Checklist for The Guidelines on Competition Violations in Labor Markets

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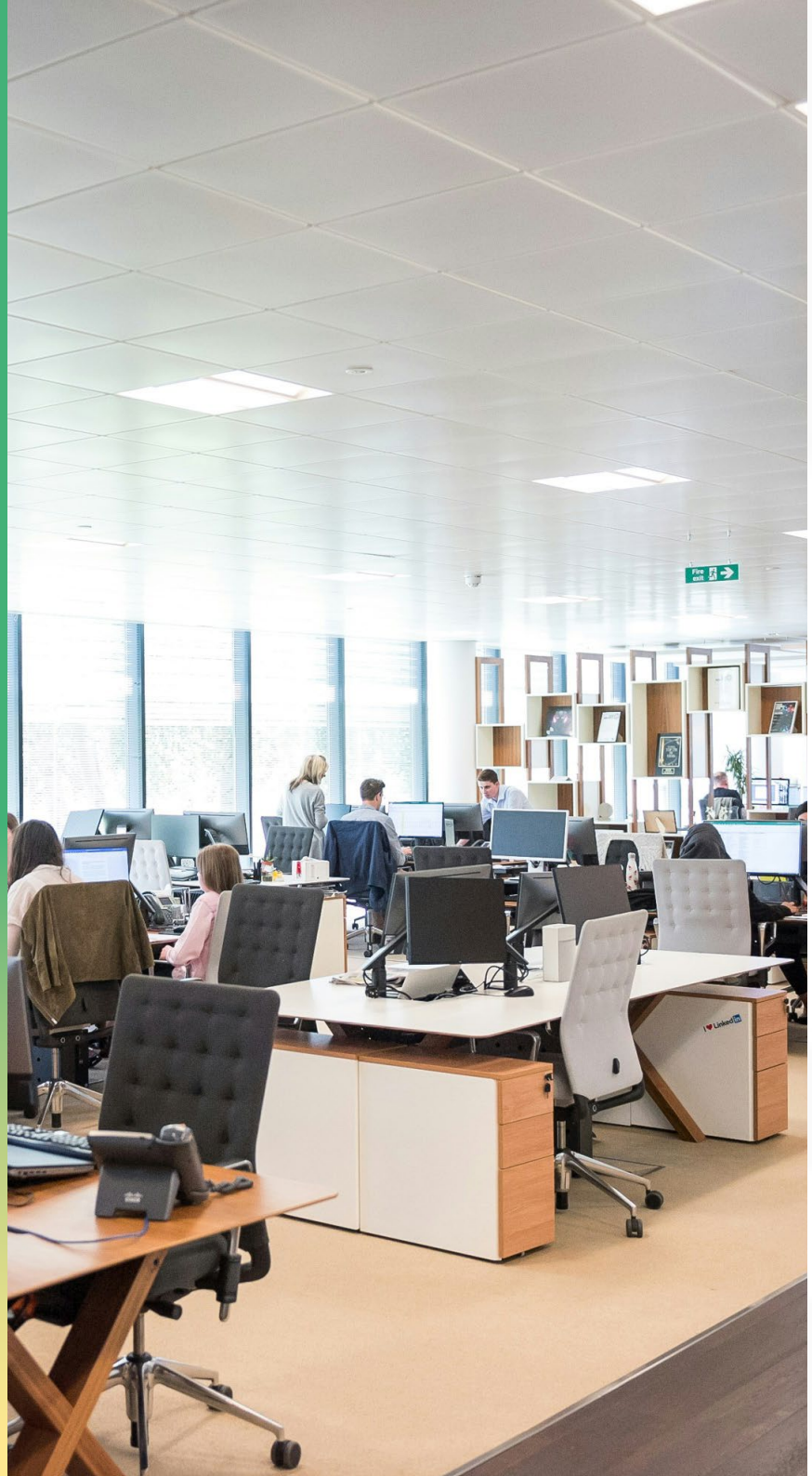


