

## Antitrust/Competition

### Cooperation Between Turkish Competition Authority and Personal Data Protection Authority

It was announced on October 26, 2023, that the Turkish Competition Authority and the Personal Data Protection Authority have signed a Cooperation and Information Exchange Protocol.

The synergy between the Personal Data Protection Authority and the Turkish Competition Authority carries increasing importance as the digitalized silhouette of the 21st century displays the data-driven technologies' contributions to support the digital economy. In this vein, the Turkish Competition Authority explained that thanks to these technologies, there are numerous and varying products and services that support the digital economy.

However, the increased processing of personal data may raise concerns regarding the protection of competition and personal data, since the strategies of undertakings may be contemplated and/or implemented in such a way as to prejudice both the confidentiality of personal data and the establishment of effective competition.

Considering these, the Turkish Personal Data Protection Authority and the Turkish Competition Authority have entered into a Cooperation and Information Exchange Protocol with a view to ensuring an active and effective regulatory environment. Within the scope of the Cooperation and Information Exchange Protocol, the authorities have agreed to substantially engage in active cooperation initiatives, such as:

- (i) Conducting joint studies in developing areas which fall under both authorities' remit and have the potential to cause irreparable damages if not intervened swiftly and effectively,
- (ii) Raising awareness of users in terms of personal data protection and protection of competition, particularly in digital markets, and issuing reports to convey a common message to undertakings on



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practices concerning both fields of law, with the cooperation of both authorities,

(iii) Organizing joint presentations and discussion programs within the scope of the traditional "Wednesday Seminars" of the Turkish Personal Data Protection Authority and/or "Thursday Conferences" of the Turkish Competition Authority,

(iv) Organizing trainings where the relevant authority shares its expertise and experiences related to its remit,

(v) Consulting on the common matters in national and/or international events organized and/or attended by the relevant authority and supporting such events in terms of matters falling under the relevant authority's remit.

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## Practice Area News

**The Draft for Regulation on Active Cooperation.** The draft Regulation on Active Cooperation of the Turkish Competition Authority aims to clarify the distinction between active cooperation and settlement, to set a reasonable time limit for certain active cooperation applications to avoid disruption of investigation processes, to determine the deadline for the submission of information and documents if new information and documents are obtained by applicant. The draft has been submitted for public consultation.

**The Board's Approach towards Export Turnover.** Within its decision (January 5th 2023, 23-01/12-7), the Competition Board ("Board") excluded the revenues generated through export sales in calculating the administrative monetary fine and added one more case to its precedent body. The decision, on the other hand, contains dissenting opinions disagreeing with the conclusion by also referencing numerous court judgments which rejected the claim that export sales should be excluded.

**The Board's Approach towards Standard of Proof.** The Competition Board evaluated that internal correspondence between employees of the same undertaking regarding the existence of a price fixing agreement with a competitor may not be sufficient to prove the existence of an anticompetitive agreement between competitors and a mere internal correspondence found in the competitor's possession may not meet the standard of proof to hold an undertaking responsible, unless supported by other evidence (January 5th 2023, 23-01/6-5).

**The Prevention of On-Site Inspection.** The Competition Board (April 13th 2023, 23-18/325-110) evaluated two instances where employees of an undertaking deleted certain messages. The forensic devices did not identify whether the first deletion was realized during the dawn raid but identified that the second deletion was realized during the dawn raid. The Board confirmed that the first deletion cannot be fined, but the second deletion shall be fined due to hindering of dawn raid.

## In the Firm

• **ELİĞ Gürkaynak Attorneys-at-Law.** ELİĞ Gürkaynak represents corporations, business associations, investment banks, partnerships and individuals in wide variety of competition law matters. We also collaborate with international law firms on Turkish competition law matters.

• **ELİĞ Gürkaynak Attorneys-at-Law.** In addition to our strong Turkish competition law practice, our international experience provides us with a high capability in multinational competition law issues.

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