COMMUNIQUÉ

From the Presidency of the Competition Authority:

COMMUNIQUÉ CONCERNING THE MERGERS AND ACQUISITIONS CALLING FOR THE AUTHORIZATION OF THE COMPETITION BOARD

(COMMUNIQUÉ NO: 2010/4)

Purpose

ARTICLE 1 – (1) The purpose of this Communiqué is to determine and announce the mergers and acquisitions which require notification to and authorization by the Competition Board in order to gain legal validity pursuant to Article 7 of the Act on the Protection of Competition, dated 7/12/1994 and numbered 4054, as well as the procedures and principles concerning the notification of such transactions.

Scope

ARTICLE 2 – (1) The scope of this Communiqué covers the procedures and principles concerning the identification of the mergers and acquisitions which require the authorization of the Competition Board in order to become legally valid within the framework of Article 7 of the Act no 4054, as well as the procedures and principles concerning the notification of such mergers and acquisitions to the Competition Board.

Basis

ARTICLE 3 – (1) This Communiqué has been prepared based on Articles 7 and 27 of the Act no 4054.

Definitions

ARTICLE 4 – (1) For the provisions of this Communiqué, the following definitions apply:

a) Undertakings concerned: Merging persons or economic units in merger transactions; acquiring or acquired persons or economic units in acquisition transactions,

b) Transaction party: the undertaking party to the merger or acquisition,

c) Act: The Act no 4054 on the Protection of Competition,

ç) Board: The Competition Board,

d) Authority: Turkish Competition Authority.

Cases Considered as a Merger or an Acquisition

ARTICLE 5 – (1) Under Article 7 of the Act,

(a) The merger of two or more undertakings, or

(b) The acquisition of direct or indirect control over all or part of one or more undertakings by one or more undertakings or by one or more persons who currently control at least one undertaking, through the purchase of shares or assets, through a contract or through any other means

shall be considered a merger or acquisition transaction, provided there is a permanent change in control.

(2) For the purposes of this Communiqué, control may be acquired through rights, contracts or other instruments which, separately or together, allow *de facto* or *de jure* exercise of decisive influence over an undertaking. In particular, these instruments consist of ownership right or operating right over all or part of the assets of an undertaking, and those rights or contracts granting decisive influence over the structure or decisions of the bodies of an undertaking. Control may be acquired by right holders, or by those persons or undertakings who have been empowered to exercise such rights in accordance with a contract, or who, while lacking such rights and powers, have *de facto* strength to exercise such rights.

(3) Formation of a joint venture which would permanently fulfill all of the functions of an independent economic entity shall constitute an acquisition

transaction under sub-paragraph (b) of paragraph 1 of this Article. In such transactions, each transaction party is considered to be the acquiring party.

(4) Closely related transactions which are tied to conditions or which are realized rapidly through securities within a short period of time shall be considered as single transactions under the scope of this Article.

Cases Not Considered as a Merger or an Acquisition

ARTICLE 6 – (1) Transactions with the following properties fall outside the scope of Article 7 of the Act and such transactions do not require authorization from the Board:

a) Intra-group transactions and other transactions which do not lead to a change in control.

b) In case of undertakings whose ordinary operations involve transactions with securities on their own behalf or on behalf of others; temporarily holding on to securities purchased for resale purposes, provided that the voting rights from those securities are not used to affect the competitive policies of the undertaking which issued the securities in question.

c) Acquisition of control by a public institution or organization by operation of law and due to divestment, dissolution, insolvency, suspension of payment, bankruptcy, privatization or a similar reason.

ç) Occurrence of the situations listed in Article 5 of this Communiqué as a result of inheritance.

Mergers or Acquisitions Subject to Authorization

ARTICLE 7 – (1) In a merger or acquisition transaction as specified under Article 5 of this Communiqué, authorization of the Board shall be required for the relevant transaction to carry legal validity in case,

(a) Total turnovers of the transaction parties in Turkey exceed one hundred million TL, and turnovers of at least two of the transaction parties in Turkey each exceed thirty million TL, or

(b) Global turnover of one of the transaction parties exceeds five hundred million TL, and at least one of the remaining transaction parties has a turnover in Turkey exceeding five million TL.

