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QUARTERLY BULLETIN

4th Quarter 2022

ACTECON

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Happy Ending RPM Stories: Closed with Settlement Procedure

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Getting to Understand Technology Undertakings Better: Merger Control in Action

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Dear reader,

We would like to share with you several interesting headings of the fourth quarter of 2022.

Electric vehicles sector has been in the spotlight of attention of the competition authorities within and outside of Turkey. The TCA fined a Turkish e-scooter/micro-mobility company, for providing false and misleading information. The decision is noteworthy as it makes clear the TCA's tough stance towards ensuring the efficiency of the request for information tool. The electric vehicles sector has been subject to the market inquiry in Austria, particularly focusing on the hindrance of competition in this market due to the lack of transparency. We believe we will be hearing more news on this sector in the upcoming future consindering the development of electic vehicles and their popularity.

There are several "happy ending stories" in relation to the RPM cases that were closed with the settlement procedure. At the same time, you may find more details on the TCA's approach towards assessment of the RPM in the Adidas case.

The role of competition law in the labour markets is clearly pictured in the decision on private hospitals. This is the first decision in fact in which the TCA imposed fines on undertakings for their actions in the labour market and emphasized that the agreements made to fix the wages of the employees and no-poaching agreements are regarded as no different from the behaviour of cartels and such practices restrict competition per se.

Speaking about cartels, FMCG operators were heavily fined in Turkey for hub-and-spoke cartel. The case also deals with the ne bis in idem principle, particularly applicable in relation to the retailors.

Competition law news from other jurisdictions are mostly digital markets related. Additionally, the European Super League case deserves a special attention here as it provokes discussions on the future of sports governance in the EU.

International trade developments in this quarter of the year 2022 are represented by several regulatory amendments to the import regimes, export registration procedure, as well as several investigations.

As regards data protection, you may be curious to hear more about the facial recognition search engine, firing employees for turning off webcam during work hours and their compliance with the data protection and privacy rules, as well as health data breaches in Italy and a record-breaking settlement of hundreds of millions of dollars for the privacy violation allegations.

Have a wonderful festive season and a happy 2023!

Sincerely,

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FMCG Heavily Fined in Turkey for Hub-and-Spoke Cartel, Retailers Enjoyed Ne Bis in Idem

*The Turkish Competition Authority ("**TCA**") imposed a hefty fine amounting to approximately TRY 878 million in total (approx. EUR 44,5 million) on twelve undertakings operating in the FMCG sector. The fine was based on the premises that the concerned undertakings violated Article 4 of the Law No. 4054 on the Protection of Competition ("**Turkish Competition Law**") via agreements or concerted practices with the nature of a hub-and-spoke cartel that aimed to fix retail sales prices through ensuring the coordination of sales prices and price increases among the retailers that are parties to the investigation and maintaining the coordination for their products.*

On 21 December 2022, it was unanimously ruled that the Coca Cola Satış Dağıtım A.Ş. ("**Coca Cola**"), Doğanay Gıda Tarım ve Hayvancılık San. Tic. A.Ş. ("**Doğanay**"), Düzey Tüketim Malları Sanayi Pazarlama ve Ticaret A.Ş. ("**Düzey**"), Eti Gıda San. ve Tic. A.Ş. ("**ETİ**"), Frito Lay Gıda Sanayi ve Ticaret A.Ş. ("**Frito Lay**"), Glaxosmithkline Tüketici Sağlığı A.Ş. ("**GSK**") , Haribo Şekerleme Sanayi ve Ticaret Ltd. Şti. ("**Haribo**"), Pasifik Tüketim Ürünleri Satış ve Ticaret A.Ş. ("**Pasifik**"), Pepsi Cola Servis ve Dağıtım Ltd. Şti. ("**Pepsi**"), Red Bull Gıda Dağıtım ve Pazarlama Ticaret Limited Şirketi ("**Redbull**"), Şölen Çikolata Gıda Sanayi ve Ticaret A.Ş. ("**Şölen**") and Unmaş Unlu Mamuller Gıda Sanayi ve Ticaret A.Ş. ("**Unmaş**") acted as intermediary for the exchange of competitively sensitive information such as retailers' future prices and price changing dates.

With the dissenting opinions of two Turkish Competition Board ("**Board**") members, including the Board President, it has been decided that there was no sufficient evidence to decide that Kent Gıda Maddeleri Sanayi ve Ticaret A.Ş. ("**Kent**"), which was one of the parties concerned in the relevant investigation, had been involved in hub and spoke agreements. Thus, the Board did not impose an administrative fine on Kent for the allegation of hub-and-spoke cartel.

With regard to the concerned undertakings operating as retailers, namely BİM Birleşik Mağazalar A.Ş. ("**BİM**"), CarrefourSA Carrefour Sabancı Ticaret Merkezi A.Ş. ("**CarrefourSA**"), Migros Ticaret A.Ş. ("**Migros**"), Şok Marketler Ticaret A.Ş. ("**Şok**") and Yeni Mağazacılık A.Ş. ("**A101**"), it was decided unanimously that they violated Article 4 of the Turkish Competition Law via agreements or concerted practices with the nature of a hub-and-spoke cartel that aimed to fix retail sales prices through price coordination and/or price increases by indirect contact through common suppliers; sharing competitively sensitive information such as future prices, price increasing dates, seasonal activities and campaigns through the common suppliers; intervening in the prices of undertakings which discounted prices or which did not increase prices yet when the prices in the overall market were increasing to ensure that the prices increased to the disadvantage of the consumers; constantly monitoring compliance with the collusion by different strategies such as reducing (breaking) the prices specific to a product when the competitors' prices did not increase. However, since they were fined previously (decision No 21-53/747-360 dated dated 28.10.2021), it was decided that imposing new administrative fines under the scope of this investigation would not be necessary, considering the "ne bis in idem" principle. Same applied to Beypazarı İçecek Pazarlama Dağ. Amb. Tur. Pet. İnş. San. ve Tic. A.Ş. ("**Beypazarı**"), which infringed Article 4 of the Turkish Competition Law. However, with the dissenting opinion of two Board members, it was stipulated that since Beypazarı was fined previously (decision No 22-23/379-158 dated 18.05.2022), it was covered by "ne bis in idem".

In addition, within the scope of the investigation, it was concluded that Şölen, Coca Cola, Doğanay, ETİ, Frito Lay, Haribo, Kent, Pasifik, Unmaş and Pepsi violated Article 4 of the Competition Law by determining retail resale prices for goods.

