

QUANTITATIVE ANALYSIS OF  
TURKISH COMPETITION  
AUTHORITY'S PHASE II M&A  
REVIEWS

MAY 2022



ECONOMIC  
RESEARCH

## Introduction

On the occasion of the 25th anniversary of the appointment of the first members of the Turkish Competition Board, we have made a [quantitative analysis](#) of the elements that we find interesting in the investigation decisions of the Board. In this second part of our tribute, we have analysed the findings of the Board regarding mergers, acquisitions and joint ventures ("mergers").

As seen in the following pages, since most merger control decisions result in authorisation, they are not worth analysing in terms of competition policy, except for their sheer number. Therefore, our study focused on more severe mergers, i.e., the transactions subject to Phase II review under Article 10(1) of the Competition Law due to competitive concerns.

With the amendment made by Communiqué No. 2022/2 dated 4 March 2022, the turnover thresholds used to determine the necessity of notification of mergers to the Turkish Competition Authority ("TCA") were raised, and a necessary step was taken for the Competition Authority to focus more on mergers that may raise competitive concerns. Therefore, it will not be surprising to see fewer merger decisions in the coming period, but with greater importance in terms of competition policy.

Kind Regards,  
ICR Economic Research

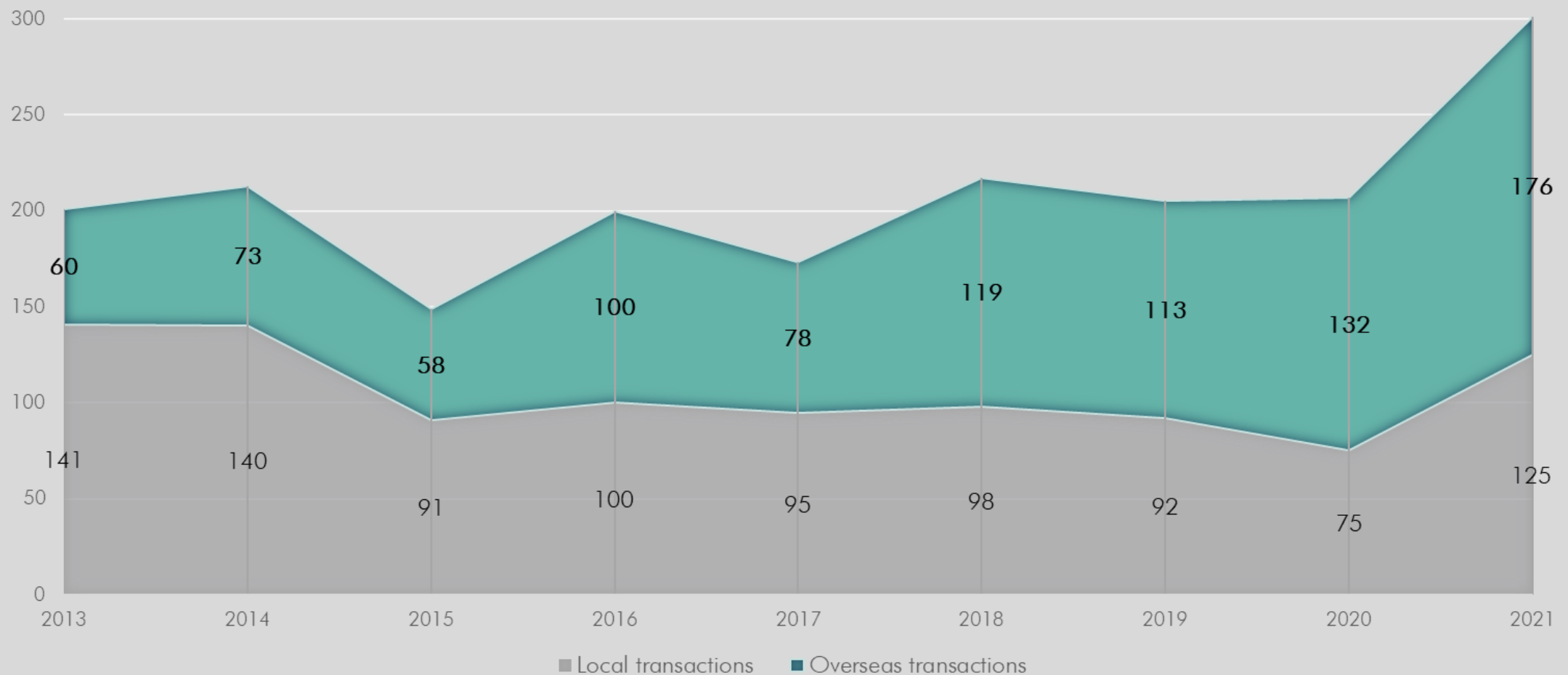
# Intervention rate: 1,26% (\*)