(2) Except in cases of joint ventures, authorization of the Board shall not be required for transactions without any affected market, even if the thresholds listed in the paragraph 1 of this Article are exceeded.

(3) The thresholds listed in paragraph 1 of this Article shall be re-established every two years after this Communiqué comes into force.

Calculation of turnover

ARTICLE 8 – (1) For the purposes of the implementation of Article 7 of this Communiqué, in the calculation of the turnover of each transaction party, total turnovers of the following are taken into account:

a) Undertaking concerned,

b) Persons or economic units in which the undertaking concerned

1) holds more than half of the capital or commercial assets, or

2) holds the power to exercise more than half of the voting rights, or

3) holds the power to appoint more than half of the members of the board of supervisors, board of directors or the bodies authorized to represent the undertaking, or

4) holds the power to manage operations,

c) Persons or economic units which hold the rights and powers listed in b) over the undertaking concerned,

ç) Persons or economic units over which those listed in (c) hold the rights and powers listed in (b),

d) Persons or economic units over which those listed in (a-ç) jointly hold the rights and powers listed in (b).

(2) In the calculation of the turnovers included in paragraph 1 of Article 7 of this Communiqué, in case of a transfer of those parts of the transaction parties with

or without legal personality, only the turnover of the part transferred shall be taken into account with regards to the transferor.

(3) Turnovers of the economic units with which undertakings concerned jointly hold the rights and powers listed in sub-paragraph (b) of paragraph 1 of this Article shall be calculated by equally dividing by the number of undertakings concerned.

(4) Turnovers of the joint ventures where undertakings concerned hold the right to manage business together with third parties shall be calculated by equally dividing by the number of such right holders.

(5) Two or more transactions under paragraph 2 of this Article, carried out between the same persons or parties within a period of two years, shall be considered as a single transaction for the calculation of turnovers listed in Article 7 of this Communiqué.

(6) Turnover, in accordance with the uniform accounting plan, shall consist of the net sales generated as of the end of the financial year preceding the date of the notification, or, if this can not be calculated, of those generated as of the end of the financial year closest to the date of notification. In the calculation of the turnover, turnovers of persons or economic units listed in paragraph 1 of this Article generated from sales made to each other shall not be taken into account. In the calculation of the turnover, average buying rate of exchange of the Central Bank of Turkey for the financial year the turnover is generated shall be taken into consideration as the rate of exchange.

Calculation of turnover in financial institutions

ARTICLE 9 – (1) Concerning financial institutions, the turnover shall consist of the sum of

a) For banks and participation banks; as included within the income statement requested under the "Communiqué Concerning the Financial Tables to be Disclosed to the Public by Banks, and Related Explanations and Footnotes," issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 10/2/2007 and numbered 26430;

1) Interest and profit sharing income,

2) Fees and commissions collected,

3) Dividend income,

4) Commercial profits/losses (net),

5) Other operational income,

b) For financial leasing, factoring and funding companies; as included within the income statement requested under the "Communiqué Concerning the Uniform Accounting Plan to be Implemented by Financial Leasing, Factoring and Funding Companies and the Explanation Note Thereof, and Concerning the Format and Content of the Financial Tables to be Disclosed to the Public," issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 17/5/2007 and numbered 26525;

1) Real operating income,

2) Other operating income,

c) For intermediary institutions and portfolio management companies; as included within the detailed income statement requested under the "Communiqué Concerning the Principles on Financial Reporting within the Capital Market," numbered Serial:XI, No:29, which was issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 9/4/2008 and numbered 26842;

1) Sales income,

2) Interests, fees, premiums, commissions and other income,

3) Other operating income,

4) Shares in the profits/losses of the investments valued via the equity method,

5) Financial income other than operating income

ç) For insurance, reassurance and pension companies; in accordance with the last financial statements or data either published by the Undersecretariat of Treasury, Association of The Insurance and Reinsurance Companies of Turkey or Pension Monitoring Center, or disclosed to the public by the companies related to the merger or acquisition, to be confirmed by the Undersecretariat of Treasury;

1) Domestic direct premium production for insurance companies (gross),

2) Domestic direct premium production for reassurance companies (gross),

3) Total amount of contributions and total amount of funds in pension companies, as well as domestic direct premium production (gross) for those pension companies which also operate in life insurance,

d) For other financial institutions;

1) Interest and similar income,

2) Income generated from securities,

3) Commissions,

4) Net profit generated from financial activities,

5) Other operation income.

