandatory tender offers. It repeats the general principles of the mandatory tender offer regime regulated in the secondary legislation of the current Capital Markets Law. However, the New CML replaces the administrative fines imposed in case of non-compliance with a more efficient instrument. The shareholding rights (e.g. voting rights in the general assembly) attached to the shares of those required to call for mandatory tender offer will be automatically suspended if such obligation is not fulfilled within the period required by the Board.

In parallel with the introduction of squeeze-out rights under the TCC, the New CML also grants authority to the Board to determine the thresholds which will enable the exercise of squeeze-out rights in public companies. The thresholds and mechanics of exercise of such rights will be determined under the secondary legislation.

In an effort to prevent privileged shareholders from abusing their privileges, the New CML also sets forth that in case the company suffers losses for a period of five consecutive years, the privileges pertaining to multiple voting or board member nomination will be terminated upon the Board's decision.

The Year Ahead

Despite the global consequences of the euro crisis affecting 2012, 2013 is anticipated with a certain amount of optimism. Since the forecasts of economic growth herald a better and safer environment for Turkey, statements from official sources and executives also indicate that the energy sector and privatisations will characterise the deals of the forthcoming year. Not only international investors but also Turkey's leading holding companies are expected to be active in mergers and acquisitions along with privatisation in various markets.

The Yearly Program for 2013, published in the *Turkish Official Gazette*, states that privatisation of public enterprises will continue and an income of TL 4bn is estimated in the forthcoming year. The privatisation operations of electricity distribution companies, namely Boğaziçi, Gediz, Trakya, İstanbul Anadolu Yakası, Toroslar, Akdeniz, Aras, Vangölü and Dicle, are expected to be finalised by the end of 2013.

As for the private sector, Limak Holding, which is operating in more than five sectors involving electric power generation and port management, is planning a public offering in the forthcoming year. Another public offering plan concerns Pegasus, a noteworthy airline company contained within Esas Holding, and is expected to be a major event in the first quarter of 2013. For the banking sector, Adabank, which was taken over by the Turkish Saving Deposit Insurance Fund in 2003, will be tendered for the sixth time. The last tender in 2011 received the highest bid for $75m from G Capital Limited, subsidiary of Gulf Finance House in Dubai, however the Turkish Banking Regulation and Supervision Agency did not approve the acquisition. The tender is expected to take place in early 2013.

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Endnotes

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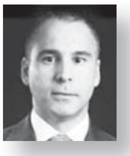

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After spending six years at a major Istanbul-based law firm and completing his LL.M at London School of Economics, Mr Aksel joined Kolcuoğlu Demirkan in June 2012. He has diverse experience in cross-border corporate and banking transactions. His cross-border corporate and banking transaction experience includes a variety of deal types, ranging from joint ventures to M&A and from acquisition financing to secured lending transactions. Mr Aksel has also advised multilateral financial institutions and commercial lenders in their cross-border secured lending transactions. He regularly advises leading Turkish and foreign investment and private equity funds with respect to the structuring of various aspects of their Turkish investments. Recently, he represented Turkven in its successful acquisition of Kelebek and Doğtaş.

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