

From the Presidency of the Competition Authority,

**COMPETITION BOARD DECISION**

**File No:** 2019-4-041

(Acquisition)

**Decision No:** 20-37/523-231

**Decision Date:** 13.08.2020

**A. BOARD MEMBERS IN ATTENDANCE**

**Chairman:** Birol KÜLE

**Members:** Arslan NARİN (Deputy Chairman), Ahmet ALGAN, Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN

**B. RAPPORTEURS:** Muhammad Safa UYGUR, Hatice CESUR, Damla YAZ, Alican KORKMAZ

**C. RELEVANT PARTY:-** Terminal Investment Limited Sàrl

Representatives: Atty. T. Şeyma İNAL and Atty. Baran BAŞ Teşvikiye Caddesi  
No:45 İsmet Apt. Kat:2 D:3 Nişantaşı/İstanbul

- (1) **D. SUBJECT OF THE FILE:** The acquisition of Marport Liman İşletmeleri Sanayi ve Ticaret A.Ş.'s sole control by Terminal Investment Limited Sàrl.
- (2) **E. PHASES OF THE FILE:** Preliminary Inquiry Report dated 13.09.2019 and numbered 2019-4-41/Öİ, was prepared in relation with the notification which entered to the Competition Authority (Authority) records on 22.07.2019 with the number 4779 and which was completed finally on 21.08.2019 with the number 5412. The said Report was discussed during the Competition Board (the Board) meeting dated 26.09.2019 and the decision numbered 19- 33/490-Mİ was taken that an additional work shall be made.
- (3) The Preliminary Inquiry Report dated 13.09.2019 and numbered 2019-4- 041/Öİ prepared about the aforementioned acquisition and the Information Note dated 25.10.2019 and numbered 2019-4-41/BN prepared after the additional work were discussed during the Board meeting dated 31.10.2019 and the decision numbered 19-37/555-M was taken that the transaction would be taken under final examination pursuant to the first paragraph of article 10 of Act no 4054 on the Protection of Competition (Act no. 4054). Following the Board decision, Final Examination Notification was prepared in accordance with article 43 of the Act no 4054 and sent to Terminal Investment Limited Sàrl (TIL). TIL received the said notification on 05.11.2019. In this context, the first written opinion of the party was submitted to the Authority's records within the legal period in accordance with the letter dated 04.12.2019 and numbered 8439.
- (4) The Final Examination Report dated 30.04.2020 and numbered 2019-4-041/Nİ containing the findings and evaluations made as a result of the final examination was sent to the relevant party and all Board members. The second written opinion of TIL on the findings and evaluations made in the Final Examination Report (Report) was submitted in time to the Authority records as dated 03.06.2020 and numbered 5182. An Additional Written Opinion was prepared on the aforementioned second written opinion and sent to the party within the framework of the second paragraph of article 45 of the Act by a letter dated 12.06.2020 and numbered 7563. The third written opinion of the party was submitted to the Authority records on 16.07.2020 with the number 7367.
- (5) In the Board decision dated 25.06.2020 and numbered 20-31/383-M, regarding the transaction, it was decided to initiate an examination by taking into consideration the provisions of the Act no 7246 on the amendments to the Act on the Protection of Competition, which was published in the Official Gazette dated 24.06.2020 and numbered

31165.

(6) At the end of the process, the Final Examination Report dated 30.04.2020 and numbered 2019-4-041/Nİ and the Information Notes dated 12.06.2020 and 03.07.2020 were discussed and a decision was taken.

(7) **F. RAPPORTEUR OPINION:** The relevant report states in brief that there is no objection to allow the transaction that is the subject of the file.

### **G. EXAMINATION AND ASSESSMENT**

(8) In the application of TIL entered in the Authority records on 22.07.2019 with the number 4779; in accordance with "Share Transfer Agreement" signed between the parties on 03.07.2019, a request that the acquisition of the sole control and 50% shares of Marport Liman İşletmeleri Sanayi ve Ticaret A.Ş. be authorized within the framework of the Act no 4054 and Communique no 2010/4 on Mergers and Acquisitions Calling for the Authorization of the Competition Board (Communique no 2010/4) is made.

(9) According to the decision of the Board dated 26.09.2019 and numbered 19-33/490-Mİ that an additional study should be made, opinions and information/documents were requested from the Ministry of Transport and Infrastructure, TIL, other ports in the Marmara Region, Maersk Denizcilik Taşımacılık A.Ş. (MAERSK), Marport Liman İşletmeleri Sanayi ve Ticaret A.Ş. and various container transporters. Within this framework, the response letters were sent to the Authority records. In addition, the response letters of Autoport Liman İşletmeleri A.Ş. (AUTOPORT), Limaş Liman İşletmeciliği A.Ş. (LİMAŞ), Yılport Konteyner Terminali ve Liman İşletmeleri A.Ş. (YILPORT), Asyaport Liman A.Ş. (ASYAPORT), Evyap Deniz İşletmeciliği Lojistik ve İnşaat A.Ş. (EYAP), Çelebi Bandırma Uluslararası Liman İşletmeciliği A.Ş. (ÇELEBİ), Haydarpaşa Limanı TCDD Liman İşletmesi Müdürlüğü'nün (HAYDARPAŞA), DP World Yarımca Liman İşletmeleri A.Ş. (DP WORLD), Martaş Marmara Ereğlisi Liman Tesisleri A.Ş. (MARTAŞ) Kumport Liman Hizmetleri ve Lojistik San. ve Tic. A.Ş. (KUMPORT), Roda Liman Depolama ve Lojistik İşletmeleri A.Ş. (RODA), Ceyport Tekirdağ Uluslararası Liman İşletmeciliği A.Ş. (CEYPORT), Mardaş Marmara Deniz İşletmeciliği A.Ş. (MARDAŞ), Gempport Gemlik Liman ve Depolama İşletmeleri A.Ş. (GEMPORT), Borusan Lojistik Dağıtım Depolama Taşımacılık ve Ticaret A.Ş. (BORUSAN), Belde Liman A.Ş. (BELDE), Belstar Denizcilik ve Taşımacılık A.Ş. (BELSTAR), Cosco Shipping Lines Denizcilik A.Ş. (COSCO), Tur-Kon Konteyner Taşımacılık ve Denizcilik A.Ş. (TUR-KON), CMA CGM Deniz Acenteliği A.Ş. (CMA CGM) also entered the Authority records.

(10) Within the scope of the file, opinion was requested from the Economic Analysis and Research Department (EARD) with the letter dated 03.12.2019 and no 13949 on defining the relevant geographic market regarding port management services for container handling, analyzing the competitive and anti-competitive effects specific to the defined geographic markets and identifying the data to be requested from the parties to be used in the relevant economic analysis and assessments. Then, information was requested from seven ports and Türkiye Maritime Organization (TMO). Within this framework, the requested response letters entered the Authority records.

### **G.1. Parties**

#### **G.1.1. Terminal Investment Limited Sàrl (TIL)**

(11) Headquartered in Geneva, Switzerland, TIL was founded by Mediterranean Shipping Company Holding S.A. (MSC) in 2000, Switzerland. According to the information on the website of the undertaking, it is the operator of 37 active terminals in 26 countries around the world and its main strategy in container terminal management is to establish joint

initiatives with other international container operators<sup>1</sup>. Within the framework of the information on the same Internet page, TIL's largest customer is MSC, which is its founder and shareholder.

### **G.1.2. Marport Liman İşletmeleri Sanayi ve Ticaret A.Ş. (MARPORT)**

- (12) MARPORT has been serving MSC, Arkas Group and third parties as a container terminal in Ambarlı Port since 1996<sup>2</sup>. MARPORT has been under the joint control of TIL and Arkas Group since 2001<sup>3</sup>.

### **G.1.3. TIL HOLDING**

- (13) According to the information provided in the Notification Form, TIL HOLDING is a holding company of TIL Group companies and has no active business. The shareholders of TIL HOLDING are MSC with 57.3%, GIP with 32.7% and GIC with 10% shares. Founded in 1970, MSC is a container transporter under the control of the Aponte Family residing in Switzerland. The undertaking is currently operating container transportation in 155 countries with 520 ships<sup>4</sup>. GIP is a US-based fund management partnership specialized in infrastructure. When the undertaking's portfolio is examined, it is seen that the undertaking owns shares in fields such as renewable energy/energy, logistics, recycling, etc. It is understood that GIP also has investments in logistics sector such as airports (Edinburgh, Gatwick, London City), ports (Great Yarmouth, Port of Brisbane, Port of Melbourne) and railways (Italo – Nuovo Trasporto Viaggiatori S.p.A., Pacific National).<sup>5</sup> GIC is the government fund manager of the government of Singapore.
- (14) It is stated in the Notification Form and the First Written Opinion by the Parties that TIL HOLDING is jointly controlled by MSC and GIP, which has veto rights in strategic decisions. In parallel with the assessment in question, in light of the examination and assessments made within the scope of the file, it is concluded that TIL HOLDING is under the joint control of MSC and GIP, which have mutual veto rights for strategic decisions, in the management of TIL HOLDING.
- (15) TIL HOLDING develops, manages and invests in container terminals in Türkiye. TIL HOLDING has indirect shareholdings in some Turkish port companies. These are
- 50% shareholding in MARPORT,
  - 70% indirect shareholding at ASYAPORT through Global Terminal Limited Şarlı<sup>6</sup> (GTL),
  - 50% indirect shareholding at Assan Liman İşletmeleri A.Ş. (ASSAN) through 49,9% shareholding of TIL and %0,1 shareholding of Galata Liman İşletmeleri A.Ş. (GALATA)

Hereunder is information about the activities and control structure of the ports under the direct or indirect control of TIL HOLDING in Türkiye, except for Marport Terminal, which is the subject of notification.

#### **G.1.3.1. Assan Port**

- (16) The main activities of Assan Port, which is located in İskenderun and put into service by Kibar Holding A.Ş., via Assan Panel San. ve Tic. A.Ş. are container and freight handling

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<sup>1</sup> <https://www.tilgroup.com/about> (Last Accessed: 29.04.2020).

<sup>2</sup> [http://www.marport.com.tr/marport\\_hakkinda/tanitim.html](http://www.marport.com.tr/marport_hakkinda/tanitim.html) (Last Accessed: 29.04.2020).

<sup>3</sup> With the decision of the Board dated 09.11.2001 and numbered 01-55/544-128, the joint control of MARPORT by TIL and Arkas Group was authorized.

<sup>4</sup> <https://www.msc.com/che/about-us> (Last Accessed: 29.04.2020).

<sup>5</sup> <https://www.global-infra.com/portfolio/industry/transportation/> (Last Accessed: 27.04.2020).

<sup>6</sup> GTL is the Luxembourg-based subsidiary of TIL HOLDING in which TIL HOLDING owns all its shares.

services. Since 2013, ASSAN has been under the joint control of TIL HOLDING and Kibar Holding A.Ş.<sup>7</sup> Hereunder is the shareholding structure of ASSAN.

Table 1: ASSAN Shareholding Structure

Shareholder	Shareholding (%)
Assan Panel Sanayi ve Ticaret A.Ş.	50.0
TIL	49.9
GALATA	0.1
of	100.0

Source: Notification Form

### G.1.3.2. Galata Port

- (17) TIL HOLDING also has a 100% indirect shareholding in GALATA through TIL. On the other hand, it is understood from the contents of the file that GALATA is not an actively operating company; the undertaking did not achieve any turnover in 2018.

### G.1.3.3. Asyaport Port

- (18) ASYAPORT has been serving as a transit container port in Tekirdağ since 2015.<sup>8</sup> ASYAPORT was first established in 2005 by Ahmet SOYUER and Gülsüm SOYUER, and TIL HOLDING included in the shareholders of ASYAPORT in 2010.
- (19) In ASYAPORT, Soyuer Family holds shares at the rate of %(.....) in total and Ahmet SOYUER holds %(.....) of whereas TIL HOLDING holds shares at the rate of % (.....) via GTL. %(.....) of the shares owned by the Soyuer Family belongs to Ela APONTE, who is the daughter of Ahmet SOYUER and is also married to Diego APONTE, the president of the MSC.
- (20) The board of directors of ASYAPORT decided that (.....) in accordance with the base contract provisions.
- (21) ASYAPORT's board of directors consists of two people, Ahmet SOYUER, chair of the board of directors, as a representative of group A shareholders and Ammar Yahya KANAAN, a member of the board of directors, as a representative of group B shareholders.
- (22) Additionally, within the framework of the Main Agreement of the undertaking,
- (.....),

is seen. In this context, since it is seen that the strategic decisions of ASYAPORT can be taken depending on the joint positive votes of Ahmet SOYUER and TIL, it is considered that the undertaking is under the joint control of the aforementioned persons.

### G.1.4. Arkas Group<sup>9</sup>

- (23) Arkas Holding A.Ş. currently operates in the fields of agency services that integrate sea, land, rail and air transportation, ship operations, port activities and logistics services as its main areas of activity. In addition, the undertaking is also active in the fields of refueling, automotive, insurance services, information systems and tourism.
- (24) Limar Liman and ve Gemi İşletmeleri A.Ş. (LİMAR) currently provides services at ports in İzmir, Gempert, Rodaport, Borusan, Limaş, Mersin, Haydarpaşa, DP World Yarımca, İskenderun Limak and TRNC Adaport Ports and provides documentation, ship planning,

<sup>7</sup> With the Board decision dated 03.10.2013 and numbered 13-56/781-333, ASSAN's joint control by TIL HOLDING and Kibar Holding A.Ş. was authorized.

<sup>8</sup> <http://www.asyaport.com/tr-TR/hakkimizda/627896> (Last Accessed: 29.04.2020).

<sup>9</sup> Arkas Group refers to Arkas Holding A.Ş., Arkas Lojistik A.Ş., Limar Liman and Gemi İşletmeleri A.Ş. (LİMAR), Lucien Arcas and Diane Arcas Göçmez.

door operation, container damage inspection, refrigerated and empty container stock management services and equipment support. The company also owns 19 container ships that fly Turkish flags and most of the ships provide services under Arkas Konteyner Taşımacılık A.Ş., which operates in the field of container line transportation.

## **G.2. Information related to the Sector**

- (25) The notified transaction essentially concerns the container terminal management services sector. MARPORT's other areas of activity include temporary storage services, guidance and towing services, as well as port ancillary services.

### **G.2.1. Information on Container Line Transportation and Container Handling Services**

- (26) About 84% of the trade carried out in the world in terms of volume and about 70% in terms of value is transported by sea<sup>10</sup>. According to TURKSTAT data, the sea route is the most preferred type of transport in this respect, where 57% of the total trade in terms of US dollars takes place in the import and export transportation of our country<sup>11</sup>. Maritime transport is the most preferred method in international trade since it is cheaper compared to other types of transportation and it allows moving large amounts of freight from one place to another at a time. In general, it is accepted that maritime transportation is about 75% cheaper than rail transportation and 85% cheaper than land transportation<sup>12</sup>.
- (27) Developments in maritime transportation that focused on efficiency and cost savings have urged ports to follow these developments. The containerization process, which started in the 1950s for this purpose, is one of the most important developments in the maritime sector; this process has reduced unit freight costs, shortened transportation time as well as the time spent in the port and increased operational reliability. Container usage has become widespread since containerization facilitates integration with other transportation chains as it unites and standardizes freights. Containerization has also played a major role in managerial, organizational and operational alteration of ports<sup>13</sup> and in the transformation of ports into capital-intensive structures<sup>14</sup>.
- (28) In addition, the increase in the size of ships in maritime transport and the increase in the trend towards ships specific to the needs and transportation of certain freights are accelerating the changes in the world fleet. These developments in the world fleet, especially specialized ships, increase the need to adapt the docks and equipment of ports to these ships and freights<sup>15</sup>. On the other hand, ports and hinterland connections cannot convert at the same speed in the face of these developments<sup>16</sup>. For example, in order to serve larger ships that need a larger size and greater depth, ports built for smaller ships need to adapt their sea access, infrastructure, equipment and hinterland transport links to this. It is clear that the aforementioned elements also require significant investment costs in terms of ports. The natural location and local characteristics of the ports can be

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<sup>10</sup>UAB (2018), "Ulaşan ve Erişen Türkiye 2018", p. 451.