Notification of Mergers and Acquisitions

ARTICLE 10 – (1) Notification may be made jointly by the parties or by any of the parties or the authorized representatives thereof. The notifying party shall be required to inform the other relevant party concerning the situation.

(2) Notification shall be made with the Notification Form enclosed with this Communiqué. Joint notifications shall be made by a single form. The Notification Form and attached documents shall be prepared also in electronic form, and shall be forwarded to the Authority headquarters in Ankara by hand or by mail. In case there are duplicates among the documents, those filing a notification must certify that they conform to the originals.

(3) The notification must include, completely and correctly, all of the information and documents required. Any changes in such information that may arise before the Board comes to a decision must be notified forthwith to the Board. Administrative fines in accordance with Article 16 of the Act shall be imposed on those who include false or misleading information within the Notification Form.

(4) A merger or an acquisition shall not become legally valid until a decision is taken, either explicitly under Article 10 paragraph 1 of the Act or tacitly under

paragraph 2 of the same article, concerning the notification made on the merger or acquisition subject to authorization.

(5) Article 11 of the Act shall be applied in case merger or acquisition transactions subject to authorization are not notified to the Board, or in case the notification is made after the transaction is implemented.

(6) In case mergers or acquisitions subject to authorization are implemented without the authorization of the Board, administrative fines shall be imposed pursuant to Article 16 of the Act. Administrative fines shall be imposed on each of the parties in merger transactions, and on the acquiring party in acquisition transactions.

(7) In merger or acquisition transactions, date of implementation is the date when the control is changed.

Date of validity of the notification

ARTICLE 11 – (1) Notification shall be deemed to be made on the date it is received into the Board records. In case the information requested within the Notification Form is false, misleading or missing or in case there are changes to this information, notification shall be deemed to be made on the date this information is completed or amended.

(2) In case the opinion of a public institution or organization is required in accordance with legislation, the time periods specified in Article 10 of the Act shall commence after the relevant opinion is received into the Board records.

Announcement of mergers and acquisitions

ARTICLE 12 – (1) The Authority shall announce the notified mergers and acquisitions on its website, together with the undertakings concerned and their fields of operation.

Assessment of mergers and acquisitions

ARTICLE 13 – (1) In assessing mergers and acquisitions, the structure of the relevant market, actual and potential competition among domestic- and foreign-based

undertakings, the status of the undertakings within the market, their economic and financial power, their alternatives sources for suppliers and customers, their ability to access sources of supply, barriers to entry into market, supply and demand trends, consumer interests, activities benefiting the consumers and other issues shall be taken into account in particular.

(2) Concerning the creation of joint or separate dominant positions, or the strengthening thereof, mergers and acquisitions that lead to a significant decrease in competition in all or part of the country shall be prohibited.

(3) The formation of a joint venture which has the goal or effect of limiting competition among undertakings and which would permanently fulfill all of the functions of an independent economic entity shall also be assessed within the framework of Articles 4 and 5 of the Act.

(4) The Board shall either allow the merger and acquisition transactions that fall under the scope of Article 7 of this Communiqué or, in case it decides to take the transaction under final examination, concurrent with its preliminary objection it shall duly notify the relevant parties, together with any other measures it deems necessary, that the merger or acquisition transaction has been suspended until the final decision and may not be implemented. In this case, to the extent they are relevant, provisions of Articles 40 to 59 of the Act shall be applied. The Board may specify conditions and obligations in its authorization decision.

