

COMPETITION LAW
(36/2009, 42/2010 and 3/2012)

Communication under Article 8(1)

Competition Board shall publish the following Communication using the power granted to it by the Article 8 (1) of Competition Law:

Short Name 1 This Communication shall be cited as “the Concentrations Communication”.

CHAPTER ONE
General Rules

Definitions 2. Unless the text requires otherwise within this Communication;

36/2009 “Board” shall mean Competition Board.
42/2010 “Privatization” shall mean the definition stated in the Privatization
3/2012 Law.
 “Complete Application” shall mean the situation when notification
24/2012 is submitted to the Board and no necessity of additional information
 required by the Board or when additional information is required,
 completion of additional information.
 “Enterprise”, shall mean entities that are engaged in economic or
 commercial activities constitute a whole from the economic point of
 view, and can independently make decisions, regardless of their
 legal status and the way they are financed.
 “Law” shall mean Competition Law.
 “Concentration” shall mean merging of two or more enterprises so
 as to bring permanent changes to their control mechanism or taking
 over direct or indirect control of one or more enterprises by one or
 more other enterprises through purchasing shares or properties, by
 an agreement or by any other means.

Objective and 3. This Communication aims at determining the concentration
Scope transactions to be notified to the Board in order to take permission
 and the principles and procedures regarding the control of the
 concentrations.

CHAPTER TWO
Concentrations

Cases Considered 4. (1) According to Article 7(1) of the Law the situation of
as Concentration concentration shall emerge under the following conditions:

 (A) Merger of two or more enterprises
 (B) Taking over of the whole or part of the direct or
 indirect control over one or more enterprises by one
 or more other enterprises, particularly under the
 following conditions:

- (a) Taking over the majority of shares or equity stakes, or
 - (b) Taking over majority of voting rights, or
 - (c) Taking over the properties making up the whole or part of an enterprise, or taking over usufruct for a specific period
 - (ç) Any other type of seizure or acquisition that will be carried out in compliance with the provisions of laws regulating establishment and management of enterprises.
- (C) Two or more independent enterprises going into a long term partnership forming an independent enterprise.
- (2) Control mentioned in paragraph 1 of this Article may be performed separately or together via rights, agreements or other tools enabling exertion of decisive influence, whether de facto or de jure, over an enterprise. Such tools shall be the rights or agreements that specifically enable property right or usufruct right for the operable ones over entire or partial assets of an enterprise, and exertion of decisive influence over decisions or formation of the bodies of an enterprise. Control may be undertaken by holders of right, or by persons vested with such rights upon an agreement or by persons or enterprises that de facto have the power to use such rights although not eligible or right holder.
- (3) Formation of a joint entrepreneurship that will permanently carry out all functions of an independent economic entity shall be considered as the act of acquisition under the scope of sub-paragraph 1(B) of this Article. In case of these acts each one of the parties shall be considered as transferee.
- (4) Privatizing actions are also considered as concentrations and they are notified to the Board in accordance with the provisions of Privatizing Law.
- 24/2012
- Exceptions
5. Within the scope of Article 4 of this Communication, the following situations shall not be considered as concentration of enterprises:
- (1) In the event that banks or other financial institutions or insurance companies purchase shares temporarily for their ordinary operational activities with the aim of reselling later or they offer these shares for sale within twelve (12) months at the latest and do not make use of voting rights attached to these shares throughout the abovementioned period;
If an enterprise proves that such a transaction cannot be performed within the given period, Competition Board may extend this period upon request from either parties;
 - (2) In the event that a person being a liquidator pursuant to the Bankruptcy Law takes over the control;
 - (3) Acquisition of the control by a public organisation
- Chapter 5

and institution as required by the Law with the aim of managing liquidation, dissolution, payment difficulty, suspension of payments, concordatum and privatisation;

(4) The cases mentioned in Article 4 of this Communication to come into effect via inheritance.

