

Board granted negative clearance to information exchange via Bank Association's Risk Centre

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Introduction

The Turkish Competition Board recently published a reasoned decision on granting negative clearance for the exchange of information obtained from the Interbank Card Centre (Bankalararası Kart Merkezi AŞ) regarding merchant turnover, pursuant to:

- a board of directors decision by the Turkish Banks Association's Risk Centre; and
- Banking Law 5411 and its related regulations.

The Turkish Banks Association is a legal entity and professional organisation with public institution status, which all deposit, development and investment banks must join under the Banking Law. The Risk Centre was established within the Turkish Banks Association to:

- gather credit agencies' risk information;
- collect Banking Regulation and Supervision Agency-approved financial instructions; and
- exchange such information with the relevant institutions and parties.

In its reasoned decision, the Competition Board stated that the information exchange will impact the financial sector. However, it noted that an exact definition of a 'relevant product market' would not be required within the scope of the case. The board defined Turkey as the relevant geographical market.

Evaluation of information exchange

The Competition Board found that the data which the Risk Centre shares can be assessed under information exchange criteria from a competition law perspective. As stated within the Guidelines on Horizontal Cooperation Agreements, information relating to the following areas is considered to be competitively sensitive:

- prices;
- quantities;
- customers;
- costs;
- turnover;
- sales;
- purchases;
- capacities;
- product characteristics;
- marketing plans;
- risks;

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- investments;
- technologies; and
- R&D programmes and similar information.

The board noted that the scope of accessible information on merchant turnover would be limited to:

- terms;
- the tax identification of merchants;
- turnover; and
- the number of banks as the source of the revenue concerned.

Further, the Interbank Card Centre would consolidate such information and share it confidentially with the Risk Centre and its members to evaluate merchants' loan requests. The board also considered that:

- all competitors can access the information exchange;
- the Risk Centre would share information concerning one month previously; and
- the information exchange would not include the names of banks and details of each bank's turnover.

Authority granted to Risk Centre

The Competition Board stated that the analysis of the case focused on whether:

- the Risk Centre, as an association of undertakings has the authority to collect and share data;
- there was data that the Risk Centre could collect and share outside the scope of its authority as granted by law; and
- the relevant data was considered to be competitively sensitive.

The board found that the Risk Centre is authorised to collect and share relevant data within the scope of the Banking Law through a review of the clauses and opinions requested from the Central Bank of Turkey and the Banking Regulation and Supervision Agency.

In light of the above, the board stated that powers which might be considered to violate competition law can be granted to associations of undertakings through their own legislation; however, as the relevant decisions and applications fall within the scope of the authority granted to associations of undertakings through specific legislation, they do not violate Law 4054 on the Protection of Competition.

Ultimately, the board granted negative clearance to the sharing of merchant turnover information via the Risk Centre.

Comment

In line with previous Competition Board, (1) Council of State(2) and Administrative Court decisions, (3) the board's April 20 2016 decision (16-14/217-94) is one of the precedents which demonstrate that the authority granted to undertakings by law is not subject to review under Law 4054 on the Protection of Competition.

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Endnotes

(1) The Competition Board's October 2 2001 decision (01-46/475-119) and November 13 2003 decision (03-73/876(a)-374).

(2) The 13th Council of State's January 5 2010 decision (2007/2748 E, 2010/8 K).

(3) The 12th Administrative Court's November 19 2014 decision (2014/978 E).

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