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The Turkish Competition Authority grants a negative clearance to a data transfer system developed by an association of payment and electronic money institutions (*TODEB*)

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Turkish Competition Authority, *TODEB*, Decision, 1 December 2022 (Turkish)

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This case summary aims to offer insight into the Turkish Competition Board's ("Board") *TODEB* decision, where the Board assessed whether negative clearance or individual exemption can be granted to the Data Transfer System ("DTS") developed by the Payment and Electronic Money Institutions Association of Turkey ("*TODEB*") for the purpose of collecting data sets from member undertakings. As a result of its evaluation, the Board concluded that DTS within its purpose and effects would not restrict competition within the scope of Article 4 of the Law No. 4054 on the Protection of Competition ("**Law No. 4054**"), and therefore, a negative clearance can be granted in accordance with Article 8 of Law No. 4054 for the activities to be carried out within the scope of DTS.

Evaluations on *TODEB*'s Legal Nature

Before delving into its analysis, the Board examined the nature of *TODEB* and DTS. As *TODEB* is a Turkish public institution to which payment and electronic money institutions operating in Turkey can become members, the Board considered *TODEB* as an association of undertakings.

DTS involves the retrieval of the data sets from *TODEB*'s member undertakings through a platform created by an independent software developer. The datasets to be submitted by the undertakings encompass various types of information including but not limited to balance sheets, activities records, transaction volumes, general and detailed information forms, profit and loss statements etc. In its application, *TODEB* assures the Board that the information related to prices, commissions or costs applied by member undertakings will not be shared on DTS. Further, DTS strictly forbids the undertakings to access the data of other members. Additionally, *TODEB* guarantees that data sharing with the general public would only be limited to broad information about the industry and to its development.

Furthermore, it is stipulated that the shared data will not contain any information related to competitive behaviors of undertakings that would coordinate any anti-competitive actions. The Board decided that in order to mitigate the risk of any anticompetitive behavior and possible cartelization through the data flow, the gathered datasets must undergo a minimum aging period of three to five months.

Relevant Market

Before assessing whether negative clearance should be granted, the Board elaborated on relevant markets. The Board detected that member undertakings of TODEB are active in the fields of payment systems and electronic money export activities. The Board further concluded that these markets can be wholly considered “payment services”. However, the Board stated that considering that the provision in paragraph 20 of the Guideline on the Definition of the Relevant Market, stating that market definition may not be necessary if the proposed transaction does not raise competition concerns within the framework of potential alternative market definitions, there is no need to define the relevant product market and the relevant geographical market as the evaluation to be made will not be affected.

The Board’s Evaluation on DTS

In order to assess whether negative clearance could be granted to TODEB within the scope of Article 8 of Law 4054, the Board stated that it should first be determined whether the DTS application falls within the scope of Article 4 of Law 4054, which prohibits agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings, which have as their object or effect, or are likely to have as their object or effect, the prevention, distortion or restriction of competition, directly or indirectly, in a particular market for goods or services.

The Board stated that, taking into account the control structure of TODEB, which consists of payment and/or electronic money institutions, and its decision-making mechanism, the activities carried out by competing undertakings through TODEB have the potential to affect competition. The Board assessed that the DTS involves the aggregation of data by TODEB and its dissemination to the public and member undertakings, and the Board emphasised that it should be analysed how the exchange of information is viewed under competition law and how this exchange of information may affect competition in the market.

The Board explained that from a competition law perspective, the exchange of information does not in itself constitute a violation in all cases. However, in certain situations, it may reduce market uncertainty and facilitate anti-competitive agreements or practices between the undertakings, which may lead to or maintain anticompetitive agreements or practices. In order to determine whether an information exchange raises competition law concerns, it is necessary to understand the market structure, the nature of the information exchanged, the parties involved in the exchange, the frequency of the exchange, the extent to which the exchanged information covers the market, and the level of participation in the exchange. In this context, the data sets exchanged through DTS should be examined within the framework of the criteria mentioned above. In this context, the Board underlined that the data exchange activity is based on the duty of TODEB, referring to its founding law and its status as an association, therefore it can be said that the data exchange activity is carried out in compliance with the legislation in effect.

In addition, the Board assessed that the data sets will be shared with low frequency and that any competitively sensitive data sets, in particular price and quantity data, which could lead to the coordination of competitive behaviour between member undertakings, will not be shared with TODEB or member undertakings. Taking into account the increase in the number of payment and/or electronic money institutions and the number of banks active in many specific payment services, the Board considered that the market for payment services is highly fragmented and characterised by a multi-player structure. Therefore, the Board considered that the market subject to data

sharing has a non-concentrated structure. In addition, the Board considered that the services provided by the member undertakings in the field of payment services are different and that the data sets to be collected under the DTS will contribute to the creation of a general pool of information about the sector. In this way, companies will be able to monitor parameters such as size, profitability, transaction volume, investment capacity, efficiency and similar factors in order to monitor the development of the sector when assessing their fintech operations.

Conclusion

Following its evaluations, the Board concluded that considering the purpose and effect of DTS, the system does not have a nature that restricts competition within the scope of Article 4 of Law No. 4054, and therefore, a negative clearance can be granted in accordance with Article 8 of Law No. 4054 for the activities to be carried out within the scope of DTS. The Decision of the Board provides invaluable insight on criteria considered by the Board in assessing data sharing activities from a competition law perspective.