In the last nine years, 98.74% of the merger transactions notified to the TCA were authorised without any intervention. The TCA's interventions are not limited to rejection decisions but may also be directed to alleviate competitive concerns by granting conditional clearance to the mergers. The number of mergers cleared subject to these conditions was 18 in the last nine years.

(\*) The ratio of rejected and conditionally authorised mergers to all merger cases (2013-2021). Data is compiled from the TCA Annual Reports.

## Overseas transactions have been in the majority for the last four years

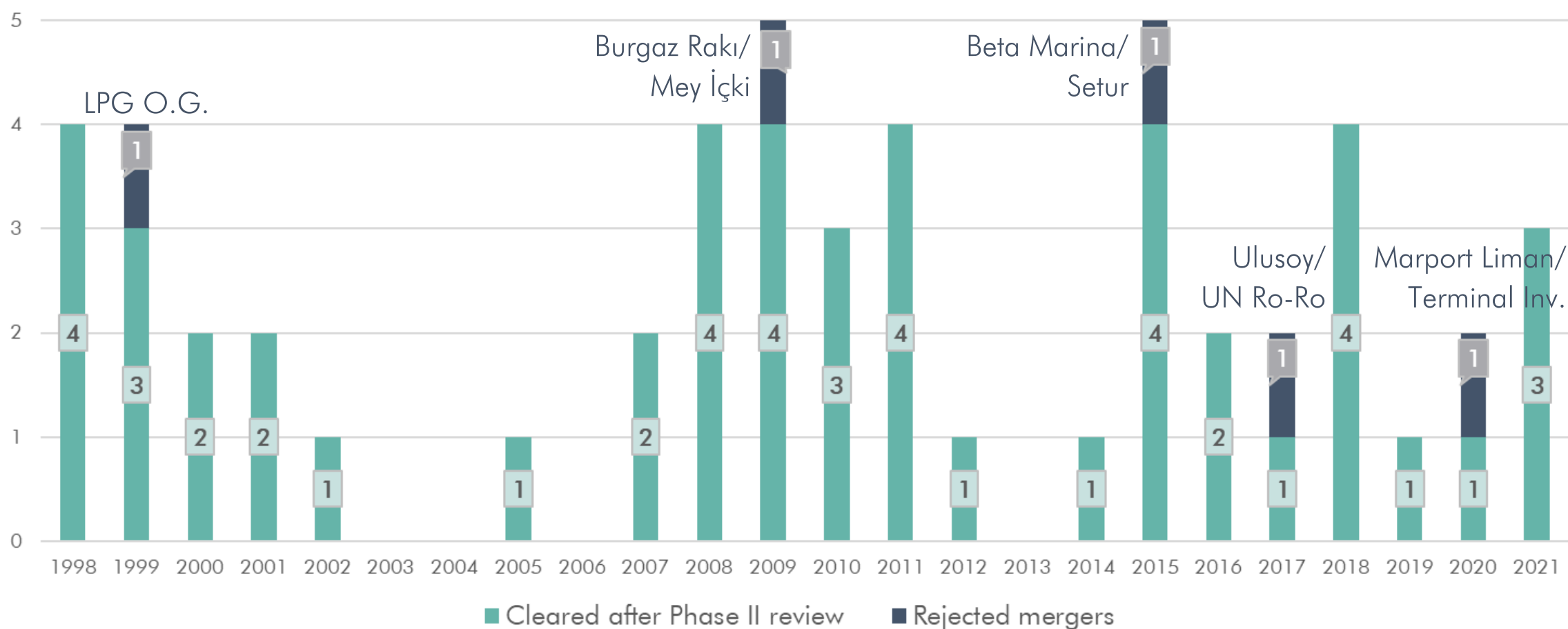


In its Merger and Acquisition Outlook Reports published since 2012, the TCA classifies the merger notifications as "local" and "overseas" transactions. Local transactions are characterised when the target company is a company established under Turkish law. Due to the weakening of the Turkish Lira in recent years, the increase in overseas transactions may be expected to return to pre-2016 values due to the update of the notification thresholds. We will see whether the "technology company exception" can offset this decrease.

