

MERGER NOTIFICATION AND PROCEDURES TEMPLATE

[TURKEY]

April 2008

IMPORTANT NOTE: This template is intended to provide initial background on the jurisdiction's merger notification and review procedures. Reading the template is not a substitute for consulting the referenced statutes and regulations.

1. Merger notification and review materials (please provide title(s), popular name(s), and citation(s)/web address)

A. Notification provisions	<p>Article 7 of the Act on the Protection of Competition no 4054 (Act No 4054) http://www.rekabet.gov.tr/word/ekanun.doc</p> <p>Communiqué on the Mergers and Acquisitions Calling for the Authorization of the Competition Board Communiqué No: 1997/1 http://www.rekabet.gov.tr/word/tebligeng1.doc</p> <p>Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid Communiqué No 1998/4 http://www.rekabet.gov.tr/word/tebligeng11.doc</p>
B. Notification forms or information requirements	<p>Notification Form on Mergers and Acquisitions (Form-2). This form is an annex to the Communiqué on the Mergers and Acquisitions Calling for Authorization of the Competition Board Communiqué No 1997/1 http://www.rekabet.gov.tr/word/tebligeng1.doc</p>
C. Substantive merger	<p>Article 7 and 11 of the Act No 4054 http://www.rekabet.gov.tr/word/ekanun.doc</p>

review provisions	
D. Implementing regulations	See point 1A above.
E. Interpretive guidelines and notices	There are no distinct interpretive guidelines or notices. However, all merger related Communiqués do involve some explanatory information. See point 1A above.

2. Authority or authorities responsible for merger enforcement.

A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.	Rekabet Kurumu (Turkish Competition Authority) has full enforcement responsibility for mergers and acquisitions above a certain threshold. However, Act No 4054 is not applicable to mergers and acquisitions involving banks on the condition that sectoral share of their total assets does not exceed 20%.
B. Address, telephone and fax (including country code), e-mail, website address and languages available.	<p>Rekabet Kurumu (Turkish Competition Authority) Bilkent Plaza B3 Blok 06530 Bilkent / ANKARA Tel : 00 90 312 2914444 Fax : 00 90 312 2667920 http://www.rekabet.gov.tr - available both in Turkish and English E-Mail : rek@rekabet.gov.tr</p> <p>Turkish Competition Authority Directorate of Istanbul Contact Office istanbul Dünya Ticaret Merkezi (DTM) Blokları A-1 Blok Kat:4 No:195 34149 Ye ilköy/ STANBUL Tel : 00 90 212 4657920-21-22 Fax : 00 90 212 4657924 E-Mail : rek.ist@rekabet.gov.tr</p> <p>Notifications can only be made to Turkish Competition Authority and those that are made to the contact office of the Competition Authority shall be deemed as not made.</p>
C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.	<p>Pre-notification consultations are carried out, on an informal basis, by the Sector Specific Investigative Technical Departments.</p> <p>For information, please contact the Authority's Directorate of International Relations.</p> <p>Tel: 00 90 312 291 43 10 Fax: 00 90 312 266 01 17</p>

3. Covered transactions

A. Definitions of potentially covered transactions (i.e., concentration or merger)	<p>According to article 2 of Communiqué on Mergers and Acquisitions Calling for the Authorization of the Competition Board No. 1997/1 (Communiqué on Mergers and Acquisitions No. 1997/1), the cases considered as mergers or acquisitions are as the following;</p> <ul style="list-style-type: none">a) Merger of two or more independent undertakings.b) Control or acquisition, by any undertaking or person, of the assets of another undertaking, or the whole or a part of its partnership shares, or the means granting it the power to have a right in the management.c) Joint ventures which emerge as an autonomous economic entity possessing labour and assets to achieve their goals, and which do not have the aims or effect of restricting the competition between the parties, or between the parties and the joint venture.
B. If change of control is a determining factor, how is control defined?	<p>Change of control is a determining factor. For the purposes of Communiqué on Mergers and Acquisitions No. 1997/1, control may be brought about by rights, contracts or any other means which, either separately or in combination, de facto or by law, grant the opportunity of exercising decisive influence on an undertaking, and in particular by an ownership right or an operative right or an operative right to use on all or part of the assets of an undertaking, or by rights or contracts which ensure decisive influence on the composition or decisions of the bodies of an undertaking.</p> <p>Control shall be deemed to have been acquired by the holders of rights, or persons or undertakings entitled to use the rights under a contract, or in spite of not having such right and power, have de facto power to exercise such rights.</p>
C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?	<p>As defined above (point 3B) control is a determining factor to define the realization of a merger or acquisition. And for the purposes of the Communiqué on Mergers and Acquisitions No. 1997/1, control can be acquired by partial (less than 100%) stock acquisitions/minority shareholdings.</p>
D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?	<p>Notification requirements cover all kinds of concentrative joint ventures. In other words, joint ventures which emerge as an autonomous economic entity possessing labour and assets to achieve their goals, and which do not have the aims or effect of restricting competition between the parties, or between the parties and the joint venture are within the scope of notification.</p>

