The Turkish Competition Authority Amended the Communiqué on Mergers and Acquisitions Calling for Its Authorization

A. Introduction

Article 7/2 of Act No. 4054 on the Protection of Competition ("**ACP**") authorizes the Turkish Competition Authority ("**TCA**") to determine through communiqués, types of mergers and acquisitions which must be notified for clearance in order to become legally valid. Pursuant to this provision, the TCA adopted Communiqué No. 2010/4 on Mergers and Acquisitions Calling for the Approval of the Turkish Competition Board ("**Communiqué No. 2010/4**"), which sets out the procedures and principles for the notification of mergers and acquisitions.

The TCA introduced certain significant amendments to Communiqué No. 2010/4 through Communiqué No. 2026/2 ("**Amending Communiqué**"), which was published in the Official Gazette dated 11 February 2026 and numbered 33165. The main changes are explained below:

B. Amendments

a. The turnover thresholds are significantly increased.

The Amending Communiqué has substantially increased the turnover thresholds prescribed in Article 7/1 of Communiqué No. 2010/4 that trigger the notification requirement. Accordingly:

(i) the Türkiye turnover threshold of TRY 250 million applicable to each transaction party has been increased to TRY 1 billion,

(ii) the aggregate Türkiye turnover threshold of TRY 750 million has been increased to TRY 3 billion, and

(iii) the worldwide turnover threshold of TRY 3 billion stipulated in Article 7/1(b) of Communiqué No. 2010/4 has been increased to TRY 9 billion.

b. The scope of the technology undertaking exception is narrowed.

The amendment to Communiqué No. 2010/4 dated 4 March 2022 introduced an exception to the notification thresholds for acquisitions of technology undertakings. The original text of the added provision, Article 7/2, was as follows: *"In transactions concerning the acquisition of technology undertakings which operate or have R&D activities in the geographical market Türkiye, or which provide services to users in Türkiye, the TRY 250 million thresholds set out in subparagraphs (a) and (b) of the first paragraph shall not apply."*

The technology undertaking exception was criticized on the grounds that it unnecessarily increased the number of notified transactions and created uncertainty in practice, due to the lack of clarity surrounding the criteria of "operating or having R&D activities in the Türkiye" or "providing services to users in Türkiye."

The Amending Communiqué has revised Article 7/2 of Communiqué No. 2010/4, significantly narrowing the scope of the technology undertaking exception. The amended text of the provision reads as follows:

"In merger transactions where at least one of the transaction parties is a technology undertaking established in Türkiye, and in transactions concerning the acquisition of such undertakings, the TRY 1 billion thresholds set out in subparagraphs (a) and (b) of the first paragraph shall apply as TRY 250 million with respect to the transaction party subject to the acquisition."

This revised provision, firstly, limited the scope of the exception solely to transactions involving technology undertakings that are "established in Türkiye," thereby removing the criteria that triggered the application of the exception under the previous version of Article 7/2, -namely (i) operating in Türkiye, (ii) conducting R&D

activities in Türkiye, and (iii) providing services to users in Türkiye. Although the concept of being "established in Türkiye" still requires some clarification, it is safe to state that acquisitions of technology undertakings whose headquarters are located abroad will no longer fall within the scope of the technology undertaking exception.

Secondly, the Amending Communiqué has also introduced a change with respect to the required turnover thresholds for technology undertakings. Under the previous version of the provision, the turnover of the relevant technology undertaking was not required to exceed any threshold to trigger the notification requirement for acquisitions of such undertakings. The new provision, on the other hand, stipulates that the TRY 1 billion thresholds set out in Article 7/1 will apply as TRY 250 million for technology undertakings established in Türkiye. Accordingly, acquisitions of technology undertakings that have the potential to constitute an important competitive constraint, despite having no or low turnover in Türkiye, will no longer be subject to notification. This amendment is highly likely to significantly reduce the number of transactions required to be notified to the TCA under the technology undertaking exception.

c. The concept of "transaction party" is clarified with respect to acquisitions.

The concepts of "transaction party" and "undertaking concerned" play a decisive role in determining whether a transaction meets the applicable notification thresholds and in defining the scope of the information and documentation to be submitted to the TCA in the course of the notification process.

Under the previous version of Article 4/1(b) of Communiqué No. 2010/4, the concept of "transaction party" was defined as *"the undertaking that is a party to the merger or acquisition."* Based on this definition, in acquisition transactions, it could be inferred that, with respect to the transferring side, the transaction party referred to the entire economic unit to which the transferring entity (the undertaking concerned) belonged. Article 8/2 of Communiqué No. 2010/4 mitigated the effects of such a broad interpretation of the term "transaction party" with respect to the transferring side by providing that, in the calculation of turnover for acquisitions, only the turnover of the transferred economic entity shall be taken into account for the transferring side. However, since the Notification Form requires the submission of various information based on the transaction parties, in practice it was considered necessary to provide information relating also to economic entities on the transferring side that were not subject to the transfer.

