

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## TURKEY

January 2011

**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)

<b>A. Notification provisions</b>	<p>Article 7 of the <a href="#">Act on the Protection of Competition no 4054</a> (the Competition Act)</p> <p>Article 7 of the Communiqué No 2010/4 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board (<a href="#">Communiqué on Mergers and Acquisitions</a>)</p> <p>Articles 4 and 5 of the <a href="#">Communiqué No 1998/4</a> on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the [Turkish] Competition Authority in order for Acquisitions via Privatization to Become Legally Valid</p>
<b>B. Notification forms or information requirements</b>	<p>Notifications should be made with the notification form that is an annex to the Communiqué on Mergers and Acquisitions.</p>
<b>C. Substantive merger review provisions</b>	<p>Article 7 and 11 of the Competition Act</p>
<b>D. Implementing regulations</b>	<p>See communiqués in point 1A above.</p>

<b>E. Interpretive guidelines and notices</b>	There are no distinct interpretive guidelines or notices. However, all merger related communiqués do involve some explanatory information. See communiqués in point 1A above.
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## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	Rekabet Kurumu (Turkish Competition Authority) has full enforcement responsibility for mergers and acquisitions above a certain threshold (The decision making body of the Turkish Competition Authority is the Competition Board). However, the Competition Act is not applicable to mergers and acquisitions involving banks if the sectoral share of their total assets does not exceed 20%.
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Rekabet Kurumu (Turkish Competition Authority)</p> <p>Bilkent Plaza B3 Blok 06800 Bilkent / ANKARA</p> <p>Tel : 00 90 312 291 44 44  Fax : 00 90 312 266 79 20  <a href="http://www.rekabet.gov.tr">http://www.rekabet.gov.tr</a> - available both in Turkish and English  E-Mail : <a href="mailto:rek@rekabet.gov.tr">rek@rekabet.gov.tr</a></p> <p>Turkish Competition Authority Directorate of Istanbul Liaison Office</p> <p>İstiklal Caddesi, Odakule İş Merkezi, Kat:8 No:142 Beyoğlu/İSTANBUL</p> <p>Tel : 00 90 212 243 33 86-87  Fax : 00 90 212 243 33 52</p> <p>It should be known that notifications should be forwarded to the headquarters of the Turkish Competition Authority in Ankara.</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>Pre-notification consultations are carried out, on an informal basis, by the professional staff of the Turkish Competition Authority.</p> <p>For information, please contact the Turkish Competition 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

<b>A. Definitions of potentially covered transactions (i.e., concentration or merger)</b>	<p>According to Article 5 of Communiqué on Mergers and Acquisitions, the following cases are considered as mergers or acquisitions provided that there is a permanent change in control:</p> <ul style="list-style-type: none"><li>a) Merger of two or more independent undertakings,</li><li>b) Acquisition of direct or indirect control over all or part of one or more undertakings by one or more undertakings or by one or more persons who currently control at least one undertaking, through the purchase of shares or assets, through a contract or through any other means, or</li><li>c) Formation of a joint venture which would permanently fulfill all of the functions of an independent economic entity.</li></ul>
<b>B. If change of control is a determining factor, how is control defined?</b>	<p>Change of control is a determining factor. For the purposes of the Communiqué on Mergers and Acquisitions, control may be acquired through rights, contracts or other instruments which, separately or together, allow de facto or de jure exercise of decisive influence over an undertaking. In particular, these instruments consist of ownership rights or operating rights over all or part of the assets of an undertaking, and those rights or contracts granting decisive influence over the structure or decisions of the bodies of an undertaking. Control may be acquired by rights holders, or by those persons or undertakings who have been empowered to exercise such rights in accordance with a contract, or who, while lacking such rights and powers, have de facto strength to exercise such rights.</p>
<b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b>	<p>As defined in point 3B above, control is a determining factor to define the realization of a merger or acquisition. Therefore, partial (less than 100%) stock acquisitions/minority shareholdings may be covered if they lead to permanent change in control.</p>
<b>D. Do the notification requirements cover joint ventures? If so, what types (e.g., production joint ventures)?</b>	<p>As defined in point 3A, joint ventures which would permanently fulfill all of the functions of an independent economic entity are covered by notification requirements.</p>