<https://www.uab.gov.tr/uploads/pages/kutuphane/3dbf8bb47414193.pdf> (Last Accessed: 29.04.2020).

<sup>11</sup>Board decision dated 11.10.2019 and numbered 18-38/618-299, p. 5.

<sup>12</sup> Aforementioned decision, p. 5

<sup>13</sup>ESMER, S. (2009), *Konteyner Terminallerinde Lojistik Süreçlerin Optimizasyonu ve Bir Simulasyon Modeli*, Dokuz Eylül University PhD Thesis.

<sup>14</sup>SESLİ, E. (2008), *Liman Özelleştirmeleri Sürecinde ve Sonrasında Rekabet*, Competition Authority Expert Thesis, No: 89, Ankara, p. 8.

<sup>15</sup>UNCTAD (2018), *Review of Maritime Transport*, p. 73

[https://unctad.org/en/PublicationsLibrary/rmt2018\\_en.pdf](https://unctad.org/en/PublicationsLibrary/rmt2018_en.pdf) (Last Accessed: 29.04.2020).

<sup>16</sup>UNCTAD (2017), *Review of Maritime Transport*,

[https://unctad.org/en/PublicationsLibrary/rmt2017\\_en.pdf](https://unctad.org/en/PublicationsLibrary/rmt2017_en.pdf) (Last Accessed: 29.04.2020).

a restrictive element in front of their adaptation.

- (29) The services provided at the ports differ within the framework of the abovementioned developments. In some ports, port capacity and facilities enable providing services to all types of ships, while the infrastructure of some ports allows only certain ships to dock, and only certain types of freights can be serviced in these ports<sup>17</sup>. Therefore, the port infrastructure and superstructure are decisive in the services to be provided at the port. The most distinctive feature of the port infrastructure is its high cost and long service life, as well as the fact that it is in indivisible large units that are compatible with the conditions of the geographic region in which they are located<sup>18</sup>. When the port infrastructure, the port superstructure and the equipment suitable for the service required for the provision of port service are assessed together, these can also be regarded as an entry barrier to the market.
- (30) In addition to investment costs, administrative permission processes required for the establishment of the port<sup>19</sup>, the size of transit costs, natural barriers, some provisions contained in operating contracts are also other factors that create an entry barrier. Briefly considering the aforementioned factors, the size of the transit costs among those is especially affected by the size of the capital requirement that may occur during the transition from one port facility to another. Another factor, the natural barriers, arises from the size of the land or fixed facility required to operate. In particular, a certain fixed facility is required for docks, storage areas and other fixed facilities at the port, in addition ensuring the appropriate width and depth of the dock according to the need can cause additional costs.
- (31) The most important aspect that has affected the spread of container use in maritime transportation is that different types of cargo can be transported via containers, and this method is much healthier and safer than conventional transportation. With the use of containers, the products can be delivered to the destination without being subjected to any impact, damage or deterioration due to bad weather conditions. Another factor spreading the use of containers is cost saving. First of all, with respect to port operators, the use of containers has brought a serious specialization, as it provides standardization of freights, and has provided significant savings in handling costs along with the creation of the necessary infrastructure<sup>20</sup>. These cost savings have also been reflected in line carriers and therefore freight owners as lower port charges.
- (32) Standardization of container sizes has allowed reducing transportation costs while also assuring integrating sea transportation into air, land, and rail transportation better (*intermodal* transportation<sup>21</sup>). In addition, the ability to load different types of cargo owned

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<sup>17</sup>Board decision dated 18.04.2019 and numbered 19-16/229-101, p. 6.

<sup>18</sup>Sesli 2008, p. 8.

<sup>19</sup> In Türkiye, port construction requires opinions and permits from the Ministry of Environment and Urbanization, Directorate General of National Property, Ministry of Transportation and Infrastructure, İLBANK, the Ministry of Culture and Tourism and the relevant governorates and municipalities. After the completion of the port construction, the process of operating permits from the relevant municipalities Ministry of Transportation and Infrastructure, Ministry of Trade Directorate General of Customs and Trade begins.

<sup>20</sup> According to a study, the amount of cargo handled at ports increased by about seven times between 1960 and 1994, while the labor force hours needed decreased by 42% with containerization. Michele Acciaro, "Private Sector Financing of Container Terminal Infrastructure", Erasmus University Rotterdam MS in Maritime Economics and Logistics, p. 7.

<sup>21</sup> *Intermodal* transportation is the mode of transport by which freights (goods) are transported by two or more modes of transport in vehicles or transport units; in the transition between the species, transport (loading) unit (container, etc.) is handled not the goods themselves.

by different people on the same container ship has saved manufacturers from high inventory costs. With these developments, it has become possible for manufacturers to send their freights easily to long distances.

- (33) In terms of carriers, with the production of special ships for container transportation, ship capacities have begun to be used more efficiently. The main cost saving in container transportation resulted from economies of scale. As a result of technological developments and increased competition among carriers, especially after the 1980s, larger ships were built and thus a significant cost was made in unit transportation cost.
- (34) One of the most important elements of the container transportation service is the terminal management service for container handling. Port services can be divided into services provided to ships and freights. Services provided to ships contain pilotage, towage, binding, scanning, ship repair and environmental services while the services for the freights are loading/unloading, handling, transferring to land transportation, storage, security and equipment leasing. Another distinction related to port services is given below:

Table 2: Services Provided at Ports

Pier Services	Freight Handling	Services for Freight Owners	Auxiliary Services
1. Pilotage 2. Towage 3. Binding	1. Loading/unloading 2. Terminals 3. Storage 4. Freezers (Fish, etc.)	1. Essential bureaucratic procedures for ships and freights 2. Authorizations (Health, customs, etc.) 3. Ordinary Lease	1. Maintenance 2. Cleaning 3. Security

Source: Sesli 2008, p. 9

- (35) The most important service provided to freights and at the same time the type of service that has the largest share in port revenues is the freight handling service. The handling service covers all movements of freights from shore to ship and from ship to shore, as well as all movements of freights in port facilities. In the past, unloading freights from the ship to the shore safely (*stevedoring*) and loading from shore to ship safely (*loading*), were performed by different workers and it caused a distinction between these services. However, today there are companies that perform all freight handling services with various equipment, and these companies specialize in freight types such as dry cargo, liquid cargo and containers. Services for freight owners are performed by agencies operated by ship companies and responsible for following the necessary procedures to use the port before the ship arrives.
- (36) Carrying out container transportation with larger tonnage ships has led to the birth of a transportation system called *hub and spoke* in maritime transportation. In addition to the problems relevant to the capacity utilization of ships, the fact that large container ships could only dock at large ports that had made the necessary infrastructure investments required the use of hub and spoke systems. In this system, instead of direct cruises between all ports, transportation is carried out by feeder ships (*feeder*) from small, secondary ports, called spokes, to the central ports, after the transfer is carried out at the central ports, freights transported to the other central port by large container ships are again distributed to small ports through feeders. This system has many advantages over the point-to-point system. Firstly, there is no need for large ships to visit every port; small ships carry freights from small ports to large ports that large ships can visit by providing feeder service. Thus, it is ensured that the capacity utilization of both small ships serving on feeder lines and large ships operating on main lines is high and capacity costs are

saved<sup>22</sup>. However, especially with the increase in regional demand, in certain regions, it is seen that the *hub and spoke* system is replaced by direct cruises. In container transportation, the emergence of the "*hub and spoke*" system has led to the expansion of the relevant geographic market in terms of the central ports named as "*hub*" in particular.

- (37) *Feeder* service is used for the transportation of freights, which mainline ships have brought to the main ports, to points with relatively limited facilities, or for collection of the freights collected from different container ships at one terminal, or for the transportation of freights taken from ships with unavailable draft. *Feeder* services are provided by relatively small ships (usually with a carrying capacity of 300 TEU to 1,000 TEU), and they are called *feeder* because they feed mainline ships and mainline ports, or provide services to the ports available for *draft*. *Feeder* is an easy, fast and widely used system because it is carried out by relatively small ships. *Feeder* service is part of the transportation service and is not one of the issues that port operators can decide on.
- (38) Most of the container ports in our country serve other freights beside container freights. In addition, container ships are included in the operating permits but there are also ports that do not provide container services at the present time. The ports providing container services in the Aegean Region are Socar, Ege Gübre, Nempport and Alsancak İzmir, while the ports of Antalya, Mersin, Assan and Limak İskenderun provide services in the Mediterranean Region. The following table lists the first twenty port operators providing container handling services in Türkiye.

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<sup>22</sup> KUTOĞLU, L. (2007), "*Düzenli Hat Taşımacılığında Regülasyon ve Rekabet*", Competition Authority Expert Thesis, No: 76, Ankara.



Table 3: First 20 Port Operators Handling Containers in Türkiye

Line	Port Operator	2016 (TEU)	2017 (TEU)	2018 (TEU)
1	MIP (Mersin)	1.453.038	1.591.983	1.722.711
2	MARPORT	1.846.995	1.711.357	1.573.600
3	KUMPORT	664.787	1.063.246	1.258.294
4	ASYAPORT	694.107	1.002.133	1.117.749
5	TCDD IZMIR	682.057	639.300	647.715
6	DP WORLD	52.191	437.047	575.869
7	YILPORT	396.099	499.283	551.726
8	GEMPORT	356.461	474.019	524.652
9	EVYAP	688.496	369.659	464.756
10	NEMPORT	271.751	313.596	390.071
11	MARDAŞ	291.138	357.264	351.849
12	LİMAK İSKENDERUN	243.745	269.583	317.961
13	EGE GÜBRE	366.845	286.926	298.045
14	SOCAR TERMİNAL	-	149.311	277.000
15	BORUSAN	249.466	241.971	245.499
16	ASSAN	131.051	188.132	225.496
17	PORT AKDENİZ	172.036	200.117	186.290
18	RODA PORT	86.322	88.438	86.464
19	SAMSUNPORT	54.929	70.027	74.129
20	HAYDARPAŞA	109.675	86.709	56.067
TOTAL OF TÜRKİYE		8.911.073	10.165.981	11.065.236
SHARES OF PRIVATE PORTS		91.1%	92.8%	93.7%
SHARES OF PUBLIC PORTS		8.9%	7.1%	6.3%

Source: TÜRKLİM Port Sector 2019 Report

- (39) Looking at the year 2018 in the table above, handling 15.6% of the total container freight in our country, Mersin Port is in the first place with 1.7 million TEU. MARPORT is in the second place with 1.5 million TEU and KUMPORT is in the third place with 1.2 million TEU.

### G.2.2. Information about Bonded Temporary Storage Services

- (40) The regulation on the bonded temporary storage service is as follows: the goods brought to the Customs Territory of Türkiye are in the status of temporary stored goods until they are subject to a customs-approved operation or use after submission to customs and are named as temporary stored goods. Temporary stored goods can only be stored at places deemed appropriate by customs administrations and under conditions specified by those. Temporary storage places are areas made in such a way as to protect temporary stored goods from all kinds of external factors and interference, such as warehouses, depots, storehouses or hangars where vehicles stop, dock or disembark. The goods are taken to these places under the responsibility of the on-duty operating personnel and under the supervision of customs officers. Open areas that are integral parts of temporary storage places peculiar to the placement of heavy and remittance goods in places where customs operations are carried out, such as ports, as well as places in passenger halls where passenger goods are placed until they are brought with the passenger and submitted to customs for a process or use approved by customs, are also temporary storage places. Goods brought to areas where there is no temporary storage places may also be put in places authorized by customs with the status of temporary stored goods, provided that the necessary measures are taken in accordance with the conditions. It is mandatory to take the following items to temporary storage places with special devices and structures:

- Flammable, explosive, combustible and combustion improver goods,
- Goods that require special equipment for their protection, such as in cold storage warehouse.

- (41) Goods arrived by sea are stored for 45 days, goods arrived by other means are stored for 20 days in temporary storage places. Goods that are not subject to a customs-approved transaction or use within these periods are discharged if there is no judicial or administrative proceeding. The goods requested to be placed in temporary storage places for export or re-export purposes may stay there for a month, and customs offices may give an extension up to three months.
- (42) According to the Circular numbered 2013/5, it is possible to transfer goods from the temporary storage place to another temporary storage place under the supervision of the same customs authority. The aforementioned circular provides for that the owner of the goods or the person who has the right of disposal on the goods until their delivery shall apply to the relevant customs administration with a petition in accordance with the example in the appendix no 1 of the circular in question; if the application is found appropriate, the goods will be transferred in company with the officer by taking the necessary measures regarding property and by taking down the minutes in the appendix no 2. In addition, the necessary changes shall be made in the inventory records of temporary storage places and the records in the BİLGE system for the exit of goods from the first temporary storage place and the entrance of goods to the second temporary storage place.

Figure 1: Storage Areas Located in Ambarlı



Source: Board Decision No. 18-14/267-129.

- (43) In the figure above, bonded temporary storage areas located in Ambarlı Port are seen. Bonded sites belonging to MARPORT, MARDAŞ, and KUMPORT have direct connection to dock whereas Hürsan Lojistik ve Dış Ticaret A.Ş. (HÜRSAN) and Almo Lojistik Geçici Depolama Hizm. Ltd. Şti.(ALMO), which do not carry out port management activities, have no direct connection to the port. Freights handled at MARPORT, MARDAŞ and KUMPORT terminals can be towed to any bonded temporary storage area at the request of the freight owner.

### **G.2.3. Information on Guidance and Towing Services**

- (44) Guidance and towing services include guiding ships and docking services within the scope of activities related to services assisting maritime transport. These services are carried out within the scope of the approval of the Undersecretariat of Maritime Affairs and in accordance with the applicable legislation in order to ensure the safety of life, property and the marine environment.
- (45) Services such as guidance, towing and mooring provided to ships can be provided by public undertakings or private companies. Guidance covers the necessary procedures for the ship to enter and to leave the port safely. Towing is the process of maneuvering the ship through trailers, while mooring includes services provided for the safe stay of the ship at the dock.

### **G.2.4. Ancillary Services**

- (46) Ancillary services include services such as general management, infrastructure, planning, geological surveys, security and environmental regulation, maintenance and cleaning of the common areas of terminals.

## **G.3. Relevant Market**

- (47) In Competition law, the market definition is a tool used to determine the boundaries of competition between undertakings. Relevant market consists of two main dimensions: product and geographic market. The purpose of defining the market by product and geographic region dimensions both is to identify competitors who have the power to limit the behavior of undertakings and prevent them from acting independently of effective competitive pressure.