Privatisation notifications are included in the numbers.

Data is compiled from the TCA's Merger and Acquisition Outlook Reports.

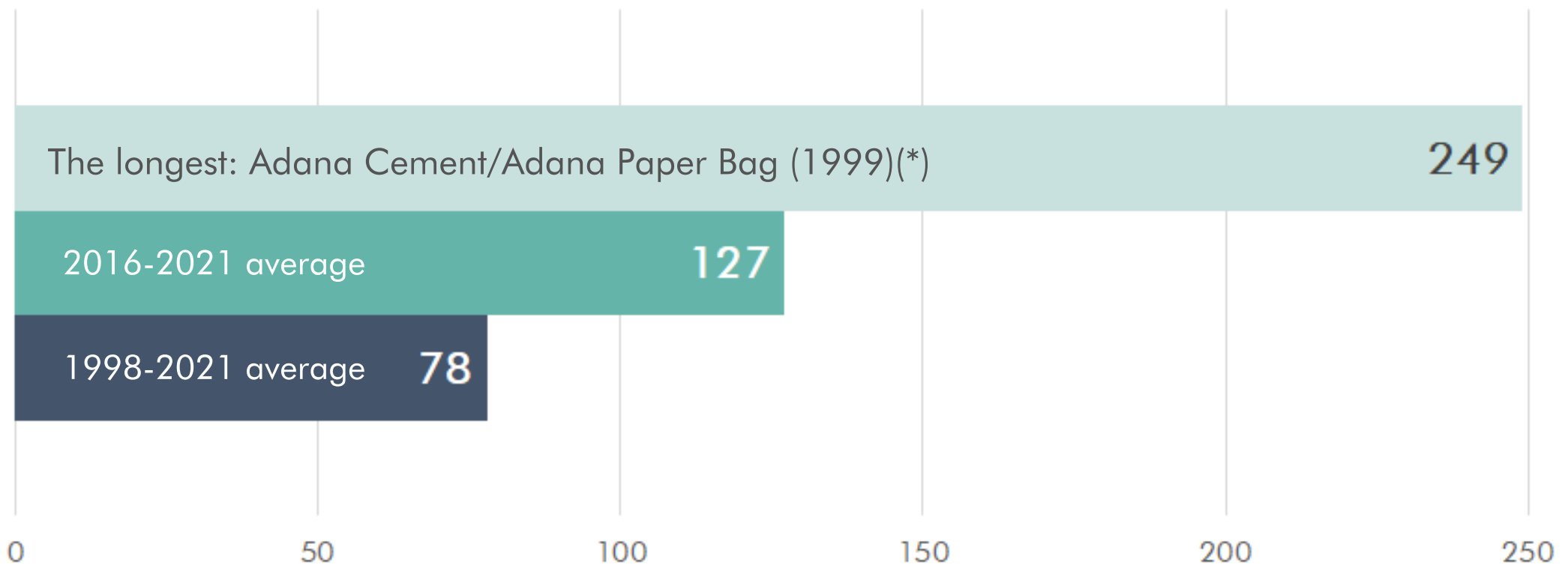
## A brief history of the Phase II reviews



Mergers notified to the TCA are subject to final review if competitive concerns arise. The decision on whether or not to authorise the transaction is made at the end of the final examination phase (i.e. Phase II). In 25 years between 1997 and 2021, 53 transactions were subject to Phase II review, and five did not receive the necessary authorisation.

Since statistics on Phase II reviews are not included in the annual reports of the TCA, we compiled the data from the reasoned decisions.

