

Turkish Merger Control Regime in Technology Markets: Defining the Limits

Recently, several competition authorities worldwide have increased merger control scrutiny in technology markets. The European Commission encourages national competition authorities to refer to transactions falling below the European Union and national turnover thresholds. The Digital Markets Act, which entered into force in November 2022, obliges large digital platforms (i.e., gatekeepers) to notify the European Commission of mergers or acquisitions regardless of turnover thresholds. Additionally, German and Austrian competition authorities have introduced transaction value thresholds alongside turnover thresholds to catch small-scaled but prominent transactions in the technology markets.

Following this global trend, the Turkish Competition Authority ("TCA") introduced a turnover threshold exception for acquisitions of technology undertakings by amending the Communiqué Concerning the Mergers and Acquisitions Requiring the Approval of the Competition Board ("Communiqué") in March 2022. Under this amendment, the TRY 250 million local turnover thresholds do not apply to transactions involving the acquisition of a technology undertaking that operates, engages in R&D activities or provides services to users in Türkiye. Since the amendment, acquisitions of technology undertakings have come under higher scrutiny and may require mandatory filing in Türkiye even if the target company has very limited presence in the country.

The definition of "technology undertaking" is critical for determining whether a transaction requires mandatory merger filing in Türkiye. The Communiqué defines technology undertakings as "companies active in digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals, and health technologies". However, this definition is vague and requires further guidance to identify its limits.

The TCA has published over 50 decisions providing guidance on the interpretation of technology undertakings. In some cases, the categorization of companies within the technology undertaking concept is more evident, while in others, the Board opts for a broader interpretation. For instance, in one decision, the Board categorized a company primarily selling investment products through brokers as a technology undertaking solely because it provides life insurance services via a digital platform (The Board's Decision dated May 18, 2022, and numbered 22-23/372-157). In another decision, the Board determined that a company



Neyzar Ünübol

nunubol@kolcuoglu.av.tr



Esen Çakır

ecakir@kolcuoglu.av.tr

primarily engaged in the financing and management of other companies is a technology undertaking due to its subsidiaries' online platform services for real estate activities (The Board's Decision dated September 7, 2023, numbered 23-41/800-284). Therefore, the TCA considers that the target is a technology undertaking when its commercial activities involve a technology dimension, but its primary activity does not.

In a subsequent decision, the Board classified a distributor of health technology products as a technology undertaking, although the company was not involved in the development or production of the relevant products (The Board's Decision dated May 25, 2023, numbered 23-24/452-156). Furthermore, the Board categorized the acquisition of intellectual property rights related to software products (and not the acquisition of a technology undertaking itself) as a technology undertaking acquisition (The Board's Decision dated August 31, 2023, and numbered 23-40/780-273). Thus, the TCA considers that the acquisition of intellectual property rights can be within the scope of technology undertakings.

Based on the above, it is possible to comment that the Turkish merger control regime tends to interpret the "technology undertaking" definition broadly. Published decisions still do not provide sufficient guidance on the limits of this definition. Thus, it is crucial to thoroughly assess the target's activities to determine whether a transaction must be filed in Türkiye.





Practice Area News

The Turkish Competition Authority Published its Decision Statistics for the First Half of 2024 – Merger Control. In July 2024, the TCA published its decision statistics for the first half of 2024. According to the statistics, during this period, the TCA reviewed **141** mergers and acquisitions in total. **127** of these transactions were cleared unconditionally by the TCA. On the other hand, **3** transactions were cleared conditionally with remedies. The other **13** transactions were considered out-of-scope or not subject to the TCA's approval.

The Turkish Competition Authority Published its Decision Statistics for the First Half of 2024 – Investigations. According to the TCA's decision statistics, during the first half of 2024, the TCA rendered **96** decisions regarding the breach of the Law No. 4054 on the Protection of Competition. In 10 decisions, the TCA applied an administrative fine amounting to **TRY 4.15 billion** (approximately **USD 131.5 million**) in total. During this period, **66** of the investigations conducted by the TCA ended with settlement and **11** ended with commitments.

TCA's Investigation Against Leading Company in the Electric Vehicle Charging Sector. In July 2024, the Board launched an investigation against ZES Dijital Ticaret Anonim Şirketi ("ZES") and Otoyol İşletme ve Bakım Anonim Şirketi ("OIB"). The TCA will assess whether ZES and OIB restricted competition with their exclusivity practices in the O-5 highway and whether OIB discriminated against companies active in the charging network operation market. This is the first investigation in the newly developing electric vehicle charging sector.

Google Avoids Fine in the Fifth TCA Investigation. In July 2024, the Board decided that Google did not abuse its dominant position in the general search services market by using search features in the general search results page and thus, ended the investigation without imposing an administrative fine. Previously, the Board had fined Google **TRY 1.25 billion** (approximately **USD 39.2 million**) in total in four separate antitrust investigations concerning various abusive conducts.

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- Ece Çağırın, Senior Associate – Mergers and Acquisitions, Capital Markets
- Ceyda Betül Gülmezoğlu, Senior Associate – Mergers and Acquisitions

We congratulate our colleagues on these well-deserved achievements.



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Senior Associate
Mergers and Acquisitions,
Capital Markets



Ceyda Betül Gülmezoğlu
Senior Associate
Mergers and Acquisitions