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Türkiye: Competition Authority bolsters merger control with stronger focus on thresholds

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IN SUMMARY

This article details the key aspects of the Turkish merger control regime. It discusses recent developments and cases regarding merger control in Türkiye, including two important recent decisions.

DISCUSSION POINTS

- Turkish merger control regulations
- Thresholds, notification and investigation
- Recent developments and statistical data on merger control

REFERENCED IN THIS ARTICLE

- Turkish Competition Authority
- Law No. 4054 on Protection of Competition
- Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board
- Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board
- Communiqué No. 2017/2 Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board
- Decision No 23-17/318-106
- Decision No. 23-31/592-202

The national competition agency for enforcing merger control rules is the Turkish Competition Authority (the Competition Authority), a legal entity with administrative and financial autonomy. The Competition Authority comprises the Competition Board, the presidency and service departments.

As the competent decision-making body of the Competition Authority, the Competition Board is responsible for, among other things, reviewing and resolving merger and acquisition notifications. It comprises seven members and is seated in Ankara.

TURKISH MERGER CONTROL REGULATION

The applicable legislation on merger control is Law No. 4054 on Protection of Competition (Law No. 4054) and Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (Communiqué No. 2010/4). On 4 March 2022, the Competition Authority published Communiqué No. 2022/2 on the Amendment of Communiqué No. 2010/4 on the Mergers and Acquisitions Subject to the Approval of the Competition Board (Communiqué No. 2022/2). Communiqué No. 2022/2 introduces certain new regulations concerning the Turkish merger control regime, which will fundamentally affect the notifiability analysis of merger transactions and the merger control notifications submitted to the Competition Authority.

Article 7 of Law No. 4054 authorises the Competition Board to regulate, through communiqués, the mergers and acquisitions that must be notified to be valid. Communiqué No. 2010/4 is the primary instrument in assessing merger cases. It sets forth the types of mergers and acquisitions that are subject to the Competition Board's review and approval.

With a continued interest in harmonising Turkish competition law with EU competition law, the Competition Authority has published various guidelines on merger control that are in line with the EU antitrust and merger control rules.

The Guidelines on Market Definition are closely modelled on the Commission Notice on the definition of relevant market for the purposes of Community competition law (97/C 372/03).

The Guidelines on Undertakings Concerned, Turnover and Ancillary Restrictions in Mergers and Acquisitions contain certain topics and explanations about the concepts of undertakings concerned, turnover calculations and ancillary restraints, and are closely modelled on Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

The Guidelines on Cases Considered as Mergers and Acquisitions and the Concept of Control, the Guidelines on the Assessment of Horizontal Mergers and Acquisitions and the Guidelines on the Assessment of Non-Horizontal Mergers and Acquisitions were published in 2013.

The Guidelines on Remedies Acceptable in Mergers and Acquisitions provide explanations on possible remedies.

TYPES OF TRANSACTIONS

Communiqué No. 2010/4 defines the scope of the notifiable transactions in article 5 as:

- a merger of two or more undertakings; or
- the acquisition of direct or indirect control over all or part of one or more undertakings by one or more undertakings or persons, who currently control at least one undertaking, through:
    - the purchase of assets or a part or all of its shares;
    - an agreement; or
    - other instruments.

Türkiye is a jurisdiction with a pre-merger notification and approval requirement, much like the EU regime. Concentrations that result in a change of control on a lasting basis are subject to the Competition Board's approval, provided they exceed the applicable thresholds. 'Control' is defined as the right to exercise decisive influence over the day-to-day management or the long-term strategic business decisions of a company and can be exercised de jure or de facto.

Acquisition of a minority shareholding can constitute a notifiable merger if it leads to a change in the control structure of the target entity on a lasting basis. Joint ventures that emerge as independent economic entities possessing assets and labour to achieve their objectives are subject to notification to, and approval of, the Competition Board. In accordance with article 13 of Communiqué No. 2010/4, cooperative joint ventures are also

subject to a merger control notification and analysis as well as an individual exemption analysis, if warranted.

MARKET DOMINANCE AND SIGNIFICANT IMPEDIMENT OF EFFECTIVE COMPETITION

The Turkish merger control provisions rely on the significant impediment of effective competition (SIEC) test to ascertain whether a merger may be cleared. Pursuant to article 7 of Law No. 4054 and article 13 of Communiqué No. 2010/4, mergers and acquisitions that do not create or strengthen a dominant position and that do not significantly impede effective competition in a relevant product market within the whole or part of Türkiye shall be cleared by the Competition Board.