## 4. Thresholds for notification

<p><b>A. What are the general thresholds for notification?</b></p>	<p>According to Article 7 of the Communiqué on Mergers and Acquisitions, authorization of the Competition Board is required for the relevant transaction to carry legal validity if:</p> <p>(a) Total turnovers of the transaction parties in Turkey exceed one hundred million TL, and turnovers of at least two of the transaction parties in Turkey each exceed thirty million TL, or</p> <p>(b) Global turnover of one of the transaction parties exceed five hundred million TL, and at least one of the remaining transaction parties have a turnover in Turkey exceeding five million TL.</p> <p>Except in cases of joint ventures, authorization of the Competition Board shall not be required for mergers and acquisitions without any affected market, even if the thresholds above are exceeded.</p>
<p><b>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?</b></p>	<p>In calculation of the turnover, the sum of turnovers of all undertakings controlled under the same economic group is taken into account. See Article 8 of the Communiqué on Mergers and Acquisitions in point 4E below.</p> <p>See point 3B above for the principles on determination of control.</p>
<p><b>C. Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b></p>	<p>Thresholds will be adjusted every two years from entry into force of Communiqué on Mergers and Acquisitions on 1<sup>st</sup> of January, 2011. It is anticipated that the first adjustment will be done before 1<sup>st</sup> of January, 2013 and be effective as of this date. Previously, the merger regime did not involve any adjustments regarding thresholds.</p>
<p><b>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)?</b></p>	<p>Thresholds relate to the turnover generated as of the end of the financial year preceding the date of the notification, or, if this can not be calculated, to the turnover generated as of the end of the financial year closest to the date of notification.</p>
<p><b>E. Describe the methodology for identifying and calculating any values necessary to determine if</b></p>	<p>Articles 8 and 9 of the Communiqué on Mergers and Acquisitions describe the methodology for identifying and calculating the relevant values. Both articles are granted in the following:</p> <p><b>“Calculation of turnover</b></p>

**notification is required, including the value of the transaction, the relevant sales or turnover, and/or the relevant assets?**

*ARTICLE 8 – (1) For the purposes of the implementation of Article 7 of this Communiqué [Communiqué on Mergers and Acquisitions] [Article 7 concerns turnover thresholds cited in point 4A above], in the calculation of the turnover of each transaction party, total turnovers of the following are taken into account:*

*a) Relevant undertaking,*

*b) Persons or economic units in which the relevant undertaking*

*1) holds more than half of the capital or commercial assets, or*

*2) holds the power to exercise more than half of the voting rights, or*

*3) holds the power to appoint more than half of the members of the board of supervisors, board of directors or the bodies authorized to represent the undertaking, or*

*4) holds the power to manage operations,*

*c) Persons or economic units which hold the rights and powers listed in (b) over the relevant undertaking,*

*ç) Persons or economic units over which those listed in (c) hold the rights and powers listed in (b),*

*d) Persons or economic units which hold the rights and powers listed in (b) jointly with those listed in (a)-(ç).*

*(2) In the calculation of the turnovers included in paragraph 1 of Article 7 of this Communiqué [Communiqué on Mergers and Acquisitions], in case of a transfer of those parts of the transaction parties with or without legal personality, only the turnover of the part transferred shall be taken into account with regards to the transferor.*

*(3) Turnovers of the economic units with which relevant undertakings jointly hold the rights and powers listed in subparagraph (b) of paragraph 1 of this Article shall be calculated by equally dividing by the number of relevant undertakings.*

*(4) Turnovers of the joint ventures where relevant undertakings hold the right to manage business together with third parties shall be calculated by equally dividing by the number of such right holders.*

*(5) Two or more transactions under paragraph 2 of this Article, carried out between the same persons or parties within a period of two years, shall be considered as a single transaction for the calculation of turnovers listed in Article 7 of this Communiqué [Communiqué on Mergers and Acquisitions].*

*(6) Turnover, in accordance with the uniform accounting plan, shall consist of the net sales generated as of the end of the financial year preceding the date of the notification, or, if this can*

not be calculated, of those generated as of the end of the financial year closest to the date of notification. In the calculation of the turnover, turnovers of persons or economic units listed in paragraph 1 of this Article generated from sales made to each other shall not be taken into account. In the calculation of the turnover, average buying rate of exchange of the Central Bank of Turkey for the financial year the turnover is generated shall be taken into consideration as the rate of exchange.”

