

## COMPETITION BOARD

### **Communiqué<sup>1</sup> on the Mergers and Acquisitions Calling for the Authorization of the Competition Board, Amended by the Competition Board Communiqués No. 1998/2, 1998/6 and 2000/2**

#### **Communiqué No: 1997/1**

#### **Purpose and Scope**

**Article 1-** The purpose of this Communiqué is to determine and announce the mergers and acquisitions calling for authorization by notifying to the Competition Board, in order to be legally valid, pursuant to Article 7 of the Act on the Protection of Competition (hereinafter referred to as the “Act”) numbered 07.12.1994 and dated 07.12.1994.

Cases which are or are not deemed as a merger or an acquisition under Article 7 of the Act, mergers or acquisitions which call for the authorization of the Competition Board in order to be legally valid, and the procedures and principles relating to their notification to the Competition Board, are provided under this Communiqué.

#### **Cases Considered as a Merger or an Acquisition**

**Article 2-** As the following points are deemed as mergers and acquisitions between undertakings under Article 7 of the Act, and considered to come under this Communiqué, the authorization of the Competition Board should be taken depending on the conditions in Article 4 of the Communiqué.

**a) Merger of two or more independent undertakings.**

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<sup>1</sup> OG – 12.08.1997, 23078.

**b)** Control or acquisition, by any undertaking or person, of the assets of another undertaking, or the whole or a part of its partnership shares, or the means granting it the power to have a right in the management.

**c)** Joint ventures which emerge as an autonomous economic entity possessing labour and assets to achieve their goals, and which do not have the aims or effect of restricting competition between the parties, or between the parties and the joint venture.

For the purposes of this Communiqué, control may be brought about by rights, contracts or any other means which, either separately or in combination, de facto or by law, grant the opportunity of exercising decisive influence on an undertaking, and in particular by an ownership right or an operative right to use on all or part of the assets of an undertaking, or by rights or contracts which ensure decisive influence on the composition or decisions of the bodies of an undertaking.

Control shall be deemed to have been acquired by the holders of rights, or persons or undertakings entitled to use the rights under a contract, or in spite of not having such right and power, have de facto power to exercise such rights.

### **Cases not Considered as a Merger or an Acquisition**

**Article 3-** Mergers and acquisitions whose essence is described below do not fall under the scope of Article 7 of the Act, and it is not required to obtain the authorization of the Competition Board for such mergers and acquisitions.

**a)** That undertakings whose ordinary activities are to transact with securities for their own account or for the account of others, temporarily hold the securities acquired with a view to reselling them, provided that the voting rights arising from such securities are not exercised by them in such a way that the competition policies of the undertaking issuing the securities are affected.

**b)** That acquisition is carried out by a public institution and an organization with the aim or reason of liquidation, winding up, insolvency, cessation of payments, composition, privatization or by a similar reason, and as required by law.

**c)** That cases provided in Article 2 of this Communiqué take place via inheritance.

### **Mergers or Acquisitions Subject to Authorization**

**Article 4- (Amended: the Competition Board Communiqué No. 1998/2; OG – 26.03.1998, 23298)** Where, as a result of a merger or an acquisition mentioned in article 2 of this Communiqué, total market share of the undertakings that carry out the merger or acquisition exceeds 25 % of the market in the relevant product market within the whole or a part of the territory, or even though it does not exceed this rate, their total turnover exceeds TL twenty-five trillion, it is compulsory for them to take the authorization of the Competition Board<sup>2</sup>.

In calculation of the market share or turnover, sum of market shares or sum of turnovers of the following undertakings in the relevant product market is taken as the basis:

**a)** Respective market shares or turnovers, in the relevant product market, of the undertakings carrying out a merger or an acquisition,

**b)** Market shares or turnovers, in the relevant product market, of those undertakings where the undertakings carrying out a merger or an acquisition, directly or indirectly, own more than half of the capital or business assets, or have the power to exercise more than half of the voting rights, or have the power to appoint more

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<sup>2</sup> Former version of the paragraph: *"Where, as a result of a merger or an acquisition mentioned in article 2 of this Communiqué, total market share of the undertakings that carry out the merger or acquisition exceeds 25 % of the market in the relevant product market within the whole or a part of the territory, or even though it does not exceed this rate, their total turnover exceeds TL ten trillion, it is compulsory for them to take the authorization of the Competition Board."*

than half of the members of the supervisory board, the board of directors or bodies entitled to represent the undertakings, or have the right to manage their affairs,

**c)** Market shares or turnovers, in the relevant product market, of those undertakings which have, on the undertakings carrying out a merger or an acquisition, the rights and powers listed in (b),

**d)** Market shares or turnovers, in the relevant product market, of those undertakings which have, on the undertakings referred to in (c), the rights or powers listed in (b),

**e)** Market shares or turnovers, in the relevant product market, of those undertakings which jointly have, on the undertakings referred to in (a) to (d), the rights or powers listed in (b).

