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Recent Turkish Competition Board decisions on technology undertakings: Is there light at the end of the tunnel?

In March 2022, the Turkish Competition Authority (“**Authority**”) amended Turkey’s merger control regime legislation. Together with a significant increase concerning turnover thresholds, the newly introduced definition of “technology undertakings” has piqued much interest. Recent Turkish Competition Board (“**Board**”) decisions are the first steps to clarify this definition.



What was this definition about and why is it important?

Communiqué No. 2022/2 amending Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (“**Communiqué No. 2010/4**”) indicated that the threshold for the target company’s Turkey-related turnover is not applicable in acquisitions of “technology undertakings”.¹ Therefore, most acquisitions of technology undertakings require filing in Turkey (you can find our brief explanation [here](#)).

In the Communiqué, the Authority noted that the technology undertaking exemption applies to undertakings or related assets that (i) are active in the Turkish geographical market, (ii) conduct R&D activities in the Turkish market, or (iii) provide services to users in Turkey in the fields of:

- i. digital platforms,
- ii. software and gaming software,
- iii. financial technologies,
- iv. biotechnology,
- v. pharmacology,
- vi. agrochemicals and
- vii. health technologies.

This broad definition in the new legislation requires a case-by-case analysis to determine whether or not an undertaking is a “technology undertaking”. Since the amendments came into force in May 2022, the Board has issued certain decisions concerning technology undertakings, and the reasoned decisions for some of them have been recently published.



Cinven Capital/International Financial Group Limited (IFGL)

The first of these decisions concerns the acquisition of an undertaking that provides savings and investment products through life insurance packages to individual investors through a local broker. It is noted in the decision that as a small part of its activities in the life insurance sector in Turkey, the target undertaking provides services to its customers with digital access via digital platforms. Although this activity is quite limited—there are approximately 230 registered users in Turkey who have access to and use these digital platforms—the Board found that the target falls within the scope of the definition of a “technology undertaking”.

1. A transaction requires approval of the Competition Board if one of the following thresholds under the amended Article 7(1) of Communiqué No. 2010/4 is triggered:
 - a) The aggregate Turkish turnover of the transaction parties exceeds TL 750 million (approx. EUR 71.9 million or USD 84.8 million) and the Turkish turnover of at least two of the transaction parties each exceeds TL 250 million (approx. EUR 23.9 million or USD 28.2 million), or
 - b) (i) The Turkish turnover of the transferred assets or businesses in acquisition exceed TL 250 million (approx. EUR 23.9 million or USD 28.2 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (approx. EUR 287.8 million or USD 339.6 million), or
(ii) the Turkish turnover of any of the parties in mergers exceeds TL 250 million (approx. EUR 23.9 million or USD 28.2 million) and the worldwide turnover of at least one of the other parties to the transaction exceeds TL 3 billion (approx. EUR 287.8 million or USD 339.6 million).
2. The Board’s decision dated 18.05.2022 and numbered 22-23/372-157

Astorg Asset/Corden Pharma

The second relevant decision³ is a rather straightforward case with regards to the technology undertaking definition. This transaction concerns the acquisition of an undertaking that produces APIs (Active Pharmaceutical Ingredients) and ready-to-use drugs on behalf of pharmaceutical companies. The Board found that, as the target is active in pharmacology, the technology undertaking exemption applies and the transaction is subject to approval. This is a case where the turnover thresholds would not have been triggered without the exemption.

Providence/Airties

In another brief reasoned decision of the Board,⁴ an undertaking that provides residential Wi-Fi solutions to broadband operators and provides software services that enable broadband operators to deliver and manage Wi-Fi networks to residential customers was defined as a technology undertaking, considering the software services offered.

CD&R/TPG/Covetrus

The latest relevant Board decision contains a pertinent assessment regarding the definition of a “technology undertaking” related to an undertaking providing animal health products and related services.⁵ The Board states in its decision that the target undertaking provides animal health technology and services and also operates in the wholesale of animal health consumables. Therefore, considering its activities in the pharmaceutical and software sector for animals, the Board assessed that the target’s field of activity may be included in the fields of “health technologies” and “pharmacology” and that the transaction under review is subject to the Board’s approval.

Conclusion

Considering that the definition “technology undertaking” in the Communiqué is quite extensive and that the Authority to date has not provided any guidelines, in some cases it is difficult to determine if an undertaking is within the scope of the definition or not. There is still some way to go before we can give more definitive answers to what constitutes a technology undertaking in Turkey.

As the assessments thus far regarding the definition of technology undertakings have been a paragraph or shorter, the decisions of the Board do not shed much light on their thought process or on the scope of the definition. Any acquisition in Turkey that may concern a technology undertaking still necessitates an examination according to the particular facts relating to each situation. We expect this issue to continue to be a hot topic for Turkey’s merger control regime as the Authority is focusing on these innovation-heavy markets.



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3. The Board’s decision dated 02.06.2022 and numbered 22-25/398-164

4. The Board’s decision dated 02.06.2022 and numbered 22-25/403-167

5. The Board’s decision dated 07.07.2022 and numbered 22-32/512-209