

Antitrust/Competition

Turkish Competition Authority's Increased Scrutiny Towards No-Poaching Agreements

No-poaching agreements have gathered increased attention from competition authorities worldwide. These agreements, in which undertakings agree not to hire or solicit each other's employees, have come under scrutiny for their potential to restrict competition in the labor market. The Turkish Competition Authority ("TCA") has also begun to investigate and impose administrative fines on undertakings engaging in no-poaching agreements and other forms of anti-competitive behavior related to employment practices such as wage-fixing. In this context, undertakings entering into non-poaching agreements or exchanging sensitive information on wages and benefits may violate Law No. 4054 on the Protection of Competition.

The TCA is working on developing a guideline specifically addressing the labor market, however it has not been public yet. Therefore, understanding the TCA's approach on no-poaching agreements requires analyzing past decisions of the Competition Board ("Board").

In November 2022, the Board imposed its first administrative fine regarding the labor market in the *Private Hospitals* decision, establishing that no-poaching agreements are considered similar to cartels. According to the TCA's practice, no-poaching agreements are anti-competitive by object. These practices can indirectly limit employees' mobility, thus potentially leading to the stabilization of wages in the labor market.

Subsequently, the TCA has initiated a full-pledged investigation into 32 undertakings across various sectors concerning no-poaching allegations. Later on, the investigation expanded to include a total of 49 undertakings ultimately, resulting in settlements for 11 and fines for 16. The investigation resulted in a total of TRY 252 million in administrative fines, emphasizing TCA's heightened focus on no-poaching agreements. A crucial point to consider is that the TCA defined the market in these investigations as the "labor market," and not segmented the market according to sectors. Accordingly, undertakings entering into such agreements do not have to be competitors operating in the same market to violate competition law, since undertakings might be competing in the labor market



Neyzar Ünübol

nunubol@kolcuoglu.av.tr



Ali Tunçsav

atuncsav@kolcuoglu.av.tr

to recruit the same employees, regardless of whether they provide the same goods or services. Recently, the Board imposed a total administrative fine of approximately TRY 92 million on eight undertakings operating in the technology sector due to no-poaching agreements. In a recent announcement, the TCA also emphasized that in recent years, employers' behaviors decreasing competition for labor has negative effects on wages and competitive work conditions. In this context, the TCA is determined to intervene in the labor market through competition law tools and aims to preserve the competitive structure of the labor market.

To sum up, the TCA has completed three investigations on no-poaching agreements in two years and the increasing number of investigations and imposed fines indicate that the Board will continue its scrutiny in labor markets. Therefore, companies must assess the risks associated with no-poaching agreements. In particular, human resources professionals need to stay informed about these developments and adapt their practices to ensure compliance.



Practice Area News

Sector Inquiry Report on Fuel Industry has been Published After 4 Years of Research. On January 5, 2024, the TCA published its Fuel Sector Inquiry Report, analyzing the competition problems in the fuel market. The report includes policy recommendations to establish a more competitive market structure. Notably, it recommends changing the regulations to enable white flag fuel stations entrance to the retail market, diverging from the exclusive dealership model and removing distance restrictions between stations.

The Turkish Constitutional Court's Significant Judgment on Turkish Competition Authority's Dawn-Raids. Recently, the Turkish Constitutional Court examined the legality of Article 15 of the Turkish Competition Law, which authorizes the TCA to conduct dawn-raids without a court order. If the awaited decision concludes that Article 15 of the Competition Law infringes the right to immunity of residence, this may lead to limitations on the TCA's capacity to conduct dawn-raids.

META Platforms, Inc. Shut Down Threads in Turkey. On March 18, 2024, the TCA issued an interim measure on META amid allegations of merging Threads and Instagram data without consent of the users. The TCA fined META a total of TRY 336 million for not complying with the interim measure. In response, META shutdown Threads in Türkiye to avoid more fine.

Turkish Competition Authority's TRY 552 Million Administrative Fine on META Platforms, Inc. In 2022, the TCA imposed an administrative fine of TRY 346 million on META for abusing its dominant position by combining data collected from Facebook, Instagram, and WhatsApp services and obliged META to offer measures to end the infringement. However, META failed to submit appropriate measures to the TCA until April 4, 2024. The TCA imposed an administrative fine of TRY 552 million on META for not submitting measures for 115 days.

In the Firm

• Energy Law Group Meeting in Istanbul.

It was a true honor and pleasure to host the Energy Law Group's meeting in Istanbul, at the Çırağan Kempinski, on 26 April 2024. With special thanks to Ümit Boyner, Mehmet Ögütçü, Zeynep Harezi and Emre Turanlı for their enlightening speeches that enriched our event, we are grateful to the 36 members of the Energy Law Group representing 40 countries that attended the event.

We are proud of being ELG's Turkey member and look forward to hosting several other meetings in our city, in the near future.