4. Thresholds for notification

<p>A. What are the general thresholds for notification?</p>	<p>According to article 4 of the Communiqué on Mergers and Acquisitions No. 1997/1, where total market share of the undertakings that carry out the merger or acquisition exceeds 25 % of the market in the relevant product market within the whole or a part of the country, or even though it does not exceed this rate, their total turnover exceeds YTL twenty-five million, it is compulsory for them to take authorization of the Competition Board.</p>
<p>B. To which entities do the merger notification thresholds apply, i.e., which entities are included in determining relevant undertakings/firms for threshold purposes? If based on control, how is control determined?</p>	<p>In calculation of the market share or turnover, sum of market shares or sum of turnovers of all undertakings belonging to the same group in the relevant product market is taken into account.</p> <p>Control is determined if the undertakings carrying out a merger or an acquisition, directly or indirectly, own more than half of the capital or business assets, or have the power to exercise more than half of the voting rights, or have the power to appoint more than half of the members of the supervisory board, the board of directors or bodies entitled to represent the undertakings, or have the right to manage their affairs,</p>
<p>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</p>	<p>Thresholds are not adjusted periodically.</p>
<p>D. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</p>	<p>Thresholds relate to the financial year preceding the merger.</p>
<p>E. Describe the methodology for identifying and calculating any values necessary to determine if notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?</p>	<p>Article 4 of the Communiqué on Mergers and Acquisitions No. 1997/1 is relevant and it is as follows:</p> <p>Article 4 - Where, as a result of a merger or an acquisition mentioned in article 2 of this Communiqué, total market share of the undertakings that carry out the merger or acquisition exceeds 25 % of the market in the relevant product market within the whole or a part of the country, or even though it does not exceed this rate, their total turnover exceeds YTL twenty-five million, it is compulsory for them to take the authorization of the Competition Board.</p>

In calculation of the market share or turnover, sum of market shares or sum of turnovers of the following undertakings in the relevant product market is taken as the basis:

- a) Respective market shares or turnovers, in the relevant product market, of the undertakings carrying out a merger or an acquisition;
- b) Market shares or turnovers, in the relevant product market, of those undertakings where the undertakings carrying out a merger or an acquisition, directly or indirectly, own more than half of the capital or business assets, or have the power to exercise more than half of the voting rights, or have the power to appoint more than half of the members of the supervisory board, the board of directors or bodies entitled to represent the undertakings, or have the right to manage their affairs,
- c) Market shares or turnovers, in the relevant product market, of those undertakings which have, on the undertakings carrying out a merger or an acquisition, the rights or powers listed in (b),
- d) Market shares or turnovers, in the relevant product market, of those undertakings which have, on the undertakings referred to in (c), the rights or powers listed in (b),
- e) Market shares or turnovers, in the relevant product market, of those undertakings which jointly have, on the undertakings referred to in (a) to (d), the rights or powers listed in (b).

Turnover shall comprise the net sales achieved in the preceding financial year, in accordance with uniform scheme of accounts. The turnovers resulting from the sales between the undertakings themselves referred to in paragraph two shall not be taken into account in the calculation of the turnover. In mergers and acquisitions realized with partial acquisition of undertakings, the turnover of the transferred part shall be taken as the basis.

