Kluwer Competition Law Blog

Diverging Opinions on Big Tech M&A: A case example of Google/GalileoAI in Turkey

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The Turkish Competition Authority (TCA) published its decision clearing Google's acquisition of generative AI developer Galileo AI (Galileo)[1]. Galileo AI was founded in 2022 and develops generative AI tools, namely text-to-user interface (UI) and image-to-UI tools. The decision (and the dissenting opinion) provides insights into how competition authorities struggle to tackle anticompetitive risk arising from Big Tech M&A. The decision of the TCA is particularly relevant in two aspects: it operationalizes an alternative to dealing with mergers falling below thresholds and assessments of the killer acquisition theory. More interestingly, 3 of the 7-member Board of the TCA issued a dissenting opinion stating the merger should have been scrutinized more thoroughly.

While the TCA's decision concerns digital markets in Turkey, its importance may go far beyond that. Competition authorities and policymakers are seeking the most effective approach to address potential innovation concerns arising from mergers. For example, the EU initiated a review process for its merger guidelines, upon the recommendation in the Draghi report. The review process includes in-depth consultation on seven specific topics. Two of these topics, Topic C on innovation and Topic E on digitalisation—explicitly mention issues such as killer acquisitions and innovation considerations in merger control.

Big Tech's Hunger for Mergers

It is a challenge to find the exact number of acquisitions Big Tech has made so far. Parker, Petropoulos and Van Alstyne find that Big Tech (Google, Amazon, Apple, Microsoft and Meta) made 855 acquisitions between 1998 and 2020, with approximately 97% of these mergers having gone under the radar, according to Kwoka and Valetti. More recently, another recent research and a public dataset by SOMO shows that Big Tech acquired 191 companies between 2019 and 2025, meaning that Big Tech acquired a company every 11 days in the last 6 years. One thing is for sure: mergers are one of the main business strategies of Big Tech firms.

Authorities have been unable to intervene so far, primarily due to most of these mergers falling below notification thresholds and a limited understanding of how competition works in digital markets. Moreover, the prominence of non-price factors—such as innovation, quality, interoperability, and privacy—has made it difficult to assess the true impact of these mergers.

A different approach to below-threshold mergers: Technology Undertakings

Like most jurisdictions, Turkey's merger control regime was (and still mostly is) based on the annual turnovers of the merging parties. That said, in 2022, with the Communique No. 2022/2[2], the TCA brought a novel concept of *technology undertakings,* creating an exception to the turnover-based merger control regime. Technology undertakings are defined as undertakings and their assets operating in specific industries: digital platforms, software and gaming software, fintech, biotechnology, pharmacology, agriculture chemicals and health-tech.

Accordingly, if the target technology company:

- Operates in Turkey or
- Conducts R&D activities in Turkey or
- Provides services to users in Turkey

Then, merging parties must notify the transaction to the TCA, as long as the acquirer's annual turnover exceeds the notification thresholds. This is quite a different approach from a deal value-based threshold (such as in Germany) or the call-in power approach in multiple European countries (such as Italy).

(Substantial) Activity in the Domestic Market

The assessment of the TCA is twofold (i) whether the proposed merger is subject to mandatory notification, and (ii) whether the merger significantly impedes effective competition. The identification of Galileo as a technology undertaking is pretty simple. According to the TCA, Galileo qualifies because it provides software-based technology services. As Google's turnover exceeds the relevant notification thresholds, the transaction is subject to mandatory notification (para 11). Contrary to other jurisdictions, such as Germany, the technology undertaking approach doesn't require the authority to find substantial activity of the target company in the domestic market to review the merger. Although the amendment mentions that the target company must operate or have R&D activities or provide services to customers in Turkey to be reviewable by the TCA, there is no requirement for the extent of the activity. Therefore, even though Galileo had limited activity in Turkey (para 25), the existence of customers in Turkey (para 17) was sufficient for the TCA to review the merger.

The substantial activity requirement limits competition authorities from intervening in cases dealing with the acquisition of a small company. Indeed, because of this requirement, the Higher Regional Court of Dusseldorf stated that the Bundeskartellamt doesn't have jurisdiction to review Adobe's acquisition of Magento and Marketo as the target companies didn't have substantial activity in Germany.

Similarly, call-in power was subject to criticism by companies. In October 2024, the European Commission accepted the referral request from the Italian Competition Authority (AGCM), which used its call-in power to review the Nvidia/Run:ai merger. The merger was later approved by the European Commission. However, Nvidia filed a lawsuit (Case T-15/25) against the European Commission's acceptance of the referral from AGCM, alleging that AGCM's exercise of "loosely defined, ex-post, discretionary call-in powers infringes institutional balance, legal certainty, proportionality, and equal treatment.

In these two aspects (domestic activity and discretionary powers), the technology undertaking approach has certain advantages in capturing below-threshold mergers, although there might be other concerns related to this approach.

Assessment of Competition

After holding that the merger falls within the scope of the Turkish merger control regime, the TCA analyses the competition in relevant markets. The genAI tools that Galileo develops enable users to generate high-quality designs by entering text and image inputs. Google stated in the notification form that it intends to integrate Galileo AI into its Google Labs, a platform that allows developers to test experimental AI products. Further, according to the notification form, although Google Labs has an unreleased tool for UI design, Galileo's contribution to developer tools would be minimal, given the deal value and Galileo's limited turnover (para 22).