Turnover shall comprise the net sales achieved in the preceding financial year, in accordance with uniform scheme of accounts. The turnovers resulting from the sales between the undertakings themselves referred to in paragraph two shall not be taken into account in the calculation of the turnover. In mergers and acquisitions realized with partial acquisition of undertakings, the turnover of the transferred part shall be taken as the basis.

**(Supplement: the Competition Board Communiqué No. 1998/6; OG - 18.11.1998, 23527)** In calculation of the thresholds mentioned in paragraph one, the sum of the following are considered as a turnover in financial institutions:

**A-** For banks;

**1)** Interest revenues;

**a)** Interests from credits,

- b)** Interests from deposit reserve funds,
  - c)** Interests from banks;
  - d)** Interest from inter-bank currency market,
  - e)** Interests from securities portfolio,
  - f)** Other interest revenues,
- 2)** Non-interest revenues;
- a)** Fees and commissions received,
  - b)** Profits of capital market transaction,
  - c)** Foreign exchange profits,
  - d)** Dividends from participations and affiliated partnerships,
  - e)** Extraordinary revenues,
  - f)** Other non-interest revenues

which take place in profit and loss statement whose procedures and principles are determined by the Undersecretariat of Treasury pursuant to article 51 sub-paragraph (5) of the Banks Act No. 3182.

**B-** For Private Financial Institutions;

- 1)** Revenues from current accounts,

- 2) Revenues from participation accounts,
- 3) Revenues from private fund pools,
- 4) Revenues from funds extended out of equities,
- 5) Revenues and profits from other activities,
- 6) Ordinary revenues and profits

which take place in the revenue statement requested by the Undersecretariat of Treasury from the other institutions.

**C-** For financial leasing companies;

- 1) Financial leasing revenues,
- 2) Ordinary revenues and profits from the other activities,
- 3) Extraordinary revenues and profits

which take place in the revenue statement requested based on article 8 paragraph two of the Regulations concerning The Establishment and Activities of Financial Leasing Companies, which entered into force after having been published in the Official Gazette dated 28/4/1992 and numbered 21212.

**D-** For factoring companies;

- 1) Factoring revenues,
  - a) Factoring interest revenues,

- b) Factoring commission revenues,**
- 2) Ordinary revenues and profits from the other activities,**
- 3) Extraordinary revenues and profits**

which take place in the revenue statement requested by the Undersecretariat of Treasury from institutions.

**E- For intermediary Institutions;**

- 1) Gross sales profit,**
- 2) Ordinary revenues and profits from the other activities,**
- 3) Extraordinary revenues and profits**

which take place in the detailed revenue statement requested pursuant to the “Communiqué on the Principles and Rules concerning the Financial Statements and Reports in the Capital Market” with the series XI and number 1, issued by the Capital Market Board and published in the Official Gazette dated 29/1/1998 and numbered 20064.

**F- For insurance companies;**

- 1) Premiums received,**
- 2) Commissions received,**
- 3) Other revenues**

which take place in the consolidated profit and loss accounts from the financial statements requested by the Insurance Supervisory Board pursuant to the Uniform Account plan issued by the Undersecretariat of Treasury.

The geographic market which comprises a substantial part of the country within the meaning of paragraph 1, are areas in which undertakings operate in the supply and demand of their goods and services, in which the conditions of competition are sufficiently homogenous, and which can easily be distinguished from neighbouring areas, as the conditions of competition are appreciably different from these areas. In assessing the geographic market, particularly, factors such as the characteristics of the relevant goods and services, existence of entry barriers in respect of consumer preferences, and that of an appreciable difference as regards undertakings' market shares or prices of goods and services between the relevant area and neighbouring areas are taken into account.

In determining the relevant product market within the meaning of paragraph 1, the market comprising the goods or services which are the subject of a merger or an acquisition, and the goods or services which are deemed identical in the eye of consumers in terms of their prices, intended use and characteristics is taken into account; other factors that may affect the market determined shall also be assessed.

### **Notification of Mergers or Acquisitions**

**Article 5-** Notification shall be made jointly by persons or undertakings who/which realize the conditions deemed as a merger or an acquisition under Article 2 of this Communiqué. Notification made by either of the parties shall also be deemed valid.

Notification may also be made by legal representatives of persons and undertakings referred to in paragraph 1. In this case, certificates showing that the representatives are authorised have to be attached to the Notification Form. In cases

where notification is made by two or more persons or undertakings, they may file a notification through a joint representative as well.

