

Law Bulletin

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SIGNIFICANT CHANGES TO THE TURKISH MERGER CONTROL REGIME

On 4 March 2022, Communiqué No. 2022/2 (the "**Communiqué**") amending Communiqué No. 2010/4 on Mergers and Acquisitions was published. The Communiqué introduced significant changes to the Communiqué on Mergers and Acquisitions, including increased turnover thresholds, a new merger control threshold specific for technology company acquisitions and modifications to the current version of the notification form. These amendments will enter into force two months after the Communiqué publication date.

Updated Turnover Thresholds

Pursuant to the amendment, as of 4 May 2022, the Competition Board's approval will be mandatory for transactions where:

- the aggregate of the transaction parties' Turkish turnover exceeds TRY 750 million (approximately EUR 71.9 million or USD 84.9 million)¹ (previously TRY 100 million) and at least two of the transaction parties' Turkish turnover exceeds TRY 250 million each (approximately EUR 23.9 million or USD 28.3 million) (previously TRY 30 million); or
- the transferred assets or businesses in acquisitions or of any of the parties in mergers that have a Turkish turnover which exceeds TRY 250 million (approximately EUR 23.9 million or USD 28.3 million) (previously TRY 30 million) and at least one of the other transaction

¹ The turnover thresholds in terms of EUR and USD are based on the applicable exchange rates of 2021 and, thus, will change for the upcoming years.

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parties' worldwide turnover exceeds TRY 3 billion (approximately EUR 287.9 million or USD 339.7 million) (previously TRY 30 million).

For a transaction to be subject to the Competition Board's approval, only one of these turnover thresholds must be exceeded. The increase in the turnover thresholds has been long awaited since the previous turnover thresholds that were determined more than ten years ago were highly outdated due to the recent devaluation of the TRY. The Turkish Competition Authority's (the "TCA") merger control workload is expected to decrease with the introduction of the Communiqué.

Lower Threshold for Technology Company Acquisitions

According to the Communiqué, the local TRY 250 million turnover thresholds will not apply to acquisitions of technology companies that operate in the Turkish geographical market, engage in R&D activities, or provide services to users in Turkey.

Therefore, a technology company acquisition may trigger a mandatory filing in Turkey, even if the target company has no turnover. It should be highlighted that this amendment will trigger a mandatory filing of foreign-to-foreign transactions in Turkey where the target has users in Turkey. Therefore, the Communiqué brings more scrutiny with regard to technology company acquisitions.

The Communiqué broadly defines technology companies as "*Companies operating in the fields of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies or their assets related to these fields.*" The TCA signalled more scrutiny and lower thresholds for transactions that involve technology focused undertakings in its e-commerce and payment systems sector inquiry reports published in 2021. These reports highlighted concerns regarding so called "killer acquisitions" in these sectors and the TCA's policy recommendation was to establish lower turnover thresholds specific for these technology focused sectors.

The Competition Authority also announced that it reviewed the applicable legislation adopted by Germany and Austria but, contrary to these countries' legislations, decided not to implement an additional transaction value threshold for technology company acquisitions.

Revised Notification Form and Other Amendments

The current template notification form has also been revised to ease notification form submissions via the TCA's online submission portal. The TCA also announced that in the near future, aside from online submissions, drafting the notification form through its online platform will also be possible. In addition, a shorter form will be submitted for transactions that do not lead to any affected markets in Turkey (i.e., horizontal overlap or vertical relation). However, for transactions to be subject to a long form filing, the previous market share thresholds of 20% for horizontally affected markets and 25% for vertically affected markets are no longer applicable. In other words,

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any transaction that leads to an affected market in Turkey will require the submission of a long form filing regardless of the transaction parties' market shares in the affected markets.

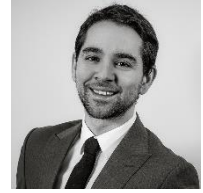
In addition, the Communiqué on Mergers and Acquisitions' relevant provision is amended to reflect the adoption of the significantly impeding effective competition (SIEC) test, in line with the amendments to the Law on Protection of Competition (the "**Competition Law**") made on 24 June 2020. The relevant provision is revised as "mergers and acquisitions leading to a significant decrease in competition, particularly by creating or strengthening a dominant position shall be prohibited." Lastly, the TCA revised the Guidelines on Horizontal Mergers and Acquisitions and Guidelines on Non-horizontal Mergers and Acquisitions in line with the SIEC test to harmonize its secondary legislation with the Competition Law.

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