(5) Authorization granted by the Board concerning the merger and acquisition shall also cover those restraints which are directly related and necessary to the implementation of the transaction. The principle is that transaction parties should determine whether the restraints introduced by the merger or acquisition exceed this framework.

Commitments

ARTICLE 14 – (1) In order to eliminate any competition problems that may arise under Article 7 of the Act, undertakings may give commitments concerning the merger or acquisition. Such commitments by undertakings must be capable of completely eliminating competitive problems.

(2) In its authorization decision, the Board may specify conditions and obligations aimed at ensuring that any such commitments are fulfilled.

(3) Commitments may be undertaken during the preliminary examination or final examination phases. In case the commitment is given during the preliminary examination phase, the notification shall be deemed to be made on the date the text of the commitment is received by the Authority.

Request for Information and on-the-spot inspection

ARTICLE 15 – (1) When assessing the merger or acquisition, the Board may, if it deems necessary, request information under Article 14 of the Act from other persons related to the merger or acquisition, and from third parties such as the customers, competitors and suppliers of the parties, in addition to the parties to the merger and or acquisition.

(2) If it deems necessary, the Board may conduct inspections at undertakings and associations of undertakings under Article 15 of the Act.

Re-examination power of the Board

ARTICLE 16 – (1) In the following cases, the Board shall re-examine a merger or acquisition concerning which there is a previous decision stating, explicitly under paragraph 1 of Article 10 of the Act or tacitly under paragraph 2 of the same Article, that the merger or acquisition is not in violation of Article 7 of the Act:

a) If the decision was taken as a result of false or misleading information supplied by the transaction parties, or

b) If the conditions or obligations tied to the decision were not fulfilled.

Legislation abolished

ARTICLE 17 – (1) Communiqué no 1997/1 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board, published in the Official Gazette dated 12/8/1997 and numbered 23078, has been abolished.

TEMPORARY ARTICLE 1 – (1) References in other legislation to the Communiqué no 1997/1 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board shall be considered to be made to this Communiqué.

TEMPORARY ARTICLE 2 – (1) For notifications made to the Board before this Communiqué's date of entry into force, it is sufficient to fill the Notification Form enclosed with the Communiqué no 1997/1 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board.

Entry into force

ARTICLE 18 – (1) This Communiqué shall enter into force on 1/1/2011.

Execution

ARTICLE 19 – (1) The provisions of this Communiqué shall be executed by the President of the Competition Authority.

ATTACHMENT

NOTIFICATION FORM CONCERNING MERGERS AND ACQUISITIONS

(NOTIFICATION FORM)

(1) All information requested within the notification form must be completely filled. However, information requested in Articles 6, 7 and 8 of the Notification Form is not required,[1]

a) In case one of the transaction parties shall acquire full control over an undertaking in which it had joint control, or,

b) For any affected market within Turkey and in terms of geographical markets; in case the sum of the market shares of the transaction parties are less than twenty per cent for horizontal relationships, and the market share of one of the

transaction parties is less than twenty five per cent for vertical relationships, in relation to the affected markets in question.

(2) In case it is discovered that the above conditions are not met or, in exceptional circumstances, for the purposes of a complete examination of competitive concerns even when these conditions are met, the Board may request that the Notification Form be completely filled. If the Board decides that the Notification Form should be completed, it informs the notifying party and its representatives in writing. In this case, the Notification Form is deemed to be incomplete and the notification is considered to be made when the completed copy is received by the Authority.

(3) Notification may be made by any of the parties or the representatives thereof. The notifying party must inform the other relevant party of the situation. Notifications made by unauthorized persons are deemed invalid.

(4) A copy of the final or current version of the agreement concerning the notified merger or acquisition should be enclosed with the Notification Form. If the agreement in question was not drawn in Turkish, a Turkish translation must be forwarded, as well. The Board shall decide based on the Turkish translation. Each page of any translation not done by a certified translator shall be approved by an undertaking official or representative.