Guidelines on Competition Violations in Labor Markets

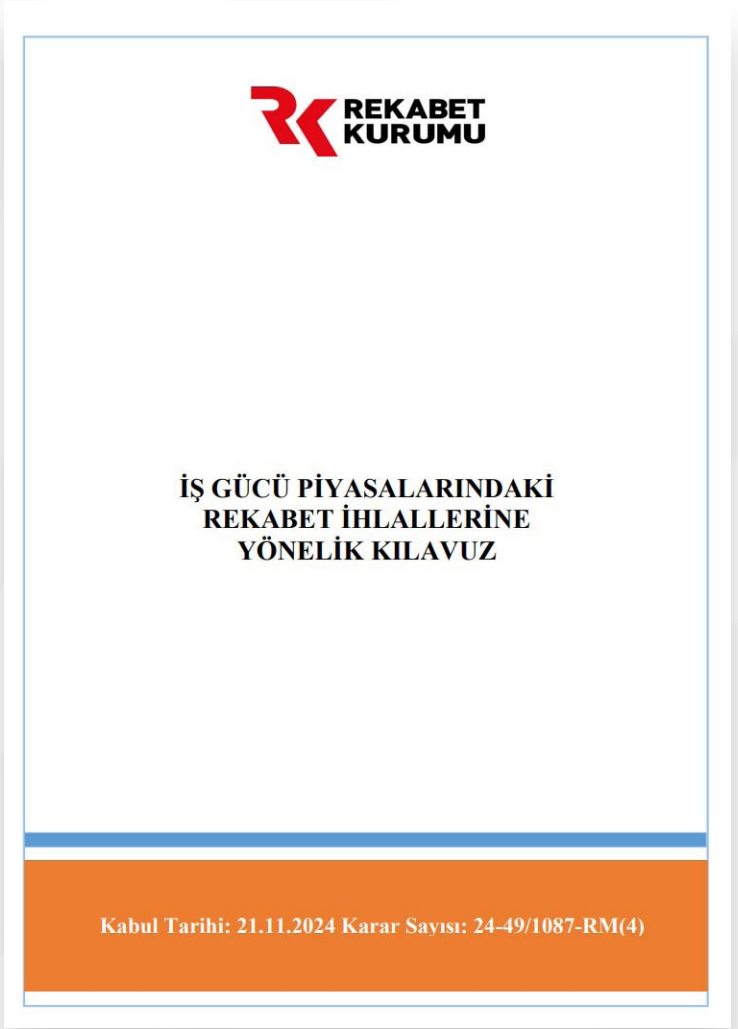
On 03.12.2024, the Competition Authority (Authority) published the Guidelines on Competition Violations in Labor Markets (Guidelines).

The significant aspects of the Guidelines are briefly summarized below:

- The Guidelines aim to provide certainty regarding labor market violations within the Law on the Protection of Competition No. 4054 (Law No. 4054).
- The Guidelines explain the types of violations that may occur in the labor markets within the framework of Article 4 of Law No. 4054 and how the Competition Board will evaluate these violations. In this context, the Guidelines mainly focus on wage-fixing and no-poaching agreements that may arise in labor markets.
- In addition, the Guidelines emphasize that the possibility of anti-competitive effects of information exchange should be considered not only by undertakings that are competitors in the labor market, but also by undertakings that exchange information as third parties, such as independent market research organizations and private employment agencies.
- It is also stated that conditions must be met to ensure that the exchange of information does not have an anti-competitive effect. These conditions are as follows: (i) the information exchange must be conducted by an independent third party, (ii) the source or content of particular data must be unintelligible, (iii) the exchanged information must be at least three months old, (iv) the data must consist of information from at least ten participants, and (v) no single participant's

data must account for more than 25% of the total data. If these conditions are met, it is accepted that the exchange of information will not have an anti-competitive effect.

- Furthermore, it is stated that information on the working conditions of employees, such as wages, wage increases, working hours, benefits, compensation, leave entitlements, etc. will be considered competitively sensitive information and the exchange of such may have anti-competitive aim or effects.
- The Guidelines also explain the scope of application of Articles 5, 6, and 7 of Law No. 4054 along with ancillary restraint assessments to agreements and practices in labor markets.
- The Guidelines state that wage-fixing and no-poaching agreements and information exchanges to restrict competition in labor markets are, in principle, not eligible for exemption.
- In addition, it is stated that in assessments regarding Article 6 of Law No. 4054, whether the undertaking under review has a dominant position both in the relevant product or service market and in the relevant labor market will be examined.
- Finally, it is emphasized that whether mergers and acquisitions reduce competition in the labor market will be assessed based on various criteria such as whether the transaction poses a risk of being a killer acquisition.