## Duration of Phase I reviews (days)



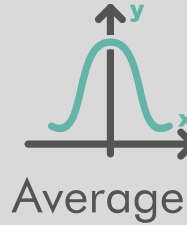
Merger transactions subject to authorisation must either obtain approval or be subject to Phase II review within 15 days from the date of notification. Under Article 11(1) of Communiqué No. 2010/4, for this 15-day period to commence, the TCA requires the "missing" information in the notification form to be completed. Therefore, the period from the first notification to the decision to take the case to Phase II (which constitutes Phase I) is much longer than 15 days. A second observation is that the average Phase I review duration of the last five years has exceeded the 25-year average.

(\*) The review period for EssilorLuxxotica (2021), a relatively new transaction, was 244 days.

# The average duration of Phase II reviews



First Notification



Phase I



Phase II

152 days

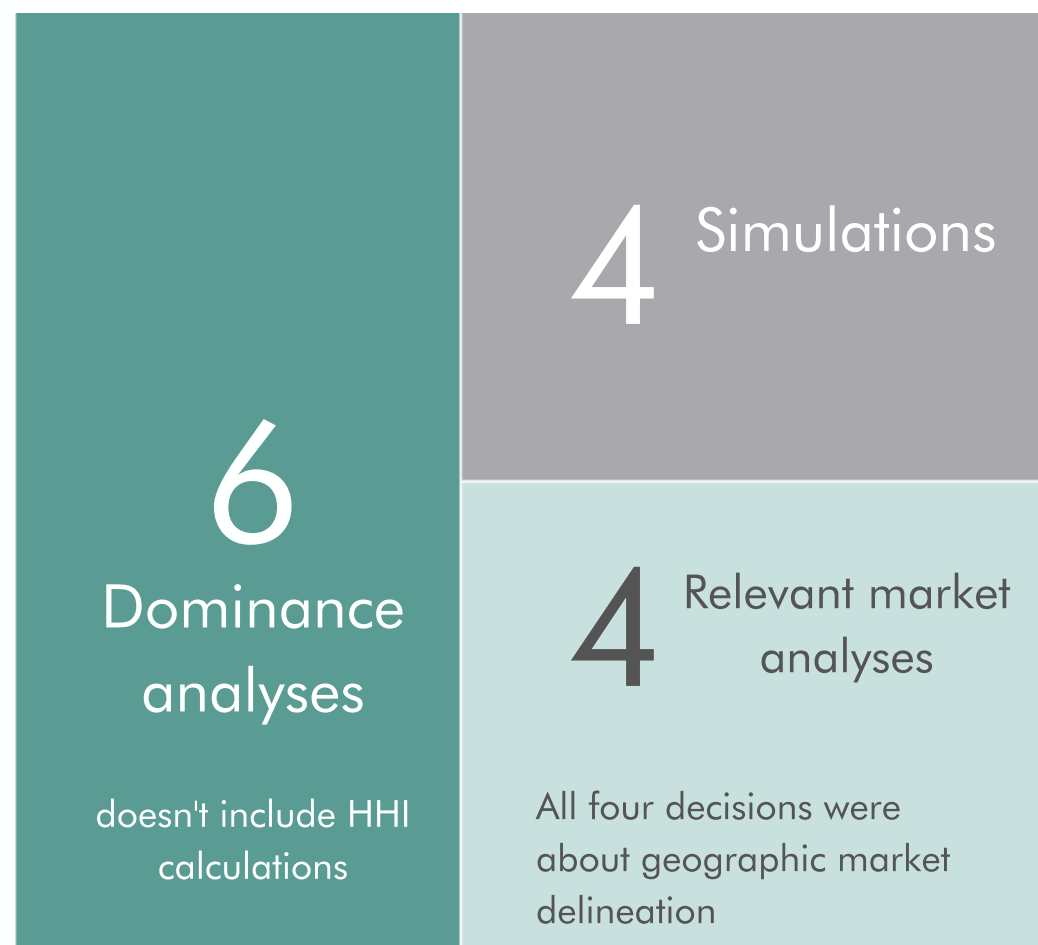
228 days



Clearance decision

When a transaction is taken to Phase II, a long waiting period begins for the parties. The average length of Phase II review in 25 years is 152 days. If we calculate from the date of the first notification, a transaction under Phase II review was concluded at the end of 228 days on average.