(5) The notification must completely and correctly include all requested information and documents. In case the parties do not have some of the information and documents, the parties must state the reason for this, supply the soundest estimated data concerning the information in question, and disclose the sources for these estimated data. The parties must also clarify from where the information or documents they do not have available may be gathered.

(6) Fines under Article 16 of the Act shall be imposed on those who make false or misleading statements within the Notification Form.

1. Scope of the Merger or Acquisition

1.1. Provide information on the merger or acquisition transaction, including the undertakings concerned, nature of the transaction (merger, acquisition or joint venture), affected markets and the field of activity of the transaction parties.

1.2. For purposes of using for the publication of the merger or acquisition transaction on the Authority's website, summarize the information requested under point 1.1., without including any trade secrets.

2. Parties

2.1. Write the name-trade name, address, telephone and fax numbers, and if available, the internet address of the notifying party (parties).

2.2. In cases where the notification is made by a representative, write the name, last name, address, telephone and fax numbers, and the e-mail address of the representative.

2.3. Write the name-trade name, address, telephone and fax numbers, and if available, the internet address of the other party (parties) to the merger or acquisition.

2.4. Write the name, last name, duty, address, telephone and fax numbers, and the e-mail address of an authorized person from the parties to the merger or acquisition, who may be contacted if necessary.

2.5. Write the correspondence address.

3. Other information regarding the merger or acquisition

3.1. Write the important transactions foreseen for the realization of the merger or acquisition, and their planned or anticipated date.

3.2. State the economic justification of the merger or acquisition transaction.

3.3. Write the turnovers of the transaction parties in detail, within the context of Article 8 of the Communiqué.

3.4. State the value of the merger or acquisition transaction to be notified (sales amount or the value of the assets within the scope of the transaction, as the case may be).

3.5. Provide information on the mergers or acquisitions realized by the transaction parties in the affected markets in the last three years.

4. Structure of control

4.1. Explain the ownership, control and management structure of the undertakings concerned, prior to and after the transaction.

4.2. As regards the merger or acquisition transaction, indicate:

a) Each person or economic entity directly or indirectly controlling the undertakings concerned,

b) Each person or economic entity directly or indirectly controlled by the undertakings concerned,

c) Each person or economic entity that is directly or indirectly controlled by those specified under (a) and that operates in the affected markets,

also stating the nature of control and the instruments ensuring control, and using an organizational chart if the need be.

4.3. State the other persons or economic entities ten or more percent of whose voting rights, capital or property holdings are owned by the transaction parties directly or indirectly and that operate in the affected markets, and provide information on their capital, shareholding and ownership structure.

4.4. Write the names of those persons who take part in the management structure of the transaction parties while at the same time taking part in the audit or management boards of other undertakings that operate in the affected markets, also stating their duties.

5. Market definitions[2] and market shares

Provide the requested information bearing in mind the definitions below.

Relevant product market

In determining the relevant product market, the market made up of all of the goods or services that are accepted as exchangeable or substitutable in the eyes of the consumer, in terms of price, purposes of use and qualities, are taken into account; other factors that might affect the determined market are also considered.

Relevant geographic market

Relevant geographic market refers to those regions where undertakings operate for the supply and demand of their goods and services and that are readily distinguishable from the neighboring regions because the competitive conditions are sufficiently homogenous, and especially, the competitive conditions are noticeably different from those in the neighboring regions. In making a geographic market assessment, aspects particularly taken into account are the properties of the relevant goods and services, consumer preferences, entry barriers, and the existence of a noticeable difference between the relevant region and the neighboring regions in terms of the market shares of the undertakings or prices of goods and services.

Affected markets

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 in (vertical relationship),

constitute the affected markets.

5.1. Define the affected markets that you think the Board should take as the basis while evaluating this notification and state your justifications. Write the NACE Rev.2 codes corresponding to these markets.[3]

5.2. Define the relevant geographic markets from the point of the affected markets and state your justifications.

5.3. Provide information on;

a) The overall size of the market in terms of sales value and sales amount (in units), (indicating the source),

b) Sales value and sales amount information, together with the market shares, of the transaction parties,

c) Trade names and market shares of those competitors that have more than five percent market share (indicating the source),

ç) Contact information of the competitors stated under (c),

as pertaining to the last three years for each affected market from the point of Turkey and the relevant geographic markets.