### **G.3.1. Relevant Product Markets**

- (48) An assessment is made according to demand substitution and supply substitution in defining the relevant product market. Assessment of demand substitution requires determining other products that are considered to be able to replace the relevant product in the eyes of the consumer. The relevant product market consists of all goods or services that are considered interchangeable or substitutable in terms of their price, intended use and qualities in the eyes of the consumer.
- (49) In defining the relevant product market for ports, the determinant factor is the type of the freight and ship served by the port. Besides, the source of the freight, route and equipment needed during the handling stage, size of the ships that stop by the port, customer preferences and alternative transport in the logistics chain can be taken into consideration.
- (50) While container freights cruise by the ports from regions where industry is relatively developed, agricultural-intensive regions stand out in bulk freights such as grain and fertilizers. Market conditions and port characteristics in which general cargo freights will be serviced are different from the port characteristics and market conditions in which container freights will be serviced. There are more port alternatives for general cargo freights than container freights. The strategies of the lines cruising in container freights also determine the port where the freight will be handled. Hinterlands of the ports where the lines stop by at container ports can spread over a wide area depending on the destination of the freight. "Transportation costs", "proximity to the production center" and "transportation options" are equally important for container freights when the factors determining the development of a hinterland are evaluated depending on the freight types.

- (51) In the Notification Form, it is stated that MARPORT operates in bonded temporary storage, in guidance and towing services due to its shares in ARPAŞ Ambarlı Römorkaj Pilotaj Ticaret A.Ş. (ARPAŞ) and Ambarlı Kilavuzluk A.Ş., and in the ancillary services market due to its shares in ALTAŞ Ambarlı Liman Tesisleri Ticaret A.Ş. (ALTAŞ) in addition to the port management service for container handling in Ambarlı Port.
- (52) The relevant product markets assigned for similar concentrations in the Board decisions dated back.

Table 4: Relevant Product Market Definitions in the Previous Board Decisions

Decision Date:	Decision No:	Relevant Product Market
09.11.2001	01-55/544-128	- Port services for container handling
28.11.2002	02-75/874-358	- Port services for container handling
15.07.2004	04-47/615-152	- Port management services for container services - Port management services for vehicle loading/unloading services
26.02.2004	04-17/125-27	- Port management services for container services
15.06.2006	06-44/545-145	- Container handling, - Conventional freight handling, - Port services provided to Ro-Ro ships - Port services for passenger ships - and Pilotage and Towing
14.09.2006	06-63/857-247	- Port management services for handling containers - Port management services for vehicle loading/unloading services
09.10.2006	06-72/951-273	- Bulk dry and liquid freight, common cargo, container handling and cruise port services
24.04.2007	07-34/341-122	- Common cargo and container handling services
14.01.2009	09-02/19-12	- Common cargo and container handling services
08.07.2010	10-49/922-325	- Bulk dry and liquid freight, common cargo, container handling services - Port services for cruise ships
17.08.2011	11-45/1055-361	- Bulk dry and liquid freight, common cargo, container handling services - Port services for cruise ships - Cargo and freight transportation
02.03.2012	12-09/301-93	- Port management
08.05.2018	18-14/267-129	- Port management for container handling - Bonded temporary storage - Guidance and towing services - Ancillary services

- (53) As it is seen from the table, the port management market for container handling can be defined as a separate product market in the Board decisions dated back. In addition, depending on the nature of the file, services such as bonded temporary storage, guidance and towing services, ancillary services, cargo and freight transportation, cruise services, etc. provided at ports are defined as a separate relevant product market.
- (54) On the other hand, in relation to defining the relevant product market within the framework of the current transaction, the evaluations made in *Mardaş* decision dated 08.05.2018 and numbered 18-14/267-129 remain valid because Marport and Mardaş terminals, which were supposed to be transferred within the scope of the relevant file, are located in Ambarlı Port and provide similar services. Within this framework, the relevant product market can be defined as “port management for container handling

services” in the current file. In addition, it would be appropriate to assess the market in question by dividing into downstream markets as “port management for container handling regarding transit traffic” and “port management for container handling regarding hinterland traffic” as stated in the aforementioned Board decision.

- (55) Finally, as there is no competitive concern in the alternative market definitions to be made in terms of “bonded temporary storage”, “guidance and towing services” and “ancillary services” in the current file, no precise market definitions are made in terms of the mentioned services.

### **G.3.2. Relevant Geographic Market**

#### **G.3.2.1. General Framework**

- (56) As stated in the Guidelines on the Definition of the Relevant Market, the relevant geographic market consists of areas in which undertakings operate in the supply and demand of their goods and services, the conditions of competition are sufficiently homogenous, and which can easily be distinguished from neighboring areas as the conditions of competition are appreciably different from these areas. For the evaluation of the geographic market, it is stated in the Notification Form attached to the Communiqué no 2010/4 that factors such as the characteristics of the related goods and services, consumer preferences, barriers to entry, the presence of a noticeable difference between the relevant region and neighboring regions in respect of undertakings’ market shares or in prices of goods and services will be taken into account.
- (57) An important stage among the competitive assessments conducted in the competition law enforcement is the examination of the market powers of the undertaking or undertakings concerned. It is necessary to calculate the market shares correctly to make a sound assessment and it is necessary to define the relevant product market(s) and geographic market(s) in which these undertakings operate accurately to calculate the market shares correctly.
- (58) In response to this need, various quantitative tests have also been developed in the competition economics literature to support or test the qualitative analyses performed. In the Guidelines on the definition of the Relevant Market, it is noted that these tests include various econometric and statistical approaches such as demand elasticity and cross-price elasticity calculations for a certain product, analysis for similarity of price changes in time, causality between price series and similarity of price levels.
- (59) Among the quantitative tests aimed at determining the relevant market, SSNIP (*Small but Significant Non-Transitory Increase in Price*) is the most frequently used one. In the SSNIP test, which has various variations, whether the price increase for a particular product or product group will increase the profit of the monopolistic firm if a hypothetical monopoly makes a small but significant (5%-10%) permanent increase in its prices.
- (60) If the price increase is profitable, then it is concluded that there are no close substitutes for the relevant products, so these products are qualified as separate product markets. However, if the price increase reduces the monopoly's profit, it becomes necessary to define a broader market covering substitute products as well since consumers can turn to alternative products in the face of this price increase. In the analysis, the profitability of the price increase of the hypothetical monopoly is tested by adding competitors offering substitute products every time; it is stated that the narrowest product group that has passed the test is the relevant product market. It is also possible to use SSNIP testing for detecting the relevant geographic market(s) by applying it to regions instead

of products with the same approach.

- (61) The ability of SSNIP testing to give correct results depends on the ability to predict demand and cross-price elasticity (demand system) accurately for the relevant products. However, due to problems such as the data set being limited in practice, the difficulty of finding suitable instrumental variables, achieving results that are not statistically or economically significant as a result of estimating flexibility values, or *Cellophane Fallacy*<sup>23</sup> it may not be possible to perform this test or obtain realistic results.
- (62) The basic logic underlying the methods of *price-based tests* or *price tests* in short, may be summarized as “if the prices of certain products move together, these products should be grouped in the same market”.<sup>24</sup> The four most commonly used types of price tests are i) price correlations, ii) Granger causality tests, iii) unit root – stationarity tests, and iv) cointegration tests.
- (63) In fact, price tests contain economically simple *arbitrage* argument: if the products are very close substitutes in terms of supply or demand, their prices will not be able to move too far apart, because [in the long run] either consumers or producers will shift from one product to another, pushing the more expensive one out of the market<sup>25</sup>. Hence the arbitrage<sup>26</sup> will prevent prices for products in the same [market] from moving independently of each other [in the long run]<sup>27</sup>. It is not necessary that prices converge to a single price level in absolute terms, and a relative convergence is considered sufficient.
- (64) The main reasons for using price tests, in contrast to complex demand forecasts, are that such tests do not require a lot of additional data, except for information about price data. Similarly, such tests can be applied in an easier way and a short time relatively. The tests in question also contain a number of drawbacks that are widely expressed in the literature and are the subject of criticism in this regard.
- (65) First of all, the results of price tests can be affected partially or completely by the existence of common factors (cost elements, exchange rate, etc.) that affect the entire price series subject to analysis.) For instance, in case of a supply shock (for instance cost) or demand shock during the analysis period for all the products included in the analysis, a *spurious correlation* problem may occur in the price series of those products because the relationship between these series may actually be the result of the parallel movement of these common factors. In this case, it is possible that the price test applied will show a result that product groups or geographic locations which actually constitute different markets are have limited or no substitution possibilities in the same relevant product/geographic market.
- (66) For this reason, it is necessary to check the common shocks and to examine the validity

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<sup>23</sup> A problem was encountered for the first time in the USA Supreme Court's *Du Pont* (United States v. E. I. DuPont de Nemours & Co., 351 US 377) decision, which is defining the relevant market much wider than it actually is in the application of the hypothetical monopoly test when the price level, which is the starting point of the analysis, is well above the competitive market. This problem is called *Cellophane Fallacy* in the literature.

<sup>24</sup> COE, P.J. and D. KRAUSE (2008), “An Analysis of Price-Based Tests of Antitrust Market Delineation”, *Journal of Competition Law & Economics*, Volume 4, Issue 4, 1 December 2008, 983-1007.

<sup>25</sup> FORNI, M. (2004), “Using Station Tests in Antitrust Market Definition”, *American Law and Economics Review*, Vol. 6, No. 2 (Fall 2004), pp. 441-464, Oxford University Press.

<sup>26</sup> Here it is thought that the possibility of arbitrage that exceeds transportation and similar costs is meant. It is not possible to mention the possibility of real arbitrage in the presence of transportation and similar costs that exceed the price difference between the products.

<sup>27</sup> Stigler and Sherwin, 1985.

of the tests after the price series has been cleared of the effects of these shocks. Unless such control can be performed, it is not possible to be sure whether the results obtained by price tests are *false* or *valid*<sup>28</sup>. However it should be emphasized that even a solution aimed at elimination of a possible *fake relationship* requires researchers to find out, for instance the common cost components for cost elements and be able to determine how these costs are reflected in the final product prices<sup>29\*</sup>.

- (67) On the other hand, although they are considered useful by some practitioners, price tests are also often criticized as they are not compatible with the market in the sense of competition law practice; they produce inconsistent results with each other; they perform poorly in the presence of limited observation numbers and/or short time series. Another criticism of price tests is that these tests often fail to distinguish between substitutes and non-close substitutes<sup>30</sup>.
- (68) It is clear from the explanations given in the file that a prudent approach is appropriate towards using price tests in competition law enforcement in the face of the various drawbacks of these price tests. Especially the “fake relationship problem”, in other words, the possibility that the relevant market may have a wider outlook than it actually is according to the test results should not be ignored. In the final analysis, it should be noted that price tests for the determination of relevant markets are of complementary value, not an alternative to other quantitative and qualitative analyses conducted within the scope of the examination.

### **G.3.2.2. EARD's Opinion on the Definition of the Relevant Geographic Market**

- (69) In the Economic Analysis Report dated 27.04.2020 and numbered 2020-EAA-04 prepared to define the relevant geographic market regarding port management service for container handling and to analyze the possible competitive and anti-competitive effects of the transaction in accordance with the determined geographic markets, in summary, the following issues are stated:
- Within the scope of the current file, price correlation, cointegration and stationarity tests were used in the analysis and evaluation of the relevant geographic market, respectively.
  - First of all, it is observed that the price correlation test made between weighted average unit price calculated for container handling services in relation to Northwest Marmara, Northeast and South Marmara indicates the absence of a significant correlation between price series. In addition, it is understood in the bilateral cointegration tests that there are no cointegration relations between Northwest Marmara and Northeast Marmara and South Marmara subregions or between the Northwest Marmara and the South Marmara average unit prices. Finally, the results of the ADF and KPSS stationarity tests also reveal that the ratios between the price

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<sup>28</sup> NIEBERDING, J. F. (2009), *The Role of Price Tests in Market Definition* (A Comment Addressing to #2b and #4 of the Questions for Public Comment), HMG Review Project – Comment, Project No. P092900.

<sup>29</sup> HOSKEN, D. and C. T. TAYLOR (2004) 'Discussion of "Using Station Tests in Antitrust Market Definition"', *American Law and Economics Review*, Vol. 6, No. 2 (Fall 2004), pp. 465-475, Oxford University Press.

\* In cases where a common shock cannot be observed, the probability of encountering a fake relationship problem will increase. As a matter of fact, it should be emphasized that it may not always be possible to observe common shocks if there is missing information about the supply and demand structures of products, and in this regard, the possibility of these tests to produce wrong results cannot be ignored in this aspect.

<sup>30</sup> BOSHOF, W. H. (2013), “Limits and Uses of Price Tests for Market Definition”, *Stellenbosch Economic Working Papers*: 01/11.



series subject to the analysis are not stable over time.

- In this regard, it is understood that the results of price tests concerning weighted average unit prices calculated for the mentioned subregions are compatible with each other; within this framework, there is no statistical finding that these prices move together over time.
- It should be emphasized that this result is essentially in line with the results reached in the Economic Analysis Report dated 12.12.2017 and numbered 2017-EAA- 8, submitted within the scope of the file no 2017-4-010 on the acquisition of another port located in the same region, to a certain extent. The result of the Full Equilibrium Relevant Market Test (*FERM*), applied within the framework of the economic analysis conducted within the scope of the file in question indicated the existence of a market consisting of the ports of MARPORT, KUMPORT, MARDAS, ASYAPORT and HAYDARPAŞA if the threshold value is considered to be 5%.
- In addition, it is necessary to note that the price series used in the report are calculated taking into account the total of all incomes from container handling services and total handled container volumes in the relevant periods; in this regard, they also include the information on the revenue and volume of the transit freights. However, from the interviews conducted with undertakings during the analysis process, in terms of transit container freights of ports, it is understood that they feel the competitive pressure of ports located in a relatively wider geography compared to "*local*" freights and therefore follow a relatively low pricing policy for these freights.
- On the other hand, even if a certain statistical evidence had been found that the prices calculated for the above-mentioned sub-regions in time, this would not be considered a final evidence showing that there was a strong competitive pressure between the geographic markets analyzed.
- Finally, it should be noted that econometric results are only one of the quantitative and qualitative evidence such as past substitution relations between products or regions, the opinions of customers and competitors, market inquiries, consumer surveys, entry barriers and cost constraints aiming to shift demand to alternative providers. In this regard, it is considered that it will be appropriate to determine the relevant geographic market for the container services that are the subject of this file by evaluating the findings obtained in this analysis and other quantitative and qualitative analyses performed within the scope of the file together.
- Consequently, taking into account the findings obtained as a result of the statistical and econometric analyses given above and the results obtained in the Economic Analysis Report dated 12.12.2017 and numbered 2017-EAA-8, it is considered that in terms of the transaction that is the subject of the file, it is reasonable to define the relevant geographic market for "port management service for container handling" as "*Northwest Marmara*"; in addition, on the grounds given above, it would be appropriate to determine the relevant geographic market by evaluating the findings obtained in this analysis and other quantitative and qualitative analyses performed within the scope of the file together.

(70) Within this framework, taking into account the quantitative assessments put forward by EAAD, the relevant geographic market assessments concerning this file are given below.

### **G.3.2.3. Determination of the Relevant Geographic Market**

(71) The relevant geographic markets with respect of the relevant product markets "port



management relevant to container handling for transit traffic” and “port management relevant to container handling for the hinterland traffic” are evaluated within the framework of the information obtained under the scope of the file. The evaluations are given below.

