

Amendment To The Turkish Merger Control Regime

11 January 2013

Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Approval of the Turkish Competition Board (the “**Former Merger Communiqué**”) setting forth the Turkish merger control regime has been amended on 29 December 2012 by Communiqué No. 2012/32 (the “**New Merger Communiqué**”), issued by the Turkish Competition Authority (the Former and New Merger Communiqués are hereinafter referred together as the “**Communiqué**”).

The aforesaid amendment, which introduces two substantial changes in the application of the Communiqué, amends solely Article 7 of the Communiqué. Article 7 sets forth the range of merger and acquisition transactions subject to the control and authorization of the Turkish Competition Board (the “**Board**”).

The New Merger Communiqué will enter into effect on 1 February 2013. Any transactions realized and notified before such date will not be affected by the amendments mentioned herein.

1. Revision of the Notification Thresholds

Pursuant to the Former Merger Communiqué, a merger or acquisition was required to be notified to the Board for approval if either:

- (i) the total turnover of all parties in Turkey exceeded TL 100,000,000 (approximately USD 56 million) and the individual turnovers of at least two parties in Turkey separately exceeded TL 30,000,000 (approximately USD 17 million), or
- (ii) the global turnover of one party exceeded TL 500,000,000 (approximately USD 280 million) and the individual turnover of at least one of the other parties in Turkey exceeded TL 5,000,000 (approximately USD 2.8 million).

With the New Merger Communiqué, there is no change in the threshold referred to in item (i) above. However, the TL 5,000,000 threshold referred in item (ii) above has been increased to TL 30,000,000 and its scope has been narrowed down to apply only to assets or activities subject to an acquisition transaction and to at least one of the transaction parties in merger transactions.

Article 7, as amended and restated by the New Merger Communiqué, reads as follows:

“In order for a merger or acquisition transaction to become legally effective, it is obligatory to obtain the approval of the Board if either:

- (i) the total turnover of all parties in Turkey exceeds TL 100,000,000 (approximately USD 56 million) and the individual turnovers of at least two parties in Turkey separately exceeds TL 30,000,000 (approximately USD 17 million), or
- (ii) in acquisition transactions, assets or activities subject to the transaction, and in merger transactions, the individual turnover of at least one of the transaction parties in Turkey exceeds TL 30,000,000 (approximately USD 17 million) and the global turnover of at least one of the other transaction parties exceeds TL 500,000,000 (approximately USD 280 million).

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The aforesaid thresholds shall be re-determined every two years by the Board.”

In light of the above, it can be concluded that such amendment is significant especially for acquisition transactions. Though the Former Merger Communiqué did not make a distinction as to which of the transaction parties the figures in item (ii) should be applied, the New Merger Communiqué explicitly limits the applicability of the newly established TL 30,000,000 threshold to the domestic operator in a cross-border transaction. The New Merger Communiqué also states an additional specification in which it applies the global turnover threshold of TL 500,000,000 to the acquiring party.

2. Abolition of Affected Markets

In addition to the changes made in the thresholds, the New Merger Communiqué also removes the affected market test¹ previously provided for in mergers and acquisitions.

Pursuant to the Former Merger Communiqué (except for joint ventures), notification was not required if there were no affected markets in Turkey. Although originally regarded as a reasonable test for notifiability, due to the ambiguity in its application by the Board, this test did not provide the expected results and caused confusion rather than providing clarity in the Turkish merger control regime. It is expected that the parties will now have a clearer perspective.

Any merger or acquisition not notified to the Turkish Competition Authority by 1 February 2013 will be reviewed for its notifiability according to the New Merger Communiqué.

1 Under the Turkish merger control regime, the affected market is defined as:

“Relevant product markets that might be affected by the transaction to be notified and where,

a) two or more of the parties are commercially active in the same product market (horizontal relationship),

b) at least one of the parties is commercially active in the downstream or upstream market of any product market in which another party operates (vertical relationship).”