**“Calculation of turnover in financial institutions**

ARTICLE 9 – (1) Concerning financial institutions, the turnover shall consist of the sum of

a) For banks and participation banks; as included within the income statement requested under the "Communiqué Concerning the Financial Tables to be Disclosed to the Public by Banks, and Related Explanations and Footnotes," issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 10/2/2007 and numbered 26430;

1) Interest and profit sharing income,

2) Fees and commissions collected,

3) Dividend income,

4) Commercial profits/losses (net),

5) Other operational income,

b) For financial leasing, factoring and funding companies; as included within the income statement requested under the "Communiqué Concerning the Uniform Accounting Plan to be Implemented by Financial Leasing, Factoring and Funding Companies and the Explanation Note Thereof, and Concerning the Format and Content of the Financial Tables to be Disclosed to the Public," issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 17/5/2007 and numbered 26525;

1) Real operating income,

2) Other operating income,

c) For intermediary institutions and portfolio management companies; as included within the detailed income statement requested under the "Communiqué Concerning the Principles on Financial Reporting within the Capital Market," numbered Serial:XI, No:29, which was issued by the Banking Regulatory and Supervisory Agency and published in the Official Gazette dated 9/4/2008 and numbered 26842;

1) Sales income,

2) Interests, fees, premiums, commissions and other income,

	<p>3) <i>Other operating income,</i></p> <p>4) <i>Shares in the profits/losses of the investments valued via the equity method,</i></p> <p>5) <i>Financial income other than operating income</i></p> <p><i>ç) For insurance, reinsurance and pension companies; in accordance with the last financial statements or data either published by the Undersecretariat of Treasury, Association of The Insurance and Reinsurance Companies of Turkey or Pension Monitoring Center, or disclosed to the public by the companies related to the merger or acquisition, to be confirmed by the Undersecretariat of Treasury;</i></p> <p>1) <i>Domestic direct premium production for insurance companies (gross),</i></p> <p>2) <i>Domestic direct premium production for reinsurance companies (gross),</i></p> <p>3) <i>Total amount of contributions and total amount of funds in pension companies, as well as domestic direct premium production (gross) for those pension companies which also operate in life insurance,</i></p> <p>d) <i>For other financial institutions;</i></p> <p>1) <i>Interest and similar income,</i></p> <p>2) <i>Income generated from securities,</i></p> <p>3) <i>Commissions,</i></p> <p>4) <i>Net profit generated from financial activities,</i></p> <p>5) <i>Other operation income.”</i></p>
<p><b>F. Describe methodology for calculating exchange rates.</b></p>	<p>In the calculation of turnover, the average buying rate of exchange of the Central Bank of Turkey for the financial year the turnover is generated shall be taken into consideration as the rate of exchange.</p>
<p><b>G. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b></p>	<p>The thresholds involve both worldwide and domestic turnovers. See point 4A above.</p>
<p><b>H. Can a single party trigger the notification threshold (e.g., one party’s sales, assets, or market share)?</b></p>	<p>No.</p>

<p><b>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 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?</b></p>	<p>Effects doctrine is adopted as seen in Article 2 entitled “Scope” of the Competition Act 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 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 [Competition] Act.”</p> <p>Therefore, it can be said that turnover obtained via sales within the boundaries of the Republic of Turkey is taken into account even if 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><b>J. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b></p>	<p>Sales affecting the Turkish markets regardless of the location of customer and seller are relevant.</p>
<p><b>K. If market share tests are used, are there guidelines for calculating market shares?</b></p>	<p>N.A.</p>
<p><b>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)?</b></p>	<p>Yes. See point 4E above.</p>
<p><b>M. Are any sectors excluded from notification requirements? If so, which sectors?</b></p>	<p>No. However, as mentioned in point 2A above, the Competition Act is not applicable to mergers and acquisitions involving banks if the sectoral share of their total assets does not exceed 20%.</p>
<p><b>N. Are there special rules regarding jurisdictional thresholds for transactions in which</b></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>

<b>both the acquiring and acquired parties are foreign?</b>	
<b>O. Does the agency have the authority to review transactions that fall below the thresholds?</b>	No.