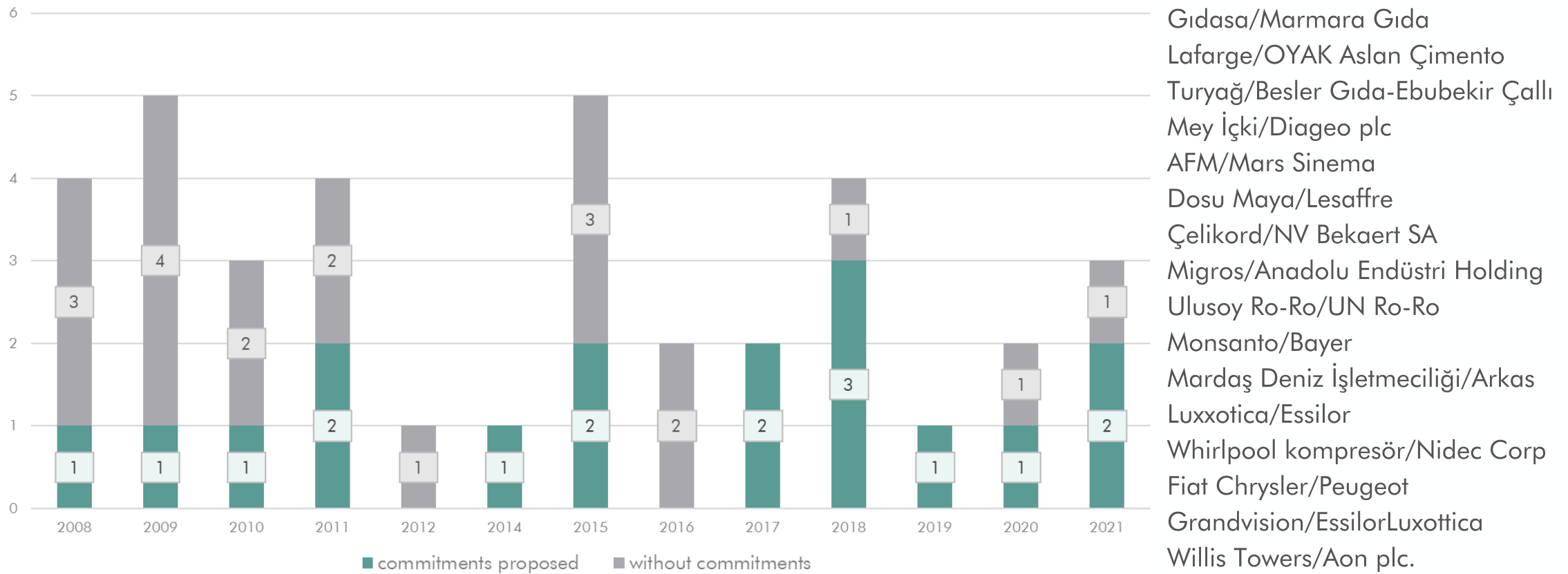
## Economic analyses conducted during Phase II



Quantitative analyses in merger filings were first reflected in the reasoned decisions in 2009 using the SSNIP test to determine the relevant geographic market (Lafarge Aslan Cement/OYAK). By 2011, merger simulations were used to estimate the possible prices of the market players after the transaction and the quantities they could sell at these prices (AFM/Mars). However, we are aware that there are also cases where the economic analyses made by the TCA and the parties were not reflected in the decision (e.g. Dosu Maya/Lesaffre-2014). Interestingly, no quantitative study on the relevant product market analysis has been conducted in any of the decisions.



## Phase II cases submitted with commitments



Although the commitment mechanism was introduced with the Communiqué No. 2010/4, it can be traced back to the Gıdasa/MGS-Topbaş Family (2008) merger. Above is the information on the transactions where the parties proposed commitments. We should remember that there are also cases where these commitments were not accepted (Un Ro Ro-2017) or were accepted without the need for a commitment (SAB Miller-2016).

