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DRAFT GUIDELINE ON COMPETITION INFRINGEMENTS IN LABOR MARKETS

The Turkish Competition Authority ("Authority") has published the "Draft Guidelines on Competition Violations in Labor Markets" ("Draft Guidelines") on September 16, 2024, to clarify competition violations in labor markets. The Draft Guidelines set forth fundamental principles regarding restrictive agreements and practices in labor markets, specifying the conditions under which agreements between employers may be deemed unlawful.

Examining Labor Markets Within the Scope of Competition Law

Article 4 of the Law No. 4054 on the Protection of Competition ("Law") prohibits agreements between employers that aim to determine employees' wages and working conditions or to limit employee mobility. Employers are considered competitors in the labor market if they have similar demands for labor, regardless of whether they compete in output markets. In fact, these markets, dominated by a few employers with significant bargaining power, often create an imbalance, increasing the tendency for employers to make anti-competitive agreements and thus distorting competition in labour markets and preventing the creation of better job opportunities for employees.

TYPES OF COMPETITION VIOLATIONS

Wage-Fixing Agreements

Wage-fixing agreements are those in which employers agree to set wages, working conditions, and benefits at a fixed level. The Authority views these agreements as "per se violations" and considers them a form of cartel. Agreements to set wages and working conditions are explicitly prohibited under Article 4 of the Law due to their restrictive impact on competition by limiting costs in the labor market. Additionally, if sectoral associations or consulting firms mediate such wage-setting agreements, these entities may also be held liable for competition violations.

No-Poaching Agreements

No-poaching agreements are arrangements between employers not to hire each other's employees. These agreements restrict employee mobility, hindering employees from pursuing better job opportunities. The Authority treats no-poaching agreements as a type of violation on the buyer side of the labor market. As such, these agreements, which restrict competition, are regarded as cartels. No-poaching agreements may also cover former employees or be implemented indirectly, such as through requirements for employers to seek approval before hiring each other's employees.

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Information Exchange

Information exchange in labor markets involves the sharing of competition-sensitive information among employers, such as wage levels, working conditions, or salary increase rates. This exchange enables coordination among employers and reduces market uncertainty, leading to a restriction of competition. The Authority has stated that such exchanges in labor markets constitute a violation if they restrict competition. Information exchanges can occur directly or through a third party, such as market research organizations or staffing agencies, and these exchanges can negatively impact competition. The Authority considers such information exchanges as violations when they have an anti-competitive intent, regardless of their impact.

Ancillary Restrictions

As stated in the Draft Guidelines, ancillary restraints that do not have the purpose or effect of preventing, distorting or limiting competition, but are necessary for the maintenance of agreements (for example, in mergers and acquisitions) may also be in question. Restrictions considered as ancillary restrictions are excluded from the scope of Article 4 of the Law. It is explained in the Draft Guidelines that ancillary restrictions are acceptable provided that the restriction is directly related to the main agreement, is necessary for its implementation and is proportionate.

Review Under Other Articles of the Law

The Draft Guidelines also assess competition violations in labor markets from the perspectives of inter-company agreements, abuse of dominant position, and mergers and acquisitions. Wage-fixing and no-poaching agreements generally do not fall within the scope of exemptions, and such behaviors by a dominant entity in the labor market may be deemed as an abuse of dominance. Additionally, mergers and acquisitions that could significantly reduce competition in labor markets may be prohibited.

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