## 5. Notification requirements and timing of notification

<b>A. Is notification mandatory pre-merger?</b>	Yes.
<b>B. Is notification mandatory post-merger?</b>	<p>Notification of mergers and acquisitions subject to authorization should be done before they are realized. In cases where a merger or an acquisition exceeding the thresholds has been realized without authorization of the Competition Board, the Competition Board, when it is informed of the transaction concerned, shall examine it on its own initiative.</p> <p>If mergers or acquisitions subject to authorization are realized without the authorization of the Competition Board, there is a procedural fine. See point 15A below.</p>
<b>C. Can parties make a voluntary merger filing even if filing is not mandatory? If so, when?</b>	The parties can make such voluntary filings. It is suggested that filing be done before the transaction is realized, in order to avoid any unforeseen conditions that might arise following the examinations conducted by the Turkish Competition Authority.
<b>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?)?</b>	<p>First of all, there is no need for a final agreement signed by the parties. It is recommended that the agreement be notified within a proper period (preferably 30 days) before the realization of the transaction. The transaction is deemed to be realized when control is changed.</p> <p>As an exception to the explanation on notification in the first paragraph of the answer above, if control is changed as a result of purchasing of shares in stock exchange, the Council of State, the appellate court for the decisions of the Competition Board, has ruled that the notification should be done within a reasonable period following change of control, in its judgment dated 16.2.2010 (Registration No: 2007/6432; Judgment No: 2010/1330). Although the judgment does not include clear guidance on what a reasonable period is, the Council of State, in the same judgment, did not consider that notification, which was made approximately two months later than the date control was changed, was filed within a reasonable period.</p>

<p><b>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 public takeover bids?</b></p>	<p>See point 5D above.</p> <p>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 the Communiqué No 1998/4 on the Procedures and Principles to be Pursued in Pre-Notifications and Authorization Applications to be Filed with the [Turkish] Competition Authority in order for Acquisitions via Privatization to Become Legally Valid. See point 1A above.</p>
<p><b>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.</b></p>	<p>No.</p>

## 6. Simplified procedures

<p><b>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.).</b></p>	<p>All information requested within the notification form, which is an annex to the Communiqué on Mergers and Acquisitions, must be completely filled. However, information requested in articles 6 (on information on the affected markets), 7 (on market entry conditions and potential competition) and 8 (on efficiency gains) of the notification form is not required,</p> <p>a) If one of the transaction parties shall acquire full control over an undertaking in which it had joint control, or,</p> <p>b) For any affected market within Turkey and in terms of geographical markets; in case the sum of the market shares of the transaction parties is less than twenty per cent for horizontal relationships, and the market share of one of the transaction parties is less than twenty five per cent for vertical relationships, in relation to the affected markets in question.</p> <p>Nonetheless, if it is discovered that the above conditions are not met, or, in exceptional circumstances, for the purposes of a complete examination of competitive concerns even when these conditions are met, the Competition Board may request that the notification form be completely filled. If the Competition Board decides that the notification form should be completed, it informs the notifying party and its representatives in writing. In this case,</p>
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	the notification form is deemed to be incomplete and the notification is considered to be made when the completed copy is received by the Turkish Competition Authority.
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## 7. Documents to be submitted

<p><b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b></p>	<p>In addition to information requested in it, the notification form, which is an annex to the Communiqué on Mergers and Acquisitions, requires the parties to submit the following documents:</p> <ul style="list-style-type: none"> <li>• a copy of the final or current form of the agreement to be notified that lays out the merger or acquisition,</li> <li>• a copy of the other documents relating to the merger or acquisition,</li> <li>• documents that show the latest accounts of the undertakings in relation to the information concerning turnover and that have been approved by the official authorities,</li> <li>• planning, market inquiries and other studies (if available) belonging to the undertakings concerned, in relation to the affected markets, conducted by the transaction parties or third parties,</li> <li>• If a commitment is to be proposed in relation to the merger or acquisition, a signed commitment text that covers it in detail, and</li> <li>• documents showing that the notifying person is authorized.</li> </ul>
<p><b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b></p>	<p>As mentioned in point 7A above, documents showing that the notifying person is authorized should be submitted by the parties (See also point 11D below). Moreover, documents showing the latest accounts of the undertakings in relation to the information concerning turnover must have been approved by the official authorities.</p> <p>In case there are duplicates among the documents submitted, those filing a notification must certify that they conform to the originals.</p> <p>A copy of the final or current version of the agreement concerning the notified merger or acquisition should be enclosed with the notification form. If the agreement in question was not drawn in Turkish, a Turkish translation must be forwarded as well. Each page of any translation not done by a certified translator must be approved by an undertaking official or representative.</p>

