

Ms. Fiona O'Neill

Microsoft

Date : 08.21.2023

LCC Program Manager

Number: 23-015

70 Sir Rogerson's Quay

Dublin, 2, Ireland

Dear Ms. Fiona O'Neill,

1. Turkish Competitive Telco Operators' Association (TELKODER) was established on June 26, 2002, with a view to contribute directly to the development of full competition and liberalization in the electronic communications sector services in Türkiye, to enhance service quality and efficiency by establishing close solidarity and cooperation between the operators active in the field, to strengthen the companies in the sector in order to enable them to open up to the world and compete in foreign markets.

2. There are numerous data center operators among the members of the Association, and we made a written application to Microsoft Ireland Operations Limited in 2017, regarding the problems experienced by these member operators under the Microsoft Service Provider License Agreement (SPLA).

3. In the intervening period, not only the existing problems were not solved, but also we were informed that a new process had been initiated in 2023 against the operators that are active in Türkiye and are members of our Association. In this context, it became imperative to apply to you once again.

4. In the correspondence in 2017, we conveyed the complaints summarized below of the data center operators, which are members of the Association and which use Microsoft software by signing SPLAs with your company that you are authorized to represent;

- The audit practices that amount to the violation of the regulations in force in Türkiye and the EU concerning the protection of personal data,
- Unfair contract terms and discriminatory pricing regarding SPLA products,
- Adopting an excessively punitive approach towards Turkish data center operators for end-user license violation allegations.

Nevertheless, it became evident with the transactions in 2023 that there were no policy changes or corrections on the part of Microsoft.

5. With the SPLA agreements they were forced to sign, the data center operators in Türkiye not only encounter problems such as Microsoft's unilateral price increases, facing penalties or additional costs due to their customers setting up virtual server systems on leased servers without informing the operators and using more than one Microsoft product on these servers or due to over or underreporting of licenses as the result of personnel errors, and not receiving technical support from any Microsoft channel regarding the leased products, but also they sometimes lose their customers to Microsoft.

6. Insofar as conveyed to TELKODER by data center operators, Microsoft requested **detailed information on their customers** (such as customer names, addresses and tax numbers) from data center operators, which were contacted through the consultancy company KPMG authorized by Microsoft, while abstaining from signing the texts such as non-disclosure agreements (NDAs), which **reflect the legal guarantee rights of data center operators**.

7. The facts that the contracts are signed with Microsoft Ireland and the Irish office is used for the audit, although both Microsoft and KPMG have offices in Türkiye, suggest that the aim is to neutralize the Turkish legal system.

8. Furthermore, the facts that Microsoft provides software services to data center operators on one hand and offers retail cloud services on the other hand, and that Microsoft can abuse its existing monopoly position through **vertical integration**, indicate the presence of a suspicious case for data center operators. Hence, Microsoft sometimes adopts a severe competitive behavior in order to get ahead in the market in which it provides retail services, leaves especially the small-scale data center operators in Türkiye

in a tight spot, by at least abstaining from preventing the illegal attacks made through its cloud systems, and despite this, blocking the e-mail traffic of these companies without notice on grounds of spamming, and causes these operators to lose their customers.

9. Although the consultancy company KPMG noted that customer information was requested for "checking for banned customers" in the 2023 audits, it abstained from the legal obligations aimed at eliminating the problems that might arise in terms of data security and unfair competition, raising concerns about the process. While requesting the information of, for example, only the foreign customers using SPLA would suffice, it is not a righteous practice to request all customer information of data center operators.

10. This case was also mentioned in the press (<https://turk-internet.com/microsoft-turkiyedeki-veri-merkezlerinden-yine-musteri-bilgisi-istiyor/>), and so far as anyone knows, neither Microsoft nor KPGM replied the questions in this matter.

11. A recent meeting held between **TELKODER** and the Cloud Infrastructure Services Providers in Europe (**CISPE**) revealed the fact that the license fees and the negative monopolistic attitude concerning competition, which are virtually raw wounds in the field of cloud infrastructure services, are common problems in both Türkiye and Europe.

12. Hence, in the scope of this application, we hereby request you to answer the following questions within fifteen days;

1. whether an audit process aimed at the data center operators active in Turkey was initiated in 2023 through the consultancy company KPMG,
2. if initiated, whether the data, which are proprietary knowledge or in the scope of personal data, were requested from the data center operators,
3. if requested, the reason and legal grounds for this request,
4. if data are requested, the reason for not fulfilling the demand of the data center operators to sign non-disclosure agreements,
5. whether any information was requested from large-scale data center operators with the same demands,

and to hold a meeting with the participation of TELKODER and data center operators for solving the present and ongoing problem and to eliminate the problems arising from the provisions, implementation and audits of SPLA by means of negotiations; and we hereby note that, in the opposite case, it will become imperative to initiate the complaint processes in line with the provisions concerning competition and protection of personal data in order to solve these problems.

Respectfully,

Rıdvan Uğurlu

Secretary General

Halil Nadir Teberci

Chairman of the Board

TELKODER

Turkish Competitive Telco Operators' Association

Annex: The letter dated December 27, 2017, sent by Attorney Gökhan Candoğan on behalf of TELKODER