

GEDİK & ERAKSOY

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Investigation into the THY OPET – Mobil merger

In 6 March 2014, the Turkish Competition Board (**TCB**) decided to initiate an investigation into the application for the acquisition by THY OPET Havacılık Yakıtları A.Ş. (**THY OPET**) of 25% of the property rights of Mobil Oil Türk A.Ş. (Mobil) of the assets subject to the Aviation Operation Agreement for Refuelling and Storage at the Airports in Turkey (**Operation Agreement**). The aim of the investigation is to determine whether the proposed merger would result in a significant lessening of competition in the relevant market under Article 7 of Act no 4054 on the protection of competition (**Act no 4054**).

The Operation Agreement, which was initially signed in 2008 and received an individual exemption from the TCB in the same year, brought together the individual refuelling and storage units owned by four fuel oil companies (Mobil, Shell, THY OPET and BP) at the Antalya, Bodrum, İzmir and Atatürk (İstanbul) airports, and established a common management structure for the operation of these units. There is, in fact, another decision of the TCB on the same matter from November 2013, whereby it cleared the acquisition by SOCAR of 25% of the property rights of Mobil of the assets subject to the Operation Agreement. It appears that this transaction has never been put into effect and Mobil is now planning to transfer these rights to THY OPET.

THY OPET is the biggest company, after OMV Petrol Ofisi A.Ş. (**OMV**), in the jet fuel market in Turkey. If the transaction is cleared, it will have 50% of the property rights of the refuelling and storage units, which may lead to a dominant position in the relevant airports.

The TCB's concerns over this transaction may also relate to the problem of vertical integration. THY, one of the parent companies of the THY OPET joint venture, is the biggest airline company in Turkey. Thus, it is the biggest buyer of jet fuel. In addition, the other parent company, OPET, is controlled by the Öztürk and Koç families, where the latter also control the single refinery in the country, TÜPRAŞ. Therefore, the transaction may have a significant impact both on the supply and demand sides of the market. However, the TCB cleared the acquisition by THY OPET of the usage rights of Mobil on refuelling and storage units at the Ankara, Kayseri, Dalaman and Çorlu airports in November 2011.

On a separate note, the TCB, concurrently with its investigation decision on the THY OPET – Mobil merger, gave a conditional clearance to the allocation of the operating rights of the fuelling and storage units at the Sabiha Gökçen Airport (İstanbul) to THY OPET for five years. The TCB has still not announced on what conditions the transaction has been authorised.

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