Notification shall be made by the Notification Form (Form-2) enclosed with this Communiqué. Joint notifications may be made by a single form. Each notification and the documents attached thereto shall be forwarded to the Competition Authority after having prepared in **(Amended: the Competition Board Communiqué No. 2000/2; OG - 21.08.2000, 24147)** 3<sup>3</sup> copies. Notifications made to the branch offices or representations of the Competition Authority shall be deemed as not made. If there are copies among documents, those filing a notification should certify that they conform to the originals.

Notification must include correctly and completely those information requested in the Notification Form, and future changes in such information should be forthwith notified to the Board.

Notification shall be deemed to have been made on the date it is received by the Competition Authority. Notifications made by unauthorised persons shall be deemed as having not been made. In case the information requested in the Form is incorrect and incomplete, the notification shall be deemed to have been made on the date when such information is completed upon the request of the Board.

A merger or an acquisition shall not legally become valid until a decision, either explicitly under Article 10 paragraph 2 of the Act or tacitly under paragraph three of the same article, is taken on the notification duly made pursuant to Article 5 of this Communiqué. In case the notification is deemed as not having been made, Article 11 of the Act shall be applied.

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<sup>3</sup> The phrase “*twenty copies*” in the former version of the text has been changed as “*three copies*”.

## **Assessment of Mergers and Acquisitions**

**Article 6-** The Competition Board shall assess mergers and acquisitions in accordance with the Article 7 and subsequent articles of the Act. In this assessment, in particular:

**a)** the structure of the relevant market, and the need to maintain and develop effective competition within the country in respect of actual and potential competition of undertakings based in or outside the country,

**b)** the market position of the undertakings concerned, their economic and financial powers, their alternatives for finding suppliers and users, their opportunities for being able to access sources of supply or for entering into markets; any legal or other barriers to market entry; supply and demand trends for the relevant goods and services, interests of intermediaries and end consumers, developments in the technical and economic process, which are not in the form a barrier to competition and ensure advantages to a consumer, and the other factors shall be taken into account.

Mergers and acquisitions which do not create a dominant position or strengthen a dominant position as a result of which effective competition shall not be significantly impeded in the country or in a part of it, shall be authorized.

The Board may authorize a merger or an acquisition notified on condition that other measures deemed appropriate by it are taken, and certain obligations are complied with.

Mergers and acquisitions which create a dominant position or strengthen an existing dominant position as a result of which effective competition shall be significantly impeded in the country or in a part of it, shall be considered contrary to the Act and not be permitted.

## **Request for Information from Third Parties and Their Participation in Hearings**

**Article 7-** In assessing a merger or an acquisition, the Competition Board may, where necessary, request, under Article 14 of the Act, information from the parties to the merger or acquisition as well as other persons concerned with the merger or acquisition, and third parties such as customers, competitors and providers of the parties, and it may invite such persons to hearing.

Other persons concerned with the merger or acquisition, and third parties such as customers, competitors and providers of the parties may request from the Board to be heard, by means of indicating the existence of their legitimate interest.

## **Transformation of Notification**

**Article 8-** Should the Competition Board concludes, as a result of the examination of a notification made pursuant to this Communiqué, that the operation notified is not a merger or an acquisition, it may consider this notification as a notification within the meaning of Article 10 paragraph 1 of the Act, or an application for negative clearance within the meaning of Article 8 of the Act, or as an application for exemption within the meaning of Article 5 of the Act.

## **Re-examination Power of the Board**

**Article 9-** In cases where the decision by the Competition Board made explicitly within the Article 10 paragraph 2 of the Act, and tacitly within paragraph 3 of the same article that a merger or an acquisition is not contrary to Article 7 of the of the Act has been taken due to incorrect or misleading information by one of the undertakings, or the obligations attached to the decision have not been fulfilled, the Board may place the merger or acquisition under re-examination, and may decide on prohibition and the application of the other sanctions.

## **Entry into Force**

**Article 10-** This Communiqué shall enter into force on the date when the Competition Board, pursuant to the Temporary Article 2 of the Act, announces by a Communiqué that the organization of the Competition Authority has been concluded.

**PRESIDENCY OF THE COMPETITION AUTHORITY**

**NOTIFICATION FORM ON  
MERGERS AND ACQUISITIONS**

**(FORM-2)**

The Notification should completely and correctly involve all the information requested in the Form.

Should there be any changes to the information stated in the form, these changes have to be forthwith notified to the Board.

The Notification is made jointly by the parties to the merger or acquisition mentioned in the Form. Notification by only one of the parties is also valid.

A copy of the agreement or decision related to the merger or acquisition which is the subject of the Notification should be enclosed with the Form.

If the parts allocated for each question in the Form are not adequate for the information requested herein, detailed information can be presented on a separate sheet to be enclosed with the Form, on condition that the related article numbers are followed.

Fines shall be imposed on those who make incorrect or misleading representations in the Notification Form, under Article 16 of the Act on the Protection of Competition dated 7.12.1994 and numbered 4054.