The decision first identifies Google's activity in the AI development and mentions its presence in cloud (Google Cloud), foundation models (such as Gemini), AI development platform (Vertex AI), and genAI applications (Gemini chatbot, Gemini-integrated Google Workspace). The decision states that Galileo didn't develop its own foundation model (FM) but used third-party FMs to develop its UI design tools (para 24). Since Google doesn't offer UI design tools, TCA concludes that there is no horizontal overlap.

That said, TCA finds a vertical overlap between the activities of Google and Galileo (para 25). Unfortunately, the specific details of the vertical overlap and the potential concerns it raises have been redacted from the public document to protect commercially sensitive information. The sentences that follow the redaction seemingly suggest that the primary concern is related to the vertical overlap between the Google Gemini model and Galileo's generative AI tools—specifically, the risk of potential foreclosure. However, TCA concludes that such a foreclosure is unlikely to produce anticompetitive effects due to (i) Galileo's limited activity in Turkey and (ii) existence of alternatives of Google's Gemini model such as Microsoft/OpenAI (interestingly the decision mentions these two companies together), Meta and X (para 25). Therefore, the TCA finds that while the extent of a startup's activity in Turkey is irrelevant for determining the applicability of Turkish merger control, it is taken into account when assessing the substance of the case.

What are the conditions of a killer acquisition?

The decision then includes a risk assessment related to the killer acquisition theory. In that end, the TCA identifies three criteria for killer acquisitions (para 34):

1. Acquisition of a startup by a scaled-up incumbent
2. The acquired product or technology not being adopted, developed, maintained, or being entirely withdrawn from the market and as a result,
3. Elimination of horizontal competition and product development process

The second criterion is particularly interesting, providing a more helpful interpretation of the killer acquisition theory, as it can be applied not only when the acquirer shuts down the target, but also when it neglects it. For example, this interpretation can be well-applied in the FTC v. Facebook case, in which the Instagram co-founder said Meta starved Instagram of resources after being acquired.

After applying this interpretation to the case, the TCA concludes that there is no risk of a killer acquisition because (para 35)

- Google will integrate Galileo into Google Labs
- There is no horizontal overlap between the activities of Google and Galileo and
- Galileo competes against other products such as Adobe XD and Figma Design, which have the same technology.

As a result, TCA decides that while the Google/Galileo merger is subject to merger review, it doesn't significantly impede effective competition.

Diverging Opinions

However, the story doesn't end there. 3 out of 7 members of the Turkish Competition Board dissented from the decision to approve the merger. The dissenting opinion criticizes the TCA's analysis for its shortcomings, arguing that the Google/GalileoAI transaction, given Google's dominant position across the AI value chain, has the potential to be a killer acquisition. It emphasizes that the merger could significantly hinder competition through its vertical integration and ecosystem effects.

The dissent criticizes the analysis as it merely mentions academic literature and does not thoroughly analyze the potential harms to competition. The dissent highlights that digital ecosystems—such as the Google ecosystem centered around Google Search—are largely shaped through mergers and acquisitions. It also draws on the UK Competition and Markets Authority's (CMA) report on foundational models (FNs), noting that entry into AI markets is limited due to bottlenecks.

In this context, the dissent argues that Galileo's text-to-UI and image-to-UI tools are significantly important, but the TCA's analysis fails to conduct a substantive competitive assessment. Instead, it merely lists the names of the competitors without further analysis. Further, the dissent criticizes the analysis as it didn't scrutinize whether Galileo's products and services are strategically important in certain sectors.

The dissenting opinion draws on precedent cases—Illumina/Grail, Visa/Plaid, EEX/Nasdaq Powerdeals, and Qualcomm/Autotalks—to argue that the merger warranted a more thorough assessment, particularly regarding potential foreclosure risks, adverse effects on innovation incentives, labour market implications, the AI ecosystem, and the identification of potential competition restrictions across all relevant markets.

Finally, the opinion refers to another Google merger reviewed by the FTC—Google's acquisition of AdMob—where Google opted to buy a technology it could have developed in-house. The dissenting opinion states that had the merger not been approved, Google might have been

incentivized to build its own tools, while AdMob would have had stronger incentives to further invest in its own technology.

In summary, the three members of the TCA Board objected to the decision, stating that competition assessment in innovation-centered markets differs from that in traditional markets, and that the TCA's analysis did not take a holistic approach in this regard.

Conclusion

This decision is particularly insightful, as it demonstrates that the assessment of novel concepts, such as killer acquisitions, should include a detailed analysis of the incentives and capabilities of merging firms to drive innovation. Such an analysis should not only be limited incentives or intentions of the merging firms, but it should take lessons from previous cases to evaluate the aftermath of acquired technologies.

The decision provides two important lessons for anyone interested in merger control in digital markets. Turkey is an interesting example when it comes to tackling mergers where innovation is particularly important, and it offers an alternative to other rules, such as call-in power and deal value-based thresholds. Considering the EU is struggling to find a uniform solution to killer acquisitions, there might be lessons to take from the Turkish experience. Secondly, it also shows the diverging opinions within competition authorities when it comes to tackling digital mergers. The willingness to challenge Big Tech's dominance remains strong in jurisdictions beyond the US and EU, highlighting the global anti-sentiment toward their power.

[1] Turkish Competition Authority decision number: 25-02/62-37, published on 03.06.2025

[2] Rekabet Kurulundan ?zin Al?nmas? Gereken Birle?me ve Devralmalar Hakk?nda Tebli? (Tebli? No: 2010/4)'de De?i?iklik Yap?lmas? Hakk?nda Tebli? (Tebli? No: 2022/2)

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