RPM Stories with Happy Ending: Closed with Settlement Procedure

*On 14 December 2022 the investigation concerning resale price maintenance ("**RPM**") allegations against Aslan Ticaret Dayanıklı Tüketim Malları ve Limited Şirketi ("**Aslan**") was concluded with a settlement procedure. Earlier in November 2022 three RPM investigations were concluded with settlement procedures. Accordingly, in all cases the administrative fines were imposed with a 25% discount.*

As regards Aslan case, the TCA with its decision No 22-28/458-M initiated an investigation concerning the allegations that Aslan had violated Article 4 of the Turkish Competition Law by intervening in the resale prices of organized retailers. The investigation was concluded with a settlement procedure when Aslan accepted the existence and scope of the violation.

The TCA imposed an administrative fine of TRY 7,241,818.69 on Aslan for infringing Article 4 of the Competition Law. As a result of the settlement procedure, Aslan received a 25% reduction of the fine, thus the final amount imposed was TRY 5,431,289.02.

As for the November investigations, those were carried out to determine whether Miele Elektrik Aletler Dış Ticaret ve Pazarlama Ltd. Şti, Natura Gıda Sanayi ve Ticaret A.Ş., Korkmaz Mutfak Eşyaları San. ve Tic. A.Ş., Gençler Ev Araç ve Gereçleri Pazarlama Tic. A.Ş., and Punto Dayanıklı Tüketim Malları İth. Ihr. Tic. Ltd. Şti. had violated Article 4 of the Turkish Competition Law by interfering in the resale price of the resellers of the products it supplies was concluded.

With the acceptance of the resale price maintenance allegations, three investigations were concluded with settlement procedure and accordingly, a total administrative fine of TRY 19,569,061.84 (approx. EUR 1,011,642) was imposed on four undertakings with a 25% discount.

Gun-Jump Allegations Rejected

*On 5 December 2022 the TCA concluded an inquiry concerning the e-scooter company Martı. In this case, the TCA reviewed alleged gun-jumping claims against Martı. It is understood that, during the preliminary inquiry period, the TCA received a complaint against Martı to the effect that Martı and Mobilite Teknoloji Çözümleri A.Ş. ("**Mobilite A.Ş.**") had breached the notification obligation under the Competition Law by effectively acting as a single economic entity. The TCA unfavoured this claim and determined that the alleged concentration between Martı and Mobilite A.Ş. had not occurred. The TCA added that since Martı and Mobilite A.Ş. were controlled by the same undertaking, i.e., Martı Technologies Inc ("**Martı US**"), such a concentration would be classified as an intra-group transaction, which does not lead to a change in control.*

Upon a complaint received during the preliminary inquiry initiated against Martı, the TCA investigated whether Martı and Mobilite A.Ş. had infringed the notification obligation stipulated under Article 7 of the Turkish Competition Law.

In its decision, dated 21 July 2022 and numbered 22-33/527-214, the TCA set forth that Martı and Mobilite A.Ş. are companies controlled by the Martı US, which is incorporated in the United States. According to the additional information provided by Martı, a merger between Martı and Mobilite A.Ş. is planned although no merger transaction has taken place between these two companies yet.

In this context, the TCA made clear that no concentration existed between the parties and even if a had concentration taken place between them, it would have fallen outside of Article 7 of the Competition Law since Martı and Mobilite A.Ş. belong to the same undertaking. Consequently, the TCA found no evidence of infringement of the notification obligation and decided to take no action against Martı and Mobilite A.Ş.

Competition Law Infringements in Labour Markets: Private Hospitals Fined

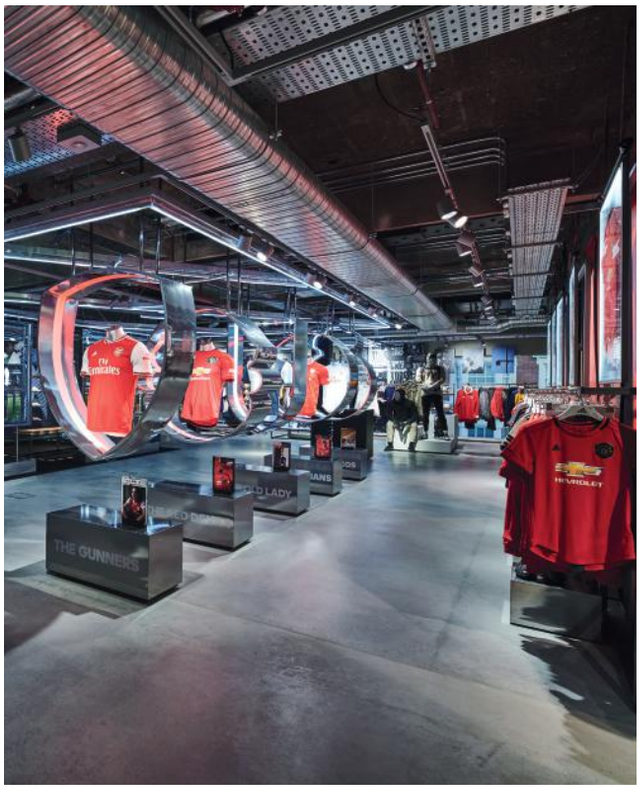
In its decision dated 24 February 2022 and numbered 22-10/152-62, the TCA examined allegations that some private health institutions and associations of undertakings in Samsun and Bursa had (i) jointly determined the operating room service fees they charged to freelance doctors, and (ii) prevented the transfer of personnel between hospitals through a gentleman's agreement and determined the salary scales and increase of employees jointly.

The in-depth investigation by the TCA uncovered that several hospitals and health institutions had determined the operating room service fees and prices for some other services (e.g. psycho-technical report approvals) jointly and some undertakings had been party to a gentlemen's agreement the aim of which had been to prevent the transfer of doctors between hospitals. During its investigation, the TCA also found that several undertakings had exchanged competitively sensitive information (i.e., complementary health insurance coefficient information) via WhatsApp groups and jointly had determined salary scales and increases via several meetings. As a result, on 1 November 2022 a total fine of approximately TRY 58 million (approx. EUR 2,998,370) was imposed on the undertakings.

How to Recommend Prices: Adidas' Experience

On 27 October 2022 the TCA published its reasoned decision regarding Adidas. It was cleared of allegations of being involved in the RPM and discrimination. But it is interesting to look into the TCA's assessment and approach to such practices.