In calculation of the thresholds mentioned in paragraph one, the sum of the following are considered as a turnover in financial institutions:

A- For banks;

1) Interest revenues;

a) Interests from credits,

b) Interests from deposit reserve funds,

c) Interests from banks;

d) Interest from inter-bank currency market,

e) Interests from securities portfolio,

f) Other interest revenues,

2) Non-interest revenues;

a) Fees and commissions received,

b) Profits of capital market transaction,

- c) Foreign exchange profits,
- d) Dividends from participations and affiliated partnerships,
- e) Extraordinary revenues,
- f) Other non-interest revenues

which take place in profit and loss statement whose procedures and principles are determined by the Undersecretariat of Treasury pursuant to article 51 sub-paragraph (5) of the Banks Act No. 3182.

B- For Private Financial Institutions;

- 1) Revenues from current accounts,
- 2) Revenues from participation accounts,
- 3) Revenues from private fund pools,
- 4) Revenues from funds extended out of equities,
- 5) Revenues and profits from other activities,
- 6) Ordinary revenues and profits

which take place in the revenue statement requested by the Undersecretariat of Treasury from the other institutions.

C- For financial leasing companies;

- 1) Financial leasing revenues,
- 2) Ordinary revenues and profits from the other activities,
- 3) Extraordinary revenues and profits

which take place in the revenue statement requested based on article 8 paragraph two of the Regulations concerning The Establishment and Activities of Financial Leasing Companies, which entered into force after having been published in the Official Gazette dated 28/4/1992 and numbered 21212.

D- For factoring companies;

- 1) Factoring revenues,
 - a) Factoring interest revenues,
 - b) Factoring commission revenues,
- 2) Ordinary revenues and profits from the other activities,
- 3) Extraordinary revenues and profits

	<p>which take place in the revenue statement requested by the Undersecretariat of Treasury from institutions.</p> <p>E- For intermediary Institutions;</p> <ol style="list-style-type: none"> 1) Gross sales profit, 2) Ordinary revenues and profits from the other activities, 3) Extraordinary revenues and profits <p>which take place in the detailed revenue statement requested pursuant to the "Communiqué on the Principles and Rules concerning the Financial Statements and Reports in the Capital Market" with the series XI and number 1, issued by the Capital Market Board and published in the Official Gazette dated 29/1/1998 and numbered 20064.</p> <p>F- For insurance companies;</p> <ol style="list-style-type: none"> 1) Premiums received, 2) Commissions received, 3) Other revenues <p>which take place in the consolidated profit and loss accounts from the financial statements requested by the Insurance Supervisory Board pursuant to the Uniform Account plan issued by the Undersecretariat of Treasury."</p>
<p>F. Describe methodology for calculating exchange rates.</p>	<p>N.A.</p>
<p>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</p>	<p>Domestic turnovers of the participating companies are relevant for the threshold calculations.</p>
<p>H. Can a single party trigger the notification threshold (e.g., one party's sales, assets, or market share)?</p>	<p>Yes.</p>
<p>I. How is the nexus to the jurisdiction determined (e.g., sales or assets in the jurisdiction)? If based on an "effects doctrine," please describe how this is</p>	<p>Effects doctrine is adopted as seen in Article 2 entitled "Scope" of the Act on the Protection of Competition No 4054 which is as follows:</p> <p>"Agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the boundaries of</p>

<p>applied. Is there a requirement of local presence (local assets/affiliates/subsidiaries) or are import sales into the jurisdiction sufficient to meet an “effects” test?</p>	<p>the Republic of Turkey, and the abuse of dominance by the undertakings dominant in the market, and any kind of legal transactions and behaviour having the nature of mergers and acquisitions which shall decrease competition to a significant extent, and transactions related to the measures, establishments, regulations and supervisions aimed at the protection of competition fall under this Act.”</p> <p>Therefore, it can be said that turnover or market share obtained via sales within the boundaries of the Republic of Turkey is taken into account in case even an undertaking operates outside the Republic of Turkey. There is no need for local presence. Therefore, import sales into the Republic of Turkey are sufficient to meet the effects test.</p>
<p>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</p>	<p>The relevant criterion is the location of customers.</p>
<p>K. If market share tests are used, are there guidelines for calculating market shares?</p>	<p>See point 4E above.</p>
<p>L. Are there special threshold calculations for particular sectors (e.g., banking, airlines, media) or particular types of transactions (e.g. joint ventures, partnerships, financial investments)?</p>	<p>See point 4E above.</p>
<p>M. Are any sectors excluded from notification requirements? If so, which sectors?</p>	<p>No. However, Act No 4054 is not applicable to mergers and acquisitions involving banks on the condition that sectoral share of their total assets does not exceed 20%.</p>
<p>N. Are there special rules regarding jurisdictional thresholds for transactions in which both the acquiring and acquired parties are foreign?</p>	<p>No. Thresholds given in point 4A above are also valid for merger and acquisition transactions in which both the acquiring and acquired parties are foreign.</p>