**PRESIDENCY OF THE COMPETITION AUTHORITY**

**NOTIFICATION FORM ON MERGERS AND ACQUISITIONS**

**(FORM –2)**

**1. Identity information on the notifying party(-ies)**

1.1. The following information on the notifying undertaking or undertakings, or associations of undertakings:

<b><u>Name-Title</u></b>	<b><u>Address</u></b>	<b><u>Telephone and Fax No.</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

1.2. In cases where the notification is made by a representative (the document indicating that the Representative is authorized should be enclosed with the notification)

<b><u>Name and Surname of the Representative</u></b>	<b><u>Address</u></b>	<b><u>Telephone and Fax No.</u></b>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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1.3. The following information on the other undertakings which are the parties to the merger or acquisition:

<u>Name-Title</u>	<u>Address</u>	<u>Fields of activity</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1.4. The following information on an official to be contacted, if required, in the undertakings which are the parties to the merger or acquisition:

<u>Name-Title</u>	<u>Position</u>	<u>Address</u>	<u>Telephone and Fax No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

1.5. Address for Notice

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**2. Information on the merger or acquisition**

2.1. Briefly specify the nature, scope and purposes of the merger or acquisition which is the subject of the notification.

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2.2. Identify the legal framework of the merger or acquisition which is the subject of the notification, and the economic and financial structuralization before and after the merger or acquisition in respect of the parties.

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2.3. Specify the individual and total turnovers of the merging or acquiring parties.

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2.4. List the parties and the undertakings belonging to the same group with the parties, directly or indirectly controlling undertakings or persons, the undertakings which are active on the affected markets and are directly or indirectly controlled by the parties or other undertakings, as well as mentioning the nature and means of control.

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**3. Personal and financial information on the parties and the above-mentioned undertakings and persons**

3.1. List the undertakings and persons where the other undertakings and persons belonging to the same group and operating in the affected markets hold, directly or indirectly, individually or collectively, 10 % voting right, capital or assets, and list the values held by them by stating in percentage.

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3.2. List the names as well as specifying the positions of the persons who are involved in the boards of directors of the merging or acquiring parties, and also of those who are involved in the boards of supervision or directors of the other undertakings operating in the affected markets.

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3.3. Provide detailed information on the acquisitions made during the last three years by the groups involving the undertakings which are the parties to the merger or acquisition.

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**4. Information on the relevant market**

4.1. List the **relevant product market** where the merger or acquisition is effective and which, you consider, should be taken as the basis by the Board during its assessment of this Notification, and the goods and services considered by you to be directly or indirectly affected from the merger or acquisition which is the subject of the Notification.

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4.2. Identify the **relevant geographic market** where the merger or acquisition which is the subject of the notification is effective and which, you consider, should be taken as the basis by the Board during its assessment of this Notification.

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4.3. Identify the **affected markets** where the merger or acquisition which is the subject of the notification is effective and which, you consider, should be taken as the basis by the Board during its assessment of this Notification.

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4.4. Specify the market shares of the undertakings involved in the merger or acquisition, and the estimated market shares of the other undertakings in the market.

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4.5. Specify the names, addresses, telephone and fax numbers, and the name of an official to be contacted, when required, of the five largest providers providing goods and services to the undertakings which are the parties to the merger or acquisition.

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4.6. The following information on the five largest customers of the undertakings or persons which/who are the parties to the merger or acquisition:

<u>Name-Title</u>	<u>Address</u>	<u>Telephone and Fax No.</u>
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Name of an official to be contacted when required

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**5. Information on the conditions for market entry and the potential competition**

5.1. Are there conditions affecting the entry into the relevant product market? If so, specify them.

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5.2. Over the last five years, has there been any undertaking newly entering into the relevant product market in the geographic area where the parties operate? If so, specify the name, address, telephone and fax numbers and the estimated market share of this undertaking, and the name of one of its officials to be contacted when required.

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**6. Information on the grounds for the Notification**

6.1. Should the Board does not authorize the merger or acquisition which is the subject of the Notification, do you request that this notification made by you be considered as an application for negative clearance or a notification for exemption?

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6.2. Other points you would like to specify about the merger or acquisition which is the subject of the Notification:

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**7. Information on the enclosures with the Notification**

In addition to the foregoing information, the parties enclose with this Notification Form:

7.1. A copy of the final version of the agreement or decision which is the subject of the Notification and which regulates the merger or acquisition,

7.2. A copy of the other documents and instruments pertaining to the merger or acquisition,

7.3. Instruments and documents showing the most recent annual reports and accounts of the merging or acquiring parties,

7.4. Plannings, market surveys and other relevant studies, if any, carried out by the parties or a third party with respect to the activities of the parties.

We hereby declare that the information included in the Notification Form above is complete and correct.

Date

Signature