### G.3.2.3.1. Location and Characteristics of the Port

- (72) MARPORT, which will be transferred within the framework of the notified transaction, is located in the Marmara Region. The Marmara Region has a special importance in the port sector, as it covers 62.5% of the total volume of containers handled in Türkiye. Accordingly, the Marmara Region is followed by the ports of the Mediterranean Region with 22.2%, the ports of the Aegean Region with 14.6% and the ports of the Black Sea Region with 0.8%<sup>31</sup>. Looking at the general situation of the ports located in the Marmara Region, the Port Operators Association of Türkiye (TÜRKLİM) Sector Report divides<sup>32</sup> the Marmara Region into three subregions as Northeast Marmara, Northwest Marmara and South Marmara depending on the industrial and commercial characteristics, foreign trade volumes, freight patterns as well as the distance to the port groups where they feed or are fed.

Figure 2: Map of the Marmara Region and its Sub-regions



Source: TÜRKLİM Sector Report, 2016.

- (73) The Northeast Marmara subregion, which is composed of the Gulf of İzmit and its close neighborhood, is the busiest region in terms of the number of ports and covers the provinces of İstanbul (Asia), Kocaeli and Sakarya. There are a total of 69 terminals within this area. Seven of these terminals are used as container terminals. Container-handling activities are carried out in seven ports in this region<sup>33</sup>. The Northwest Marmara subregion consists of İstanbul (Europe), Tekirdağ and Edirne. There are a total of 32 terminals in the Northwest Marmara Region, including Ambarlı region, where Türkiye's important ports are located. Six of the terminals are container terminals. Container handling activities are carried out in six ports totally in this region<sup>34</sup>. Finally, the South

<sup>31</sup> TÜRKLİM – Report of Turkish Port Sector (2019), p.102.

<sup>32</sup> The aforementioned decision, p. 97.

The ports of DP WORLD, EVYAPORT, LİMAŞ, SAFİPORT, YILPORT, BELDEPORT and HAYDARPAŞA.

<sup>34</sup> The ports of AKÇANSA, KUMPORT, MARDAŞ, MARPORT, ASYAPORT and CEYPORT.

Marmara subregion consists of Bursa, Balıkesir and Çanakkale<sup>35</sup>. Out of the total 28 terminals located in the region, only four are used as container terminals. There are four ports operating as container ports in the region<sup>36</sup>.

- (74) The following are the shares of local, transit and total freights handled in the Northeast Marmara, Northwest Marmara and South Marmara subregions in the Marmara Region:

Table 5: Distribution of total freights handled in the Northeast Marmara, Northwest Marmara and South Marmara subregions (based on the number of TEU-filled containers)

Region	2015 (%)	2016 (%)	2017 (%)	2018 (%)	2019 (%)
Northwest Marmara	64.94	64.94	67.33	66.40	65.13
Northeast Marmara	22.49	23.50	21.00	25.37	24.49
South Marmara	12.57	11.56	11.67	8.23	10.38

Source: Calculations of rapporteurs

Table 6: Distribution of local freights handled in the Northeast Marmara, Northwest Marmara and South Marmara subregions (based on the number of TEU-filled containers)

Region	2015 (%)	2016 (%)	2017 (%)	2018 (%)	2019 (%)
Northwest Marmara	46.08	45.20	45.09	43.91	41.83
Northeast Marmara	34.62	35.81	34.69	41.00	39.56
South Marmara	19.30	18.99	20.22	15.09	18.61

Source: Calculations of rapporteurs

Table 7: Distribution of transit freights handled in the Northeast Marmara, Northwest Marmara and South Marmara subregions (based on the number of TEU-filled containers)

Region	2015 (%)	2016 (%)	2017 (%)	2018 (%)	2019 (%)
Northwest Marmara	98.44	95.00	97.01	92.70	93.85
Northeast Marmara	0.94	4.75	2.72	7.08	5.91
South Marmara	0.62	0.25	0.27	0.22	0.24

Source: Calculations of rapporteurs

- (75) As it is seen from the tables, although the Northwest Marmara Region and the Northeast Marmara Region are almost at par on the basis of local freights, almost all of the transit freights are handled in the Northwest Marmara Region. From the information and documents in the file, it is clear that the main reason for this situation is the lack of appropriate technical infrastructure of ports currently located in Northeast Marmara for ships carrying transit freights. It is also seen that the ports located in South Marmara offer almost no transit container handling service in a similar manner. In addition, part of the freights handled in the South Marmara and Northeast Marmara regions being 'transit' freights transported within the scope of the Northwest Marmara *feeder* service increases the importance of the Northwest Ports.

### G.3.2.3.2. Hinterland Transportation Facilities of the Ports in Marmara Region

- (76) Size of the hinterland which the ports address depends on whether there are advanced transportation facilities in the relevant hinterland. Thus the establishment of an effective logistics network between the destination of the freight loaded at the port (or the departure point of the freight loaded at the port) and the port is directly related to the existence of a transport infrastructure that is convenient for freight transport on the relevant lines. The following figure shows the road transport map of the Northwest Marmara and Northeast Marmara subregions.

Figure 4: North Marmara Highway Connection Map

<sup>35</sup> Compiled from the TÜRKLİM – Port Sector of Türkiye Report (2019).

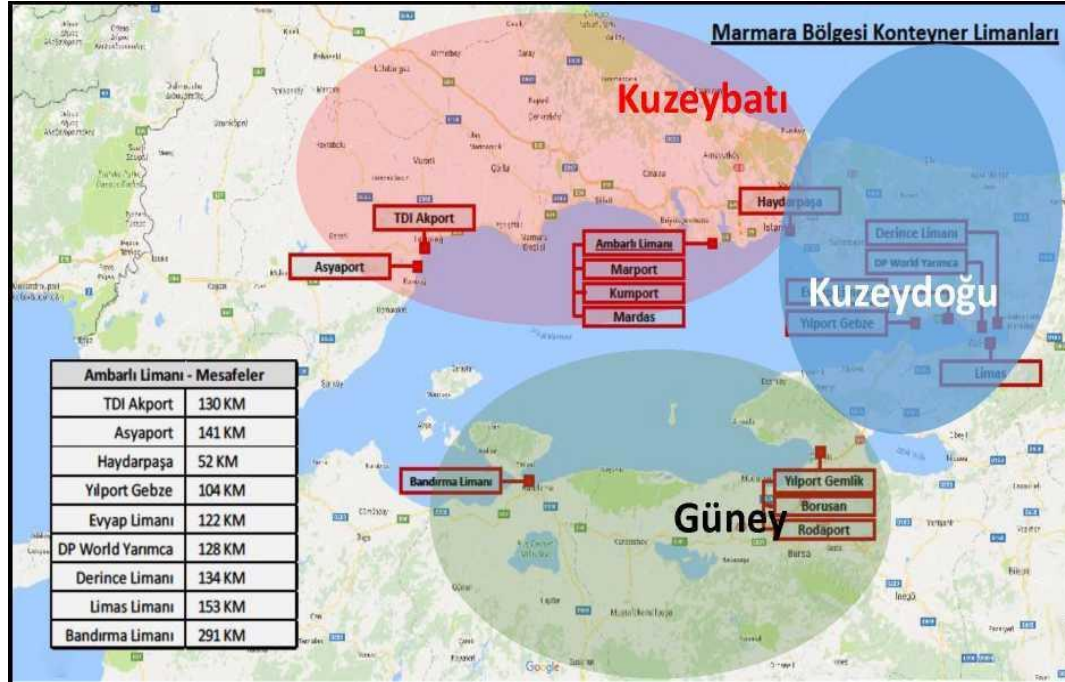
<sup>36</sup> The ports of BORUSAN, GEMPORT, RODAPORT and ÇELEBİ BANDIRMA.



Source: <https://www.kgm.gov.tr/SiteCollectionImages/KGMimages/Haritalar/b1.jpg> (Last Accessed: 29.04.2020)

- (77) As it is seen from the map above, there is a connection between both the highway (red line) and the divided highway (black line following the coastline and indicated by a double line) in Northwest Marmara, the nearest hinterland of Ambarlı Port. The connection with the rest of the region is provided by concrete asphalt roads (single black line) and state roads (single navy blue line). The connection of Ambarlı Port to the Northeast and South Marmara is provided by both highways and divided highways primarily through the Yavuz Sultan Selim Bridge (3rd Bridge). In addition, Osmangazi Bridge built at the Gulf of İzmit, has facilitated transit from Northwest Marmara to South Marmara.
- (78) In the figure below, the distances of highways between container ports located in the Marmara subregions and Ambarlı Port are given.

Figure 5: Container Ports in the Marmara Region and their highway distances to Ambarlı Port



Source: Board decision numbered 18-14/267-129

- (79) As it is seen from the figure above, Ambarlı Port is the only container port on the European side of İstanbul, and the terminals of MARPORT, KUMPORT and MARDAŞ serve side by side in this port. The nearest alternative to this point is HAYDARPAŞA, which is 52 km away and located on the Anatolian side of İstanbul. Within a range of 130 to 160 km, TDİ TEKİRDAĞ and ASYAPORT are located in the West<sup>37</sup>. EVYAPPORT, YILPORT, DP WORLD, SAFİPORT<sup>38</sup> LİMAŞ are located in the East. Apart from these, GEMPORT<sup>39</sup>, BORUSAN and RODAPORT located in the Gulf of Gemlik provide container handling services. Finally, there is ÇELEBİ BANDIRMA port at the farthest distance (291 km) from Ambarlı in the Marmara Region.
- (80) As mentioned above, although transit between ports are getting relatively easier, it should not be ignored that both the distance between ports and the tolls of third Bridge and Osmangazi Bridge impose significant costs on undertakings<sup>40</sup>. Within the scope of this, it is considered that the mentioned infrastructure elements are not sufficient to create a substitution relationship between the ports, and no concrete data can be provided by the parties regarding this.
- (81) As an alternative to road connections, railway connections located behind the port are also of great importance. The following are the connections of railways in Türkiye.

<sup>37</sup> The current name of the port, which is seen as TDİ Akport on the map, is TDİ Directorate of Tekirdağ Port Authority (TDİ TEKİRDAĞ).

<sup>38</sup> The current name of the port, which is seen as Derince on the map, is Safi Derince Liman İşletmeciliği A.Ş.

<sup>39</sup> GEMPORT is named as Yılport Gebze on the map.

<sup>40</sup> As of 2020, toll of the Yavuz Sultan Selim Bridge (3rd Bridge) for 4th and 5th class vehicles is respectively 137.30 and 170.80 TL. On the other hand, the toll for the same class of vehicles of the Osmangazi Bridge is respectively 297.10 and 374.90 TL. See

<https://www.kgm.gov.tr/Sayfalar/KGM/SiteTr/Otoyollar/UcretlerYeni.aspx> (Last Accessed: 28.04.2020)



Figure 6: Railway Map of Türkiye



Source: TCDD

- (82) As can be seen from the map, railway freight transportation is made in the Northwest Marmara region. Those freights can be transported from Northwest Marmara to Northeast Marmara and from there to inland by the Directorate General of Turkish State Railways (TSR). As stated by TSR, freight transportation between the two continents is currently carried out by ferries. This method of transportation is costly and also leads to a loss of time. On the other hand, among the existing railway projects, there is a project to transport these freights between two sides using the Marmaray line (during night hours when passenger transportation is not carried out).
- (83) Within the scope of Türkiye's 2023 projections, it is expected that the aforementioned transits will be carried out on the third Bridge. With the completion of the projects aimed at making Marmaray and the third Bridge suitable for rail freight transportation, transits through the Bosphorus with the railway will be significantly facilitated and this may reduce the cost of railway container transportation in the region.
- (84) Finally, the project of connecting ASYAPORT to the existing railway line is still under preparatory stage. However, if the project is finalized, this port will be able to provide more service to Northwest Marmara through a railway line extending into the ASYAPORT port. There is a similar project concerning Ambarlı Port. The connection of Ambarlı Port to the railway line, like the Port of ASYAPORT, is among the projects that have not yet been implemented. However, the status of the project for Ambarlı Port is more uncertain compared to ASYAPORT. Ambarlı Port is currently located inside the city. This situation may pose a number of difficulties in the implementation of the project. In addition, it is expected that this port will be able to serve İstanbul after connecting the railway line to ASYAPORT. In case the railway reaches ASYAPORT yet does not reach Ambarlı Port, ASYAPORT will become more advantageous compared to the current situation and it will be possible for ASYAPORT to become a serious alternative to Ambarlı for the freights of İstanbul.
- (85) On the other hand, it is concluded that these projects do not affect the assessment of the substitution relationship between the relevant ports in the foreseeable near future because the mentioned opportunities are not available in the short term.

(86) In the past Board decisions<sup>41</sup>, market definitions concerning ports were made on the basis of geographic regions, taking into account the capture areas of ports. It is also understood that geographic market definitions are sometimes made wider to include more than one geographic region and sometimes Türkiye as a whole. In terms of port management services for container handling regarding to Ambarlı Port, the relevant geographic market has been determined as the Marmara Region in the Board decisions dated back<sup>42</sup>. Although the Board defined the relevant geographic market as “Marmara Region” in its most recent decision on the subject, *Mardaş* decision<sup>43</sup>, the decision also evaluated the possible effects on competition in terms of the Northwest Marmara subregion, where the impact of the transaction could be felt intensively. The aforementioned assessment is also in accordance with the results of the economic analysis that the relevant geographic market will consist of MARPORT, KUMPORT, MARDAŞ, ASYAPORT and HAYDARPAŞA ports if the 5% threshold is taken as a basis value in the results of the analysis made for the transaction in the file and within the framework of the FERM method<sup>44</sup>.

**G.3.2.3.3. Preferences of Customers**

(87) Within the scope of the relevant geographic market assessment, among the container line operators carrying freights to the ports in the Marmara Region, information about the market shares of ASYAPORT and MARPORT, which are under the joint control of TIL as well as the information about the ports where MSC, which has joint control of TIL stops by, are given on the basis of local and transit freights.

Table 8: Shares of the ports where MSC stops by on the basis of local freights handled in the Marmara Region

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
YILPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
GEMPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MARPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ASYAPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
DP WORLD	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

Table 9: Shares of the ports where MSC stops by on the basis of transit freights handled in the Marmara Region

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
ASYAPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MARPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
GEMPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
EVYAPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
DP WORLD	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

(88) It is understood from Table 8 and 9 that although MSC uses ASYAPORT and

<sup>41</sup> Board decisions dated 08.05.2018 and numbered 18-14/267-129, dated 11.05.2016 and numbered 16-16/267-118.

<sup>42</sup> Board Decision dated 14.01.2009 and numbered 09-02/19-12

<sup>43</sup> Board Decision dated 08.05.2018 and numbered 18-14/267-129.

<sup>44</sup> Economic Analysis Report dated 12.12.2017 and numbered 2017-EAA-8.

MARPORT, over which it has almost complete joint control in transit freights, it intensively uses one port in each of the Northwest, South and Northeast Marmara regions for local freights. This situation supports the fact that Northwest Marmara and other regions should be evaluated in separate geographic markets in terms of local freights.

- (89) Within this scope, in the light of the qualitative and quantitative studies and analyses given above, it is concluded that the relevant geographic market should be limited to "Northwest Marmara" within the scope of local freights.
- (90) On the other hand, when it comes to transit freights, container line carriers have the opportunity to choose a much larger number of ports compared to local freights. As an example of this situation, it is stated that the Port of Piraeus in Greece is in competition with ASYAPORT located in Tekirdağ, and transit freights transported by MSC on various lines (such as Mediterranean-Far East, Mediterranean-Northern Europe) can be dropped at any port in the entire region. It is stated that with the construction of ASYAPORT, this port began to handle not only the transit freights of MSC in MARPORT, but also the transit freights in the Port of Piraeus.
- (91) Within the framework of the information above, in terms of the market for container port management regarding transit traffic, Marmara region, Aegean and Mediterranean region ports may be substitutes for each other. Although the relevant geographic market may be identified as Türkiye and neighboring countries, within the scope of this file, a certain definition of the relevant product market for transit freights is not needed.