Article 3 of Law No. 4054 defines 'dominant position' as 'any position enjoyed in a certain market by one or more undertakings by virtue of which those undertakings have the power to act independently from their competitors and purchasers in determining economic parameters such as the amount of production, distribution, price and supply'.

With the SIEC test introduced by the amendment law that was passed through parliament and entered into force on 24 June 2020, the Competition Board is able to prohibit not only transactions that may result in creating a dominant position or strengthening an existing dominant position but also those that may significantly impede effective competition.

The Competition Board's approval decision will be deemed to also cover the directly related and necessary extent of restraints in competition brought by the concentration (eg, non-competition, non-solicitation and confidentiality). This allows parties to engage in self-assessment, and the Competition Board usually does not devote a separate part of its decision to the ancillary status of all restraints brought with the transaction. Non-competition issues are, in principle, not taken into account.

THRESHOLDS

Communiqué No. 2022/2 introduced threshold exemptions for undertakings active in certain markets and sectors and increased the applicable turnover thresholds for the concentrations that require mandatory merger control filing before the Competition Authority.

As per Communiqué No. 2022/2, if a transaction is closed (ie, the concentration is realised) as of or after 4 May 2022, the transaction will be required to be notified in Türkiye if one of the following increased turnover thresholds is met (all currency conversions are based on the Turkish Central Bank's applicable average buying exchange rates for the financial year 2023):

- the aggregate Turkish turnover of the transaction parties exceeds 750 million Turkish lira and the Turkish turnover of at least two of the transaction parties each exceeds 250 million Turkish lira;
- the Turkish turnover of the transferred assets or businesses in acquisitions exceeds 250 million Turkish lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion Turkish lira; or
- the Turkish turnover of any of the parties in mergers exceeds 250 million Turkish lira and the worldwide turnover of at least one of the other parties to the transaction exceeds 3 billion Turkish lira.

Pursuant to Communiqué No. 2022/2, the 250 million lira Turkish turnover thresholds mentioned above will not be sought for the acquired undertakings active in, or assets related to, the fields of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies, if:

- they operate in the Turkish geographical market;
- they conduct research and development activities in the Turkish geographical market; or
- they provide services to Turkish users.

The new regulation does not seek the existence of an 'affected market' in assessing whether a transaction triggers a notification requirement, and if a concentration exceeds one of the alternative jurisdictional thresholds, the concentration will automatically be subject to the approval of the Competition Board.

The implementing regulations provide for important exemptions and special rules.

- Article 19 of Banking Law No. 5411 provides an exception from the application of merger control rules for mergers and acquisitions of banks. The exemption is subject to the condition that the market share of the total assets of the relevant banks does not exceed 20 per cent.
- Mandatory acquisitions by public institutions as a result of financial distress, concordat, liquidation, etc, do not require a pre-merger notification.
- Intra-corporate transactions are not notifiable.
- Acquisitions by inheritance are not subject to merger control.
- Acquisitions made by financial securities companies solely for investment purposes do not require a notification, subject to the condition that the securities company does not exercise control over the target entity in a manner that influences its competitive behaviour.
- Two or more transactions carried out within three years between the same persons or parties, or within the same relevant product market by the same undertaking, are deemed a single transaction for turnover calculation purposes following the amendments brought by Communiqué No. 2017/2, Amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Approval of the Board (Communiqué No. 2017/2). If the transactions exceed the notification thresholds individually or cumulatively, all the transactions must be notified, regardless of whether the transactions concerned are related to the same market or sector or whether they were previously notified. The main goal of this regulation is to prevent the conclusion of important mergers or acquisitions without authorisation through the compartmentalisation of mergers and acquisitions originally subject to authorisation.

