Building a better working world

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The investigation into labor markets was concluded with a penalty

After the Private Hospitals decision[1] taken last year, the much-anticipated investigation was concluded and 16 enterprises were given administrative fines of approximately 150 million TRY for being party to anti-competitive no-poaching agreements[2].

What are the behaviors that constitute a violation of competition in labor markets?

Competition restrictions in labor markets can occur in different ways. First of all, salary fixing and no-poaching agreements between employers can be considered. Agreements to fix salaries or working conditions include agreements between competing employers to determine or control the raise rate, fringe benefits, compensation, and working conditions in addition to the salary. The Board states that wage fixing agreements are no different from purchasing cartels[3].

No-poaching agreements mean that rival employers agree not to recruit, transfer or accept employees from each other. It should be emphasized that the Board considers this type of agreement as a cartel, stating that it is no different from market or customer sharing.

On the other hand, the analysis may change if a no-poaching agreement relates to a legitimate cooperation already established between employers (such as a takeover agreement or service contract). In these cases, it is possible to consider the prohibition in question as a side restriction. If the basic criteria, which can be considered as necessity, proportionality and direct relevance, are met on a case-by-case basis, it can be said that the relevant agreement will not violate competition in terms of purpose.

Another type of violation that can occur in labor markets is the exchange of sensitive information about employees, such as wages and hiring, between competing employers. Such information exchanges carried out directly or through third parties can be described as a facilitating action within the scope of an open wage determination agreement, or they can also be considered as an agreement restricting direct competition.

What to do?

The developments in the last three years clearly demonstrate that competition law will continue to be relevant to labor markets. In this regard, it is important for enterprises to avoid practices such as blacklists and not to communicate on issues such as wages and benefits. Whatsapp etc. communication groups in which the human resources teams of rival enterprises are involved also carry a high risk in this regard. Therefore, it may be beneficial to increase competition law awareness in human resources units as well as in conventional units such as sales and marketing, review existing company practices and contracts, and carry out a compliance program.

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[1] Decision dated numbered 22-10/152-62.

[2] https://www.rekabet.gov.tr/Dosya/isgucu-nihai-karar.pdf

[3] Ege Konteynır Decision numbered 20-01/3-2.

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