#### **G.4. Opinions of Undertakings Operating in the Sector regarding the Transaction**

##### **G.4.1. Opinions of Ports Operating Container Terminals in the Marmara Region**

- (92) In 12 of the 16 response letters from the ports in the Marmara Region, the undertakings expressed their opinion that the acquisition would not have a negative impact on the market. Hereunder, the response letters of the undertakings expressing their opinions are given in brief.
- (93) (.....) stated that they do not expect the aforementioned acquisition to have an impact on the market in today's conditions.
- (94) By (.....) , it was stated that in terms of the aforementioned transaction, the relevant market is the Marmara Region and there are many ports in the Marmara Region that can create significant competitive pressure on each other, so the transaction in question will not have any negative impact on the relevant market. Similarly it is also stated by (.....) that the aforementioned transaction will not have a negative impact in the Marmara Region, where the competition is intense.
- (95) It was stated by (.....) that they mainly work with transit containers; Piraeus (Greece), Beirut (Lebanon), Gioia Tauro (Italy), Alexandria (Egypt) are the main competitors; there are many container service ports in the region, hence the transaction will not have a negative impact on the market.
- (96) It was stated by (.....) that the ports are located at (.....) and MARPORT which is located on the west side of İstanbul is in a different market segment and in this respect, the notified transaction will not affect the ports. (.....) explains that the ports of (.....), which are different from MARPORT due to geographic distance and difference of ships are not directly affected by MARPORT's activities. Similarly, it was stated by (.....) that they do not expect to be affected by the (.....) acquisition process. Taking into account the areas of activity of their port (.....) stated that, the notified transaction would not have a negative impact.

- (97) However a few of the ports (.....) stated that the market will be negatively affected if this transaction takes place.
- (98) It was stated by (.....) that half of the local freights delivered by and most of the transit freights going to the Black Sea countries are transported by MSC, in this case, if the transaction is allowed, the port operator will have a significant advantage in competition because MSC already owns ASYAPORT and the share of MSC, which already has a large part of the market, will grow and MSC will be a monopoly, and it will be the beginning of a difficult period for ports such as CEYPORT, MARDAS, KUMPORT, which will do and/or are doing the same business, in addition, the operating enterprise will favor of its own ships in terms of factors such as priority of ship berthing, tariff difference, operational performance, in this case other lines cannot compete, the competitive power of ports that will serve third parties will decrease, lines other than MSC will have to receive services from other existing ports and if the capacity of these ports is full, the tariffs will rise, as a result, other port operators, ship/container lines and exporters and importers in the region will be negatively affected if the aforementioned transaction is realized.
- (99) (.....) stated that regardless of the local hinterland, there is a sufficient amount of ports for existing container lines, in a local sense, if two of the four container ports located on the west side of İstanbul are operated by relevant undertakings, there may be monopolistic effects, otherwise, if the ports are managed by international operators, they may have a positive contribution to the country's economy, the hinterland of the ports of Dilovası and the Gulf of İzmit and the hinterland of the ports on the west side of İstanbul have no chance to coincide, in addition, Gemlik and Bandırma Ports are also located in South Marmara, so there is no hinterland partnership.
- (100) (....) stated in summary that considering the volume of business handled by the ports serving the European Side of Istanbul and the Tekirdağ Region in the first six months of 2019, if all of the business volume, in which the Marmara total of the handling volume of ASYAPORT and MARPORT consists of (.....), is under the sole control of the MSC, regarding big customers, MSC can have the power to provide services only from their own ports using rate of freights on the transportation pillar. In addition, its superiority in determining the destinations to be visited by establishing a joint service in cooperation with other lines (for example, in the 2M strategic alliance established in MSC and MAERSK partnership, only its own ports are visited) will allow MSC to unilaterally determine freight and port prices. Small and medium-sized companies that will not be able to make special agreements with the line due to work volume will be most affected by this situation and will have to bear more logistical costs. Like the acquisition of KUMPORT by a global line operator, if this transaction takes place, the ports in the region will fall into the hands of two important global line players, and each line will visit its own port, eliminating competition and creating an oligopoly structure. This will prevent other terminal operators from remaining in the market and making new investments, the number of independent line carriers other than the joint consortia established by global line carriers in regular line transportation is small, and as a result, the competitiveness of small lines with large lines in terms of freight and expenses is limited.
- (101) (.....) thinks that TIL is a partnership making investments in ports affiliated to MSC Group, MSC Group is also a shareholder and operator of ASYAPORT in Tekirdağ, therefore, if the notified transaction is realized, the competitive environment in the sector may deteriorate, monopolization may occur and higher costs may arise in related service items.



#### **G.4.2. Opinions of Undertakings Engaged in Container Transportation in the Marmara Region**

- (102) Opinions of undertakings engaged in container transportation on the abovementioned transaction that is the subject of the file were also requested. In line with this while (.....) expresses that the transaction will not have any negative effects on them, (.....) and (.....) stated that as the ports in the Marmara Region have excess capacity, they are competing with each other, due to use of Yavuz Selim and Osmangazi bridges and the presence of highways, all ports around the Marmara Sea address the same hinterland, therefore, the transaction in question will not have a negative impact. In addition, it was stated by (.....) that the ports in the region have become competitors with each other and this has increased the bargaining power of container shipping enterprises against the ports.
- (103) (.....) stated that they attach importance to the availability of alternative ports and free competition between these ports in the (.....) Ambarlı Region, as far as it is known, the dominant shareholder of TIL is MSC, and MSC is one of the port users. On the other hand, there are also KUMPORT and MARDAŞ ports in the Ambarlı Region and TIL and/or MSC is not involved in the partnership and management structures of these ports. Within the scope of this, such environment will not prevent natural competition, if the transaction is realized, there will be no negative change in the competitive conditions between the ports, as an alternative port will not be eliminated.
- (104) It was stated by (.....) that considering that MSC has a share also in ASYAPORT, which operates in the same region as MARPORT, the change in the market shares if the transaction in question is realized may adversely affect price competition.
- (105) (.....) stated that in the 2M Agreement, to which they are parties with MSC and which includes ship-sharing cooperation at the global level, there is a provision that if the parties have a partial or full share in a port, this port may have a priority right among ports to be visited provided that the terms are competitive, since MSC has a share in MARPORT before the aforementioned transaction, MSC visits this port because it offers competitive terms, so if MSC takes sole control of MARPORT, there will be no changes to the aforementioned terms, as long as the conditions are competitive, MARPORT can be visited. In addition, there is no provision in the 2M Agreement that prevents ships from visiting other ports; MAERSK also visits the ports of ASYAPORT and KUMPORT, so this transaction will not make any changes in the market for them.

#### **G.5. Findings and Legal Assessment**

##### **G.5.1. The Nature and Assessment of the Transaction**

- (106) The notified transaction is related to the acquisition by TIL of the 50% shares of MARPORT owned by ARKAS Group, operating in Ambarlı Port. TIL currently owns 50% shares in MARPORT and retains joint control of the undertaking.
- (107) MARPORT will be transferred from the joint control of ARKAS and TIL to the sole control of TIL, thus the transaction examined within the scope of the file is an acquisition that involves the transition from joint control to full control within the framework Article 5 of the Communiqué no 2010/4.
- (108) Since it is understood from the contents of the file that the transaction parties' turnovers in 2018 have exceeded the turnover thresholds in subparagraphs (a) and (b) of the article 7 of the Communiqué no 2010/4, the notified transaction is subject to authorization.

- (109) The acquisition that is the subject of the file causes a horizontal overlap in terms of the market for port management for container handling and a vertical overlap in terms of the container line transportation market.
- (110) According to the amendments made with Article 2 of the Act no 7246 on the Amendments to the Act on the Protection of Competition, which entered into force on 24.06.2020 and was published in the Official Gazette no 31165, article 7 of the Act no 4054 has been amended as follows:
- “It is illegal and prohibited for one or more undertakings to merge, or for an undertaking or a person to acquire - except by inheritance - assets, or all or part of the partnership shares, or instruments conferring executive rights over another undertaking, where these would result in a significant lessening of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position”.*
- (111) Within the framework of the aforementioned amendment to the act, it is seen that the “test of significant lessening of effective competition” (SLC) has been adopted in the control of concentrations. Transactions that result in creating or strengthening a dominant position within the scope of the harm theories to be evaluated, as well as transactions that may lead to a significant lessening of competition may be prohibited<sup>45</sup>. The main difference of SLC from the dominant position test is observed in terms of a transaction where undertakings may unilaterally increase prices but which do not result in creating or strengthening a dominant position after the transaction<sup>46</sup>. In other words, as it is stated in the Paragraph 25 of the EU Regulation on the Control of Concentrations, SLC is used to mean that beyond the concept of dominance, the transaction leads to anti-competitive effects although the acquiring party has not become dominant and coordinated effects have not occurred.
- (112) Considering the nature of the notified acquisition, it is understood that the transaction is a transition from joint control to single control. Transition to single control to joint control may lead to competitive concerns under the scope of article 7 of the Act in cases where the acquiring party operates in the relevant market or upstream and downstream markets of the relevant market and particularly has important market power in those markets, as the nature of single control and joint control is different.
- (113) Within the scope of the file, it is important to reveal the relationship between TIL and MSC, and then between ASYAPORT and the acquirer TIL, in order to evaluate the conditions in the market before and after the transaction. As mentioned in the sections above, TIL is jointly controlled by MSC and GIP. Similarly, ASYAPORT is controlled jointly by TIL and Ahmet SOYUER.
- (114) TIL is a company established mainly for the purpose of guaranteeing the terminal capacity to be used by MSC at the ports used by the said undertaking. In this context, MSC is already the largest customer of TIL<sup>47</sup>. Moreover, the case is similar for ASYAPORT. The following tables show the amount of containers handled by ASYAPORT on the basis of transit and local freights between 2015 and 2019.

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<sup>45</sup> <https://www2.tbmm.gov.tr/d27/2/2-2875.pdf> (Last Accessed: 01.07.2020)

<sup>46</sup> OECD (2010), “The Standard for Merger Review, With a Partial Emphasis on Country Experience with the Change of Merger Review Standard From The Dominance Test to the SLC/SIEC Test”, OECD Policy Roundtables, DAF/COMP(2009)21, p.16.

<sup>47</sup> <https://www.tilgroup.com/about> (Last Accessed: 29.04.2020)

Table 10: Distribution of ASYAPORT's sales within the scope of local freights ( based on the number of TEU-filled containers)

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MAERSK	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
HAPAG	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

Table 11: Distribution of ASYAPORT's sales within the scope of transit freights (based on the number of TEU-filled containers)

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MAERSK	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
HAPAG	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

- (115) As it is understood from the tables, ASYAPORT provide services almost completely to MSC. Considering the commercial relationship in question together with the aforementioned relationship between MSC and TIL, it is concluded that ASYAPORT and TIL are a joint venture that mainly sells and provides services to MSC. Although TIL and ASYAPORT are jointly controlled, MSC's power on TIL and ASYAPORT is strengthened due to those conditions and the fact that TIL's other partner, GIP, is a fund management partnership, and ASYAPORT's other partner, the SOYUER Family, has no activity in the sector. Thus the activities of TIL and ASYAPORT are not independent of MSC's activities and the activities of TIL and ASYAPORT are considered as part of MSC's activities.
- (116) It is stated in paragraph 13 of the Guidelines on the Assessment of Horizontal Mergers and Acquisitions (Horizontal Guidelines) that market shares and concentration levels are important indicators of market structure, competition between merging parties and other undertakings. Taking into account that MSC is active in the container line transportation market therefore, it receives services from both ASYAPORT and MARPORT, the shares of undertakings in the relevant market will be considered first by excluding the sales of MARPORT and ASYAPORT to MSC. To this end, first of all, primarily the distribution of MARPORT's sales according to its first five customers on the basis of transit and local freights between 2015 and 2019 is given in Table-12 and 13:

Table 12: Distribution of MARPORT's sales to its first five customers within the scope of local freights ( based on the number of TEU-filled containers)

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MAERSK	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ARKAS	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ZIM	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
SEAGO	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

Table 13: Distribution of MARPORT's sales to its first five customers within the scope of transit freights (based on the number of TEU-filled containers)

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MAERSK	( ... )	( ..... )	( ..... )	( ..... )	( ..... )
ARKAS	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ZIM	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
SEAGO	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

- (117) MSC is the most important customer of MARPORT in local freights. Similarly, ASYAPORT also provides services almost completely to MSC on the basis of transit/local freights. Thus, the distribution of ASYAPORT's sales to container line carriers, which it provides services on the basis of local and transit freights, is given above in Table 10-11.
- (118) The shares of undertakings providing port services for container handling of local freights in the Northwest Marmara Region are presented below, excluding local freights handled by ASYAPORT and MARPORT for MSC:

Table 14: Shares calculated by excluding MSC freights handled in ASYAPORT and MARPORT

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
KUMPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MARPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MARDAŞ	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
AKÇANSA	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ASYAPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

- (119) It is seen in the table that in the Northwest Marmara Region when MSC freights are excluded, MARPORT has (.....) % while ASYAPORT has (.....)% shares. In this context, it can be said that ASYAPORT and MARPORT have a total share of about (.....)% in the port services market for container handling of local freights in 2019, excluding MSC freights.
- (120) On the other hand, excluding the freights handled by ASYAPORT and MARPORT for MSC, in other words, the service provided to MSC may lead to ignoring actual and potential competitiveness because the capacity of these ports used for MSC and their capacity in general are not taken into account and to measuring their potential market power incorrectly and also create barriers to accurate analysis of the horizontal and vertical effects of the transaction in this market, where fixed investments are high, facility ownership and capacity are important.
- (121) Accordingly, the market shares of undertakings active in the market for port management for container handling in the Northwest Marmara Region are given below:

Table 15: Market shares in the market for port management for container handling (based on the number of TEU-filled containers )

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MARPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
KUMPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MARDAŞ	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ASYAPORT	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
AKÇANSA	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

(122) As it is seen from the table, MARPORT is the leader in the market for port management for container handling within the scope of local freights in the Northwest Marmara Region with a (.....) % share as of 2019. MARPORT is followed by KUMPORT with a share (.....) %. ASYAPORT, on the other hand, ranks third with a (.....)% share, largely due to the service it provides to MSC. The transaction in question means that MSC will also add MARPORT to the container handling activities carried out through ASYAPORT, so it seems that MSC/TIL group will retain a (.....)% share in the actual and potential market of the port management for container handling in terms of local freights in the Northwest Marmara Region. Although by being the second largest player in the market, KUMPORT is an important competitor with a share of about (.....)%, the fact that TIL will take sole control of MARPORT, the largest player in the market, as well as ASYAPORT, which is operated by MSC, will further increase the level of concentration in the market, where the concentration level is high.

