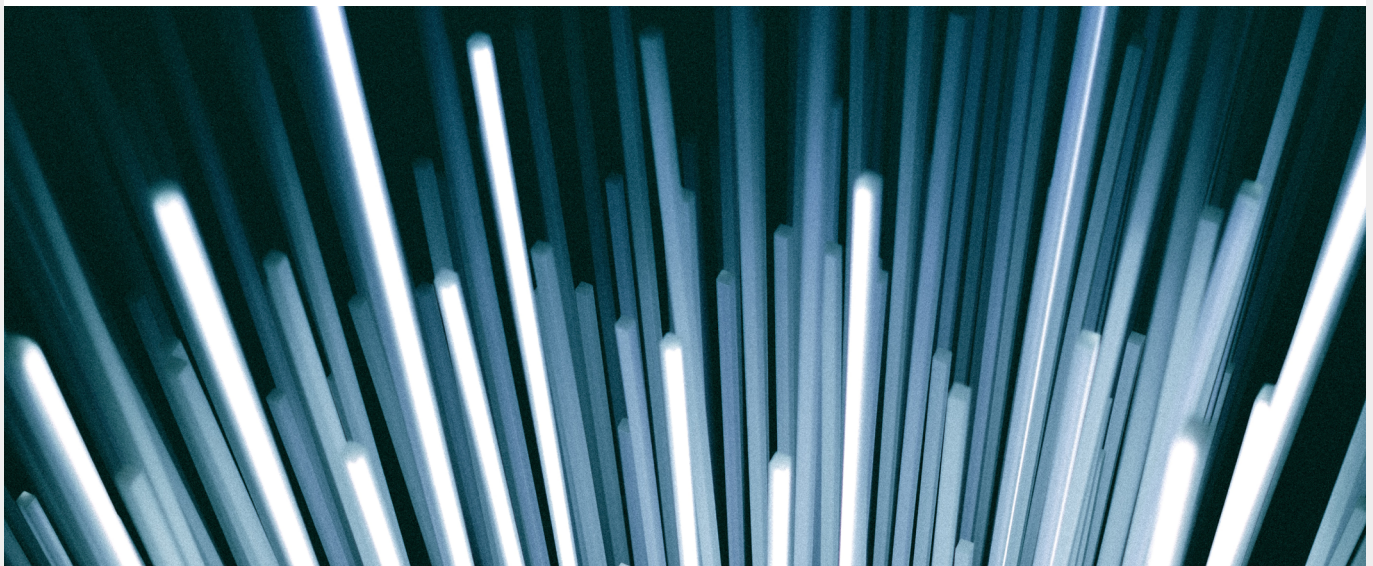


Jurisdictional Turnover Thresholds and Guidelines have been revisited under Turkish Merger Control Regime

March 2022



Dear Clients, Colleagues and Friends,

The Communiqué Amending the Communiqué on the Mergers and Acquisitions Subject to the Approval of the Turkish Competition Board No. 2022/2 (the “**Amendment Communiqué**”) has been published on the Official Gazette dated 4 March 2022 and numbered 31768. In brief, the Amendment Communiqué brings drastic changes for the notifiability analysis of the transactions, as it particularly (i) raises the turnover thresholds, (ii) introduces an exception for the technology undertakings subject to acquisitions and (iii) amends certain items for turnover calculation of the financial institutions. The guidelines on the implementation of the mergers and acquisitions have been also updated and published on the official website of the Turkish Competition Authority (“**Authority**”).

Relevant amendments are summarised below as follows:

Revised Turnover Thresholds

As per the Amendment Communiqué, transactions triggering one of the below turnover thresholds will require approval of the Turkish Competition Board to be legally valid;

- (a) The aggregate Turkish turnover of the transaction parties is TRY 750 million¹ (appx. EUR 71.9 million and USD 84.9 million) and the Turkish turnover of at least two of the transaction parties each exceeding TRY 250 million² (appx. EUR 23.9 million and USD 28.3 million),

¹ Previously TRY 100 million in Communiqué No. 2010/4.