The Amending Communiqué defines the concept of transaction party separately for each type of transaction and each side, thereby eliminating the ambiguity in this regard. Under the new provision, the concept of transaction party will cover;

(i) in merger transactions, the economic unit to which each merging undertaking concerned (economic entity) belongs,

(ii) in acquisition transactions, for the acquiring side, the economic unit within which the undertaking concerned (economic entity) is included, and for the transferring side, the undertaking concerned subject to the transfer itself and the economic entities controlled by it.

d. Amendments made to the Notification Form

The Amending Communiqué has also updated the Notification Form annexed to Communiqué No. 2010/4.

First, the new paragraph 2(b) of the recitals of the Notification Form stipulates that, for transactions where the parties' combined market

share in the affected market is less than 15% in the case of horizontal relationships and each party has a market share of less than 20% in the case of vertical relationships, it is not required to fill certain sections of the Notification Form relating to the effects of the transaction on the markets and to information concerning customers and competitors. In fact, this provision, which allows for the completion of a short form, was largely applicable prior to the amendment to the Notification Form on 4 March 2022[1]. Following the amendment dated 4 March 2022, the completion of the short form was permitted only for transactions where no affected market existed in Türkiye. In this respect, the update introduced by the Amending Communiqué has significantly reverted the framework to that which was in place prior to 4 March 2022.

The updated Notification Form also allows for certain information requested in the Notification Form to be provided only with respect to Türkiye for transaction parties qualifying as venture capital investment companies, venture capital investment funds, venture capital companies, or angel investors.

e. The impact of the amendments on pending transactions

The Amending Communiqué entered into force on 11 February 2026, the date of its publication. Pursuant to Provisional Article 1 added to Communiqué No. 2010/4, the turnover thresholds revised by the Amending Communiqué, as well as the other amendments introduced thereby, will also apply to pending transactions. Accordingly, if it is determined that a transaction under review as of the date on which the Amending Communiqué entered into force does not meet the newly introduced turnover thresholds or other applicable conditions, the review will be terminated by a decision of the TCA.

f. The assessment of the coordination effects of full-function joint ventures is further clarified.

The Amending Communiqué also revises provisions regarding the substantive assessment of full-function joint ventures under Article 4 ACP. The previous version of Article 13/3 of Communiqué No. 2010/4, provided that: *"The establishment of a joint venture that has as its object or effect the restriction of competition between undertakings and that will permanently perform all the functions of an independent economic entity shall also be assessed within the framework of Articles 4 and 5 of the Act."*

This provision, which was inspired by Articles 2(4) and 2(5) of the EU Merger Regulation, contained certain ambiguities when compared to its model provision. Foremost among these ambiguities were (i) whether Article 4 ACP would apply in cases where one of the parent undertakings operates in the same market as the joint venture, and (ii) whether all effects of the transaction, or only the risk of coordination between the undertakings, should be examined under Article 4 ACP.

The Amending Communiqué revised Articles 13/3 and 13/4 of Communiqué No. 2010/4 in way that significantly eliminates those ambiguities and ensures alignment with the EU Merger Regulation. The new versions of those provisions read as follows:

"(3) The establishment of a joint venture that has as its object or effect the restriction of competition <u>between the parent undertakings</u> and that will permanently perform all the functions of an independent economic entity

[1] Prior to the amendment dated 4 March 2022, the completion of the short form was regarded sufficient for transactions where the parties' combined market share in the affected market is less than 20% in the case of horizontal relationships and each party has a market share of less than 25% in the case of vertical relationships.

shall also be assessed within the framework of Articles 4 and 5 of the Act.

(4) In carrying out the assessment referred to in the third paragraph, the Board shall, in particular, take into account whether two or more of the transaction parties have significant activities in the same market as the joint venture or in a market which is upstream, downstream, or closely related to the market in which the joint venture operates; and whether the coordination that is a direct consequence of the establishment of the joint venture is likely to eliminate competition between the parent undertakings in respect of a substantial part of the products or services concerned."

The new provision clarifies that Article 4 ACP will apply where at least two parent undertakings are active in the same market as the joint venture or in related markets, and indicates that the assessment will focus on the risk of coordination in those markets.

C. Conclusion

The Amending Communiqué eliminates certain ambiguities that caused uncertainty in practice and limits the scope of transactions subject to the notification requirement. Therefore, the amendments in question may, overall, be regarded as positive. In particular, considering the level of inflation over the past four years, the increase in the turnover thresholds seems to be justified. Similarly, the amendments concerning the technology undertaking exception are likely to reduce uncertainties in practice, prevent an unnecessary increase in the workload of the TCA, and provide time and cost advantages for undertakings.

For more information and assistance, please feel free to contact us.

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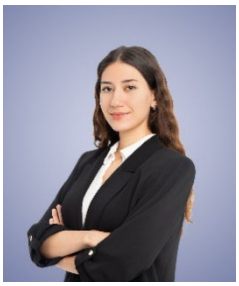

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