(123) The total market shares of the two largest players that are active in container handling activities within the scope of local freights in the Northwestern Marmara Region (MARPORT and KUMPORT) is about (.....)% as of 2019 and considering that the market shares of the few undertakings that follow these two undertakings remain relatively low, it is understood that the market has a narrow oligopoly nature, close to the duopoly. The following are the HHI levels in the market for port management for container handling within the scope of local freights in the Northwest Marmara Region:

Table 16: HHI levels concerning the market for port management for container handling within the scope of local freights before the transaction

	2015	2016	2017	2018	2019
HHI	3778	3822	3467	3385	3386

Source: Calculations of rapporteurs

(124) As it is seen from the table, HHI level before the transaction in the market in question is quite high. The HHI level is above the 2000 level before the transaction in the relevant market. It is understood that due to the transaction, the HHI level will increase well above the 150 level mentioned in the Horizontal Guidelines. With the notified transaction, the HHI level in the market will reach 4573 with an increase of approximately 1187 as a result of the addition of MARPORT to the container handling activities carried out by MSC through ASYAPORT. Within the framework of the explanations, it is concluded that the notified transaction will further strengthen the narrow oligopolistic structure of the market. This will decelerate the price competition between enterprises in the market, which may lead to higher prices.

(125) On the other hand, as mentioned earlier, due to the quality of the service provided, the

presence of port facilities and their capacities are important determinants of the existence and powers of undertakings in the market. For this reason, in such markets where capacity building is not easy, time-consuming or costly, the capacity of undertakings also becomes an important indicator in evaluating their position in the market because the capacity that undertakings have is also a sign of their potential competition powers. The installed capacities and capacity utilization rates concerning the container handling service offered for both transit and hinterland transportation of the ports in the Ambarlı Region, where the transaction parties provide services, and of ASYAPORT, the nearest port to them are given below:

Table 17: Board Capacities of Northwest Marmara Ports (TEU) and Capacity Utilization Rates

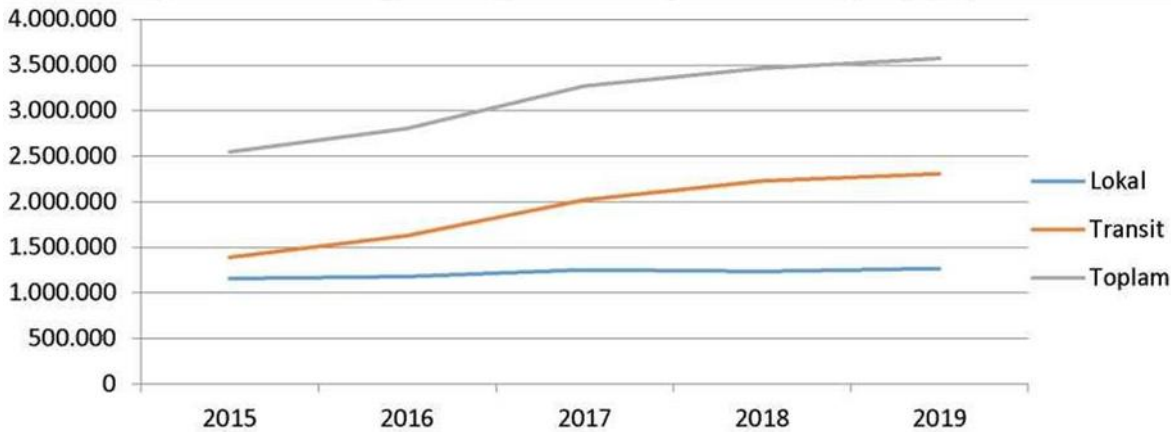
	Local Freights	Transit Freights	Total	Capacity	Empty Capacity	Use ( % )
MARPORT	(.....)					
ASYAPORT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KUMPORT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MARDAŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CEYPORT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
OF	1.877.825	2.424.170	4.301.995	8.003.000	3.248.005	56

Source: Data obtained from undertakings

- (126) As it is seen from the table above, the total capacity of the Northwest Marmara ports is about 8 million TEU. It is seen that the total capacity of ASYAPORT and MARPORT is approximately (.....)%. In other words, after the transaction, MSC will be operating approximately (.....)% of Northwest Marmara Region container handling capacity. When the fact that MSC, an important line operator on a global scale, will operate a significant part of the container handling capacity of the Northwest Marmara region is evaluated together with its strength in the field of line transportation, it will be able to create a disadvantage for other line operators using the ports of the Northern Marmara region and this may raise the costs of the line operators. This may be the case especially if there is not enough capacity available for other line operators to use. Considering the subject from this point of view, competing ports' capacity use rates and the existence of idle capacity are important.
- (127) As it is seen from the table above, KUMPORT, which is the most important competitor of MARPORT and ASYAPORT, operates with capacity utilization rate of (.....)%, and MARDAŞ with the rate of (.....)%. When MARPORT and ASYAPORT are included, it is possible to say that there is idle capacity in the Northwest Marmara Region with an idle capacity rate of about 56% in general. On the other hand, these figures should be evaluated together with expectations regarding the development of market and demand.
- (128) The following chart shows the development of the market by year based on the ports in the Northwest Marmara Region.



Chart 1: The development of demand for the relevant services in Northwest Marmara Region (TEU)



Source: Calculation of the rapporteurs

- (129) From the chart above, it is seen that there has been an increase in demand for local freights by 9% and transit freights by 65% in the last five years at the ports of the Northwest Marmara Region. Due to these rates not being low, it cannot be suggested that the idle capacity at the Northwest Marmara ports will continue to exist significantly in any case, and therefore the idle capacities will be effective in stabilizing the price level after the acquisition by supporting the competition between the three ports in the same location. On the other hand, the increase in demand in the current situation will not eliminate the idle capacity in the market. Under the assumption that significant amount of idle capacity will remain in the market, the effect of the notified transaction, which strengthens MSC's vertically integrated structure on other port operators in the region, will have to be taken into account as well. This issue will be discussed below.
- (130) As can be seen from Tables 6 and 7 presented above regarding the distribution of freights handled in the Marmara Region, although the Northwest Marmara Region and the Northeast Marmara Region are almost at par on the basis of local freights, nearly all of the transit freights are handled in the Northwest Marmara Region. From the information and documents in the file, it is clear that the main reason for this is the lack of appropriate technical infrastructure for ships carrying transit freights of ports currently located in Northeast Marmara. It is also seen that the ports located in South Marmara offer almost no transit container handling service in a similar manner. In addition, part of the freights handled in the South Marmara and Northeast Marmara regions being 'transit' freights transported within the scope of the Northwest Marmara *feeder service* increases the importance of the Northwest Ports. The fact that MSC will operate 60% of the handling capacity of this region as a result of the notified transaction raises competitive concerns.
- (131) On the other hand, it can be seen that Ambarlı Port facilities as a whole, where the acquired MARPORT is located, handle a very significant part, about 90% of the total local freight container volume handled in Northwest Marmara. As mentioned above, although it is still under preparation, there is a project to connect ASYAPORT to the existing railway line. If this project is realized, ASYAPORT will be able to serve Northwest Marmara and Istanbul to a greater extent thanks to the railway line extending to its port. Therefore, it is estimated that if this project is realized, ASYAPORT may become a much more serious alternative to Ambarlı, in other words, a closer substitute. However, with the notified transaction, TIL will take sole control of MARPORT, the largest player in terms of both market share and capacity in Ambarlı port within the scope of local freight handling, which means that two ports that are competitors to each other

in the current situation and may be much closer substitutes for each other in the future will be operated by the same undertaking.

- (132) At this point, various alliances made between container line carriers regarding the use of ports should also be noted. Such alliances established at the global level between container carriers include priority use by other alliance members if a port in which any of the undertakings is a shareholder offers competitive conditions. Within this framework, the information on the mentioned alliances is given below.

Table 18: Current cooperation between container carriers and ports they visit in Ambarlı Port

2M	Ocean Alliance	The Alliance
Departure: January 2015	Departure: April 2017	Departure: April 2017
Port of Call: MARPORT	Port of Call: KUMPORT	Port of Call: KUMPORT
MEMBERS MSC MAERSK HMM	MEMBERS CMA CGM COSCO EVERGREEN OOCL HAPAG LLOYD (UASC) Yang-Ming Line NYK K LINE MOL APL SEAGO LINE HSDG TURKON ADMİRAL MER DENİZCİLİK MEDKON AMİRAL	MEMBERS HAPAG LLOYD YANG MİNG NYK MOL K LINE

- (133) It is seen that aforementioned alliances between container carriers provide advantages to vertically integrated port operators included in an alliance, over other ports that are not vertically integrated. For example, the following is the information about the first three ports used by MAERSK on the basis of transit and local freights in the last five years:

Table 19: Ports used by MAERSK for local freights

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs



Table 20: Ports used by MAERSK for transit freights

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
( ..... )	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

- (134) Following the conclusion of 2M alliance, a significant part of the transit and local freights transported by MAERSK was transported to MARPORT. From this point of view, the aforementioned example shows that vertically integrated port operators have an advantage over non-vertically integrated port operators.
- (135) Customers related to the port management activity for container handling are usually undertakings of a global scale. The following are the shares of the first ten largest customers in terms of local and transit freights based on the ports located in the Marmara Region:

Table 21: Shares of the first ten undertakings engaged in container line transportation on the basis of local freights

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MAERSK	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
CMA	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ARKAS	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
HAPAG	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
COSCO	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
TURKON	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ZIM	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
OOCL	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
EVERGREEN	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

Table 22: Shares of the first ten undertakings engaged in container line transportation on the basis of transit freights

Years/Undertakings	2015 ( % )	2016 ( % )	2017 ( % )	2018 ( % )	2019 ( % )
MSC	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
MAERSK	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ARKAS	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
HAPAG	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ZIM	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
YML	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
CMA	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
COSCO	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
ONE	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )
SEAGO	( ..... )	( ..... )	( ..... )	( ..... )	( ..... )

Source: Calculations of rapporteurs

- (136) As it is seen from the tables above, in terms of both local and transit freights in the Marmara Region, with approximately (.....)% and (.....) shares%, respectively, MSC is the largest recipient of container handling services. MSC is followed by MAERSK, which is in 2M alliance with MSC. Together, these two line carriers are the largest buyers of container handling services in the Marmara Region with their shares of about (.....)% in terms of local freights and about (.....)% in terms of transit freights in the Marmara Region. The notified transaction will further strengthen the tendencies of both MSC and 2M alliance to make purchases from ASYAPORT and MARPORT, which existed due to MSC's shareholding in the relevant ports before the transaction, as can be seen from the past behavior of the companies. Taking into account the connection of Ocean Alliance and The Alliance with KUMPORT and MSC's being an important global line player and a major container service recipient for the region, under the current circumstances, the narrow oligopolistic structure strengthened by those alliances would be reinforced also by the notified transaction.
- (137) Taking into account the fact that MSC and line carrier undertakings involved in both 2M and other alliances are active on an international scale, are able to use transit freights that have higher bargaining opportunities with ports in agreements regarding local freights, they are advantageous vis à vis independent and non-integrated line carriers with their buyer power and vertically integrated structures, it is estimated that the notified transaction, which strengthens the vertically integrated structure of MSC in the region, may lead to a strengthening of the concentrated structure of the market and cause independent line carriers to reach ports and container handling service at more costly or disadvantageous conditions.
- (138) On the other hand, global line players and alliances working with only certain ports as a result of vertical integration may force other terminal operators to be satisfied with the demand created by independent line players. In case there is a serious level of idle capacity in the market, this may make it difficult for other terminal operators to stay in the market by preventing them from reaching the scale where they are profitable in a market where fixed costs are high and economies of scale are important, or it may adversely affect their investment incentives.
- (139) It has been concluded that the notified transaction will result in significant lessening of

effective competition within the scope of Article 7 of the Act no 4054 on the grounds detailed above.

### **G.5.2. Written Opinions**

#### **- The Claim that the Characteristics of the Transaction were not taken into Account When Evaluating the Effects of the Transaction and its Assessment**

- (140) TIL states that the nature of the acquisition is a key element in terms of assessment. It is accepted that the acquisition of sole control of another undertaking in which one undertaking has joint control is less likely to cause anti-competitive concern in both EU and Turkish competition law and therefore it is subject to a relatively facilitated notification procedure. In Board decisions on similar transactions<sup>48</sup> all transactions were unconditionally allowed, considering that the transactions in question would not lead to an increase in the undertaking's market share, create a dominant position or strengthen the dominant position, and therefore would not have a significant impact on the level of competition in the relevant market.
- (141) Within the scope of this, due to MARPORT's transformation from joint control to sole control of TIL as a result of the transaction, due to the structure of the transaction, it is suggested that the transaction cannot cause a dominant position in any market in Türkiye or strengthen the dominant position, however as it is understood from the assessments in the Final Examination Notification that the transaction will lead to an increase in market share and that the market power MSC will reach will cause competitive concern, the nature of the transaction is ignored. No changes will occur in the structure of the market after the transaction and MARPORT's market share will remain the same.
- (142) Transactions from joint control to sole control can be to be evaluated among transactions with a low risk of creating competitive concern in cases where the parties do not have significant market power, or there is no change in the market shares of the parties after the transaction within the framework of Article 7 of the Act. However in cases where the acquiring party is active in the relevant market or in the upstream and downstream markets of the relevant market and has significant market power, especially in the aforementioned markets, the risks mentioned in article 7 of the Act should be evaluated in detail. Within the scope of this, factors such as the nature of the transaction, the position of existing competitors in the relevant market, the structure and characteristics of the sector, and the existing idle capacity are taken into account in the assessment.

#### **- The Claim that MSC and TIL are Separate Undertakings and its Assessment**

- (143) It is stated that MSC and TIL are different undertakings engaged in different lines of business. MSC is active in the field of container line management and TIL is active in the field of terminal management. TIL is a wholly owned subsidiary of TIL HOLDING. TIL HOLDING's shareholders are private investment funds including MSC with shares of 57.3%, GIP with 32.7% and GIC with 10%. TIL invests in port infrastructures in order to provide profit to all its shareholders and the aforementioned private investment funds, which have different economic interests than TIL HOLDING, are not part of the same economic unity as TIL HOLDING. In addition, it is stated that TIL HOLDING is not under the sole control of MSC, it is under the joint control of MSC and GIP, which has veto rights. In order for TIL to profit from the notified transaction, it must also retain these carriers, making MARPORT attractive for line carriers other than MSC and even this

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<sup>48</sup> Board decisions numbered 18-30/508-247, 16-45/714-321, 16-31/518-232, 16-21/353-159, 14-46/839-380, 14-43/839-380, 1443/786-349, 14-30/620-272, 13-32/4Za322 and 12-25/717-203.

aspect alone indicates that TIL and MSC are different undertakings with separate economic concerns.

- (144) In the examination, the following facts are taken into account: Although it is jointly controlled, TIL was established mainly to guarantee the terminal capacity at the ports MSC calls at, it mainly serves MSC, the other partner of TIL, GIP, is a fund management partnership. It is concluded that these facts increase the effectiveness of MSC on TIL and the activities of TIL cannot be evaluated independently of the activities of MSC.