5.4. Apart from the affected markets, define the scope of the product and geographic scope of the markets where the transaction to be notified might have a significant impact. The situations below can be given as examples of such markets:

a) One of the transaction parties has more than twenty five percent market share and another one of the transaction parties is a potential competitor for that market. An undertaking can be accepted as a potential competitor especially if it made plans for market entry, or developed these plans or attempted to realize them in the last two years.

b) One of the transaction parties has more than twenty five percent market share and another one of the transaction parties holds important intellectual property rights for that market.

c) One of the transaction parties is present in a product market that is characterized as a neighboring market closely related to the product market where another transaction party operates, and the individual or collective market shares of the parties in any one of these markets is above twenty five percent. If the products complement one another[4] or if they belong to the same product range which is generally purchased by the same customer group for the same final use, the product markets are accepted as neighboring markets that are closely related.

6. Information on the affected markets

6.1. Provide information on the import conditions (if any, quota or tariff information or other restrictions) in relation to the affected markets, and state the import amounts of the undertakings concerned as well as the total import amount pertaining to the last three years.

6.2. Write the name, address, telephone and fax numbers, and if available, the internet address of the largest five suppliers providing goods or services to the transaction parties in the affected markets, together with the name and last name of an authorized person thereof who can be contacted where necessary.

6.3. Write the name, address, telephone and fax numbers, and if available, the internet address of the largest five customers of the transaction parties in the affected markets, together with the name and last name of an authorized person thereof who can be contacted where necessary.

6.4. Provide information in relation to the supply structure in the affected markets encompassing the following:

a) provide information on the distribution channels.

b) provide information on the (estimated) total capacity in Turkey in the last three years. State the production capacity, capacity utilization rates and location of the production facilities for each of the transaction parties pertaining to this period.

c) State (if known) whether any one of the undertakings concerned or their competitors have plans to expand or reduce their production or sales capacity in the near future.

6.5. Provide detailed information on the demand structure in the affected markets (in a way to cover the important points regarding the demand structure of the market such as the stages of market [like growth, maturity and decline], the estimated growth rate of demand, customer preferences [within the framework of issues such as pre- and after sales services, brand loyalty and network effects], customer groups, the regional distribution of customers, exclusive distribution agreements and the importance of long-term agreements).

6.6. Provide information on the associations of undertakings in the affected markets. State the name, address, telephone and fax numbers of a person who may be

contacted in these associations, and if available, the internet address of the association of undertaking.

7. Market entry conditions and potential competition

7.1. Provide information on the conditions of entry into the affected markets and potential competition (legal entry barriers, economies of scale, network effects, restrictions arising from intellectual property rights, access to raw material and sources of supply, production, establishment of distribution systems, advertisement, brand loyalty, etc.).

7.2. If there is an undertaking that newly entered into the affected markets in the last five years, state the name, address, telephone and fax numbers, and the estimated market share of this undertaking, together with the name and last name of an authorized person thereof who may be contacted where necessary.

7.3. If it is known that a new undertaking will enter the affected markets in the near future, state the name and contact information of this undertaking.

8. Efficiency gains

If you think that pro-consumer efficiencies will arise as a result of the merger or acquisition, provide the information requested in this section.

8.1. State the efficiencies that are expected to arise as a result of the merger or acquisition transaction, possibly in a quantified form.

8.2. For every efficiency expected to arise as a result of the merger or acquisition transaction;

a) State how the merger or acquisition transaction will ensure this efficiency, and the duration and costs necessary for the efficiency gain.

b) Provide information on how the efficiency is measured.

c) Explain in detail how the consumers will benefit from the efficiency.

9. Joint ventures

9.1. If at least two of the parent undertakings operate in the same market as the joint venture, or in the downstream or upstream market of this market, or in a neighboring market that is closely related to this market;

a) If you think that the formation of the joint venture does not result in a cooperation between independent undertakings that is restrictive of competition within the framework of Article 4 of the Act, explain the grounds for your opinion.

b) Without prejudice to your opinion stated under (a), explain the reasons why the transaction should be granted exemption within the framework of Article 5 of the Act.