Following the TCA's launch of a preliminary investigation into Adidas after an allegation brought by one of its dealers



("**Complainant**"), the TCA experts conducted an on-site inspection at Adidas' company premises on 15 March 2022. Also, the TCA assessed various agreements that had been concluded between Adidas and its dealers with different statuses. In this context, dealers who had made direct purchases and consignment sales had been differentiated. The TCA concluded that the contracts that had been signed by Adidas with (i) undertakings acting as franchise dealers, (ii) undertakings acting as wholesale dealers, and (iii) e-marketplaces did not constitute resale price maintenance within the scope of the Competition Law. In these agreements, it was stipulated that Adidas could only make a recommendation about resale prices and determine the maximum resale price of the products. Additionally, the TCA stated that the findings collected during the on-site inspection illustrated that Adidas had been sending its campaign price lists to franchise dealers to inform them and had not provided any additional benefits to the dealers who set their prices in line with the list.

As regards the allegedly discriminatory practices, positive discrimination carried out on behalf of wholesale dealers of Adidas was evaluated. The TCA found that the wholesale dealers offered many other brands in addition to Adidas brand, but franchisees only offered Adidas brand products. Accordingly, the TCA determined that Adidas' establishing different rules for dealers of different statuses could not be construed as a discriminatory practice under the Competition Law.

Therefore, the TCA concluded that Adidas had not violated Article 4 and Article 6 of the Turkish Competition Law through its practices, and there was no room for launching an investigation into Adidas.

Two Differing Decisions for Hepsiburada's Alleged Data Deletion during On-Site Inspections

*D-Market Elektronik Hizmetler ve Tic. A.Ş. ("**Hepsiburada**") was subject to two different on-site inspections within the scope of two different investigations, where the TCA ruled that Hepsiburada's actions constituted a violation during one of them, even though the hindrance in question seems to have been the same.*

During the first on-site inspection within the scope of the investigation dated 1 April 2021 at the premises of Hepsiburada on 15 June 2021 to determine whether Article 4 of the Turkish Competition Law had been violated concerning labour market allegations, the TCA found that some employees exhibited actions that may have hindered/complicated the on-site inspection by deleting various correspondence in WhatsApp groups and bilateral communications after the on-site inspection had started. Accordingly, the TCA unanimously decided that Hepsiburada had hindered and complicated the on-site investigation and, therefore, imposed an administrative fine on the undertaking.

However, within the scope of the investigation dated 1 July 2021 initiated against Numil Gıda Ürünleri San. ve Tic. A.Ş. to determine whether Article 4 and Article 6 of the Competition Law had been violated with their actions in the baby food market, another on-site inspection was conducted at the premises of Hepsiburada on 19 August 2021. During this on-site inspection, an employee was found to have deleted various WhatsApp correspondence after the commencement of the on-site inspection. However, adopting a differing approach to the similar action of

Hepsiburada, the TCA concluded that the on-site inspection had not been hindered. In this regard, two dissenting votes were cast in the decision, indicating that the majority decision contained no legitimate reasoning.

2022-2023 Football Season and Interim Measures for Digiturk

*The TCA previously launched a preliminary investigation against Krea İçerik Hizmetleri ve Prodüksiyon A.Ş. ("**Digiturk**") to evaluate whether Digiturk had provided other broadcasting organizations with sub-broadcasting rights, particularly "footage for news purposes" and "extended summary footage" in a discriminatory manner, within the scope of the broadcasting rights of Turkish Super League and 1st League football competitions, which are exclusively owned by Digiturk.*

The TCA rendered an interim measures decision based on the conclusion that Digiturk's behaviour may potentially give rise to serious and irreparable damages until the TCA's final decision. The interim measures concern the ongoing 2022-2023 football season, where the relevant product market has been defined initially as the "market for broadcasting rights of Turkish Super League and 1st League football competitions."

As per the decision, Digiturk is not to allow extended summary footage and footage for news purposes to be published before any time determined in the relevant specification for footage for news purposes by any broadcaster, who has bought or is willing to buy the broadcasting rights, every week and in terms of each match of which the footage is delivered to the audience.

Getting to Understand Technology Undertakings Better: Merger Control in Action

The TCA published its first decisions on acquisitions targeting technology undertakings. The decisions came amidst some uncertainties regarding the newly added definition of 'technology undertakings' in merger notification rules, which are defined as undertakings active in the areas of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals, and health technologies or assets related to these undertakings.

As per the renewed Communiqué No. 2010/4 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board ("Communiqué No. 2010/4"), "the TRY 250 million thresholds that are mentioned under (a) and (b) in the first paragraph, are not applicable in the acquisitions of technology undertakings that (i) are active or (ii) have R&D activities, in the Turkish geographic market or (iii) that provide services to customers in Turkey."

Following the recent amendments that set lower notification thresholds for technology undertakings that are active or have R&D activities in the Turkish geographic market or that provide services to customers in Turkey, the TCA concluded that several transactions were subject to authorization under the new rules and cleared these transactions on the basis that they did not lead to a significant impediment of effective competition.
Berkshire Hathaway Inc.'s takeover of Alleghany Corporation (15 September 2022, 22-42/625-261): Alleghany Corporation is considered as a technology undertaking due to its software development and sale activities outside Turkey. This decision highlights that as long as the target is active in the above-mentioned areas in anywhere in the globe and also is active or has R&D activities in the Turkish geographic market or provides services to customers [in any market] in Turkey, then the thresholds exemption will be applicable for that transaction.

The acquisition of the joint control of Nielsen Holdings plc by subsidiaries of Brookfield Private Equity Holdings LLC (26 May 2022, 22-24/395-BD): Even though Nielsen utilized data analytics tools to provide its customers meaningful insights about market conditions and consumer trends, Nielsen was not considered as a technology undertaking. This decision indicates that some level of technology use may not be adequate for an undertaking to be considered as a "technology undertaking" by the TCA.

The acquisition of Mandiant, Inc. by Google LLC, a subsidiary of Alphabet, Inc., (09 June 2022, 22-26/425-174): Mandiant, which is a cyber security company, is considered as a technology undertaking operating in the field of software.

The acquisition of the joint control of Covetrus Inc. by Clayton Dubilier & Rice Fund XI L.P., TPG Partners III, and TPG Healthcare (07 July 2022, no. 22-32/512-209): Covetrus's activities in the medicine and software sector involving animals were considered within the scope of "health technologies" and "pharmacology."