<p><b>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?</b></p>	<p>No.</p>
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## 8. Translation

<p><b>A. In what language(s) can the notification forms be submitted?</b></p>	<p>The notification form must be submitted in Turkish.</p>
<p><b>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.</b></p>	<p>The notification of mergers and acquisitions must be submitted in Turkish.</p> <p>As mentioned in point 7B above, a copy of the final or current version of the agreement concerning the notified merger or acquisition should be enclosed with the notification form. If the agreement in question was not drawn in Turkish, a Turkish translation must be forwarded as well. Each page of any translation not done by a certified translator must be approved by an undertaking official or representative.</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.

Review periods concerning mergers and acquisitions are provided in Article 10 of the Competition Act as follows:

“As of the date the [Competition] Board is notified of merger or acquisition agreements falling under Article 7, the [Competition] 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 [Competition] Act shall be applicable.

Where the [Competition] 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.”

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 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.

It should be said that notification is deemed to be made on the date it is received into the Competition Board records and this date is the starting date for the preliminary examination period. In case the information requested within the notification form is false, misleading or missing or in case there are changes to this information, notification is deemed to be made on the date this information is completed or amended. Moreover, where the parties offer commitments during the preliminary examination phase, the notification is deemed to be made on the date the text of the commitment is received by the Turkish Competition Authority. Furthermore, as mentioned in point 6 above, if the parties, after submitting the notification form without the information cited in Articles 6, 7 and 8, are required by the Competition Board to complete the notification form, then the notification is considered to be made when the completed copy is received by the Turkish Competition Authority.

Articles 40-59 of the Competition Act, which are cited in Article 10 of the Competition Act, include Section Four entitled “Procedure in Examinations and Inquiries of the [Competition] 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,

	<p>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>In case the opinion of a public institution or organization is required in accordance with legislation, the time periods specified in Article 10 of the Competition Act shall commence after the relevant opinion is received into the Competition Board records.</p>
<p><b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>No.</p> <p>It should be said that Article 6 of the Communiqué on Mergers and Acquisitions entitled "Cases not Considered as a Merger or an Acquisition" provides that the following transactions do not fall under the scope of Article 7 of the Competition Act and it is not required to obtain the authorization of the Competition Board for them:</p> <ul style="list-style-type: none"> <li>• In case of undertakings whose ordinary operations involve transactions with securities on their own behalf or on behalf of others; temporarily holding on to securities purchased for resale purposes, provided that the voting rights from those securities are not used to affect the competitive policies of the undertaking which issued the securities in question.</li> <li>• Acquisition of control by a public institution or organization by operation of law and due to divestment, dissolution, insolvency, suspension of payment, bankruptcy, privatization or a similar reason.</li> </ul> <p>Apart from Article 6, for acquisition via privatization transactions, rules in point 9A above apply.</p>
<p><b>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?</b></p>	<p>See explanations in point 9A above.</p>
<p><b>D. What are the procedures for accelerated review of non-problematic transactions, if any?</b></p>	<p>There are no special rules apart from those mentioned in point 9A above. Non-problematic transactions may be permitted as a result of the preliminary examination.</p>

## 10. Waiting periods / suspension obligations

<p><b>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.</b></p>	<p>See point 9A above.</p>
<p><b>B. Can parties request a derogation from waiting periods/suspension obligations? If so, under what circumstances?</b></p>	<p>No.</p>
<p><b>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 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</b></p>	<p>Suspension periods are limited to aspects of the transaction that occur or produce effects within the Republic of Turkey.</p>

<b>business operations, escrow agents.)</b>	
<b>D. Are parties allowed to close the transaction if no decision is issued within the statutory period?</b>	As mentioned in point 9A above, upon notification of merger or acquisition agreements, if the Competition 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.
<b>E. Describe any provisions or procedures available to the enforcement authority, the parties and/or third parties to extend the waiting period/suspension obligation.</b>	See explanations at point 9A above.
<b>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.</b>	N.A.
<b>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).</b>	N.A.

