BRIEF NOTE
ON
GUIDELINES ON COMPETITION INFRINGMENTS IN LABOR MARKETS

The Turkish Competition Authority ("**TCA**") occasionally publishes guidelines on its website to enlighten the market participants regarding the implementation of the relevant legislation. After TCA first examined the labor market from the competition law standpoint separately from other main issues in 2020-2021, it finally published guidelines on competition infringements in labor markets ("**Guidelines**") on December 3rd, 2024.

Since the Guidelines concern closely those that hire employees and therefore being active in the labor market, all undertakings must take it into consideration regardless of their sector. Although the Guidelines' main focus is the anti-competitive agreements, the principles are also applicable to the abuse of the dominant position and merger control.

This brief note aims to summarize the main principles set out in the Guidelines.

1. Wage Fixing Agreements

Article 4 of the Turkish Competition Act No. 4054 ("**Act**") prohibits (**i**) agreements and concerted practices between undertakings, and (**ii**) decisions and practices of associations of undertakings which have their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services. Fixing the price of goods or services, elements such as cost and profit which form the price, and any condition of purchase or sale is one of the competition infringements under Article 4/1-a of the Act.

Wages and other working conditions provided by undertakings to the employees' labor are considered as costs that form the price and/or condition of the purchase. Therefore, jointly determining working conditions such as wages, wage increases, work periods, side benefits, compensation, leave entitlements, and non-compete obligations by undertakings is a competition infringement just as the fixing the purchasing prices is.

Wage-fixing agreements can be made either directly or through a third party. In case a third party mediates for the agreement or facilitates it, this party may be accepted as a party to the infringement.

2. No-Poaching Agreements

Article 4/1-b of the Act prohibits allocation of markets for goods or services and sharing or controlling all kinds of market resources or elements with agreements, concerted practices between undertakings or decisions and practices of associations of undertakings. No-poaching agreements aim to artificially allocate the labor supply among undertakings. Thus, no-poaching agreements fall within the scope of this provision.

No-poaching agreements can be made either directly or through a third party. If a third party mediates for the agreement or facilitates it, it may be accepted as a party to the infringement.

3. Information Exchange

Exchanging competitively sensitive information is one of the competition infringements under Turkish law.

It may even be considered as anti-competitive agreement depending on the circumstances. In labor markets, such information includes wages, wage increases, work periods, workplace practices, and exchanging this kind of information is against the antitrust regulations.

Information may be exchanged between the competitors and / or independent market survey organizations and private employment agencies. Therefore, these organizations that report data about working conditions, especially information about wages should aggregate the data they collect and should not allow the prediction of the source of those data.

Information exchange is not a competition infringement, provided the following conditions are met:

- Information exchange is conducted by an independent third party,
- Information exchange does not permit the identification of the data source or individual data content,
- Information is at least three months old,
- Information includes at least the data of ten participants,
- The dataset does not contain more than 25% of the data from a single participant.

4. Ancillary Restraints

Restrictions that are not the primary objective of the main agreement but (**i**) directly related, (**ii**) necessary and (**iii**) proportional for the implementation and sustainability of the agreement are considered as ancillary restraints. While the Act does not regulate the concept of "ancillary restraint", this concept is commonly applied in Turkish competition law practice.

Restraints that are not within the scope provided above are considered as competition infringement. The most common ancillary restraint seen in the Turkish labor market is non-competition clause stipulated in the employment contracts, that may be regarded as ancillary restraints.

Wage-fixing and no-poaching agreements cannot be considered as ancillary restraints in any case since they are regarded as an infringement by object.

5. Exemption Regime

Any kind of agreement, decisions or practices that restrict the competition is an infringement. However, under Article 5 of the Act, if the said practice contributes to new developments in goods and services or increases end-user's welfare and secures the maintenance of competition in a significant part of the relevant market, undertakings could benefit from the exemption regime.

On the other hand, such agreements in labor markets are by their very nature unlikely to generate the benefits stipulated under Article 5 of the Act. Therefore, as a principle, wage-fixing and no-poaching agreements cannot benefit from the exemption regime.

Should you have any inquiries on this brief note or Guidelines, please do not hesitate to contact us.

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