Another exception pertains to the Turkish Wealth Fund, which was incorporated as a national wealth and investment fund company with Law No. 6741. Transactions performed by the Turkish Wealth Fund and companies established by the Turkish Wealth Fund are not subject to merger control rules. There are also specific methods of turnover calculation for certain sectors, which apply to banks, special financial institutions, leasing companies, factoring companies, securities agents and insurance companies. Communiqué No. 2022/2 also

updates the rules that apply to the calculation of turnover of the financial institutions in accordance with the recent changes on the financial regulations. The recent updates of article 9 of Communiqué No. 2010/4 are as follows:

- for the calculation of financial institutions' turnovers, Communiqué No. 2022/2 aligns the wording and terms in view of the applicable banking and financial regulations – it excludes the term 'participation banks' and refers to the term 'banks' in general, which covers all legal forms of banks; and
- Communiqué No. 2022/2 updates the names and references of the relevant regulations issued by the Banking Regulatory and Supervisory Agency and the Capital Markets Board referred to in article 9 of Communiqué No. 2010/4.

PROCEDURE

There is no specific deadline for making a notification in Türkiye. There is, however, a suspension requirement (ie, a mandatory waiting period): a notifiable transaction (regardless of whether it is problematic under the applicable dominance test) is invalid, with all the ensuing legal consequences, unless the Competition Authority approves it. It is, therefore, advisable, under normal circumstances, to file the transaction at least 60 calendar days before the projected closing.

The notification is deemed filed when the Competition Authority receives it in its complete form. If the information provided to the Competition Board is incorrect or incomplete, the notification is deemed filed only on the date when the information is completed upon the Competition Board's subsequent request for further data. The notification is submitted in Turkish. Transaction parties are required to provide sworn Turkish translations of the final executed or current version of the transaction agreement or the document that brings about the transaction.

NOTIFICATION

In principle, under the merger control regime, a filing can be made by either of the parties to the transaction or jointly. In the case of a filing by one of the parties, the filing party should notify the other party of the filing. It is advisable to file the transaction at least 60 calendar days before projected closing.

As for the filing process for privatisation tenders and transactions, Communiqué No. 2013/2 provides that it is mandatory to file a pre-notification with the Competition Authority before the public announcement of tender specifications to receive the opinion of the Competition Board, which will include a competitive assessment.

In the event of a public bid, the merger control filing can be performed when the documentation adequately proves the irreversible intention to finalise the contemplated transaction. Filing can also be performed when the documentation at hand adequately proves the irreversible intent to finalise the contemplated transaction.

The notification form is similar to Form CO of the European Commission. One hard copy and an electronic copy of the merger notification form must be submitted to the Competition Board. Recent updates allow notifying parties to submit the notification form via 'e-Devlet', an elaborate system of web-based services, including electronic submission. E-Devlet was already made available for submissions, especially during the pandemic period. Now,

Communiqué No. 2010/4 explicitly mentions this alternative way of submission to make it official.

The information requested includes data in respect of supply and demand structure, imports, potential competition and expected efficiencies. Some additional documents, such as the executed or current copies and sworn Turkish translations of the documents that bring about the transaction, annual reports (eg, balance sheets of the parties) and, if available, market research reports for the relevant market, are also required.

Communiqué No. 2010/4 also brought a modified notification form that replaced the former notification form as of 4 May 2022. According to the modified notification form, there is also a short-form notification (without a fast-track procedure) if a transition from joint control to sole control is at stake or if there are no affected markets within Türkiye.

In the event that the parties to a notifiable transaction violate the suspension requirement (ie, close a notifiable transaction without having obtained the approval of the Competition Board or do not notify the notifiable transaction at all), the acquiring party (for the formation of a fully functioning joint venture, all the parent companies are separately deemed to be the acquiring party) receives a turnover-based monetary fine of 0.1 per cent of its annual Turkish turnover generated in the financial year preceding the date of the fining decision. In mergers, both merging parties would be fined.

In any event, the minimum amount of the administrative monetary fine is 167,473 Turkish lira for 2024 and is revised annually. The fine does not depend on whether the Competition Authority will ultimately clear the transaction; it is a fixed ratio (0.1 per cent). The Competition Board does not have the power to increase or decrease the fine; therefore, the acquirer would automatically incur the fine once the violation of the suspension requirement is detected.

If, however, there truly is a risk that the transaction is problematic under the SIEC test applicable in Türkiye, the Competition Authority may:

- launch ex officio an investigation into the transaction;
- order structural and behavioural remedies to restore the situation as it was before the closing (restitutio in integrum); and
- impose a turnover-based fine of up to 10 per cent of the parties' annual turnover.