## 11. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both? Does each party have to make</b>	Notification may be made jointly by the parties or by any of the parties or the authorized representatives thereof. Notifications made by unauthorized persons are deemed invalid. Documents showing that the notifying person is authorized should be attached to the notification form.
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<b>its own filing?</b>	The notifying party shall be required to inform the other relevant party concerning the situation.
<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	No. Presidency of the Privatization Administration sends the notification forms filled by the successful bidders in cases of acquisition via privatization transactions.
<b>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)?</b>	No.
<b>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?</b>	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.

## 12. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined (e.g., flat fee, fees for services, tiered fees based on complexity, tiered fees based on size of transaction)?</b>	No.
<b>B. Who is responsible for payment?</b>	N.A.
<b>C. When is payment</b>	N.A.

required?	
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	N.A.

### 13. Confidentiality

<b>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?</b>	<p>According to Communiqué on Mergers and Acquisitions, the Turkish Competition Authority announces the notified mergers and acquisitions on its website, together with the relevant undertakings and their fields of operation.</p> <p>The notification form requires the parties to summarize information on transaction, including the undertakings concerned, nature of the transaction (merger, acquisition or joint venture), affected markets and the field of activity of the transaction parties without including any trade secrets. This information is to be used by the Turkish Competition Authority for the publication of the transaction on its website.</p>
<b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b>	<p>Access to the file is regulated by paragraph 2 of Article 44 of the Competition Act 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 [Turkish Competition] Authority in connection with themselves, and if possible, a copy of any evidence obtained.”</p> <p>The Competition Board adopted a secondary legislation entitled <a href="#">Communiqué No 2010/3</a> on the Regulation of the Right of Access to the File and Protection of Trade Secrets (Communiqué No 2010/3).</p> <p>To mention some of the important provisions of the Communiqué No 2010/3, according to Article 5(1), the right of access to the file shall be granted upon the written requests lodged by the parties within due period, during the final examinations conducted within the scope of the Competition Act. The right of access to the file shall be fulfilled for one time, as long as no new evidence has been obtained within the scope of the final examination.</p> <p>It should be known that, according to Article 6(1) of the Communiqué No 2010/3, the parties can have access to any document that has been drawn up and any evidence that has been obtained by the Turkish Competition Authority concerning</p>

	<p>them, except for internal correspondences and those that include trade secrets and other confidential information about other undertakings, associations of undertakings and persons.</p> <p>For further information on access to file, see Communiqué No 2010/3.</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b></p>	<p>According to Article 5(3) of the Communiqué No 2010/3, requests from the complainant and third parties shall be evaluated within the framework of general provisions. Article 4(1)(d) of the Communiqué No 2010/3 defines the complainant as natural or legal persons that have filed an application with the Turkish Competition Authority and have a legitimate interest.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>First of all, the Turkish Competition Authority announces the notified mergers and acquisitions on its website, together with the relevant undertakings and their fields of operation as provided in point 13A above.</p> <p>Secondly, the Communiqué No 2010/3 defines trade secrets (Article 12) and provides that it is essentially the responsibility of the undertakings to which the secret belongs to determine whether information and documents that enter into the records of the Turkish Competition Authority include trade secrets, and the justification thereof (Article 13.1).</p> <p>In their secrecy claims, undertakings have to notify the Turkish Competition Authority, in written, of;</p> <p>a) what the information and documents that include trade secret are,</p> <p>b) the grounds that attest to the trade secrecy of these pieces of information and documents, and</p> <p>c) those versions of documents that do not include trade secret (Article 13.2).</p> <p>Undertakings filing a claim of secrecy have to state, one by one, the trade secrets included in the documents concerned. Statements to the effect that the documents about which secrecy claims have been filed have the nature of trade secrets as a whole shall not be accepted (Article 13.5).</p> <p>For further information on trade secrets and maintenance of their confidentiality, see Communiqué No 2010/3.</p>
<p><b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign</b></p>	<p>On January 1<sup>st</sup> 1996, Customs Union between the European Community and Turkey came into effect as a result of <a href="#">Decision No 1/95 of the EC-Turkey Association Council</a>. Section 2 of Chapter 4 of the Decision provides the rules on "competition." According to article 36 in Section 2, Turkey and European</p>

