

## TURKISH WATCHDOG FINES GOOGLE AGAIN FOR ABUSING ITS DOMINANT POSITION

Turkish Competition Board (“**TCB**”) recently announced its final decision regarding the investigation against Google and accordingly, the TCB unanimously decided that Google abused its dominant position in the market for general search services by means of complicating organic search results in the content services market<sup>1</sup>. The investigation was initiated to determine whether Google infringed competition law with Google's updates on general search services and AdWords by obstructing the activities of the advertisers operating in the content services market.

After a depth-investigation, the TCB concluded that Google has violated Article 6 of Law No. 4054 on the Protection of Competition (the “**Law No. 4054**”) by placing text ads at the top of the general search results with an uncertain and intensive advertising quality by making it difficult to operate in the content services market of organic results that do not generate advertising revenue. In accordance with the Article 16 of the Law no. 4054, it was decided to impose an administrative fine on Google amount to 196.708.054,78 TRY, which roughly equals to 22 million Euros.

Apart from the fine, the TCB mandated Google to fulfil its requirements and end its anti-competitive advertisement strategy in six months. These adaptation measures must be presented to the TCB until a month before the deadline. Google will also have to deliver annual reports to the TCB about the advertisement strategy of its search engine for five years.

This is not the first time that Google's market strategy come under scrutiny of the Turkish Authority. The TCB fined Google in February 2020 for violating competition law by prioritizing vendors in terms of advertisement space and issued several additional conditions to be fulfilled<sup>2</sup>. Also, as a result of Google Android investigation, the TCB had imposed various obligations on Google in the market for licensable mobile operating system back in 2018. Due to the failure of Google to comply with these obligations, the TCB issued an additional fine for non-compliance<sup>3</sup>. These two decisions run parallel with European Commission's decisions regarding Google's market dominance and abuse of this dominant position.

In 2017, 2018 and 2019, European Commission issued three separate fines to Google regarding its abuse of dominance as a search engine by giving an illegal advantage to Google's own comparison shopping service, illegal practices regarding Android mobile devices to strengthen the dominance of Google's search engine and abuse of its market dominance by imposing a number of restrictive clauses in contracts with third-party websites which prevented Google's rivals from placing their search adverts on these websites.

Last but not least, French Competition Authority fined Google after finding the tech giant abused its dominant position in the market for search-related online advertising by adopting “opaque and difficult to understand” operating rules for its ad platform, Google Ads, and for applying them in “an unfair and random manner.”<sup>4</sup> In light of these, Google must ensure that Google Ads rules be available to advertisers under objective, transparent and non-discriminatory conditions<sup>5</sup>.

Main similarity between the TCB's latest decision and this one relate to the ambiguous nature of the applied rules. While French Competition Authority argued that the ambiguous rules adopted by Google makes it harder for users to follow, they also underline unfair and random use of these rules. In parallel, the TCB argued that the uncertain and intensive nature of the advertising used by Google makes it

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<sup>1</sup> TCB Decision No. 20-49/675-295, dated 12.11.2020

<sup>2</sup> TCB Decision No. 20-10/119-69, dated 13.02.2020

<sup>3</sup> TCB Decision No. 20-03/30-13, dated 09.01.2020; TCB Decision No.19-38/577-245, dated 07.11.2019.

<sup>4</sup> French Competition Authority, Decision 19-D-26 of 19 December 2019

<sup>5</sup> <https://www.autoritedelaconurrence.fr/fr/communiqués-de-presse/lautorite-sanctionne-google-hauteur-de-150-meu-pour-abus-de-position>;  
<https://www.autoritedelaconurrence.fr/en/press-release/autorite-de-la-concurrence-hands-down-eu150m-fine-abuse-dominant-position>

harder to operate in the content services market of organic results that do not generate advertising revenue.

All of the above-mentioned fines show some similarities as they focus on Google's market dominance and its abuse of this position. In order to make sure that Google obeys with its decision, the TCB mandated notification of Google's measures one month prior to the deadline, so that the measures taken by Google are sufficient and effective against their abusive action. This requirement celebrated widely as lack of such a prior notification requirement made the TCB's similar mandate ineffective as mentioned above.

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