

## **Turkey: The Turkish Competition Board clears the joint venture of Akpol (a Turkish Energy Company) and Gazprombank in the Turkish natural gas market.**

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### **Introduction**

On 18 July 2013, the Turkish Competition Board (“**Board**”) issued its decision on the formation of a joint venture in Turkey by (i) Akpol İnşaat Mühendislik Proje ve Ticaret A.Ş. (“**Akpol**”) and (ii) Prima Energy Trading LLC (“**Prima**”) (which is a wholly-owned subsidiary of Gazprombank OJSC) (“**Gazprombank**”) (“**Transaction**”) following the application for approval filed by Akpol and Prima.

The joint venture was intended to consolidate the joint venture partners’ existing interests in two Turkish natural gas import companies – Enerco Enerji Sanayi ve Ticaret A.Ş. (“**Enerco**”) and Avrasya Gaz A.Ş. (“**Avrasya**”). The joint venture company was to be in the form of a holding company called Promak Enerji Sanayi ve Ticaret A.Ş. (“**Promak**”).

### **Board’s assessment**

The Board defined the geographic market as the state of Turkey and identified the relevant product market as the natural gas supply market. The Board also took the upstream market into consideration due to the strong position of Gazprom in the upstream natural gas market (in respect of both sale and production).

In relation to its assessment of dominance, the Board considered market shares, concentration levels, potential competition and the supply and demand aspects of the market. According to the Board, the Transaction caused some horizontal concentration concerns since, upon completion, Promak (the holding company of the joint venture) would control Avrasya and Enerco, which are competitors in the natural gas supply market in Turkey. However, in view of the market position of BOTAŞ (the state-owned natural gas company which currently has the strongest position in the natural gas supply market), the Board concluded that the Transaction would not lead to the creation or strengthening of a dominant position.

A vertical concentration analysis was also an important aspect of the Board’s assessment, due to Gazprom’s involvement. According to the Board, Prima was controlled by Gazprombank and Gazprom has a certain degree of control over Gazprombank. The Board assessed, *inter alia*, (i) whether there is a risk of an anticompetitive foreclosure due to the market power of Gazprom in the upstream natural gas market, (ii) the ongoing liberalisation of natural gas market in Turkey and (iii) local natural gas production and the import of spot market LNG. In its analysis, the Board calculated that the total import share of companies jointly controlled by Gazprombank (or Gazprom) (including Avrasya and Enerco) is not at a level which would limit competition in the relevant market through vertical concentration.

Consequently Board (by a majority vote) decided to clear the Transaction; however, it also published a dissenting opinion.

### **The dissenting opinion**

Two dissenting Board members argued that the Transaction should be subject to further analysis within the scope of a Phase II investigation. The dissenting opinion notes that (i) a relatively small portion of the natural gas market is controlled by the private sector in Turkey and that Gazprom has considerable influence on this

liberalised portion and (ii) the liberalisation of the natural gas market is an ongoing process in Turkey, and (iii) the market share of BOTAŞ is scheduled to be reduced significantly. In conclusion, according to the dissenting opinion, Transaction does not only strengthen the current position of Gazprom, but it may also substantially lessen the expected competition in the market after the liberalisation; therefore, a further investigation is necessary to assess the Transaction.

Source: Cagri Cetinkaya, Yasemin Guckan, The Turkish Competition Board clears a joint venture in the natural gas market (Akpol / Gazprombank), 18 July 2013, e-Competitions Bulletin August 2013, Art. N° 61081, [www.concurrences.com](http://www.concurrences.com)

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