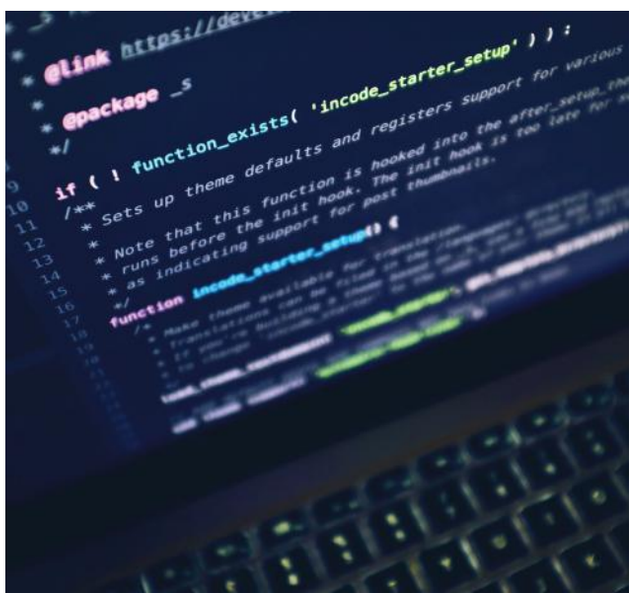
The acquisition of Affidea Group B.V. and its subsidiaries by Groupe Bruxelles Lambert SA (16 June 2022, no. 22-27/431-176): As a diagnostic imaging company, Affidea was considered to be a technology undertaking active in the "biotechnology" sector.

The indirect acquisition of the joint control of Citrix Systems, Inc. and TIBCO Software, Inc. by Elliot Investment Management L.P and Vista Equity Partners Management, LLC (12.05.2022, 22-21/344-149): The TCA found that one of the transaction parties, Citrix, with its operations relating to user virtualisation software, content sharing and coworking, network and informatics was considered to be a technology undertaking.

The acquisition of Corden Pharma Holding S.E. and Corden Pharma US Holdings through Cougar BidCo S.à r.l. and Pacific BidCo Inc. by Astorg VIII SCSp, which is managed by Astorg Asset Management S.à.r.l. (02 June 2022, no. 22-25/398-164): The TCA established that target undertakings were technology undertakings due to their operation in the pharmacology sector pursuant to Corden Pharma Group's production of ready-to-use medicine and APIs for pharmaceutical companies.

The acquisition of International Financial Group Limited by Cinven Capital Management (SFF) G.P.L. (18 May 2022, no. 22-23/372-157): It was found that while Cinven provides certain investment management and consultancy services, it also provides services to a small number of its customers with digital access via digital platforms in the life insurance sector in Turkey. Therefore, in this decision, the TCA seemed to classify an undertaking using digital platforms as being active in the software market.

The acquisition of Airties Kablosuz İletişim San. ve Dış. Tic. A.Ş. through P8 Holding 2 S.àr.l. by Providence Managing Member LLC (02 June 2022, no. 22-25/403-167): The TCA concluded that due to the software services (that enable broadband operators to deliver and manage wi-fi networks to residential customers) provided by Airties, it is considered as a technology undertaking.



European Super League Case: AG's Opinion on Future of EU Sports Governance

*The European Super League ("**ESL**"), which was set up by the European Super League Company ("**ESLC**") which was created by the prestigious clubs of Europe to organise the first closed annual European football competition dealt a severe blow after the legal adviser of the Court of Justice of the European Union ("**CJEU**") proposed that the UEFA and FIFA's rules were compatible with EU competition law. Although the opinions of Advocate General Rantos are not binding, they are followed in most cases.*

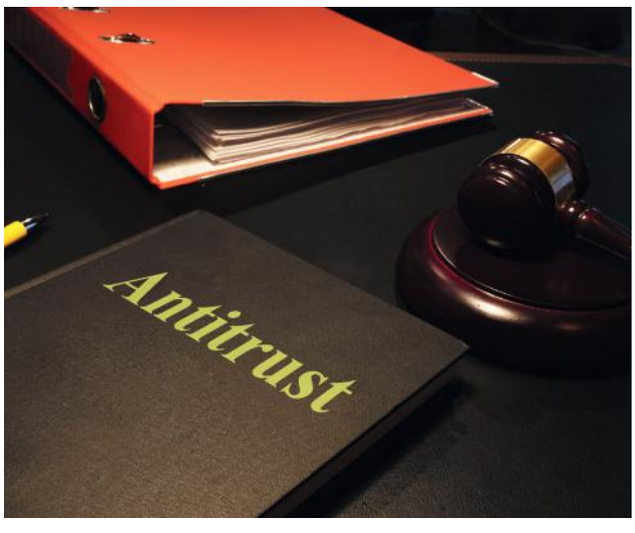
FIFA and UEFA released a statement condemning the creation of the ESL and stating that they would not recognize it. They also warned that any players or clubs involved in the new competition would be banned from participating in events organized by FIFA and its confederations.

The ESLC believed that FIFA and UEFA's actions were in violation of the EU competition law and the principles of the Treaty on the Functioning of the European Union. As a result, they took legal action against FIFA and the UEFA in the Commercial Court of Madrid. The court asked the CJEU to determine whether certain provisions in the statutes of FIFA and the UEFA, as well as the threats of sanctions made by those organizations, comply with EU law, specifically in regard to competition law.

Accordingly, AG Rantos is of the view that the non-recognition by FIFA and the UEFA of an essentially closed competition such as the ESL could be regarded as inherent in the pursuit of certain legitimate objectives and compatible with the EU competition law. His opinions on the case could be summarized as the following:

- The rules of FIFA and the UEFA requiring prior approval for new competitions are in compliance with the EU competition law, as the restrictive effects of the rules are necessary for achieving the legitimate objectives related to the specific nature of sport pursued by those organizations.
- The EU competition rules do not prohibit FIFA, the UEFA, their member federations, or their national leagues from issuing threats of sanctions against affiliated clubs that participate in projects to establish new competitions that could undermine the legitimate objectives of those organizations.
- The EU competition rules do not prohibit the exclusive marketing of rights to competitions organized by FIFA and the UEFA, as these restrictions are necessary for achieving the legitimate objectives related to the specific nature of sport pursued by those organizations.
- EU law does not prevent FIFA and the UEFA from requiring prior approval for the establishment of new pan-European interclub football competitions, as this requirement is appropriate and necessary considering the characteristics of the planned competition.

Will There Be More Antitrust Probes into Territorial Restrictions?



On 8 December 2022 the EuroCommerce, a trade association with members such as Amazon, IKEA, and Carrefour, asked the Commission to open more antitrust probes alleging large consumer goods manufacturers are preventing retailers and wholesalers from sourcing products where they wish in the Single Market.

EuroCommerce claims that large consumer goods manufacturers are denying retailers the advantages offered by the Single Market. Even if the manufacturer's branches are selling at a lower price or providing a greater selection in other EU member states, territorial supply restrictions preclude a merchant in one country from importing a product from those branches. EuroCommerce started the "SingleMarket4All" campaign to encourage customers to write letters to national enforcers and urge the commission to utilize its competition enforcement powers to address the alleged restrictions.