Concentrations
Subject to
Notification

6. (1) Upon emergence of following situations, concentrations covered under Article 4 of this Communication may not be implemented before the situation is notified and a decision approving a concentration is obtained from the Competition Board:
- (A) Any one of the enterprises operating in the TRNC that is enrolled in the concentration process to declare total annual turnover of at least 2,000,000 (two million) Turkish Liras in the financial statement of the previous year obtained by selling goods or services in the TRNC and
- (B) In case any one of the enterprises enrolled in the concentration process is registered outside the boundaries of the TRNC, the total worldwide turnover of the foreign enterprise in question or any one of the enterprises, obtained by selling goods and/or services, as declared in their previous year`s financial statement to be 20,000,000 (twenty million) Turkish Liras or higher.
- (2) When the total annual turnover within the scope of paragraph 1 of this Article is calculated, turnover of the enterprises within the group shall not be taken into consideration.
- (3) In the event that one or more enterprises, or only a part or parts of these enterprises are concentrated by concentrations prescribed in paragraph 1 of this Article, when the turnover is calculated in accordance with paragraph 1 of this Article, regardless of the status of the legal entities, only the turnover of the parts of the enterprises which are subject to concentrations` control shall be considered.
- (4) In the event that two or more concentrations specified in paragraph 3 of this Article are implemented within a period of less than 2 (two) years, such concentrations (taking over of parts of an enterprise successively) shall be regarded as a single concentration taking into account the date on which the last concentration took place.
- (5) When calculating the turnover, average buying rate announced by the Central Bank of the Turkish Republic of Northern Cyprus during that fiscal year shall be taken as the exchange rate.
- (6) In order to control concentrations of banks, other financial institutions and insurance companies the following conditions shall be regarded instead of total annual turnover:
- (A) For banks and legal persons offering financial services, sum

of the following revenue items shall be taken after relevant direct taxes are deducted:

- (a) Interest income and similar revenues;
 - (b) Income obtained from movables;
Income obtained from shares and other varying movable yields, income obtained from dividends of enterprises, and income obtained from shares of the joint enterprises.
 - (c) Commissions charged;
 - (ç) Net profit from financial activities; and
 - (d) Other operational income.
- (B) For insurance, reinsurance and pension companies;
- (a) Direct local gross premium incomes for insurance companies
 - (b) Direct local gross premium incomes for reinsurance companies
 - (c) The amount of total contribution margin and total amount of fund in the pension companies, and for the pension companies operating in the life sector direct local gross premium incomes as an extra.

Notification of Concentrations

7. (1) In the event that thresholds stated in Article 6 of this Communication are exceeded, it shall be obligatory to notify the Competition Board of a concentration before its implementation under the scope of this Communication.
- (2) Concentration shall be reported by the following parties:
- (A) In the event that the whole or part of the control of one or more enterprises will be taken over by another enterprise, such enterprise or its competent representative shall communicate the notification.
 - (B) In other cases, enterprises altogether or representative/s authorised by the involved enterprises shall communicate the notification.
- In either case, documentation proving the authorisation of such representatives must be attached to the notification folder.
- (3) Notification shall be submitted in accordance with the Notification Form to be specified by the Competition Board by the submission of a single folder. Each document in the folder shall be issued in two copies and they shall also be communicated to the Board as soft copies. In case the documents found in the folder are not original, the necessary number of copies shall be obtained and incorporated in the folder after originals are reviewed by the authorised Board personnel.
- (4) During the notification process all information and documents requested must be provided in full and in accurate form. In case of amendments to that information until the Board adopts its decision, amendments in question must be notified immediately to the Board by the relevant parties following

the procedure defined in paragraph (3) of this Article.

- Pre-Decision Implementation 8.
- (1) Mergers or acquisitions may not be implemented before the Board adopts a decision confirming the compliance of the relevant concentration with the Competition Law and the provisions of the present Communication.
 - (2) Provided that pursuant to Article 6 of the present Communication, voting rights are not exercised and the activities related to acquiring the control of the enterprises regulated by other laws are not performed, shares that have been declared to the competent authorities in accordance with the legislation in place may be sold by way of bidding.
 - (3) Exceptions may be applied to the obligation of not implementing the concentration or not using the voting rights upon request, with or without the conditions put forth by the Competition Board.
- Announcement of Concentrations 9.
- The Board shall publicly announce the enterprises which notified concentration for approval and their fields of activity on its Website.
- Assessment of Concentrations 10.
- (1) When assessing a concentration the Competition Board shall evaluate whether the concentration creates a new dominant position that will significantly impact the market competition or whether it reinforces an existing dominant position, by investigating the positive and negative impacts of the concentration, and shall evaluate particularly the following:
 - (A) Relevant market structure;
 - (B) The impacts of the merger on the existing or potential competitors;
 - (C) Positions, market shares, economic and financial strengths of the competitors;
 - (Ç) Opportunities and options to find suppliers and customers;
 - (D) Economic, legal and other hindrances during entry to the market;
 - (E) Actual and potential competitiveness levels of the parties involved in the concentration in local and international markets;
 - (F) Their supply and demand tendency for the relevant goods and/or services;
 - (G) Their technical and economic development trends;
 - (H) Consumer welfare;
 - (İ) Other issues.
 - (2) Mergers or acquisitions that cause a reduction in competition to a broad extent in the country, as a whole or in part, by way of attempting to create a dominant position singly or together, or to strengthen an already existing dominant

position, shall not be granted an approval.

