

15 January 2013

## Competition Law Update – Amendment to Mergers & Acquisition Thresholds

The Communiqué on Amendment to the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board, No:2010/4 (“**Communiqué 2012/3**”) has been published in the Official Gazette dated 29 December 2012 and numbered 28512. According to the Communiqué 2012/3, the thresholds determining the mergers and acquisitions which would be subject to the authorization of the Turkish Competition Board (“**Board**”) have been amended as follows;

**(a) Domestic Mergers and Acquisitions:** There is no change on the turnover figures. The total turnovers of the transaction parties in Turkey should still exceed TL 100,000,000, and turnovers of at least two of the transaction parties in Turkey each should still exceed TL 30,000,000.

**(b) Cross-border Mergers and Acquisitions:** Global turnover of one of the transaction parties should still exceed TL 500,000,000. The turnover of one of the remaining transaction parties, however, has been increased from TL 5,000,000 up to TL 30,000,000. Therefore, if the global turnover of one of the transaction parties exceeds TL 500,000,000 and the turnover of one of the remaining transaction parties exceeds TL 30,000,000, the transaction will be subject to the authorization of the Board.

The main reason of such amendment is to better identify the transactions which might have a significant effect over the relevant market. Such relatively low threshold of TL 5,000,000 has been highly criticized in the past and it was asserted that if the global turnover of one of the transaction parties is exceeded in a cross-border merger or acquisition, the transaction becomes almost automatically subject to the authorization of the Board. Consequently, even small transactions which do not have a significant effect over the relevant market must be notified to the Board which results in a heavy workload for the Board and burdensome procedures for the transaction parties.

In addition to the above, the Communiqué 2012/3 has also removed the exception of affected markets. As per the abolished provision, the authorization of the Board was not required for transactions which do not have any effect on any affected market, even if the thresholds are exceeded. For example, if a biscuit production factory acquires a cement production factory, it was considered by the Board that there is no affected market, as there are no vertical or horizontal overlaps between these two markets. Such exception, however, is now deleted and therefore, according to the Communiqué 2012/3, if the above thresholds are exceeded, the transaction will be subject to the approval of the Board, regardless of the affected market analysis.

Finally, it should also be emphasized that the above mentioned amendments will enter into force on and be effective as of February 1, 2013.

*Güner Law Office was established in 1996 and has since grown into one of the major corporate, M&A, banking, litigation, energy, TMT and capital markets practices in Turkey. The office is headed by Ece Güner.*

**Güner Law Office...**

Levent Caddesi Alt Zeren Sokak No.7

Levent Istanbul 34330 Turkey

Tel: +90 212 282 4385

Fax: +90 212 282 4305

[info@guner.av.tr](mailto:info@guner.av.tr)

[eg@guner.av.tr](mailto:eg@guner.av.tr)