Austria's Market Inquiry in the Electric Vehicles Sector

*On 23 November 2022 the Austrian Competition Authority ("**BWB**") announced that competition in the public charging infrastructure for electric vehicles ("**EV**") was hindered due to a lack of transparency, as it published its findings of the sector inquiry.*

Launched in November 2021, the BWB's recently published sector inquiry results revealed that the lack of transparency in the market for operating public EV charging stations hindered effective competition. Amongst the findings of the inquiry was that the dominance of state-owned companies and local dominance may lead to anti-competitive practices, such as the bundling of EV charging and household electricity.

The sector inquiry indicated the need for additional regulatory actions to eliminate any possible disruptions of competition on the supplier side. In that regard, the BWB recommended measures to ensure the promotion of small charging station operators and the preservation of the diversity of services at the local level.

Welcoming the EU Digital Markets Act: Gatekeepers, Be Cautious!

*The EU Digital Markets Act ("**DMA**"), which imposes obligations for large online platforms to ensure a fairer business environment and more services for consumers, was published in the EU Official Journal on 12 October 2022. The DMA entered into on 1 November 2022 and will apply starting from 2 May 2023.*

The application of some provisions, such as Article 3 and from Articles 40, 46, 47, 48, 49 and 50 related to the designation of gatekeepers for high-level groups, implementing provisions, guidelines, standardisation, the exercise of delegation and committee procedure begins from 1 November 2022. Application of Article 42 and Article 43, which concern respectively actions brought against infringements by gatekeepers and reporting of breaches and protection of reporting persons, will start in June 2023.

Amended Decision on Import Regime

The Decision on import regime ensures that the imports are regulated in the interest of the national economy and in accordance with the requirements of international trade. Accordingly, the ratio of the customs duty to be applied on imports is set within the scope of this decision.

Through the Decision Amending the Decision on Import Regime put into force by the Presidential Decree numbered 6359 and dated 12 December 2022, the Decision on Import Regime put into force by the Presidential Decree numbered 3350 dated 31 December 2020 was amended.

Accordingly, the import duty ratios applied to the imports of products of rice classified under the 1006 tariff code were eliminated until 31 August 2023, regardless of their country of origin.

Two Expiry Review Investigations Concluded (Textile/Fabrics and Mirrors from China)

*The Turkish Ministry of Trade concluded an expiry review investigation concerning the imports of certain made-up textile articles and fabrics made of artificial or synthetics fibres[1] originating in the People's Republic of China ("**China**") and unframed glass mirrors[2] originating in China through Communiqués numbered 2022/27 and 2022/34, dated 3 November 2022 and 25 November 2022, on the Prevention of Unfair Competition in Imports, respectively.*

1.Certain made-up textile articles and fabrics made of artificial or synthetics fibres

Following the original investigation in April 2010, an anti-dumping measure amounting to 70.44% of the CIF value (maximum USD 5) was imposed. Subsequently, the Ministry conducted an expiry review investigation as a result of which the anti-dumping measure was continued at the same level. Within the present expiry review investigation, initiated as a result of an application from domestic producers, the Ministry evaluated and determined that the continuation or recurrence of dumping was likely to occur in an environment where the concerned measures were not in place. The imports of the concerned products had undercut and depressed the domestic industry's prices in 2020. Moreover, the countries subject to the investigation had significant potential regarding production and export capacity and some negativities in the domestic industry's economic indicators had been observed. Consequently, the Ministry decided to continue the imposition of the anti-dumping measure at a lower level amounting to 42.44% of the CIF value.

1. Unframed glass mirrors

In the original investigation concluded in 2016, a definitive anti-dumping measure was imposed amounting to 27% of the CIF value. The present expiry review investigation was initiated upon the complaint of a Turkish producer, claiming that the expiry of the measures would be likely to result in the continuation or recurrence of dumping and injury. The Ministry relied on the dumping margins calculated in the original investigation. Additionally, the export and production capacity, export unit prices, and dumping measures imposed by third countries were examined. Consequently, it was evaluated that dumping was likely to continue or reoccur if the measures were revoked. Regarding the injury, although it was determined that the imports from the concerned country had neither depressed nor suppressed the prices of the domestic industry considering the production and export capacity of China, the expiry of the measures would likely result in the continuation or recurrence of dumping and injury. Consequently, it was decided to continue the imposition of the anti-dumping measures at the same level.

[1] Classified under the HS Codes 54.07, 58.10, 60.05, 60.06, and 63.03.
[2] Classified under the HS Code 7009.91.

Feldspar Subjected to Export Registration

On 13 November 2022 through Communiqué No 2022/8 on the Amendment of Communiqué on Products Subject to Export Registration, "feldspar," classified under HS Code 2529.10, was added to the list of products subject to export registration. Feldspars are a group of rock-forming aluminium tectosilicate minerals that also contain other cations such as sodium, calcium, potassium, or barium.

Pursuant to Article 7 of the Regulation on Exports, before the export of the concerned product customs declarations must be registered by the General Secretariat of the Exporters' Associations. The registered customs declarations must be submitted to the customs authorities within thirty days of their approval.

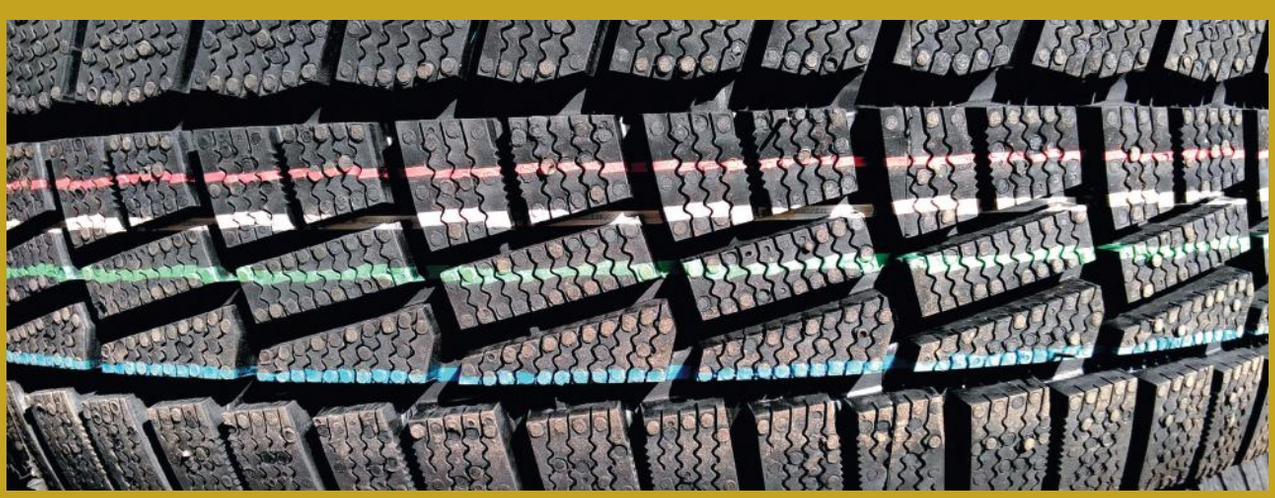
Anti-Circumvention Investigations into Certain Types of New Pneumatic Tires of Rubber

On 25 October 2022 the Ministry concluded an anti-circumvention investigation concerning the imports of certain types of new pneumatic tires, of rubber[6] originating in/exported from Malaysia, through Communiqué numbered 2022/32 on the Prevention of Unfair Competition in Imports.

