

# Competition Board fines fertiliser company for hindering on-site inspection

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## First inspection

## Second inspection

On 3 May 2019 the Competition Board published its reasoned decision (19-06/51-18 of 7 February 2019) regarding the hindering of an on-site inspection of fertiliser company Ege Gübre Sanayii AŞ. The decision concerned whether Ege Gübre had violated Article 16 of Law 4054 on the Protection of Competition during on-site inspections conducted on 16 and 17 January 2019.

### First inspection

The Competition Authority case handlers who conducted the inspection stated as follows:

- The company's general manager was found to have directed his personal email account to his work email account via 'superonline.com'.
- Company officials had argued that any emails received via 'superonline.com' were personal.
- The case handlers' examination of the relevant email messages had been limited to the scope of a preliminary investigation and access had been granted on these grounds.
- During the case handlers' examination of personal email inboxes, a search had been conducted for the name of another undertaking as part of the preliminary investigation being investigated.
- The relevant search had found email correspondence in which it was implied that another undertaking (İgşaş) would revise its prices (ie, "İgşaş said it was changing prices").
- The case handlers had asked to print this email correspondence, but company officials had stated that it was of a personal nature and had been directed from the general manager's 'superonline.com' account. Therefore, they had prevented the case handlers from accessing the relevant email and allowed the continuance of the on-site inspection only after the two e-mail accounts (personal and business) had been separated.
- The company officials had been informed by the case handlers that their actions could be regarded as hindering the on-site inspection.

By contrast, Ege Gübre officials objected to the Competition Authority's account of the events provided and argued as follows:

- The Competition Authority's account did not accurately reflect what had taken place.
- The case handlers had been given unhindered access to the corporate account of the individual in question.
- The email correspondence concerning İgşaş's pricing had been found in the individual's personal email account.
- The case handlers had accessed the personal email account without the permission of company officials.
- Examining a personal email account is a violation of the constitutional freedom of communication and the case handlers had no right to access such an account without a court order or the legal grounds to do so.

### Second inspection

The Competition Authority conducted a second on-site investigation on 17 January 2019 following a Criminal Judgeship of Peace decision to examine the email correspondence to which the case handlers had been denied access during first inspection. (1)

During the second inspection, an email was found regarding İgşaş's prospective prices. The Competition Authority stated that this email correspondence directly related to competitive behaviour.

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In response to the Competition Authority's account, Ege Gübre submitted the following statement to the Competition Authority on 29 January 2019:

- The case handlers had conducted an on-site inspection of the company's premises in accordance with Article 15 of Law 4054.
- The company had opened all of its offices and provided the documents requested by the case handlers.
- However, while the case handlers examined a corporate email, they had requested access to an email that had been erroneously left in a corporate email inbox due to a technical error and company officials had rejected this request. The company officials had told the case handlers that their objection was rightful, due to the constitutional rights to privacy and freedom of communication.
- The official records had been annotated by company officials in consideration of constitutional rights and the unlawful collection of evidence.
- The case handlers had been allowed to continue the on-site inspection during which they had examined further documents with ease and no interference.
- Following the issue of a court order, the case handlers had been granted access to the personal emails of the individual in question in the presence of law enforcement personnel and a number of these emails had been printed.
- The information gathered from the personal account did not constitute evidence and there was no legal standing for an investigation based on said documents.

However, the Competition Board found that the actions of Ege Gübre officials had constituted hindering of an on-site inspection and therefore administrative fines should be imposed on the relevant undertaking under Article 16 of Law 4054. As a result, an administrative fine of 0.5% of gross income from 2017 was imposed.

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## **Endnotes**

(1) Decision of the Aliğa Criminal Judgeship of Peace dated 17 January 2019 (2019/76 D).

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