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Turkish Competition Board decision invites fresh perspective on information exchange

ELIG Gurkaynak Attorneys-at-Law | Competition & Antitrust - Turkey



GÖNEÇ
GÜRKAYNAK



BERFU AKGÜN



ERSAGUN
BERKAY KILTAN



SIMAY DEMİR

> Introduction

> Role of TÖDEB

> Scope of information exchange

> Decision

> Comment

Introduction

The Turkish Competition Board granted negative clearance to information exchange to be conducted within the scope of the Payment and Electronic Money Institutions Association of Turkey's (TÖDEB) data transfer system (TVTS) pursuant to article 8 of the Law No. 4045 on Protection of Competition with its decision (the "TÖDEB decision").⁽¹⁾ Accordingly, the board evaluated that sharing certain information with public and TÖDEB members within the scope of the TÖDEB's authority and duty derived from Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions through a third party software does not constitute a violation in terms of Article 4 of the Law No. 4054. Overall, the Board did not make any evaluation pertaining to the individual exemption request of the TÖDEB and in its final decision granted negative clearance.

This article aims to provide a deeper understanding of the board's decision regarding TÖDEB's data transfer system.

Role of TÖDEB

The TÖDEB is a public entity with 74 member undertakings consisting of payment and electronic money institutions. The board identified the TÖDEB as an association of undertaking subject to the Turkish Central Bank's (TCMB) audit and consultation under article 31 of Law No. 6493.

The decision concerns the TÖDEB's application to the Competition Authority requesting negative clearance and individual exemption regarding sharing data sets of its members with the public and other TÖDEB members using the TVTS to gather the respective data sets and aggregating through a software (which was developed by an independent third party, XPODA). The TÖDEB stated that this practice aims to comply with relevant regulations and is carried out in accordance with article 6(1) of the Association Statute, which involves keeping and disclosing general and statistical information pertaining to its members.⁽²⁾

Scope of information exchange

In the decision, it is explained that TVTS facilitates the collection of data sets from TÖDEB members, which are then aggregated and shared through the software developed by a third party. The data sharing activity, as described in the legislation on Procedures and Principles on TÖDEB Data Transfer System, serves the purposes of meeting legal obligations, providing general sector information and promoting new investments. The data sets to be shared cover various aspects, such as:

- balance sheets;
- activity fields;
- trading volumes;
- general information;
- detailed information;
- profit and loss statements;
- protected accounts;
- payment services;
- branches form;
- representatives form;
- representatives transaction information; and
- member activity form.

The TÖDEB stated that its members will upload the data sets twice a year:

- first in September (comprising the member undertakings' activities for the period until the end of June); and
- in March the following year (comprising the member undertakings' activities for the period until the end of December).

In addition, the information will be made available to the public and members within two months following the upload. Importantly, the shared information will not include competitively sensitive details such as overall price level or cost information that could lead to anti-

competitive coordination.

The TÖDEB identified the other key parameters of the TVTS in its application as follows:

- TÖDEB members will have no access to another member's information within TVTS.
- TÖDEB personnel will be able to only access consolidated or aggregated data sets, except for specific forms such as:
 - the general information form;
 - the representatives form; and
 - the member activity form.
- The third-party software developer, XPODA, will have limited access to TVTS for system maintenance purposes only.
- TÖDEB personnel authorised as system administrator will have no affiliation with any TÖDEB member undertaking.
- The currently aggregated data sets will be outdated for a period of at least three to five months.

Decision

The board evaluated the relevant product market taking into account that 74 TÖDEB members operate in the payment acceptance services and electronic money transfer activities (which can be combined together as "payment services" or "services for payment intermediation"). These 74 TÖDEB members participate in the decision-making process of TÖDEB.

In terms of the geographical market definition, considering that the TÖDEB and its member members are subject to TCMB's audit and are obligated to comply with the applicable regulations under Turkish laws, as well as their operation within the Turkish market, the board determined that the relevant geographical market would be Turkey. Although the board conducted an assessment on the definition of the relevant product markets and the relevant geographical market, the decision did not explicitly determine a final relevant market, since the determination of the market definition would not impact the conclusion reached by the board.

In the decision, the board referred to article 8 of Law No. 4054, which regulates the principle of granting negative clearance for activities that do not violate articles 4, 6, and 7 of the same law. The board assessed whether the TÖDEB's activity fell under the scope of article 4 of Law No. 4054 and recognising the TÖDEB's control structure and the competitive nature of its members who are competitors at the horizontal level, the board acknowledged the potential anti-competitive effects resulting from TÖDEB's activities involving the analysis and aggregation of data sets.