Initially, an anti-dumping measure of 60-87% of the CIF value on the imports of certain types of new pneumatic tires of rubber originating in China was imposed on 20 August 2005. Through a subsequent expiry review investigation concluded in 2011, the concerned anti-dumping measure was reduced to a level of 60% of the CIF value and remained unchanged in the last expiry review investigation. On 10 September 2021, the Ministry ex officio initiated the concerned anti-circumvention investigation to determine whether the anti-dumping measure of 60% of the CIF value for the imports of the concerned product originating in China had been circumvented through the imports originating in/exported from Malaysia.

Two companies incorporated in Malaysia, namely Golden Horse Rubber Sdn. Bhd. (***Golden Horse***) and Continental Tyre PJ Malaysia Sdn. Bhd. (***Continental***) cooperated with the Ministry. Continental was found to not have significant raw material purchases from China, to be carrying out all stages of the production of the concerned product in its facilities in Malaysia, and hence, had not circumvented the measure. Although Golden Horse had purchased all of its raw material from China, it was determined that as it had carried out the important stages of production of the concerned product in its facilities in Malaysia, it had not circumvented the measure either. Regarding the other companies which did not cooperate with the Ministry, it was determined that the increase in exports to Türkiye in the period between 2020 and 2021(1-6) mainly had been caused by the companies which had cooperated with the Ministry and hence, the companies which did not cooperate with the Ministry were found to have not circumvented the measures. Consequently, the investigation was terminated without the imposition of measures.

[1] Classified under the HS Codes 4011.20.90, 4011.70.00.00.00, 4011.80.00.00.00, 4011.90.00.00.00.

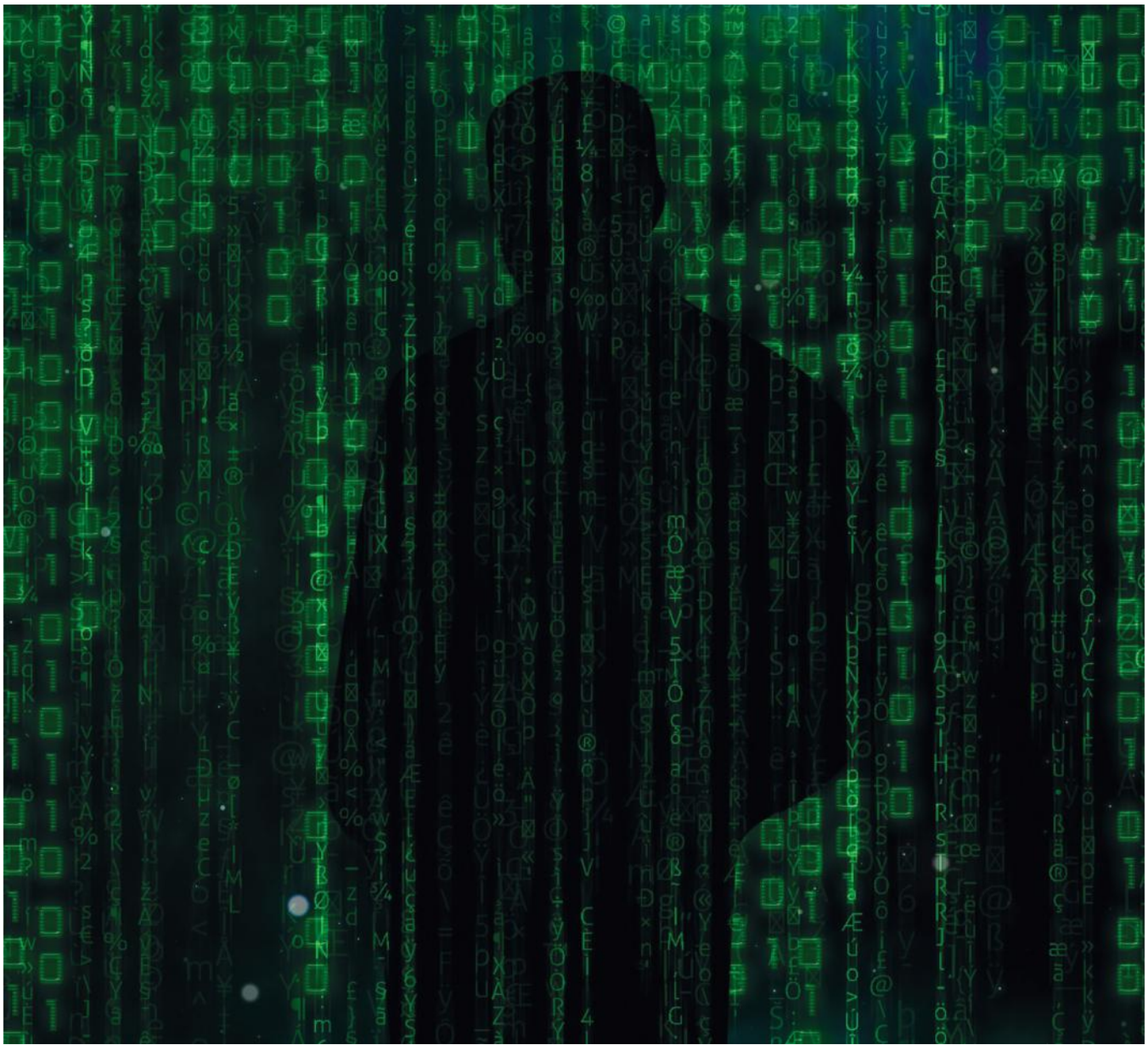


Constitutional Court's Decision on Right to Access Personal Data

*The Turkish Constitutional Court's ("**Court**") judgement, with application number 2018/6161, was published in the Official Gazette on 20 December 2022. The Decision addressed the applicant's right to the protection of personal data and an effective remedy in connection with the right to privacy that was violated due to the rejection of the request for the provision of information about the mobile phone line used by the applicant.*

In the case subject to the decision, the applicant requested from the communication services company, of which he was a customer, the internet data, log records, IMEI information of his phone, and the date of use of Hot Spot during 2014 and 2015 and requested that the data information regarding the IP numbers that he shared with other subscribers when he used the internet via his mobile phone be shared with him. As the company failed to meet this request, the applicant filed a lawsuit before the competent consumer court; however, this case was dismissed without examining the merits, on the grounds that the applicant's request was not related to the exercise of a right or legal relationship and that there was no actual interest in making such a request. Upon the appeal application, the competent Regional Court of Appeals also rejected the applicant's request without examining the merits.