<p>O. Does the agency have the authority to review transactions that fall below the thresholds?</p>	<p>Yes. Such transactions may include ancillary restraints that need to be addressed. In this case, transaction articles are assessed under negative clearance or exemption provisions.</p>
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5. Notification requirements and timing of notification

<p>A. Is notification mandatory pre-merger?</p>	<p>Yes, if statutory notification threshold requirements are met.</p>
<p>B. Is notification mandatory post-merger?</p>	<p>Notification of merger and acquisition transactions subject to authorization should be done before they are committed. In cases where a merger or an acquisition exceeding the thresholds has not been notified, the Competition Board, when it is informed of the transaction concerned anyway, shall deal with the merger or acquisition under examination on its own initiative. In case merger or acquisition transactions subject to authorization are carried out without the authorization of the Competition Board, there is a procedural fine. See point 15.A below.</p>
<p>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</p>	<p>The parties can make such voluntary merger filings. It is suggested that filing be done before transaction is performed in order to avoid any unpredictable conditions that might arise after the examinations.</p>
<p>D. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive)?</p>	<p>There must be a definitive agreement signed by the parties. It is recommended that the agreement be notified within a proper period (preferably 30 days) before the execution of the transaction.</p>
<p>E. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event. Do the deadline and triggering event depend on the structure of the transaction? Are there special rules for</p>	<p>See point 5D above. For acquisition via privatizations there is a separate communiqué to determine the procedures and principles to be pursued in pre-notifications and authorization applications which is Communiqué on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the Competition Authority in order for Acquisitions via Privatization to Become Legally Valid Communiqué No 1998/4. See point 1A.</p>

public takeover bids?	
F. Can parties request an extension for the notification deadline? If yes, please describe the procedure and whether there is a maximum length of time for the extension.	No.

6. Simplified procedures

Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, discretion to waive certain responses, etc.).	N.A.
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7. Documents to be submitted

A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).	<p>Notification of merger and acquisition transactions must be made by the Notification Form (Form 2), attached to the Communiqué on Mergers and Acquisitions No. 1997/1. Form 2, requires the parties to submit the relevant information with their Notification Form. To mention briefly, following information and documents should be provided;</p> <ol style="list-style-type: none"> 1. Identity information on the notifying party(-ies) 2. Information on the merger or acquisition: <ul style="list-style-type: none"> - The nature, scope and purposes of the merger or acquisition which is the subject of the notification - Legal framework of the merger or acquisition which is the subject of the notification, and the economic and financial structuralisation of the parties before and after the merger or acquisition in respect of the parties - The individual and total turnovers of the merging or acquiring parties - List of the parties and the undertakings belonging to the same group with the parties, directly or indirectly controlling
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	<p>undertakings or persons, the undertakings which are active on the affected markets and are directly or indirectly controlled by the parties or other undertakings, the nature and means of control</p> <p>3. Personal and financial information on the parties and above-mentioned undertakings and persons</p> <p>4. Information on the relevant market.</p> <p>5. Information on the conditions for market entry and the potential competition</p> <p>6. Information on the grounds for the Notification</p> <p>7. - A copy of the final version of the agreement or decision which is the subject of the Notification and which regulates the merger or acquisition</p> <ul style="list-style-type: none"> - A copy of the other documents and certificates pertaining to the merger or acquisition, - Instruments and documents showing the most recent annual reports and accounts of the merging or acquiring parties - Plannings, market surveys and other relevant studies, if any, carried out by the parties or a third party, with respect to the activities of the parties. <p>See Form 2 for further details. http://www.rekabet.gov.tr/word/tebligeng1.doc</p>
<p>B. Are there any document legalization requirements (e.g., notarization or apostille)?</p>	<p>In cases where the notification is made by a representative, the document indicating that the representative is authorized should be enclosed with the notification.</p> <p>Within the framework of the formal examination as to the file, primarily formal issues are inquired by the reporters assigned, such as whether or not the incoming document is original and complete and bears the required approvals, and whether or not the applicant is authorized. The copy must be approved by the authorized persons that it is the same as the original. In all applications filed in capacity of a proxy, there should exist a proxy certified by a notary, and a signature circular produced by the officials of the undertaking or association of undertakings, certified by a notary. The Turkish translations of texts (agreement, protocol, correspondence etc.) prepared in a foreign language should be enclosed with the application. In the event that the translation has not been made by a sworn translator, the condition of its being approved by the authorized persons is sought.</p>
<p>C. Are there special rules for exemptions from information requirements (e.g. information submitted or document legalization) for transactions in which the acquiring and acquired parties are foreign?</p>	<p>No.</p>