## Phase II cases cleared with remedies

### Structural remedies 10

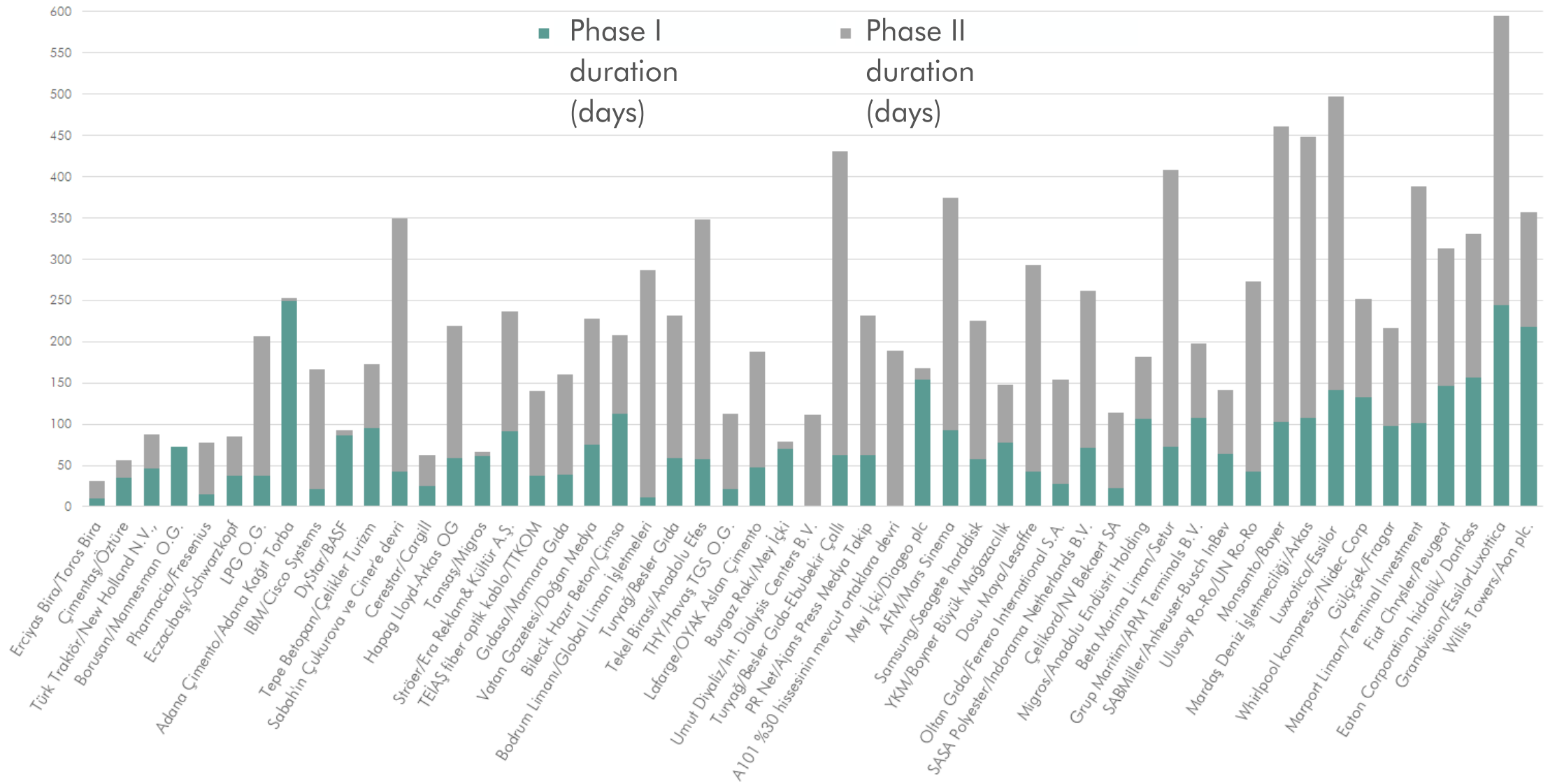
Gıdasa/Marmara Gıda  
Vatan Gazetesi/Doğan Medya  
Lafarge/OYAK Aslan Çimento  
Turyağ/Besler Gıda-Ebubekir Çallı  
Mey İçki/Diageo plc  
AFM/Mars Sinema  
Dosu Maya/Lesaffre  
Monsanto/Bayer  
Luxxotica/Essilor  
Whirlpool kompresör/Nidec Corp

