

## Guideline on Digital Data Review During On-Site Inspections

14 October 2020

### Background

As is known, with the amendment of Article 15 of the Law No. 4054 on the Protection of Competition (the **Competition Law**) entered into force on 16 June 2020, the Competition Authority was empowered to inspect all kinds of physically and electronically stored data, as well as data preserved on information systems, and take copies of them during on-site inspections. With an aim to provide the details of digital data inspections, the Competition Authority published the Guideline on Digital Data Review During On-Site Inspections (the **Guideline**) on 8 October 2020. The Guideline provides clarification on procedures to be followed for review of digital data during on-site inspections as well as examinations at the Competition Authority premises.

### What does the Guideline bring?

#### a) On-site inspection of digital data

- Competition Head Experts, Competition Experts and Competition Assistant Experts (**Case Handlers**) are authorized to inspect digital information systems such as laptop/desktop computers and portable equipment, and storage tools such as CD, DVD, USB, external hard drives, backup records and cloud services.
- Case Handlers can use the keyword search tools available on the undertaking's systems and forensic search tool software and hardware that allow qualified searches of the digital data.
- With respect to portable communication devices, such as mobile phones and tablets, Guideline introduces a two-step method. First, the Case Handlers briefly examine the device to determine whether it contains any digital data concerning the undertaking. Devices that are used solely for private purposes shall not be subject to inspection. Devices that include data belonging to the undertaking shall be review by means of forensic review tools. As a result of the examination, the data deemed as evidence shall be separated and the remaining data (that do not bear any evidential value) shall be permanently and irrevocably deleted. In any case examination of mobile phones must be carried out in the undertaking's premises.

#### b) Copies of data and further examination

- In principle, the examination shall be carried out in the undertaking's premises. However, if necessary, the Competition Board may decide the examination to be completed at the forensic informatics laboratories. The digital data that will be examined in the Competition Authority premises shall be stored in three different data storage unit. One of these three copies should be given to the undertaking and the two copies must be secured in sealed envelopes by the Case Handlers. The Competition Authority will invite a representative from the undertaking to be present when the envelopes are unsealed and during the review of the data.

- If deemed necessary by the Competition Board, upon its decision, the sealed envelope in question may be returned to the undertaking without being opened.
- If the undertaking concerned claims the data included in the case file as evidence contains business secret, provisions of the “Communiqué no. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets” shall apply.
- Copies of data which include correspondence between an attorney and their client are protected pursuant to attorney-client privilege. However, any data that is not directly related to the right to defence, especially correspondences aiming to assist the anti-competitive conduct, cannot benefit from this exemption.

### c) Responsibilities of the undertaking

The undertaking should provide full and active support to Case Handlers on their requests regarding information systems. This includes providing information, system administrator authorizations, and remote access to employee e-mail accounts, isolating computers and servers from the network, reuploading backed up corporate data and other similar activities.

The undertaking is also responsible for preventing any interventions to the data and the platforms where data is stored during the inspection.

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