8. Translation

A. In what language(s) can the notification forms be submitted?	The notification of mergers and acquisitions must be submitted in Turkish.
B. Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification of the translation, language(s) accepted, and whether summaries or excerpts are allowed in lieu of complete translations.	<p>The notification of mergers and acquisitions must be submitted in Turkish.</p> <p>The Turkish translations of texts (agreement, protocol, correspondence etc.) prepared in a foreign language should be enclosed with the application. In the event that the translation has not been made by a sworn translator, the condition of its being approved by the authorized persons is sought.</p> <p>Summaries or excerpts are not allowed in lieu of complete transactions.</p>

9. Review periods

A. Describe any applicable review periods following notification.	<p>Review periods concerning mergers and acquisitions are provided in Article 10 of the Act on the Protection of Competition No 4054 which provides “As of the date the Board is notified of merger or acquisition agreements falling under article 7, the Board is, as a result of the preliminary examination to be performed by it within fifteen days, obliged to permit the merger or acquisition transaction, or if it decides to deal with this transaction under final examination, it is obliged to duly notify, with its preliminary objection letter, those concerned of the fact that the merger or acquisition transaction is suspended and cannot be put into practice until the final decision, together with other measures deemed necessary by it. In this case, the provisions of articles 40-59 of this Act shall be applicable.</p> <p>Where the Board does not respond to or take any action for the application as to a merger or acquisition within due time, merger or acquisition agreements shall take effect and become legally valid after 30 days as of the date of the notification.”</p> <p>Although the wording of Article 10 mentions that preliminary examination will be conducted within 15 days, in practice the Competition Board finalizes it within 30 days, the period after</p>
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	<p>which the agreement takes effect and becomes legally valid because the Competition Board does not respond to or take any action for the application of the parties.</p> <p>Articles 40-59 of the Act on the Protection of Competition No 4054 includes section four entitled "Procedure in Examinations and Inquiries of the Board" and section five entitled "Private Law Consequences of Limiting Competition. Section four provides, inter alia, rules for investigation. According to Article 43 of section four, investigation must be concluded within 6 months at the latest and in cases where it is deemed necessary, the Competition Board may grant an additional period of 6 months only once.</p>
<p>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</p>	<p>No. However, article 3 of the Communiqué on the Mergers and Acquisitions No: 1997/1 entitled "Cases not Considered as a Merger or an Acquisition" provides that following mergers and acquisitions do not fall under the scope of Article 7 of the Act on the Protection of Competition No 4054, and it is not required to obtain the authorization of the Competition Board for such mergers and acquisitions.</p> <ul style="list-style-type: none"> - That undertakings whose ordinary activities are to transact with securities for their own account or for the account of others, temporarily hold the securities acquired with a view to reselling them, provided that the voting rights arising from such securities are not exercised by them in such a way that the competition policies of the undertaking issuing the securities are affected. - That acquisition is carried out by a public institution and an organization with the aim or reason of liquidation, winding up, insolvency, cessation of payments, composition, privatization or by a similar reason, and as required by law. - That cases provided in Article 2 of Communiqué on the Mergers and Acquisitions No:1997/1 take place via inheritance. <p>Apart from Article 3, for acquisition via privatization transactions, rules in point 9A apply.</p>
<p>C. What are the procedures for an extension of the review periods, if any (e.g., suspended by requests for additional information, suspended at the authority's discretion or with the parties' consent)? Is there a statutory maximum for extensions?</p>	<p>See explanations concerning duration of investigation at point 9A above for statutory maximum for extensions.</p>
<p>D. What are the procedures</p>	<p>There are no special rules apart from those mentioned in point 9A</p>

for accelerated review of non-problematic transactions, if any?	above. Non-problematic transactions may be permitted as a result of the preliminary examination.
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10. Waiting periods / suspension obligations

A. Describe any waiting periods/suspension obligations following notification, including whether closing is suspended or whether the implementation of the transaction is suspended or whether the parties are prevented from adopting specific measures (e.g., measures that make the transaction irreversible, or measures that change the market structure), during any initial review period and/or further review period.	See point 9A above
B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?	No.
C. Are the applicable waiting periods/suspension obligations limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation	Suspension periods are limited to aspects of the transaction that occur or produce effects within the Republic of Turkey.