² Previously TRY 30 million in in Communiqué No. 2010/4.

or

- (b) (i) The Turkish turnover of the transferred assets or businesses in acquisitions exceeding TRY 250 million (appx. EUR 23.9 million and USD 28.3 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TRY 3 billion (appx. EUR 287.9 million and USD 339.7 million) or (ii) the Turkish turnover of any of the parties in mergers exceeding TRY 250 million (appx. EUR 23.9 million and USD 28.3 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TRY 3 billion³ (appx. EUR 287.9 million and USD 339.7 million).

Compared to previous thresholds, the Amendment Communiqué substantially increases the turnover figures for the companies that will be subject to mergers and acquisitions for several reasons, including efficiency purposes and the growing number of the notification cases of the Authority. Indeed, the total number of mergers and acquisitions notified to the Authority in 2021 increased to 309 cases from 220 notified in 2020. Such increase was mainly because of the drastic value loss of Turkish Lira against the foreign currency; which, in turn, constitute a heavy workload for the Authority.

Turkey-Specific Notification Requirement: Exception for the Technology Undertakings

The Amendment Communiqué introduces a novel step in the notifiability analysis for the acquisitions involving “*technology undertakings*”, which provides an exception from the relevant turnover thresholds. Indeed, in case the acquired asset or business is a technology undertaking, the Amendment Communiqué does not specify any turnover thresholds for the target company/businesses, as long as it is active in Turkey or has R&D activities.

More specifically, the Amendment Communiqué indicates that (i) if the acquired business/company is classified under the definition “*technology undertakings*” introduced in the Amendment Communiqué, and (ii) in case it is active in Turkish geographical market (in Turkey) or having R&D activities or providing services to users in Turkey, the turnover thresholds specified for the target in the provisions (a) and (b) above (i.e. TRY 250 million) will no longer apply. In this regard, the Amendment Communiqué defines technology undertakings as “*Undertakings or related assets operating in the fields of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agrochemicals and health technologies*”.

Such exception for the technology companies aims to address recent global concerns in technology sectors as well as catching the so called “*killer acquisitions*”. In this regard, the Authority differs from the practices in the EU and some of the European countries (i.e. Germany and Austria) that apply transaction value-based test, as the Authority seeks to review the transactions that involve tech companies and/or start-ups as the target, regardless of their high or low turnover figures.

Update on the Guidelines

The Communiqué No. 2010/4 and accompanying guidelines have been amended in line with the SIEC test (*significant impediment to effective competition*), which was adopted by the Authority in 2020.

Horizontal Guidelines have been also updated on certain aspects such as potential competition, close competition analysis, theories of harm in digital and innovation-based markets and killer acquisitions.

In addition, revised guidelines also include certain explanations on consumer data and its impact on competition, which has been becoming increasingly important in competition law as a result of digitalization. Similarly, revised Guidelines on Non-Horizontal Mergers and Acquisitions contain improvements for the assessment of vertical and multi-market mergers, detailed under the headings for unilateral and coordination effects.

³ Previously TRY 500 million in in Communiqué No. 2010/4.

Introduction of a New Notification Form for Electronic Submission

Amendment Communiqué introduces a new notification form that alters the structure and content of the old notification form. The Authority notes that the new form could be easily transformed into electronic format that aims an electronic submission in the near future.

The Amendment Communiqué also targets to detect and request the missing information in a more practical and faster way through the electronic platform in an effort to shorten the clearance process for undertakings.

Amendment on Calculation of the Turnover for Financial Institutions

The Amendment Communiqué basically updates rules for the calculation of the turnover generated from the financial sectors. More specifically, Amendment Communiqué regulates that the turnover calculation of broker/intermediary firms and portfolio management companies would be based on the sum of the items below: (i) revenue, (ii) revenue generated from the activities in the financial sector: (a) fees, premiums, commissions and income from other services, (b) income from the portfolio management activities, (iii) other income from main activities, (iv) income from the investment activities, (v) shares from the profits of investments valued by the equity method, (vi) financial revenues.

The Amendment Communiqué will enter into force two months following the announcement date (i.e. 4 May 2022).

Please do not hesitate to contact us for any further information on this briefing.

Kind regards,



Togan Turan

Partner

tturan@paksoy.av.tr



Gülçin Dere

Counsel

gdere@paksoy.av.tr



Büşra Aktüre

Associate

bakture@paksoy.av.tr

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