**- The Claim that the joint control of ASYAPORT belongs to Ahmet SOYUER and GTL and its Assessment**

- (145) It is stated that the main agreement of ASYAPORT stipulates a veto right for minority shareholders and this is sufficient to prove that ASYAPORT is under the joint control of GTL (indirectly TIL) and Ahmet SOYUER, the determination of family ties alone is not enough to prove economic unity and other criteria should also be considered to determine this issue. In addition, it is stated that the veto right does not belong to the Soyuer Group, but to Ahmet SOYUER himself, to exceed the (.....)% acceptance vote (veto right), Ahmet SOYUER ((.....)%) and GTL ((.....)%) should have a joint vote.
- (146) The following arguments are made: In cases listed within the framework of the article 12<sup>49</sup> of the main agreement of ASYAPORT, positive votes of the (.....)% majority of shareholders are necessary. Considering the distribution of ASYAPORT shareholding in terms of Soyuer Family members, Ahmet SOYUER has (.....)% of the shares, therefore, Ahmet SOYUER's positive vote is necessary within the framework of the aforementioned article. The Board of Directors (.....) consists of two people (Ahmet SOYUER, appointed by the A Group shareholders, and the real person representative of GTL, appointed by the B Group shareholders). Board decisions must be taken unanimously in accordance with the Turkish Commercial Code. The aforementioned factors show that ASYAPORT is jointly controlled. In addition, the general meeting decision necessary to change the structure and decision-making mechanism of the board of directors could not be taken without the positive vote of Ahmet SOYUER. Ahmet SOYUER's positive vote is also required for the amendment of the important provisions of the main agreement. As it is seen, the veto right held by Ahmet SOYUER covers decisions on significant investments and the appointment of senior management. This shows that Ahmet SOYUER, through the veto rights granted to him, has a decisive influence on the strategic business behavior of the joint venture. Within the framework of this, Ahmet SOYUER's veto rights establish joint control over ASYAPORT and therefore ASYAPORT is under the joint control of Ahmet SOYUER and GTL.
- (147) According to the inquiry, although it is controlled jointly, ASYAPORT almost completely serves MSC and the SOYUER Family, which is the other partner of ASYAPORT, has no activity in the sector and these facts have increased the effectiveness of MSC on ASYAPORT and it has been concluded that the activities of TIL cannot be evaluated independently of the activities of MSC.

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<sup>49</sup> In accordance with the article 12 of the main agreement of ASYAPORT, amendment of the abovementioned articles of the main agreement, is attributed to the positive votes of (.....)% of shareholders (in other words, in other words, following provisions cannot be changed without Ahmet SOYUER's positive vote);  
(.....).

**- The claim that Family Ties Are Not Sufficient to Prove the Existence of Economic Integrity and its Assessment**

- (148) TIL argues that in order to determinate the economic unity, there should be economic ties between the individuals and/or groups beside the family ties, there are not economic ties between Soyuer Family and MSC, MSC, Ahmet SOYUER and ASYAPORT are businesses that have different interests, and it is incorrect to assume that there is an economic unity between these businesses only because of the family ties between some shareholders. However, in the Final Examination Notification, only family ties are mentioned, no information about economic ties is provided, it is stated in the *GıdaSa-MGS* Board decision<sup>50</sup> that for claiming the existence of economic unity, it is necessary to determine 1) whether there are economic and family ties between people and/or groups, 2) the basis, nature, size of economic ties and their comparison with independent activities, if any, and 3) based on these definitions, whether people are in the *unity of interest*; the abovementioned 2nd and 3rd criteria are not considered as a whole and that the assessment made is insufficient to reach a conclusion on whether there is an economic unity between the Soyuer Family and TIL or MSC, on the contrary, this situation is the proof that there is no such economic unity between the mentioned undertakings. In addition, it is stated that even the granting of a restrictive veto right to Ahmet Soyuer shows that there is no unity of interest between the mentioned shareholders.
- (149) In addition, it is stated that considering that TIL and the Soyuer Family have no other economic relations other than their partnership in ASYAPORT, TIL already has investments in more than forty container terminals located in different countries of the world and Ahmet SOYUER and TIL have a partnership in only one of these more than forty container terminals, it is seen that there is no economic unity and/or partnership of interests between MSC and the Soyuer Family, in addition, it is also stated in the Notification that the connection between MSC and ASYAPORT is based solely on Ela APONTE, the daughter of Ahmet SOYUER, however, Ela APONTE has a symbolic share in ASYAPORT ( .....)%), that she does not undertake any duties and is not involved in the management of ASYAPORT and/or MARPORT, that Ahmet SOYUER is the only Soyuer Family member who play a role in making the commercial decisions of ASYAPORT, therefore, it is not possible to claim that there is a unity of economic interests between MSC and the Soyuer family based solely on the marriage of Ela APONTE and Diego APONTE.
- (150) As detailed in the Parties section, ASYAPORT's control structure is not evaluated based on mere kinship relation within the scope of the file, and ASYAPORT's board of directors and decision-making mechanism are also examined. As a result, ASYAPORT is deemed to be under the joint control of TIL Ahmet SOYUER and GTL.

**- The claim that the Relevant Product Market for Container Handling Services Should be Determined Separately as “Container Handling Services for Hinterland Traffic” and “Container Handling Services for Transit Traffic” and its Assessment**

- (151) TIL made the following explanations: The main relevant product market of the notified transaction is the container terminal services market. Container handling activities are divided into two as container handling services for hinterland and for transit traffic. The logical approach is to divide the relevant market into two segments as hinterland and transit volumes because these markets have different characteristics in terms of

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<sup>50</sup> Competition Board decision no. 08-12/130-46.



substitutability (such as geographic location, capacity, utilization rate for local freights, economic size and lack of demand) and factors that differ in terms of competitive assessment. In addition, TIL put forward the following arguments: The Board<sup>51</sup> and the Commission<sup>52</sup> have separately evaluated container handling services for hinterland and transit traffic to this day. In the reports related to the sector, container handling services are subdivided into hinterland and transit. Considering all of these, within the scope of the notified transaction, the relevant product market for container handling services should be divided in two as "container handling services regarding hinterland traffic" and "container handling services regarding transit traffic". Accordingly, when evaluating the impact of the transaction on competition, consistent with the past evaluations and Board and Commission decisions, only full import and export containers (hinterland volume) should be considered, excluding transit volume in the relevant market assessment.

- (152) As given in the Relevant Market section, relevant products within the scope of the file, are defined as "port management for container handling on transit traffic" and "port management for container handling on hinterland traffic".

**-The Claim that The Relevant Geographic Market for Container Handling Services regarding Hinterland Traffic Should be Determined as the Marmara Region, and the Relevant Geographic Market for Container Handling Services for Transit Traffic Should be Determined as the Mediterranean Basin and its Assessment**

- (153) TIL put forward to following suggestions: The container handling services market for hinterland traffic is determined with factors such as geographic proximity to the importer or exporter, efficiency and cost of domestic road and rail infrastructure, location of the port in terms of proximity to the preferred shipping route, the ability of the terminal/port to adapt to the size of the ships to be serviced. In addition, infrastructure investments such as Yavuz Sultan Selim Bridge, Osmangazi Bridge, Northern Ring Road are expanding the hinterland market beyond the Marmara Region. If all of these investments are realized, the entire Marmara Region and the surrounding area will be connected by land and the competition between the ports serving the hinterland around the Marmara Sea will increase even more.
- (154) It is stated that in terms of assessing the transaction in accordance with the most current Board decisions, *Limar / Mardaş*<sup>53</sup> and *DP World Yarımca / Unifeeder*<sup>54</sup>, the relevant geographic market for hinterland traffic is the Marmara Region, including the Gulf of İzmit. In the Notification, it is not appropriate to define the geographic market as a whole in Marmara without dividing the hinterland and transit and to continue the assessment over the possible effects that the transaction may have on the Northwest Marmara Region without providing any justification, in addition, the approach to the division of the Marmara Region into subregions will not make a significant commercial difference, all the ports of the Marmara Region are in competition for hinterland freights.
- (155) It is stated that in terms of transit freights, companies that are active on regular container line transportation can use different Mediterranean ports for hub-and-spoke or "relay"

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<sup>51</sup> *Limar/Mardaş* decision dated 08.05.2018 and numbered 18-14/267-129; *APM Terminals/Grup Maritim* decision dated 11.05.2016 and numbered 16-16/267-118; *Samsun Port Decision* dated 12.06.2008 and numbered 08-39/514-189.

<sup>52</sup> The Commission's *COSCO SHIPPINGJOOIL* decision dated 05.12.2017 and numbered M.8594; *MAERSK LINEIHSDG* decision dated 10.04.2017 and numbered M.8330; *Hapag-Lloyd/UASC* decision dated 23.11.2016 and numbered M8120; *Eurogate/APMM* decision dated 05.06.2008 and numbered M.5066; *Hutchison/RCPMIECT* decision dated 03.07.2001 and numbered COMP/JV.55.

<sup>53</sup> *Limar/Mardaş* Board decision dated 08.05.2018 and numbered 18-14/267-129.

<sup>54</sup> *DP World by Half/Unifeeder* Board decision dated 08.11.2018 and numbered 18-42/666-327.

transit operations, since their main services cross the Mediterranean Sea in transit and these lines must provide services to the Marmara and Black Sea regions. From an economic point of view, all of these ports are potential substitutes for each other in transit services, there is no reason why the transit volume should be in Türkiye or specifically in the Marmara Region; for example, Antalya's export-import freights that were previously transferred through the Port of Piraeus are currently being transferred through ASYAPORT and that this shows that the ports in question are substitutes, that customers can quickly change their port preferences between two neighboring countries and finally, in terms of transit freights, ASYAPORT's geographic market is the whole of Türkiye and beyond that, the Mediterranean Sea, not the Marmara Region. It is stated that the reason why the Board and the Commission have repeatedly concluded that the transit volume is a different market from the hinterland volume and that the hinterland volumes should not be taken into account in the competitive assessments for the transit volume is the substitutability feature of the transit volume that covers these much larger regions.

- (156) In addition, it is stated that the official authorities regulating the sector consider that the geographic scope of transit container handling services is wider than in Türkiye in their practices and assessments. The associations of undertakings in the market emphasize the international structure of the sector. Considering all these explanations, it is suggested that the geographic market in terms of the market for container handling services regarding hinterland traffic be defined as all of the region surrounding the Marmara Sea and container handling services market regarding transit traffic be defined as Mediterranean ports, wider than Türkiye.
- (157) In light of the qualitative/quantitative examinations and analyses within the scope of the file, it is concluded that the relevant geographic market should be limited to "Northwest Marmara" within the scope of port management for container handling regarding hinterland traffic. On the other hand, no final relevant geographic market definition is made considering that alternative market definitions for the container port management market related to transit traffic do not cause competitive concern.

**- The Claim That TIL's Share in the Relevant Market Is Not At a Level That Will Cause Competitive Concern and Its Assessment**

- (158) By TIL, it is stated that when the market share of container handling services regarding hinterland traffic in the Marmara Region is calculated on the basis of filled containers that are important in terms of the transaction, ASYAPORT and MARPORT's market share totals are (.....)%, (.....)% and (.....)% for 2016, 2017 and 2018, respectively; in 2018, MARPORT's market share was (.....)% and ASYAPORT's market share was (.....)%, and that the aforementioned market shares were not at a level that would cause competitive concern and that these shares would not change after the transaction. It is also stated that MARPORT has significant competitors in the region such as KUMPORT, DP WORLD, YILPORT, EVYAP and GEMPORT, as well as ambitious entries to the market such as BELDEPORT.
- (159) It is proposed that the market share of MARPORT in the container handling services market regarding transit traffic at Mediterranean ports in 2018 was (.....)%, while the market share of ASYAPORT was (.....)% and that of ASSAN was (.....)% thus total market share of TIL is approximately (.....)%, all these market shares are at an insignificant level, therefore TIL is not dominant in any market and that no dominant position will be created in any relevant product market as a result of the transaction regarding the transition from joint control to single control.

(160) While assessing the competitive effects of the transaction, the Northwest Marmara Region, which is defined as the relevant geographic market within the scope of the file, was taken as the basis for the shares in the market for container handling services regarding hinterland traffic instead of Marmara Region and the results achieved within this framework in terms of the horizontal and vertical effects of the transaction were evaluated as a whole with competitive parameters and the opinions reached about the possible effects of the transaction were given in detail above.

**- Claims Related to Possible Competition Concerns Specified in the Final Examination Notification and Their Assessment**

(161) In relation to the competitive concerns in the Final Examination Notice TIL made the following statements:

- The claim that the transaction will lead to an increase in market share and the container handling services and container transportation services markets will be affected by the transaction does not reflect the truth. Market share of TIL is figured by calculating the market shares of MARPORT, ASYAPORT AND ASSAN ports, and the calculation was made as if these ports were under sole control. When the shares in the relevant markets are examined, it can be seen that the concentration is low and that there has been a decrease in TIL's market share over the years. No player can act independently of competitors and customers. Also MSC, as one of the jointly controlling parties of TIL, does not have the power to influence TIL's behavior alone. MSC's market shares are not related to the transaction, besides MSC's market share is well below the 40% threshold.
- The claims that half of the local freights and a big portion of the transit freights to be transported to the Black Sea countries will be transported by MSC, lines other than MSC will have to acquire services from outside and if the capacity of ports other than MARPORT and ASYAPORT becomes full, the tariffs will go up do not reflect the truth, because MARPORT capacity utilization rates dropped % (.....), % (.....) and % (.....) respectively in 2016, 2017 and 2018, and also almost all of the capacity of MARDAS located next to MARPORT is idle and because there is more supply than demand in the relevant market, it is not possible for the volume of MSC to use all of MARPORT and ASYAPORT's capacity, the volume of MSC represents only % (.....) of MARPORT's capacity, MSC also uses ports other than those operated by TIL in the Marmara Region,
- The claim that monopoly effects can be seen in terms of local freights if two of the four container ports located on the European side of Istanbul are operated by relevant undertakings is meaningless given the structure of the transaction and the market. There are 17 ports in the market for container handling services regarding hinterland traffic in the Marmara Region. TIL's market share in the relevant markets is well below 40%. Even if the Marmara Region is divided into sub-segments, there are not four as claimed, but eight ports<sup>55</sup> on the European side of Istanbul,
- The claim that the acquisition of MARPORT by MSC may lead to the transfer of ports in the region to the hands of important global line players and the formation of an oligopolistic structure does not indicate a real competitive concern. The fact that TIL and MSC are related companies does not mean that the acquirer is MSC.

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<sup>55</sup> In the defense, eight ports were mentioned as MARPORT, KUMPORT, ASYAPORT, MARDAS, AKÇANSA, CEYPORT, ZEYPORT, MARTAŞ.



In addition, there are no legal barriers to entry into the container line transportation services market and it is always possible to enter the market at a low cost. The competitive power of small lines versus large lines will not be affected because customers in the regular line transportation market use the most optimal route and shape the competition by changing suppliers whenever they want. Most of MSC volume is also not under the control of TIL, there is a significant buyer power in the container handling services market.

- (162) Above, the horizontal and vertical effects of the transaction are evaluated in detail by considering the structure of the market, its characteristics, the current situation and possible developments and basically, it is concluded that the transaction can further strengthen the narrow oligopolistic structure of the market and may cause negative effects on both terminal management and line management market.

**- The Claims regarding the Relevant Geographic Market Definition for Container Handling Services regarding Hinterland Traffic and their Assessment**

- (163) In summary, it is stated by TIL that the relevant geographic market which is reasonable for container handling services regarding hinterland traffic should be at least the entire Marmara Region. The representatives of the undertaking suggest that there is no evidence that requires the definition of the relevant geographic market as the Northwest Marmara Region other than “*a quantitative study that does not conclude any meaningful results*”; in order to distinguish the aforementioned sub-regions, there should be “*a very clear distinction*” between these sub-regions and the Economic Analysis Report does not deal with substitution in any way. In addition, the undertaking also states that

- Whether there are findings showing that demand in the relevant market shifted from Marmara to other regions or to different sub-regions of Marmara in the past is not analyzed
- There is no assessment regarding the places of departure and destination of export and import freights,
- Certain infrastructure investments are not taken into account in the evaluation process,
- Whether there are barriers and switching costs related to the shift of demand to different undertakings have not been investigated,
- Customer and competitor opinions that the relevant geographic market should be the whole Marmara Region are not taken into account,
- There are a large number of Board decisions showing that competition in container handling services regarding hinterland traffic occurs at least in the entire Marmara Region, and if there is a deviation from the relevant decisions, this deviation should be in the direction of expanding, not narrowing, the scope of the geographic market,
- Hence there is no conclusive evidence for a narrower geographic market definition, it is necessary to adopt a broader definition of the relevant geographic market.