<p>outside the jurisdiction prior to the expiration of the local waiting period and/or clearance (e.g. request for a derogation from the suspension obligations, commitment to hold separate the local business operations, escrow agents.)</p>	
<p>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</p>	<p>Upon notification of merger or acquisition agreements, if the Board does not respond to or take any action for the application as to a merger or acquisition within due time (30 days), merger or acquisition agreements shall take effect and become legally valid after 30 days as of the date of the notification.</p>
<p>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</p>	<p>See explanations concerning duration of investigation at point 9A above for statutory maximum for extensions.</p>
<p>F. Describe any procedures for obtaining early termination of the applicable waiting period/suspension obligation, and the criteria and timetable for deciding whether to grant early termination.</p>	<p>N.A.</p>
<p>G. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</p>	<p>N.A.</p>

11. Responsibility for notification / representation

A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make its own filing?	<p>Notification shall be made jointly by persons or undertakings who/which realize a merger or an acquisition. Notification made by either of the parties shall also be deemed valid.</p> <p>Notification may also be made by legal representatives of persons and undertakings realizing a merger or an acquisition. In this case, certificates showing that the representatives are authorised have to be attached to the Notification Form. In cases where notification is made by two or more persons or undertakings, they may file a notification through a joint representative as well.</p>
B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?	<p>No.</p> <p>Presidency of the Privatization Administration sends the notification forms filled by the successful bidders in cases of acquisition via privatization transactions.</p>
C. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?	<p>No.</p>
D. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?	<p>In all applications filed in capacity of a proxy, there should exist a proxy certified by a notary, and a signature circular produced by the officials of the undertaking or association of undertakings, certified by a notary.</p>

12. Filing fees

A. Are any filing fees assessed for notification? If so, in what amount and how is the amount	<p>No.</p>
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determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?	
B. Who is responsible for payment?	N.A.
C. When is payment required?	N.A.
D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?	N.A.

13. Confidentiality

A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?	<p>Pre-merger notification filing or the content of the notification is not made public.</p> <p>Decisions of the Board are published on the internet page of the Turkish Competition Authority in such a way not to disclose the trade secrets of the parties.</p>
B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?	<p>Access to the file is regulated by paragraph 2 of Article 44 of the Act on the Protection of Competition No 4054 which is as follows:</p> <p>"Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any paperwork drawn up within the Authority in connection with themselves, and if possible, a copy of any evidence obtained."</p>
C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?	No.

<p>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</p>	<p>Yes. The parties may designate the trade secrets in the notification and demand that they be treated confidential.</p>
<p>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</p>	<p>On January 1st 1996, Customs Union between the European Union and Turkey came into effect as a result of Decision No 1/95 of the EC-Turkey Association Council. Section 2 of Chapter 4 "Approximation of Laws" of the Decision provides the rules on "competition". According to article 36 in section 2, Turkey and European Union - which are the parties- shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy. The Decision No 1/95 is publicly available at http://www.mfa.gov.tr/NR/rdonlyres/AB34E535-1E1F-40CD-B65E-D7B215B60467/0/EUAssociationCouncilDecision195CustomsUnionDecision.pdf</p> <p>In some free trade agreements concluded between Turkey and other countries, there are rules for exchange of information on competition matters by taking into account limitations imposed by requirements of professional and business secrecy. Such agreements are also publicly available. Texts of these agreements are available at http://www.dtm.gov.tr/Ab/ingilizce/sta/stamenu.htm</p>
<p>F. Can the agency exchange documents or information with other reviewing agencies? If so, does it need the consent from the parties who have submitted confidential information to exchange such information?</p>	<p>Documents and information can be exchanged with governmental authorities and foreign competition agencies provided that the parties grant their consent.</p>

