

ANCILLARY RESTRAINTS IN THE MERGERS AND ACQUISITIONS WITHIN THE SCOPE OF TURKISH LAW

Ancillary restraint is frequently one of competition restricting agreements in case of accepted as illegal it can damage market. Because mergers and acquisitions sometimes lose its importance without ancillary restraints. Thus, ancillary restraints was accepted legal in practise and then it was regulated. Our country competition law is improving by EU competition law. Competition restricting agreements are prohibited but ancillary restraints accepted legal even it is one of competition restricting agreements. Ancillary restraints must be directly related with a merger and acquisition act, necessary for complete this act and must contain reasonable restrictions. Over comprehend of ancillary restraints, enterprises could abstain from make an illegal agreement in merger and acquisition acts. Competition Authority must carefully assess restrictions over this three components on case of request.

According to Turkish Law, certain mergers and acquisitions activities are subject to the approval of the Competition Board. Within this frame, a Communiqué regarding the mergers and acquisitions activities which are subject to the approval of the Competition Board has been enacted in 2010 and this Communiqué is currently in force with certain amendments in 2012 and 2015.

Definition of Non-Compete

The non-compete agreement is an ancillary restraint. Ancillary restraints are necessary restraints for application of the operation directly related to merger and acquisition and ensured that the expected result of merger and acquisition is fully achieved.

Ancillary restraints are mainly agreements aimed at preventing or restricting competition in accordance with Article 4 of the Law on the Protection of Competition No. 4054 ("Competition Law") and contrary to law. However, in accordance with the European Community practice under certain circumstances, non-compete agreements within the scope of mergers and acquisitions are appeared and permitted as a necessary ancillary restraint in the realization of the outcome of this merger and acquisition operation.

Legal Framework

There is no regulation in the Competition Law regarding ancillary restraints. However, Communiqué on mergers and acquisitions requiring permission from Competition Board numbered 2010/4 ("Communiqué numbered 2010/4") refers to the ancillary restraints. Accordingly, permission granted by the Competition Board ("The Board") for merger and acquisition operations also includes ancillary restraints.

Following the entry into effect of the Communiqué numbered 2010/4, relevant enterprise in mergers and acquisitions, endorsement, the guideline of ancillary restraints ("The Guideline") was published on the official website of the Competition Board. The guideline provides information about the features and elements of ancillary restraints.

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