The following are the assessment regarding these issues:

**- The Claim that the Economic Analysis Report is Incomplete/Wrong and its Assessment**

- (164) It is argued that the Economic Analysis Report was carried out with incomplete /incorrect data, in fact, freights from various regions of Anatolia are currently being handled at ports in the Northwestern Marmara Region, the Economic Analysis Report does not examine demand substitution in any way, and the report consists only of certain isolated price tests. In addition, the price tests used in the Economic Analysis Report are not tools suitable for conducting geographic market analysis and should not be taken into account due to the erroneous results it gives.
- (165) Price tests have advantages such as the fact that they do not require a lot of additional data, other than information about price data, and they can be applied in a relatively short time and easily. In addition, the following facts are taken into account: the aforementioned tests can reveal a false correlation/relationship problem in the presence of elements such as supply or demand shock, even solutions to eliminate the fake relationship require researchers to learn the common cost components and processes based on determining how these components are reflected in the final product prices.
- (166) In addition, on page 28 of the Economic Analysis Report, the following assessment has also been taken into account in relation to the tests mentioned:
- “In light of the explanations given so far, it is understood that a prudent approach is appropriate to use these tests in competition law practice in the face of various drawbacks contained in price tests. Especially the abovementioned “fake relationship problem”, in other words, the possibility that the relevant market may have a wider outlook than it actually is according to the test results should not be ignored. In the final analysis, it should be noted that price tests for the determination of relevant markets are of complementary value, not an alternative to other quantitative and qualitative analyses conducted within the scope of the examination.*
- (167) In this respect, an assessment has been made taking into account the drawbacks that the price tests contained in the Economic Analysis Report regarding the definition of the relevant geographic market. In addition, it should be noted that the disadvantages in this aspect are that the relevant market is defined more broadly, rather than being defined more narrowly than it actually is.
- (168) On the other hand, it should be noted that the relevant geographic market definition was made as a result of the combined evaluation of the qualitative and quantitative analyses within the scope of the file. Within the scope of this, in addition to quantitative analysis, it was concluded that the relevant geographic market should be determined as the “Northwest Marmara Region” by evaluating elements such as the location and characteristics of the port, the possibilities of transportation in the region, the preferences of customers, the opinions of market players together.
- (169) Accordingly, for example, in the section on customer preferences, information about the ports MSC calls at, which has the highest market share among container line operators, on the basis of local and transit freights is given; it is found that the undertaking uses ASYAPORT and MARPORT almost entirely for transit freights, while it uses a port in each of the Northwest, South and Northeast Marmara regions intensively for local freights.

Relevant Market Has Shifted from Marmara to Other Regions or to Different Sub-Regions of Marmara in the Past is not Examined

- (170) Due to the lack of valid and appropriate toolkits for all ports subject to analysis, EARD could not apply demand-based SSNIP testing. In the analyses conducted by the EARD taking into account price-based tests due to the unavailability of demand-based methods, it is stated that it is reasonable to define the geographic market for the port management service for container handling as “Northwestern Marmara”.
- (171) On the other hand, the relevant geographic market analysis included in the Economic Analysis Report is discussed together with quantitative and qualitative evaluations. Within the scope of this, beside the quantitative analyses conducted by EARD, it was concluded that the relevant geographic market should be determined as “Northwestern Marmara Region” by evaluating the elements such as the location and characteristics of the port, the transportation facilities of the region and the preferences of the customers together.
- (172) In the *Mardaş/Limar* Board decision dated 08.05.2018 and numbered 18-14/267-129, the road transporters who used the port mentioned in the decision the most were asked from which regions the freight was brought to Ambarlı Port and to which regions the freight was transported and as a result of the examination conducted through a sample, the following assessment is made:

*"Although data from the aforementioned transporters vary on transporter basis, these data shows that Ambarlı Port appeals to an area comprising the European side of İstanbul and more broadly between the Bosphorus and Çerkezköy Industrial Zone **basically**, and Anatolian Side of İstanbul and the other provinces in Anatolia **partially**."*

Within the scope of the aforementioned file, it is also stated that 92% of the freights entered to MARPORT by land in 2016 is from Northwest Marmara Region, 5.4% is from Eastern Marmara Region, 1% is from South Marmara Region and 1.6% is from other regions; on the other hand, 86.1% of the freights leaving MARPORT in the same year were distributed to Northwest Marmara, 10.8% to Eastern Marmara and 3% to other regions.

- (173) It is not concluded that the relevant ports “only” serve their own hinterlands. The relevant geographic market analysis, as stated in the 3rd paragraph of the Guidelines on Defining the Relevant Market, is based on the fact that the competitive conditions of Northwest Marmara Region are sufficiently homogeneous and competitive conditions, in particular, are significantly different from neighboring regions. Within the scope of this, it is not a correct methodology to conclude that the hinterland can be the whole of Türkiye based on individual examples by the party because according to such opinion, the relevant geographic market can be defined as the entire Middle East, the Balkans, Russia and the Caucasus, beyond Türkiye, which does not correspond to the basic logic in defining the relevant geographic market.
- (174) Moreover, as the party also states, when determining the ports to be used, geographic proximity, efficiency and cost of domestic road and rail infrastructure, location of the port in terms of proximity to the preferred shipping route and characteristics of the port are considered. Considering these criteria, it is not possible to agree with the assessment of the notifying party suggesting that the market can be identified “*essentially, as the whole of Türkiye*”.

- The Claim that Various Infrastructure Investments are Not Taken into Account in the

Assessment Process and its Assessment

- (175) In the defense, it is stated that the road and railway infrastructure in the Marmara Region is “sufficient to create a substitution relationship between the ports in the Marmara Region themselves and also between the ports located in other regions of Türkiye, such as the Aegean Region and the Central Anatolia Region<sup>56</sup>”. The party bases these claims on various Board decisions<sup>57</sup>. Within the scope of this, first of all, as can be understood from the sample Board decisions submitted by the party, it should be noted that the connection opportunities of the ports to the hinterlands play an important role in determining the size of the aforementioned hinterland. However, it does not seem possible to make an inference from any Board decision presented by the party as an example that it was found that all ports in Türkiye could be substituted for each other due to the development of transport facilities (even 15 years ago)<sup>58</sup>. Thus, it is not possible to agree with the assessments of the parties that all ports should be considered substitutes for each other, taking into account the transportation possibilities of 15 years ago.
- (176) On the other hand, another claim put forward by the party is that it is not a reasonable approach to state that Yavuz Sultan Selim Bridge and Osmangazi Bridge are not sufficient to create a substitution relationship between the ports just because of their cost. In addition, it is stated by the party that whether the containers pass through the mentioned bridges or not is not analyzed, and in any case, the fee is not the only variable determining the methods of transportation to be used, there are also other factors such as timing, etc. Within the scope of this, in addition, it is suggested by the party that the fact that freight transportation has started via Marmaray may affect the evaluation.
- (177) As mentioned in the paragraph 19 of the Guidelines on the Definition of the Relevant Market, the main point in determining the relevant geographic market is whether or not undertakings under examination can switch the orders of their customers to undertakings at other regions in a short period of time and at negligible costs shall constitute the basic point. However, there were no findings within the scope of the file that “other factors such as timing” affected customer preferences to such an extent that they changed the size of the relevant geographic market, and no concrete data were provided by the applicants in this direction.
- (178) In this context, finally, it is thought that the news presented by the party regarding the implementation of the Marmaray Project<sup>59</sup> is not capable of changing the analyses performed because details on to what extent Marmaray will make transportation to the relevant ports economically and technically possible are not yet clear. Concrete information supporting the opinions of the line mentioned by the notifying party, such as connection possibilities to ports, price and capacity is not provided. On the other hand, the evaluations on the other infrastructure investments mentioned by the party are given above.

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<sup>56</sup> The rapporteurs think that due to the lack of ports in the Central Anatolia Region, the Mediterranean or Black Sea Region was meant.

<sup>57</sup> *Derince Port* decision dated 04.10.2007 and numbered 07-77/916-350; *Bandırma Port* decision dated 12.06.2008 and numbered 08-39/517-191; *İskenderun Port* decision dated 02.12.2010 and numbered 10-75/1538-592.

<sup>58</sup> For example, in the *İskenderun Port* decision, the relevant geographic market is defined as, “Eastern Mediterranean, Central Anatolia, Southeastern Anatolia and Eastern Anatolia Regions”.

<sup>59</sup> <http://www.tcddtasimacilik.gov.tr/haber/444/>, <https://www.dunya.com/sectorler/lojistik/tasima-yatirimlari-rotayi-marmaray-hattina-cevirdi-haberi-470832> (Last accessed: 11.06.2020).

- The Claim that the Opinions of Customers and Competitors that the Relevant Geographic Market Should Be the Entire Marmara Region are not considered and its Assessment

- (179) It is stated that the opinions of terminal operators and customers in the Marmara Region on the scope of the geographic market for container handling services regarding hinterland traffic in the Marmara Region are not considered.
- (180) The positive and negative opinions of the ports operating in the Marmara Region are mentioned above and the customers receiving services from these ports regarding the transaction subject to file are included. The opinions in question are taken into account in the examinations and evaluations made.

-The Claim That There are Numerous Board Decisions That Competition in Container Handling Services Regarding Hinterland Traffic Occurs at Least in the Entire Marmara Region, and a Deviation from the Relevant Decisions, if any, Should Be Expanding, Not Narrowing, the Scope of the Relevant Geographic Market and its Assessment

- (181) Although the subjects of the files may be similar, assessments are made on the basis of each file separately since the information obtained in each file, documents and the conditions in the market changes. However, there are also Board decisions in which the relevant geographic market for container handling services is defined more narrowly than the Marmara Region<sup>60</sup>. In addition, there is no enforcement practice that a deviation from previous decisions, if any, should be in the direction of expanding the scope of the geographic market.

-The Claim that it is Necessary to Adopt a Broader Definition of the Relevant Geographic Market, Since There is No Conclusive Evidence for a Narrower Definition of the Geographic Market and its Assessment

- (182) As mentioned earlier, the relevant geographic market definition in the current file was reached as a result of the combined evaluation of qualitative and quantitative analyses within the file. In this regard, the claims of the party that a broader market definition should be made were not considered valid, since there was no conclusive evidence for a narrower geographic market definition.

-The Claim that in the Similar *Limar/Mardaş* Decision the Relevant Geographic Market was defined as the Marmara Region and its Assessment

- (183) Paragraph 99 of the *Mardaş/Liman* Board decision dated 08.05.2018 and numbered 18-14/267-129 states that "*in terms of the market for container handling services regarding hinterland traffic, the relevant geographic market is Istanbul in the narrowest sense, but considering the possibilities of transportation and the statistics of freights distributed in the hinterland, it is possible to determine the market more broadly, rather than determining it on a provincial basis*" and specific to the transaction, the relevant geographic market can be defined as the Marmara Region. In addition, although the decision states that the analysis conducted by EARD supports this opinion, in the analysis where the FERM<sup>61</sup> test method is used, the market consists of the ports of MARPORT, KUMPORT, MARDAS, ASYAPORT and HAYDARPAŞA if the threshold value is considered 5%. If the threshold is increased to 10%, a market wider than the

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<sup>60</sup> While in the decision dated 14.09.2006 and numbered 06-63/857-247, the relevant geographic market was determined as "Eastern Marmara", in the decision dated 15.11.2017 and numbered 17-37/603-262, the relevant geographic market was determined as "the Gulf of İzmit".

<sup>61</sup> Full Equilibrium Relevant Market Test.



nine ports covered by the analysis is indicated and the threshold value of 10% is taken as the basis within the scope of the file. In addition, although the relevant geographic market is defined as the Marmara Region, it is stated that the impact of the transaction will be felt intensively in the Northwest Marmara subregion and the possible effects of the transaction on competition for this region are evaluated.

**- The Claim that Market Shares of Undertakings should be recalculated and its Assessment**

- (184) TIL argues that the relevant geographic market for container handling services regarding hinterland traffic should be determined as the Marmara Region and the market shares of both the party and the party's competitors and should be recalculated.
- (185) It is not necessary to recalculate the market shares of the party or its competitors, since there are no issues that would require changing the relevant geographic market definition.

**- The Claim that the Information and Documents Not submitted to the Party cannot be the Basis for the Final Examination Result and its Assessment**

- (186) Briefly the parties argue that the Economic Analysis Report and the documents containing the opinions of container terminal operators and their customers that were not provided to them cannot be the basis for the final examination result.
- (187) The aforementioned Economic Analysis Report and the relevant parts of the opinions of port operators and their customers are included in the Final Examination Report submitted to the party. In addition, with the decision dated 25.06.2020 and numbered 20-31/392-175, it was decided that the Economic Analysis Report as well as the information and documents requested from the Ministry of Transport and Infrastructure and undertakings in the sector together with the responses sent to the Authority upon this request would be open to TIL's access for examination at the headquarters of the Authority without taking any electronic or mechanical copies of the responses, allowing to taking notes.

**- Objection to the Board Decision to Make an Additional Examination upon the Amendment to the Act no 4054 and to the Implementation of the Amendment to the Notified Transaction**

- (188) TIL argues that upon the amendment to the Act no 4054, making an additional examination on the notified transaction with the Board decision dated 25.06.2020 and numbered 20-31/383-M and implementing an act that has just entered into force to a file, which is already ongoing and nearly at the decision stage, is incompatible with general principles of law, equality before the law and non-retroactivity of laws. Therefore, there is the risk of incompatibility with the principles of legal security and stability as well as protection of the rightful expectations of persons.
- (189) As it is mentioned above, the Act amending the Act no 4054 was published in the Official Gazette dated 24.06.2020 and entered into force. Within the framework of this amendment, the dominant position test was replaced with the SLC test in the control of concentrations. Article 7 other relevant articles of the Act and the secondary legislation on the subject provide for an authorization mechanism, in other words, an *ex-ante* monitoring mechanism in terms of controlling concentrations. Within this framework, the principle is that concentrations are notified before they are realized and thus before the effects on competition have not occurred, and those that are subject to authorization are granted legal validity with the authorization of the Competition Authority. As in the



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notified transaction, for merger/acquisition transactions, an assessment is made of the possible future effects of the transaction before the transaction takes place. Within the framework of this, the decision to grant or not to grant permission for a transaction that will be realized in the future and have consequences on competition must be taken in accordance with the provisions of the applicable legislation.

- (190) It is seen that decisions were made taking into account the amendment to Act no 4054 in all five merger / acquisition transactions, which were concluded at the Board meeting dated 26.06.2020 and which TIL gave as an example in the context of incompatibility with the principle of legal equality.

**H. CONCLUSION**

- (191) According to the scope of the report prepared and the file examined, it has been decided UNANIMOUSLY that the notified transaction is subject to authorization under Article 7 of the Act no 4054 and the Communiqué no 2010/4 on Mergers and Acquisitions Calling for the Authorization of the Board issued on the basis of this article; the transaction will lead to significant lessening of effective competition; therefore, the transaction shall not be allowed pursuant to article 7 of the Act no 4054, with the decision subject to review before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.