### Behavioural remedies 14

Borusan/Mannesman O.G.  
Vatan Gazetesi/Doğan Medya  
THY/Havaş TGS O.G.  
Turyağ/Besler Gıda-Ebubekir Çallı  
Mey İçki/Diageo plc  
AFM/Mars Sinema  
Dosu Maya/Lesaffre  
Çelikord/NV Bekaert SA  
Migros/Anadolu Endüstri Holding  
Monsanto/Bayer  
Mardaş Deniz İşletmeciliği/Arkas  
Luxxotica/Essilor  
Whirlpool kompresör/Nidec Corp  
Grandvision/EssilorLuxottica

As structural remedies, divestment of physical or intellectual properties; as behavioural remedies, we see that a wide range of actions is accepted, such as regular notification of commercial information to the TCA, guarantees to supply the former customers of the acquired company at competitive prices, guarantees to provide services to competitors in the downstream market, implementation of a competition compliance programme, no price increases above inflation, removal of non-competition and territorial exclusivity clauses from the distributors' contracts, limitation of the exchange of customer information between companies at different levels.

## Bonus: "Big Picture"



We have prepared a compact graph for those who want to see all Phase II reviews together. The first Phase II review was the fastest transaction authorised, which took 31 days. The most comprehensive review in total took 594 days. The median, i.e. the case in the middle when ranked, took 219 days.

## Our insights

1. Since the TCA has not updated the notification thresholds since 2011, especially after 2016, the TCA spent a significant amount of time on overseas transactions with limited impact on domestic markets. We believe that the notification thresholds updated in March 2022 will eliminate "notification inflation" and pave the way for the TCA to utilise its resources better.
2. For this reason, as well as due to the increase in the information required in advance in the notification form, it can be expected that the TCA's review time will be noticeably shorter.
3. The introduction of the significant impediment to effective competition (SIEC) test led the TCA to conduct more extensive quantitative analyses in its Phase II reviews.
4. As the quantitative analyses become more challenging for the merging parties, proposing commitments to obtain clearance is expected to become widespread. While the commitments are required to be "based on legal and economic principles" by the TCA from the very beginning, the expectation that numerical analyses will support these commitments will also increase.
5. It is not possible to predict how the "technology company exception" to the notification thresholds will affect the number of notifications.

## Notes

Our study utilised data from 53 Phase II decisions finalised over 25 years. The assumptions we adopted in our analyses, and some of the problems we encountered are as follows:

1. Since one of the transactions (Umut Diyaliz-2010) was withdrawn by the parties on the 43rd day of the final review, we did not include it in the statistics regarding the duration.
2. In four of the remaining 52 decisions (Türk Traktör-1998, Bodrum Limanı-2008, THY/Havaş-2009, Çelikord-2014), we took the date of "completion of deficiencies" as the date of the first notification was not available. One transaction (A101-2011) was initiated ex officio, and we did not include it in the graphs where we calculated the duration. In one transaction (Borusan/Mannesman-1998), we assumed that the preliminary review period lasted 27 days, as the date of the final review was not included in the reasoned decision.
3. Although the Hapag Llyod/Arkas joint venture transaction was decided as granting an exemption to the agency agreement, we counted it as Phase II since the process was concluded with a final examination.
4. As stated on the page titled "Economic analyses used in final examinations, " we only considered the advanced economic studies conducted by the TCA while preparing the statistics. We did not include the classical tests for determining the market concentration level, which are included in many decisions.

## ABOUT US

ICR Economic Research offers the use of economic theory and quantitative techniques to complement legal teams' cases. It is getting harder and harder for antitrust lawyers to convince the competition authorities without integrating their arguments with economic theory or utilising economic evidence. We help lawyers when it comes to competition economics.

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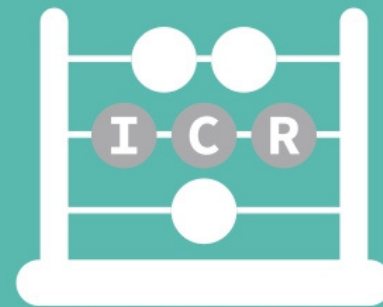
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