<p><b>competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>Community - which are the parties - shall exchange information taking into account the limitations imposed by the requirements of professional and business secrecy.</p> <p>In some <a href="#">free trade agreements to which Turkey is a party</a>, there are rules for exchange of information on competition matters by taking into account limitations imposed by requirements of professional and business secrecy.</p> <p>The Turkish Competition Authority is also a party to various <a href="#">memorandums of understandings</a> which foresees cooperation including exchange of non-confidential information.</p>
<p><b>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?</b></p>	<p>Documents and information can be exchanged with foreign government and competition agencies provided that the parties grant their consent.</p>

## 14. Transparency

<p><b>A. Does the agency publish an annual report? Please provide the web address if available.</b></p>	<p>According to article 27(1)(k) of the Competition Act, Competition Board has the power and duty to issue an <a href="#">annual report</a> on its works, and the situation and developments in its fields of duty.</p>
<p><b>B. Does the agency publish press releases related to merger policy or investigations?</b></p>	<p>As provided in point 13A above, the Turkish Competition Authority announces the notified mergers and acquisitions on its website, together with the relevant undertakings and their fields of operation. In line with this, final examinations may also be announced on the website.</p> <p>Moreover, brief information on final decisions taken by the Competition Board is regularly announced through the website until they are published with all the legal and economic grounds.</p>
<p><b>C. Does the agency publish decisions on why it cleared / blocked a transaction?</b></p>	<p>Yes. Decisions of the Competition 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>

## 15. Sanctions/penalties

### A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods/suspension obligations?

Firstly, Article 16(1)(b) of the Competition Act 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 in case merger or acquisition transactions subject to authorization are carried out without the authorization of the Competition Board. It should be known that according to the Article 16(1) the amount of fine to be determined cannot be less than 10,000 Turkish Liras. This amount is revalued each year and approximately \$ 8,200 for 2010.

Secondly, Article 11 of the Competition Act entitled "Failure to Notify Mergers or Acquisitions to the Board" is as follows:

"Where a merger and acquisition transaction whose notification to the Competition Board is compulsory is not notified to the Competition Board, the Competition 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;

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.

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 Competition 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."

The fines mentioned in Article 11.1.b involve both the fine mentioned in Article 16(1)(b), and the substantive fine mentioned in Article 16(3).

Although the question does not concern substantive fines, brief information may be valuable.

According to Article 16(3), substantive fines may be imposed on undertakings up to ten percent of their annual gross revenues. Moreover, according to Article 16(4), where an undertaking is

	imposed a substantive fine, executives or employees who have had a determining impact on the violation are imposed administrative fines up to five percent of the fine imposed on the undertaking. In case of substantive fines mentioned in Articles 16(3) and (4) of the Competition Act, full and partial leniency is possible for the undertakings or executives and employees in case they cooperate actively with the Turkish Competition Authority.
<b>B. Which party/ies are potentially liable?</b>	The fine mentioned in Article 16(1)(b) is imposed on either of the parties in merger transactions and only to the acquirer in acquisition transactions..
<b>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.</b>	Turkish Competition Authority imposes/orders sanctions/penalties directly.

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	<p>Article 55 of the Competition Act entitled “Appealing Against Decisions of the [Competition] Board” is as follows:</p> <p>“Nullity suits against final decisions, measure decisions and administrative fine decisions of the [Competition] Board shall be heard at the Council of State as the court of first instance.</p> <p>Appealing against decisions of the [Competition] Board shall not cease the implementation of decisions, and the follow up and collection of administrative fines.”</p> <p>It should be said that the parties may file a suit with the Council of State within 60 days when they receive the notification of the decision of the Competition Board.</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?**

Yes. There are various sectoral regulators responsible for sectors such as banking, electricity, and radio and TV broadcasts in Turkey. The relevant legislation may require permission of the sectoral regulator regarding merger transactions. For instance, Banking Act No. 5411 requires permission of the Banking Regulation and Supervision Board in case a bank operating in Turkey

- merges with one or several other banks or financial institutions, or
- transfers all its assets and liabilities and other rights and obligations to another bank operating in Turkey, or
- takes over all the assets and liabilities and other rights and obligations of another bank, or
- disintegrates, or
- changes shares.

## 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 a merger or acquisition is not contrary to Article 7 of the Competition Act has been taken due to incorrect or misleading information supplied by transaction parties, or the conditions or obligations attached to the decision have not been fulfilled, the Competition Board may reexamine its previous decision.

There is no time limit on this authority.