The board explained that information exchange, from a competition law perspective, refers to the sharing of competitively sensitive information that may disrupt the competitive nature of a given market. The board evaluated that such information includes price, production volume, costs, sales data, stock quantity and information exchange, and can lead to transparency within a market, potentially enabling anti-competitive coordination among competing undertakings.

Indeed, the board assessed that information exchange cannot be deemed as a competition law violation in and of itself, underlining that every unique case must be assessed based on:

- the nature of the information;
- the recipients of the information;
- the frequency of the information exchange;
- the scope of the market which would be affected by the information exchange; and
- participation in the exchange of information.

Accordingly, the board determined that the data sets to be shared via TVTS should be analysed under the criteria above.

Initially, the board assessed that the data sets planned to be shared with the public and members within the scope of the TVTS are aggregated, the data will be outdated at least three to five months, and the data sharing will be carried out at a low frequency in six-month periods. Following, the board underlined that the TÖDEB will carry out the respective activity to fulfil its duty under the article 6(1) of the Association Statute. Moreover, the board evaluated the data sets collected through the software produced through the TVTS will be shared with the public and members in an aggregated and outdated manner for at least three to five months. In terms of the frequency of information sharing, data sharing by the member undertakings of the TÖDEB through TVTS will be carried out in six-month periods. In this respect, the board evaluated that the relevant data sets between competitors within the scope of TVTS will be shared with low frequency. All in all, any competitively sensitive data sets, especially like price and quantity data, which may cause the undertakings that are members of the TÖDEB to coordinate their competitive behaviour will not be shared with the TÖDEB or the TÖDEB's members.

The board also highlighted the unconcentrated nature of the relevant market, given the increasing number of payment institutions and electronic money institutions authorised by TCMB. Furthermore, the board evaluated that the TÖDEB's members operate in different market segments, providing various payment services and electronic money transfers. In this sense, the board noted that the activity fields of the TÖDEB's members do not significantly overlap, given that some of these undertakings provide services for:

- payment of bills;
- point of sale;
- mobile payments; and
- money transfer.

Others operate in the market for more qualified services such as electronic money transfers.

Nevertheless, the board also acknowledged that information exchange can lead to various efficiency gains such as eliminating the problem of information asymmetry between parties and enabling undertakings to enhance their efficiency by comparing themselves with

their competitors. Moreover, the board evaluated the exchange of historical and current data related to market shares can be beneficial for both the undertakings and consumers if such information is presented as an indicator of product quality.

The board also referred to the Analysis Report on the Financial Technologies in Payment Services. This report evaluates the effect of the use of financial technologies (fintech) in the financial sector, which emphasises the importance of attracting direct investments to Turkey and creating data pools to support fintech development. The board also recognised the benefits of tracking market trends to generate collective market data for developing optimal services based on consumer preferences.

Lastly, the board deemed it important to establish a data pool in the payment services sector that addresses the requirements of all stakeholders and fosters the growth of the sector recognising the similar activities of:

- the TCMB, sharing numerous financial data with the public through the electronic data distribution system;
- the Interbank Card Center, providing access to various data pools in different categories (eg. general reports, credit card transactions and debit card transactions); and
- the Risk Centre of the Banks Association of Turkey, sharing various information regarding the banking sector with its members for effective risk management.

The board concluded that the data sharing activity subject to the TÖDEB's application did not have any inherent anti-competitive effects as the shared information did not have strategic nature that could lead to coordination among competitor undertakings and restrict competition. Therefore, the board granted negative clearance for the TÖDEB's activity conducted through the TVTS software developed by an independent third party, XPODA.

Comment

The decision provides insights into the perspective on information exchange between the members of association of undertakings. By acknowledging the potential effects of information exchange, the board has demonstrated a balanced approach, considering potential benefits associated with information sharing under the roof of association of undertakings along with the anti-competitive risks. The decision could be guiding for other sectors and associations that engage in similar data sharing practices.

For further information on this topic please contact [Gönenç Gürkaynak](#), [Berfu Akgün](#), [Ersagun Berkay Kiltan](#) or [Simay Demir](#) at ELIG Gürkaynak Attorneys-at-Law by telephone (+90 212 327 17 24) or email (gonenc.gurkaynak@eliglegal.com, berfu.akgun@elig.com, ersagun.berkaykiltan@elig.com or simay.demir@elig.com). The ELIG Gürkaynak Attorneys-at-Law website can be accessed at www.elig.com.

Ms Susen Azra Yeter assisted with the preparation of this article.

Endnotes

(1) The board's decision dated 1 December 2022 and numbered 22-53/806-332.

(2) Article 6(1) of the Association Statute is designed to "to keep general and statistical information on members and disclosing it to the public on a regular basis".