Access the Guide here (Turkish)

Checklist for Guidelines on Competition Violations in Labor Markets

Description	Actions To Be Taken
Under the Guideline on Competition Law Infringements Labor Markets ("Guideline") published by the Competition Authority on 03.12.2024, non-poaching agreements are defined as agreements made directly or indirectly by an undertaking not to offer a job or hire employees of another undertaking, and are prohibited under Article 4 of Law No. 4054.	Existing employment contracts, confidentiality agreements, supply agreements, service agreements *(including agreements with consultancy where HR data is obtained)*, share transfer agreements, shareholder agreements should be checked for any clauses that impose non-poaching obligations.
Under the Guideline, non-poaching agreements are defined as agreements made directly or indirectly by an undertaking not to offer a job or hire employees of another undertaking.	In commercial transactions with customers, suppliers or stakeholders please check whether there is a contractual provision or gentleman's agreement that prevents current or former employees from being offered a job, or requires employees to obtain approval from their current employer before their employment.
Under the Guideline, agreements or concerted practices concluded between employers that have object or effect of fixing wages and other working conditions of employees are prohibited under Article 4 of the Law No 4054. Wage-fixing agreements are defined as agreements where undertakings jointly determine the working conditions of their employees, such as wages, wage increases, work periods, fringe benefits, compensation, physical working conditions, leave entitlements, and non-compete obligations.	Please check whether you are a party to any agreements that may allude to a wage fixing agreement.

Description	Actions To Be Taken
Under Article 444 of the Turkish Code of Obligations no. 6098 (“TCO”), an employee who has the capacity to act may undertake in writing to refrain from competing with the employer in any way after the termination of the contract, in particular from opening a competing business on his own account, working in another competing business, or otherwise entering into any other beneficial relationship with the competing business. The non-compete clause is valid only if the service relationship provides the employee with the opportunity to obtain information about the employer’s customer environment or production secrets or the employer’s business, and at the same time, if the use of this information is likely to cause significant damage to the employer. The non-compete clause must avoid imposing unfair restrictions in terms of place, time and type of work that would unfairly danger the economic future of the employee, and duration of such clause may not exceed two years, except under special circumstances and conditions.	In this context, please check whether the non-competition clause in your employment contracts with your employees or in your joint venture, share transfer, shareholder agreements etc. is in compliance with Article 444 of the TCO, and whether the relevant non-compete clause contains the elements of proportionality and necessity in terms of its duration, content, geographical area covered and the individuals to whom it applies.

If you are conducting market research about wage increase rates, wage increases or side benefits, please pay attention to the source and methodology of this market research.

Please be aware of whether HR takes part in online chat platforms, especially WhatsApp groups, where information on periodic wage increase rates, wage increases or side benefits can be exchanged, and take necessary actions in this regard.

Description	Actions To Be Taken
Under the Guideline, the exchange of any data that is directly or indirectly related to the labor market is considered as information exchange, and information exchanges that have anti-competitive object or effect are considered as agreements or concerted practices restricting competition under Article 4 of Law No. 4054. In this context, competitively sensitive information exchange may be carried out not only by undertakings that are competitors in the labor market, but also by undertakings such as independent market survey organizations or private employment agencies that carry out the information exchange as third parties. Accordingly, various conditions must be fulfilled in order for the exchange of information in order not to create anticompetitive effects. These conditions include that the exchange of information: (i) should be managed by a third party, (ii) does not permit the identification of the data source or individual data content, (iii) the information which is the subject of the exchange should be at least three months old, (iv) information should include at least the data of ten participants, (v) no single participant's data should have a share more than 25% of the total data.	In light of the above, if market research is obtained through independent market survey organizations *(e.g. Nielsen, Korn Ferry, etc.)*, it should be checked whether the above conditions regarding the wages or benefits of employees are met.

Description	Actions To Be Taken
Non-poaching agreements, which have ancillary restraints, are considered lawful and are not evaluated within the scope of Article 4 of the Law. Ancillary restraints are those which are necessary to the implementation of and directly related to the agreement's objectives and which are imposed to the party of an agreement, which does not prevent, distort or restrict competition by object or effect, although they do not constitute the substance of the agreement.	For the ancillary restrictions to be valid, the conditions of (i) direct relevance, (ii) necessity and (iii) proportionality must be cumulatively satisfied. In addition, the following factors may also be taken into consideration in the assessment of ancillary restrictions in non-poaching clauses: ✓ It should clearly and explicitly indicate which main agreement it is made as an ancillary restriction to, ✓ It should be designed narrowly in a way that only affect employees who are envisaged to be included in the main agreement, ✓ Indicate with reasonable certainty which employees are covered by the provisions, ✓ Indicate a precise date or event that will terminate the application of the provisions, ✓ It must be signed by all parties to the agreement. In light of the above, in the event that your supply, share transfer, shareholding or joint venture agreements contain a non-poaching clause, you should check whether the above conditions are met.

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