Executive members and employees of the undertakings concerned who are determined to have played a significant role in the violation (failing to file or closing before the approval) may also receive monetary fines of up to 5 per cent of the fine imposed on the undertakings. The transaction will also be invalid and unenforceable in Türkiye.

To date, the Competition Board has consistently rejected all carve-out or hold-separate arrangements proposed by merging undertakings. Communiqué No. 2010/4 provides that a transaction is deemed to be realised (ie, closed) on the date when the change in control occurs.

Although the wording allows some room to speculate that carve-out and hold-separate arrangements are allowed, it remains to be seen whether the Competition Authority will interpret this provision in such a way. To date, it has been consistently rejected by the Competition Board, arguing that a closing is sufficient for the suspension violation fine to be imposed and that a further analysis of whether change in control actually took effect in Türkiye is unwarranted.

The Competition Authority publishes the notified transactions on its official website, with only the names of the parties and their areas of commercial activity. To that end, once notified to the Competition Authority, the existence of a transaction will no longer be a confidential matter.

COSTS

There are no filing fees required under Turkish merger control proceedings.

INVESTIGATION

The Competition Board, upon its preliminary review of the notification (Phase I), will decide either to approve or to investigate the transaction further (Phase II). It notifies the parties of the outcome within 30 calendar days of a complete filing. In the absence of any notification, the decision is deemed to be approved in accordance with an implied approval mechanism introduced by the relevant legislation.

While the wording of the law implies that the Competition Board should decide within 15 calendar days whether to proceed with Phase II, the Competition Board generally takes more time to form its opinion on the substance of a notification. It is more sensitive to the 30-calendar-day deadline on announcement. Any written request by the Competition Board for missing information will stop the review process and restart the 30-calendar-day period on the date of provision of that information.

In practice, the Competition Authority is quite keen on asking formal questions and adding more time to the review process; therefore, under normal circumstances, it is recommended that the filing be done at least 60 calendar days before the projected closing.

If a notification leads to a Phase II review, it turns into a fully fledged investigation. Under Turkish competition law, Phase II investigations take about six months. If necessary, the Competition Board may extend this period once by up to six months.

In practice, only exceptional cases require a Phase II review, and most notifications obtain a decision within 60 days of the original date of notification. Neither Law No. 4054 nor Communiqué No. 2010/4 foresee a fast-track procedure to speed up the clearance process. Aside from close follow-up with the case handlers reviewing the transaction, the parties have no available means to speed up the review process.

There is no special rule for hostile takeovers; the Competition Board treats notifications for hostile transactions in the same manner as other notifications. If the target does not cooperate and there is a genuine inability to provide information owing to the one-sided nature of the transaction, the Competition Authority tends to use most of its powers of investigation or information request under articles 14 and 15 of Law No. 4054.

The Competition Board may request information from third parties, including customers, competitors and suppliers of the parties and other persons related to the merger or acquisition. It uses this power to define the market and determine the market shares of the parties. Third parties, including the customers and competitors of the parties and other persons related to the merger or acquisition, may request a hearing from the Competition Board during the investigation, subject to the condition that they prove their legitimate interest. They may also challenge the Competition Board's decision on the transaction before the competent judicial tribunal, again subject to the condition that they prove their legitimate interest.

CLEARANCE

The Competition Board may either render a clearance or a prohibition decision. It may also give a conditional approval. The reasoned decisions of the Competition Board are served on the representatives to the notifying parties and are also published on the website of the Competition Authority.

The Competition Board may grant conditional clearance and make the clearance subject to the parties observing certain structural or behavioural remedies, such as divestiture, ownership unbundling, account separation and right of access.

JUDICIAL REVIEW

Final decisions of the Competition Board, including its decisions on interim measures and fines, can be submitted for judicial review before the administrative courts. The plaintiff may initiate a lawsuit within 60 days of the parties' receipt of the Competition Board's reasoned decision.

Decisions of the Competition Board are considered administrative acts. Filing a lawsuit does not automatically stay the execution of the Competition Board's decision. However, upon request of the plaintiff, the court may decide to stay the execution. The court will stay the execution of the challenged act only if the execution of the decision is likely to cause irreparable damage, and the decision is highly likely to violate the law. The appeal process may take up to two-and-a-half years.

RECENT DEVELOPMENTS

Communiqué No. 2022/2 was published in the Official Gazette on 4 March 2022, and entered into force on 4 May 2022. Communiqué No. 2022/2 raised the jurisdictional turnover thresholds under article 7 of Communiqué No. 2010/4.