In its decision, the Court stated that the right to request the protection of personal data set out in Article 20 of the Turkish Constitution includes the right to be informed about personal data concerning oneself, to access such data, to request their correction or deletion, and to learn whether they have been used for their intended purposes and that the right to access such data is an extension of the principle of the transparency of data processing. With regard to the proceedings before the competent courts, the Court ruled that rejecting the applicant's request to access their personal data constitutes a violation of the right to an effective remedy. The Court made clear that the approach of rejecting such a claim without providing justification and examining merits which are taken by courts in due process prevented the applicant from exercising their right to access their personal data. The Court returned the decision to the competent consumer court for the retrial of the case.



Draft Adequacy Decision on the EU-US Data Privacy Framework

The Commission started the process to adopt a data privacy framework for the EU and US that will allow for the exchange of data between the two regions and address concerns raised by the EU's Court of Justice in its "Schrems II" decision from July 2020. This framework is intended to support transatlantic data flows and address any issues related to data privacy.

An adequacy decision is a way to transfer personal data from the EU to countries outside the EU that have a similar level of protection for personal data as the EU, according to the General Data Protection Regulation ("***GDPR***"). This decision is used to ensure that personal data is transferred to countries that offer adequate protection for that data.

The draft adequacy decision dated 13 December 2022 assesses the limitations and safeguards for the collection and use of personal data transferred to controllers and processors in the US-by-US government agencies. Specifically, it looks at whether the conditions under which the US government can access data transferred to the US meet the "essential equivalence" test as required by Article 45(1) of the GDPR and interpreted by the CJEU in the Schrems II decision.

To finalize the draft adequacy decision, it was transmitted to the European Data Protection Board ("***EDPB***") for approval. Afterwards, the Commission will need to obtain the green light from a committee composed of representatives of the EU Member States. In addition, the European Parliament has a right of scrutiny over adequacy decisions. Only after that will the Commission be able to adopt the final adequacy decision, which would allow data to flow freely and safely between the EU and US companies certified by the Department of Commerce within the new framework.

Record Breaking Settlements: Epic Games Agreed to Pay $520 Million over Privacy Violations and Unwanted Charges Allegations

*Epic Games, the maker of the video game Fortnite, will pay a $275 million penalty for violating the Children's Online Privacy Protection Act ("**COPPA**"), change default privacy settings, and pay $245 million in refunds for tricking users into making unwanted charges due to design tricks, known as dark patterns.*

The FTC's action regarding Epic Games involves two separate settlements, a $275 million monetary penalty for violating the COPPA Rule, the largest penalty ever obtained for violating an FTC rule, and $245 million to refund consumers for its dark patterns and billing practices. This is the FTC's largest refund amount in a gaming case and its largest administrative order in history.

The COPPA violation concerned the allegation that Epic Games had been aware of children playing Fortnite and collected their personal data without first obtaining the verifiable consent of their parents. Furthermore, the undertaking failed to address the requests of parents to delete their children's personal information. In addition, the default settings of Epic Games enabled live text and voice communications for users by default. Because of this setting, children who were matched to play Fortnite with strangers were bullied, threatened, harassed, and exposed to dangerous and psychologically traumatizing issues. After the settlement, Epic Games was prohibited from enabling voice and text communications for children and teens unless parents (of users under 13) or teenage users (or their parents) provide their affirmative consent through a privacy setting. In addition, Epic Games was ordered to delete the personal information of children which had been collected previously.

The second allegation, concerning illegal dark patterns, claimed that Epic Games used a variety of dark patterns such as confusing button configurations, which led players to make unwanted purchases through the press of a single button, tricking players into making unintended in-game purchases. If the players disputed any charges, the undertaking locked the accounts of these players so that they cannot reach the content they had purchased and warned the players that any future dispute regarding purchases could lead them to be banned for life from the game.

Be Warned! TCA Fines Türkiye's Leading Electric Scooter Rental Company For False and Misleading Information (MARTI)

by Ertuğrul Can Canbolat, Muhammed Safa Uygur, Alper Karafil and Su Başak Satır

In December 2022 the Turkish Competition Authority published its decision imposing a monetary fine on Martı İleri Teknoloji A.Ş. ("**Martı**"), a leading electric scooter rental company in Türkiye, for providing false and misleading information [1]. The reasoned decision of the TCA indicated that the TCA had communicated with Martı via email after receiving the official answers to its initial request for information with the aim to clarify any confusions that Martı might have had regarding the requested items and decided to impose a fine only after the second round of answers, which were still false and misleading, according to the TCA.

What Led to the Fining Decision?

Within the scope of the preliminary investigation[2] initiated to determine whether Martı abused its allegedly dominant position by exclusionary conduct, the opening and per-minute fees for e-scooter services were requested from Martı. In its response letter, Martı stated that the prices of its e-scooter services between 2019 and 2022 varied due to daily, weekly, monthly and seasonal campaigns and hence, it submitted the base prices. Subsequently, the TCA requested from Martı via e-mail to convey the starting and per-minute prices of its e-scooter services only for the cities İstanbul, Ankara and İzmir on a monthly basis, with the note that the respective campaign times and contents should be provided in case the monthly prices are not available. In its response letter, Martı shared its list prices on a monthly basis together with average discounts applied. It also informed the TCA that monthly prices were calculated by taking into account the prices which were applied for the longest period in the respective month and price transition dates were also given in the annex of its responses.

However, the TCA noted that the prices submitted by Martı were different from the user data and the data provided by the complainant. Subsequently, the TCA contacted with Martı and requested the correct data. Upon this, it was observed by the TCA that the prices disclosed by Martı differed from the prices provided in its previous responses. In this respect, the TCA noted that although the discounted campaign prices were specifically requested from Martı, such data was not submitted. Furthermore, although Martı claimed that it could not gather detailed data on the ground that it did not have aggregated data on how much discount was made in the relevant period/location, the correct data was provided to the TCA in detail following the TCA's notice regarding the differing data.

Consequently, the TCA decided to impose an administrative fine at the rate of 1‰ of Martı's 2021 turnover pursuant to Paragraph 1 of Article 16 of the Law No. 4054 on the Protection of Competition as a result of providing the Authority with false and misleading information.