- (3) After the notification has been completed, the Board, whenever it deems necessary, may request a report to be prepared about the matter within a reasonable timeframe, assigning an adequate number of Service Unit personnel during the merger and acquisition activities covered by Article 6 of the present Communication. The Board shall make a final decision within 45 days following the submission of the complete notification or may decide for a 30-day extension for further assessment. In case the Board decides for extension, it shall inform the parties concerned about this decision by a letter stating the fact that the concentration process is suspended until the final decision and hence the concentration in question cannot be put into effect and expressing other measures deemed necessary.
- (4) The Competition Board shall make a decision within 30 days at the latest following the date of commencement of the abovementioned additional timeframe.
- (5) Without prejudice to the following paragraph (7), in case the Competition Board fails to formulate a decision within the timeframes mentioned under paragraph (3) of this Article, the concentration shall be assumed to have been approved.
- (6) In case the Competition Board has reasonable grounds for suspecting that the information provided during the notification process is erroneous, incomplete or inaccurate, it may decide to terminate the timeframes mentioned in this Article and initiate relevant proceedings.
- (7) If the approval for the concentration depends on erroneous, missing or inaccurate information or is received by trickery, such approval may be cancelled or amended.

Request for
Information and
Documentation

11. During the assessment process of the merger or acquisition, the Board may decide, where required, to order an on-the-spot check and to request information not only from parties involved in the merger or acquisition, but also from other persons related to the merger or acquisition, as well as from third parties such as customers, competitors or providers of the parties within the framework of Article 27 of the Law.

Conclusion of the
Assessment on
Concentrations

12. (1) Once the assessment process has been finalised, the Competition Board shall formulate one of the following decisions within the timeframes specified in the present Communication:
 - (A) Approval of the concentration;
 - (B) Prohibition of the concentration;
 - (C) Approval of the concentration under specific conditions or obligations.
- (2) In case the Competition Board approves a concentration under conditions or obligations in accordance with sub-

paragraph 1(C) of this Article, it shall also determine the measures and periods necessary for these measures to be achieved.

- (3) Parties involved in the concentration approved according to paragraph 1(C) of this Article may implement the concentration after taking the measures stated in paragraph (2) of this Article and within the specified timeframe deemed. In this case, the parties involved in the process to detect whether limits or conditions have been exceeded shall be essential.
- (4) The approval for concentration may be issued with defined conditions and obligations under paragraph 1(C) of this Article. However, these conditions and obligations must not confer the meaning of maintaining constant control over the activities of the enterprises in question.
- (5) The Competition Board may amend its decision stated in paragraph 1(C) of this Article, ex officio or upon a request from third parties, under the circumstances where parties fail to fulfil some of the conditions stated in the decision taken by the Competition Board pursuant to paragraph (2) of this Article, or fail to comply with some of the measures or timeframes set therefore in the decision or as a result of unavoidable situations outside the control of the parties.

Undertakings

13. If enterprises offer undertakings that eliminate the concerns detected and conveyed to them as a result of the pre-assessment, to be carried out by the Competition Board while the process is on-going, in accordance with the Notification, the Competition Board shall declare such undertakings to be binding for the enterprises and shall make a decision which binds the implementation to the concentration approval pursuant to Article 12(1)(C) or 12(4) of the present Communication.

Measures to be Taken in case of the Implementation of Prohibited Concentrations

14. (1) The Competition Board shall take all measures necessary, in line with the present Communication, to ensure free market competition within the market in question and determine timeframes for these measures to be implemented, ex officio or upon requests put forth by third parties, under the following circumstances: :
If the concentration has been implemented in defiance of the decision of the Competition Board made under Article 12(1)(B) of the present Communication; If the parties fail to comply with the conditions or obligations specified in the approval of the Competition Board according to Article 10(3) or 12(1)(C) of the present Communication;
If the concentration is implemented in a way that will hinder the market competition to a great extent, even though it has been realized in compliance with Article 5 of the present Communication.
- (2) By formulating a decision in accordance with paragraph (1) of

this Article, the Competition Board shall order particularly the following:

- (A) Return of acquired shares or dividends;
- (B) Prohibition or restriction of the use of voting rights stemming from shares or dividends by the enterprises or parties involved in the concentration, and termination of the control imposed upon a partnership pursuant to Article 6 of the present Communication or arising from other means and which becomes a prohibited concentration.

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| Penalties | 15. In case of a violation of the provisions of the Law and the present Communication the Board may sentence violator(s) with administrative or proportional administrative fines pursuant to Article 31 and/or 32 of the Law. |
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CHAPTER THREE
Final Provisions

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| Publication of the Decision | 16. The Board shall notify the relevant parties to the proceedings of its final decision and publish the same on the Official Gazette of the Turkish Republic of Northern Cyprus and the Website of the Board. |
| Executive Power | 17. The present Communication shall be executed by the Competition Board. |
| Entry into Force | 18. The present Communication shall enter into force as of its date of publication on the Official Gazette. |