14. Transparency

<p>A. Does the agency publish an annual report? Please provide the web address if available.</p>	<p>According to article 27(1)(k) of the Act on the Protection of Competition no 4054, Competition Board has the power and duty to issue an annual report on its works, and the situation and developments in its fields of duty.</p> <p>Annual reports in English are available at http://www.rekabet.gov.tr/Annual.html</p>
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<p>B. Does the agency publish press releases related to merger policy or investigations?</p>	<p>There is no regular press release concerning merger policy or investigations. However, press releases are issued on important cases after the final decision is taken.</p>
<p>C. Does the agency publish decisions on why it cleared / blocked a transaction?</p>	<p>Yes. Decisions of the Board are published on the internet page of the Authority in such a way not to disclose the trade secrets of the parties.</p>

15. Sanctions/penalties

<p>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?</p>	<p>Firstly, Article 16(1)(c) provides that the Competition Board shall impose on undertakings and associations of undertakings or the members of such associations administrative fine equaling one thousandth of their annual gross revenue which generated by the end of the fiscal year preceding the decision, or where it cannot be calculated, which generated by the end of the fiscal year closest to the date of decision, as calculated by the Board, in case merger or acquisition transactions subject to authorization are carried out without the authorization of the Board.</p> <p>Secondly, Article 11 of the Act on the Protection of Competition no 4054 entitled "Failure to Notify Mergers or Acquisitions to the Board" is as follows:</p> <p>"Article 11- Where a merger and acquisition transaction whose notification to the Board is compulsory is not notified to the Board, the Board shall deal with the merger or acquisition under examination on its own initiative, when it is informed about the transaction anyway. As a result of the examination;</p> <p>a) it allows the merger or acquisition in case it decides that the merger or acquisition does not fall under the first paragraph of article 7, but imposes fines on those concerned due to their failure to notify.</p> <p>b) in case it decides that the merger or acquisition falls under the first paragraph of article 7, it decides that the merger or acquisition transaction be terminated, together with fines; all de facto situations committed contrary to the law be eliminated; any shares or assets seized be returned, if possible, to their former owners, whose terms and duration shall be determined by the Board, or if not possible, these be assigned and transferred to third parties; the acquiring persons may by no means participate in the management of undertakings acquired during the period until these are assigned to their former owners or third parties, and that other measures deemed necessary by it be taken."</p>
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	<p>Thirdly, according to Article 16/3 those having committed behaviors prohibited under article 7 are imposed administrative fines amounting up to ten percent of the annual gross revenues of the undertakings and associations of undertakings to be punished or the members of such associations which generated by the end of the fiscal year preceding the final decision, or where that cannot be calculated, which generated by the end of the fiscal year that is closest to the date of final decision, as calculated by the Board.</p> <p>Finally, according to Article 16/4 where undertakings or associations of undertakings are imposed administrative fines specified under Article 16/3, executives or employees of the undertaking or association of undertakings which is detected to have had a determining impact on the violation are imposed administrative fines up to five percent of the fine imposed on the undertaking or association of undertakings.</p>
<p>B. Which party/ies are potentially liable?</p>	<p>See point 15/A above.</p>
<p>C. Can the agency impose/order these sanctions/penalties directly, or is it required to bring judicial action against the infringing party? If the latter, please describe the procedure and indicate how long this procedure can take.</p>	<p>Turkish Competition Authority imposes/orders sanctions/penalties directly.</p>

16. Judicial review

<p>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</p>	<p>Article 55 of the Act on the Protection of Competition entitled “Appealing Against Decisions of the Board” provides that appeal may be made to the Council of State within due period against the final decisions, injunction decisions, decisions on administrative fines, as of communicating the decision to the parties.</p> <p>Due period is 60 days according to the relevant legislation.</p>
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17. Additional filings

Are any additional filings/clearances required for some types of transactions, e.g., sectoral regulators, securities regulator?

No.

18. Closing deadlines

When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?

No.

19. Post merger review of transactions

Can the agency reopen an investigation of a transaction that it previously cleared or allowed to proceed with conditions? If so, are there any limitations, including a time limit on this authority?

Where the Competition Board's decision that the acquisition is not contrary to Article 7 of the of the Act on the Protection of Competition No 4054 has been taken due to incorrect or misleading information by one of the undertakings, or the obligations attached to the decision have not been fulfilled, the Competition Board may place the merger or acquisition under re-examination, and may decide on prohibition and the application of the other sanctions.

There is no time limit on this authority.