10. Other issues concerning the notification

10.1. Write the other issues you would like to state regarding the merger or acquisition to be notified.

11. Annexes to the notification

In addition to the information given above, the parties shall attach to this Notification Form;

11.1. a copy of the final or current form of the agreement to be notified that lays out the merger or acquisition,

11.2. a copy of the other documents relating to the merger or acquisition,

11.3. documents that show the latest accounts of the undertakings in relation to the information requested under Article 3.3 of the Notification Form and that have been approved by the official authorities.

11.4. planning, market inquiries and other studies (if available) belonging to the undertakings concerned, in relation to the affected markets, conducted by the transaction parties or third parties,

11.5. If a commitment is to be proposed in relation to the merger or acquisition, a signed commitment text that covers it in detail,

11.6. documents showing that the notifying person is authorized.

We represent that the information provided on the Notification Form is accurate.

Name, last name

Date/ signature

GENERAL REASONING

Article 7 of the Act No. 4054 on the Protection of Competition prohibits those merger or acquisition transactions that are capable of resulting in significant lessening of competition in a market for goods or services within part or whole of the country, from the point of creation or strengthening of dominant position. The same article further provides that certain kind of transactions shall be notified, in advance, to the Competition Board for authorization so that they can gain legal validity, and that the Board shall announce by issuing communiqués which kind of mergers and acquisitions require notification to and authorization from the Board so that they can gain legal validity.

The control of merger and acquisition transactions is one of the most important instruments of competition policy in our country, as is the case throughout the world. Within this framework, the first communiqué issued by the Competition Board following its establishment, the Communiqué No 1997/1 “on the Mergers and Acquisitions Calling for the Authorization of the Competition Board”, clarified which merger and acquisition transactions are subject to notification and authorization. However, during the period that passed from the enforcement date of the Communiqué No. 1997/1, both the important changes to the Act No. 4054 and the Turkish economy, as well as the problems encountered in practice, necessitated the issuance of a new communiqué.

Various amendments have been made to the Act No. 4054, which is the basis for the Communiqué No. 1997/1, since the date it was enforced, and particularly with the amendment made in 2008, the amount of fine to be given in case merger and acquisition transactions that are subject to authorization are realized without authorization, has been increased to an important extent. Therefore, knowing in which cases a notification is to be made became more important from the point of undertakings, so that they do not face high fines.

The Communiqué No. 1997/1 envisages a threshold system also involving market shares, for the determination of mergers and acquisitions to be subject to authorization; therefore, sufficient legal certainty has not been achieved neither for practitioners nor for the undertakings. Within this framework, the market share-based

threshold has been dismissed and a turnover-based notification threshold has been introduced with the new Communiqué, in a way to ensure legal certainty.

On the other hand, in light of the enforcement experience of the Competition Authority to date, certain shortcomings and flaws have been seen in the current system and a necessity arose to review these as a whole. In this framework, new arrangements have been adopted regarding the procedures and principles of notification, as well as regarding evaluation. At the same time, important changes have also been made to the Notification Form which is annexed to the Communiqué. The obligation to fill out certain sections of the Notification Form has been removed for those mergers and acquisitions that are not likely to be problematic for competition and thus an easier application option has been provided for undertakings.

Within the framework of the explanations given above, taking account of the developments concerning the country's economy and the Act, as well as the problems encountered in practice, the Competition Board decided that this Communiqué be published.

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[1] Affected markets, horizontal and vertical relationships are defined in Article 5 of the Notification Form.

[2] For more information on this, see the Guidelines on the Definition of Relevant Market.

[3] For NACE Rev.2 codes, see www.rekabet.gov.tr

[4] If the utilization (consumption) of a product essentially requires the utilization (consumption) of another, for instance such as staplers and wire staples, and printers and printer cartridges, these products are accepted as complementary products.