Two of the most significant developments that the Communiqué No. 2022/2 entails, inter alia, are the introduction of threshold exemption for undertakings active in certain markets and sectors and the increase of the applicable turnover thresholds for concentrations that require mandatory merger control filing before the Competition Authority.

Communiqué No. 2022/2 does not seek a Turkish nexus in terms of activities that qualify for the threshold exemption. In other words, it would be sufficient for the target company to be active in the fields of digital platforms, software or gaming software, financial technologies, biotechnology, pharmacology, agricultural chemicals or health technologies anywhere in the world for the threshold exemption to become applicable, provided that the target company operates in the Turkish geographical market, conducts R&D activities in Türkiye or provides services to Turkish users in the fields listed above. Accordingly, Communiqué No. 2022/2 does not require the generation of revenue from customers located in Türkiye, that the target company conduct R&D activities in Türkiye or the provision of services to Turkish users concerning the fields listed above for the exemption on the local turnover thresholds to become applicable.

The increased turnover thresholds and the exemption on the local turnover thresholds mechanism introduced by Communiqué No. 2022/2 seemingly altered the scope of the transactions that are notifiable to the Competition Authority. On that note, concentrations related to the fields of digital platforms, software and gaming software, financial

technologies, biotechnology, pharmacology, agricultural chemicals and health technologies are expected to be more closely scrutinised by the Competition Authority.

The Competition Authority has published the Mergers and Acquisitions Insight Report for 2023. Along with its mission, vision, objectives, priorities and description of its duties and powers, the Competition Authority assessed its activities between 1 January 2023 and 31 December 2023 in respect of merger control with statistical data.

To summarise, the Competition Board assessed 217 transactions in 2023. The number of assessments in 2023 was higher than the average number of assessments made between 2013 and 2020. Only one transaction was taken under at Phase II, and the review process for this transaction is ongoing. The Competition Board did not prohibit any transaction in 2023.

A notable decision rendered by the Competition Board in 2023 was the Competition Board's Anadolu Etap İçecek CCI decision (Decision 23-17/318-106 of 6 April 2023).[1] The transaction concerned the acquisition of a certain percentage of shares and sole control of Anadolu Etap Penkon Gıda ve İçecek Ürünleri Sanayi ve Ticaret AŞ (Anadolu Etap İçecek) by Coca Cola İçecek AŞ (CCI).

As part of its examination of potential input foreclosure, the Board initially reviewed Anadolu Etap İçecek's market shares in the fruit juice concentrate and fruit puree markets between 2020 and 2022. The Board determined that based on its 2022 market share, Anadolu Etap İçecek is a strong player in the relevant market. In that context, the Board remarked that if Anadolu Etap İçecek supplies all of its production to CCI, other actual or potential customers in the downstream market may theoretically face the risk of not accessing a sufficient supply source. However, the Board noted that a total of 57 undertakings operate in the downstream fruit juice market and five of the 10 largest undertakings in terms of their market share are vertically integrated in this market. Accordingly, the Board remarked that vertical integration is a typical operational structure in the fruit juice industry. Furthermore, the Board remarked that the customers of fruit juice concentrate and fruit puree could easily switch suppliers, considering that these products are homogenous and seasonal, and periodical factors affect the product quality and cost structure of agricultural products. The Board then indicated that Anadolu Etap İçecek's customers other than CCI could easily find themselves new suppliers and the competitive conditions in the market would not change. Lastly, the Board noted that the competitive environment in the market would not change to a substantial degree even in the worst-case scenario, where Anadolu Etap İçecek directs all of its production to CCI, considering that most of Anadolu Etap İçecek's total production is sold at export markets and most of its domestic sales are made to CCI.

As part of its examination of potential customer foreclosure, the Board remarked that CCI is a strong player in the fruit juice market considering its 2022 market share, which also makes CCI a strong buyer of fruit juice concentrate and fruit puree. The Board first examined the capacity utilisation rates of Anadolu Etap İçecek. In that context, the Board remarked that actual capacity utilisation rates differ on a monthly, seasonal or annual basis, depending on climatic (rain, frost, high temperatures, etc) or agricultural (fruit quality, quantity of harvest, etc) factors and this would prevent Anadolu Etap İçecek from supplying CCI's total demand for fruit juice concentrate and fruit puree, even if Anadolu Etap İçecek installed additional equipment. The Board pointed out that the majority of CCI's demand for fruit juice concentrate and fruit puree has already been supplied from Anadolu Etap İçecek, but there are certain alternative suppliers that CCI has been making purchases from, which have been producing the fruit juice concentrate and fruit puree types that Anadolu Etap İçecek has not

been producing. Accordingly, the Board concluded that the key criteria of actual or potential customers for preferring a supplier are product variety and prices, and CCI would not have an incentive for customer foreclosure.

