

TURKISH MERGER CONTROL RULES ON NOTIFICATION OF EXTRATERRITORIAL JOINT VENTURES

Recently, the Turkish Competition Board ("**Board**") published its clearance decision on the establishment of a joint venture between Mercedes-Benz Group China Ltd. ("**Mercedes-Benz**") and BMW Brilliance Automotive Ltd. ("**BMW**") to develop and operate a high-speed charging infrastructure network in China for battery electric vehicles ("**BEVs**"). The Board's decision¹ ("**Decision**") provides an important example of how Turkish merger control regime's reach may extend to joint ventures lacking direct presence within the Turkish market.

1. Turkish Merger Control Regime and Joint Ventures

Under Law No. 4054 on the Protection of Competition ("**Competition Law**"), certain mergers and acquisitions must obtain the Board's clearance to be legally valid. The transactions that require the Board's clearance are determined under Communiqué No. 2010/4 on Mergers and Acquisitions Subject to the Authorization of the Competition Board (the "**Communiqué**"). According to the Communiqué, "*...formation of a joint venture which would permanently fulfill all of the functions of an independent economic entity...*" will be considered as an acquisition and each parent undertaking will be regarded as an acquiring party. Accordingly, formation of a joint venture, even if it will not have any activities in Türkiye, must be notified to and cleared by the Board, if the parent undertakings turnovers are above the applicable thresholds.

However, the Board's clearance is required for the formation of joint ventures that are fully functional and jointly controlled by the transaction parties. According to the Board's decisions, the

¹ The Board's decision dated 11 January 2024 and numbered 24-03/40-13.

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conditions for a joint venture to be considered “full-functional” are **(i)** having sufficient resources to operate independently, **(ii)** operating beyond a specific function of the parent companies, **(iii)** not being dependent on the parent companies regarding its sales and purchasing activities, and **(iv)** operating on a lasting basis in the market.

2. The Board’s Decision on the Mercedes-Benz and BMW Joint Venture

In its Decision, the Board first examined the details of the joint control structure and governance arrangements of the joint venture. In this regard, both Mercedes-Benz and BMW will hold a 50% interest in the joint venture and major decisions will require collaboration between the two parties. Therefore, the Board concludes that this governance arrangement ensures that the joint venture will operate under the joint control of both parent companies.

Moreover, under the joint venture agreement, Mercedes-Benz and BMW committed to contributing cash to enable the joint venture to hire staff, acquire land, and purchase equipment necessary to establish and operate high-speed charging points in China. Also, the joint venture will not perform any specific functions for its parent companies, and transactions between the joint venture and parent companies will occur on market terms. Therefore, the Board found that the joint venture will perform all the functions of an autonomous economic entity on a lasting basis, qualifying it as a full-function joint venture.

Accordingly, the Board determined that the turnover thresholds outlined under the Communiqué were exceeded, making the transaction subject to its approval. Although the joint venture is intended to operate exclusively in China, with no assets or activities within Türkiye, the Board still found that the transaction fell within its jurisdiction. In this context, the Decision reflects the Board’s authority to control transactions involving undertakings that operate in Türkiye, even if the joint venture itself has no direct impact on Turkish markets. Ultimately, the Board approved the transaction, noting the absence of any horizontal or vertical effects in the Turkish market.

3. Consequence of Failing to Notify Extraterritorial Joint Ventures

According to the Competition Law and the Communiqué, if a transaction subject to the Board’s approval is closed before obtaining the clearance decision (i.e., gun-jumping), the Board is entitled to impose an administrative monetary fine on the acquirer in case of acquisitions. For joint ventures, since each of the parties to the transaction is considered an acquirer, the Board may impose an administrative fine on the joint venture’s all parent undertakings. The administrative monetary fine amounts to 0.1% of the parties’ latest annual turnover in Türkiye. In addition to the administrative monetary fine, a joint venture which is subject to the Board’s approval is legally invalid with all its legal consequences until the Board renders a clearance decision.

Even if a joint venture escapes scrutiny when first established, it may come to the attention of the Turkish Competition Authority (“**TCA**”) through subsequent notifications by the parties or an *ex*

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officio investigation by the TCA. For example, in a recent decision², the Board imposed administrative monetary fines on the parent undertakings of a previously established joint venture which is operating in Germany. The Board found out about the unnotified joint venture almost three years after its establishment, when a subsequent transaction concerning a new party contributing to the joint venture was notified.

Conclusion

In conclusion, the Decision regarding the Mercedes-Benz and BMW joint venture highlights the Board's broad interpretation of its jurisdiction, which reinforces that even foreign-based joint ventures without any business activities in Türkiye may still be subject to the Board's scrutiny based on their parent undertakings. In this context, the Decision serves as a substantial reminder for multinational corporations that Turkish merger control regime may require mandatory notification and clearance for formation of joint ventures without any direct or indirect revenues from or operations in the Turkish market.

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² The Board's decision dated 28 July 2020 and numbered 20-36/483-211.