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The Long-Awaited Draft Guidelines on Competition Violations in Labor Markets is Published

1 Oct 2024

The Competition Authority ("**Authority**") published the long-awaited Draft Guidelines on Competition Violations in Labour Markets ("**Draft Guidelines**") on 16.09.2024 and opened it to public opinion.

We submit our summary and explanations regarding the Draft Guideline for your consideration below, and you may access detailed information via this link.

In the Draft Guidelines, in summary, the place and importance of the conduct between undertakings in the labour markets within the framework of the Law No. 4054 on the Protection of Competition ('**Law No. 4054**"), and the Article 4 of the Law No. 4054. Article 4 of the Law No. 4054, how the Competition Board ('**Board**") evaluates such violations and what are the issues to be considered by third parties regarding the relevant violations, the criteria under which the ancillary restraint assessment for agreements between competitors in the labour markets is made/will be made, and the extent to which Articles 5, 6 and 7 of the Law No. 4054 can be applied to agreements and actions in the labour markets.

- In the first section titled "*Introduction*", it is stated that the Authority aims to create a healthy competitive environment in Türkiye and within this framework, competition in labour markets is important. Furthermore, imbalances between labour supply and demand, low bargaining power of employees and tendency of employers to make anti-competitive agreements are discussed. It is mentioned that these structural problems in the labour market lead to low wages and disadvantageous conditions for employees, thus reducing labour mobility. Moreover, the negative effects of this situation on innovation and technological development were also emphasised. In this context, it is stated that the Draft Guidelines aim to provide basic principles for the identification and supervision of anti-competitive behaviour in Turkish labour markets.
- In the second section titled "*Application of Article 4 of the Law*", in line with the Board's jurisprudence, it is stated that agreements or concerted practices and decisions and practices of associations of undertakings, which have the object or effect of fixing the wages and other working conditions of the employees or refraining from employing each other's current or former employees, will be considered as a violation of Article 4 of Law No. 4054.
    - In the Draft Guidelines, it is stated that wage fixing agreements will be evaluated similarly to price fixing agreements on the output side of the market and will therefore be considered as cartels. It is also emphasised that wage fixing agreements may be concluded between undertakings directly or through a third party, and that the third party may be a party to the infringement depending on the concrete case.
    - In addition, it is stated that what is important in employee non-solicitation agreements is whether there is an agreement to restrict employee mobility or not; the existence of an non-solicitation agreement may also be mentioned in cases where undertakings make job offers to each other's employees subject to mutual consent, and the relevant agreements may be

made for both active employees and former employees. It is stated that non-solicitation agreements will be evaluated similar to provider/customer sharing agreements, and will therefore be considered as cartels. It is also emphasised that non-solicitation agreements may be concluded between undertakings directly or through a third party, and that the third party may be a party to the violation depending on the concrete case.

- With regard to the exchange of competition-sensitive information, it is stated that, for undertakings competing in the labour market, information on all kinds of working conditions of employees, such as wages, wage increases, working hours, fringe benefits, compensation, physical working conditions, leave rights, etc. will be considered as competition-sensitive information and the exchange of such information may have anti-competitive purposes or effects. It is also emphasised that it should be taken into consideration that the exchange of information that may have anti-competitive effects may take place not only from competing undertakings, but also through independent market research organisations and private employment agencies. When reporting information such as employee wages and working conditions, these organisations should try to prevent the predictability of information sources by aggregating the data they obtain, since such information obtained from a small number of sources may increase anti-competitive effects. As a result, it is stated that information that is not aggregated, current or future-oriented, that makes the sources obvious and that is not publicly available may lead to anti-competitive effects when shared among undertakings.
- Regarding ancillary restraints, it is stated that restrictions that do not fulfil the conditions of direct relevance, necessity and proportionality cannot be accepted as ancillary restraints. Regarding the proportionality requirement, it is stated that whether (i) the duration of the restriction is not clearly stated, it exceeds the duration of the main agreement, or it goes beyond the sufficient duration for the purpose to be achieved by the restriction, (ii) the restriction is imposed on employees other than the employees who are key to the implementation of the main agreement, or it is not clear which employees are restricted, (iii) the limitation is imposed beyond the geographical area to which the original agreement applies, and (iv) the limitation is imposed to cover all or more of the parties to the original agreement where it is sufficient to impose the limitation on only one or a smaller number of the parties to the original agreement, the relevant limitation will be deemed not to meet the proportionality requirement.

- In the last section titled "*Application of Other Articles of the Law*", it is emphasized that the principles in the Draft Guidelines will be applied within the framework of Articles 5, 6, and 7 of Law No. 4054; however, wage fixing and non-solicitation agreements in the labour markets and information exchanges for the purpose of restricting competition will not benefit from the exemption. In terms of Article 6 of the Law No. 4054, it is stated that it will be examined whether the undertaking subject to examination has a dominant position both in the relevant product or service market and in the relevant labour market. Within the scope of Article 7 of Law No. 4054, it is stated that in determining whether the transaction leads to a significant lessening of competition in the labour market, -including but not limited to- the following variables will be taken into account: the shares of the transaction parties in the relevant labour market and the level of concentration of the market, the closeness of the qualifications of the employees employed by the transaction parties, the barriers to entry into the relevant product market, the organisation of labour suppliers in the relevant labour market, the costs of changing workplaces, the possibilities of the competitors of the transaction parties to increase capacity utilisation or make new investments, potential competitive pressure, whether the transaction increases the possibilities of cooperation between competitors operating in the relevant labour market and whether the transaction carries the possibility of a lethal takeover.

The general outlines of the Draft Guidelines are given above and within the scope of the opinions to be submitted to the Authority, it is envisaged that the explanations and the framework set out in the Draft Guidelines will be elaborated.

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