

“Mergers and Acquisitions Overview Report” for 2023 has been published

“Mergers and Acquisitions Overview Report” (Report) regarding transactions of previous year has been published on website of Turkish Competition Authority (Administration). The report inclusively presents statistical data of 2023 transactions and their respective comparisons with previous years.

As it is known, notification thresholds were updated approximately up to eight times in May 2022 and afterwards, number of examined transactions has been decreased to 245 from 309. In 2023, this number is realized as 217 with a decrease at a rate of 12%. In this respect, although of course it is not the mere reason, it can be stated that the objective of reducing the workload in terms of transactions subject to notification has been achieved to some extent with the updates made in the thresholds. It can also be stated that this number is close to the average number of last decade (219).

Other developments come to the fore in terms of merger and acquisition transactions in 2023

The penalty imposed to Elon Musk can undoubtedly be considered one of the most striking decisions on the merger and acquisition agenda of 2023. Since Elon Musk took over Twitter without the permission of the Administration, it was decided to impose an administrative fine on Elon Musk, who is the transferee, in the amount of one thousandth of the gross income obtained in Türkiye for 2022¹.

The Fraport/Potas decision² taken last year also attracts attention because it is a conditionally permitted transaction. The relevant transaction relates to the transfer of the construction and operation rights of the fuel supply and storage facilities that Fraport TAV will have within Antalya Airport during the new concession period to Potas. In this context, in summary, the following commitments presented by the parties were deemed sufficient by the Administration and the transaction was permitted:

- Regulations to provide open access to storage, sales and supply activities,
- Contract provisions stating that there will be no discrimination between enterprises,
- Contract provisions regarding how the storage tariff will be determined and the maximum amount it can be increased.

Another important amendment made in the Communiqué No. 2010/4 recently was the regulation that exempted technology enterprises from certain notification thresholds. A threshold of 250.000.000 TRY is not sought for the acquisition of technology enterprises operating in Türkiye or having R&D activities or providing services to users in Türkiye. In the Communiqué, such “technology undertakings” have been defined as undertakings or related assets operating in the fields of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agrochemicals and health technologies.

¹ Musk/Twitter; Decision numbered 23-12/197-66.

² Fraport/Potas, Decision numbered 23-22/426-142.

The “Merger and Acquisition Overview Report” provides a detailed evaluation of the transactions carried out last year. There appears to be a decrease in the number of transactions reported in 2023. Although not the only reason for this decrease, increases in notification thresholds may have played a role. However, turnover growth introduced by inflationary economic conditions may increase the number of transactions subject to notification in the upcoming period. Likewise, concentration transactions of foreign undertakings with limited operations in Türkiye and with foreign exchange-based balance sheets may also be subject to more frequent reporting, as average dollar and euro exchange rates nearly increased at a ratio of 45% this year compared to previous period³. Leaving the economic conjuncture aside, we hope that competition law agenda shall be more dynamic during next year in terms of mergers and acquisitions transactions.

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³ While converting the annual turnover of an enterprise calculated in foreign currency into >TRY, the average foreign exchange buying rate of the Central Bank of the Republic of Türkiye (CBRT) in the fiscal year in which the turnover occurs is taken into account. In this context, while the average dollar and euro exchange rates were 16.56 and 17.38 TRY respectively in 2022, they were realized as 23.74 and 25.68 TRY respectively in 2023. https://evds2.tcmb.gov.tr/index.php?/evds/serieMarket/#collapse_2