The Board concluded that the transaction will not significantly impede the effective competition in terms of the vertically affected markets in Türkiye and cleared the transaction.

In Activision Blizzard/Microsoft,[2] the transaction concerns a reverse triangular merger[3] in which Anchorage Merger Sub Inc (Merger Sub), a solely controlled subsidiary of Microsoft, established exclusively for the purpose of realising the transaction, will be merged with Activision Blizzard under Activision Blizzard, after which Merger Sub will cease to exist and Activision Blizzard will be the surviving company. As a result of the transaction, Activision Blizzard will become a 100 per cent subsidiary of Microsoft and will be under its sole control.

The Board determined that there is horizontal overlap between the parties: game publishing; game distribution; game-related licensed product sales; and online display advertising activities. However, the Board stated that each of these markets contains many competitors with high market shares, such as Electronic Arts Inc and Valve Corporation, both in Türkiye and globally, and that there will be many strong competitors after the transaction. Overall, the Board assessed that the transaction will not result in a significant impediment of competition in terms of both unilateral effects and coordination-inducing effects.

As regards the vertically affected markets, the Board evaluated that there is vertical overlap between the upstream market for the development and publishing of games and the parties' activities in the downstream markets for digital distribution of console and computer games, console hardware and cloud gaming services. The Board concluded that it would not make economic sense for Microsoft to impose input foreclosure considering the market shares in the console hardware market, Sony's leading position in the market, the significance of Call of Duty (CoD) on Xbox and the importance of the cross-play feature. Microsoft has also committed to provide CoD for Nintendo consoles for 10 years. The Board concluded that Microsoft's negotiations with Sony and Nintendo for the provision of Activision Blizzard's games post-transaction indicates that Microsoft intends to provide these games to competing consoles for 10 years, even though the negotiations with Sony had not resulted in an agreement. Additionally, it was assessed that Microsoft needs third-party games to continue its console hardware activities and, therefore, will not have any customer foreclosure incentive.

As for unilateral effects in the cloud gaming services market, the Board evaluated that even if Microsoft begins to offer cloud gaming services in Türkiye, input foreclosure would not be economically feasible for Microsoft in light of its global share and the presence of many large and powerful players in the cloud gaming services market, while the parties' limited share in the market for game development and publishing and the fact that Microsoft generates revenue largely through the games of third-party developers would result in the inability of customer foreclosure.

Subsequently, the Board assessed the commitments submitted by Microsoft to the Commission regarding the cloud gaming market and their validity in Türkiye. In this context, in line with the information provided by Microsoft to the Authority, it was confirmed that the first of the open licences providing streaming rights for Activision Blizzard games within the scope of the commitments, the streaming provider licence, will be valid globally and for 10 years, both for the undertakings already active in the market and for the undertakings that

may enter the market within this period, while the second of the open licences, the consumer licence, will be valid for a period of 10 years for all existing and potential consumers globally. Accordingly, the Board concluded that essentially the relevant commitments will also be valid for Türkiye for 10 years.

Finally, in terms of the coordination-inducing effects of the transaction, the Board determined that the presence of a large number of players operating in the market will make it difficult to establish coordination among undertakings and to discipline non-compliant undertakings as a result of a possible coordination. The Board held that the transaction will not significantly impede competition and may be cleared.

Endontes

[1] Competition Board, Decision No. 23-17/318-106 (6 April 2023).

[2] Competition Board, Decision No. 23-31/592-202 (13 July 2023).

[3] According to the decisional practice of the Board, a reverse triangular merger constitutes an acquisition, rather than a merger (recent case law include US Ecology/Republic Services (24 March 2022; 22-14/216-93), Take-Two/Zynga (24 March 2022; 22-14/215-92), American Securities/Ferro (24 February 2022; 22-10/144-59)).

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