No Room for a Second Chance?

The fine imposed on Martı illustrates that the TCA actively communicates with the respondents to get the accurate data requested and to prevent any misunderstanding that may reasonably occur along with its information request processes. In a similar previous decision, Türk Telekom Decision[3], the TCA repeatedly requested the correct information from Türk Telekom, Türkiye's leading internet and fixed service provider, by providing detailed explanations to its representatives during the course of a meeting in its HQs and sending additional letters

with detailed instructions to the company before establishing that the information was not submitted in the required format and inconsistencies were still detected on many occasions.

On another note, during the course of its investigation in poultry markets[4], information provided by one of the investigated parties in its first defences regarding its turnover, which was claimed to be predominantly belonging to export sales, was called into question. The company was contacted for providing the accurate information as the TCA had noticed that the sales data provided concerned only domestic sales. However, as the relevant data was again provided inaccurately in its second defences, the TCA decided to impose an administrative fine on the undertaking for providing false and misleading information.
In its OMV decision[5], the TCA requested explanations from the company regarding the contradictions between its statements in the individual exemption form (i.e. it was not active in heating oil market) and the statements on the company's own website. The undertaking in turn responded that its activities in the concerned market were indeed very limited and hence did not indicate it being active in the concerned market. However, the TCA did not accept such explanations as the company merely denied being active in the concerned market although it admitted that it had activities albeit to a limited extent. Conversely, the TCA's approach for explainable misunderstandings/errors has been rather lenient, particularly when undertakings provide the correct information after receiving such notice from the TCA. For example, in another very recent decision concerning Türk Telekom[6], the TCA accepted the explanations of Türk Telekom that the misleading information was provided inadvertently as the error was made because of the lack of familiarity of an employee with the company's systems and the mistake was based on the inexperience of that employee. The TCA accepted this explanation and concluded that there is no need to impose an administrative fine on Türk Telekom.

Conclusion

Martı decision illustrates that the TCA actively communicates with respondents in case there is any room for misunderstandings or confusions. Therefore, in order to ensure that there are no misinterpretations, provision of the accurate data along with consistent and fair communication with the TCA throughout the entire process should be ensured by the undertakings. This constitutes great importance regarding the attention which needs to be paid to the preparation of the responses, and how this process needs to be handled.

Previously published by Concurrences on December 23, 2022

[1] The TCA's decision dated 21.07.2022 and numbered 22-33/527-213.

[2] The TCA's decision dated 14.04.2022 and numbered 22-17/285-M.

[3] The TCA's decision dated 03.05.2016 and numbered 16-15/255-110.

[4] The TCA's decision dated 13.03.2019 and numbered 19-12/155-70.

[5] The TCA's decision dated 26.12.2013 and numbered 13-72/997-428.

[6] The TCA's decision dated 30.09.2021 and numbered 21-46/667-332.

Events

ACTECON attended the 21st Career Days in Law hosted by Istanbul Bilgi University, Faculty of Law on Friday, December 9, 2022. Our Senior Associate, Mustafa Ayna and our Associate Selim Turan had an engaging discussion with the students.

Our Senior Associate Caner K. Çeşit delivered a speech entitled "Standing Out Approaches in Supervision of Administrative Courts Regarding the Decisions of the Competition Authority" on Saturday, November 26, 2022 at the "Competition Law and Connected Fields Symposium" organised by Istanbul University, Law Faculty, Career in Law Club.

News

ACTECON promoted Senior Associates Caner K. Çeşit and Mustafa Ayna to Counsel, Mid-Level Associates Özlem Başıböyük Coşkun and Alper Karafil to Senior Associate, and Cansen Erensoy to Mid-Level Associate position, effective as of January 2, 2023.

Global Competition Review (GCR) published an announcement on their website regarding the promotion of Mustafa Ayna and Caner K. Çeşit to Counsel positions at ACTECON.

Publications/Projects

Who's Who Legal - Trade & Customs - Economists & Anti-Dumping Consultants 2022
Fevzi M. Toksoy, our Managing Partner has once again been recognised as Expert by Who's Who Legal in the Economists and Antidumping Consultants category of the Trade & Customs Global Guide.

ACTECON has once again been recognized by Global Competition Review's GCR 100 2023 edition listing the world's best competition practices.

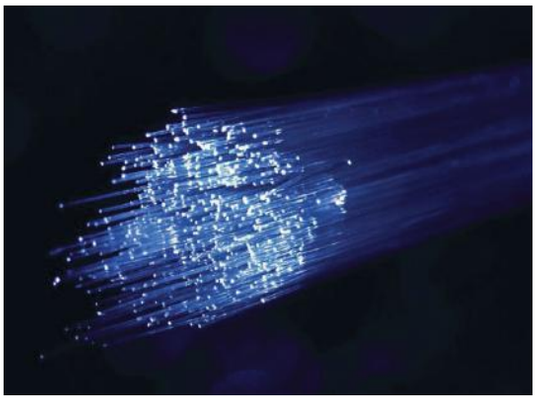
ACTECON's latest publications (https://www.actecon.com)

Please follow the links to read more:
https://www.actecon.com/news-articles
https://www.actecon.com/en/publications

November – December 2022

A New Age for Digital Markets in Turkey? The Draft Amendment to the Law No. 4054 on the Protection of Competition

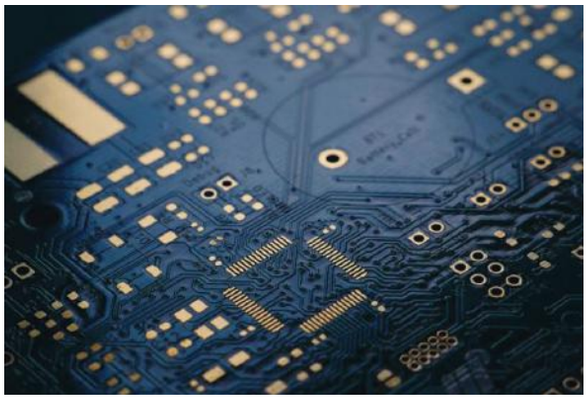
Türk Telekom Decision: Recent Approach to Refusal to Deal



Dawn raids in Turkey – Can Companies Avoid Responsibility by Asserting Subjective Grounds for the Deleted Data During On-site Inspections?

Turkey - What to Consider in Sharing Sectoral Reports with Sector Members?

The Turkish Competition Authority Sets the Boundaries of its "Technology Undertaking" Definition



ACTECON's latest publications (https://www.actecon.com)

The Information You Have Requested Cannot Be Reached at the Moment: The Regional Administrative Court Upheld the Board's Decision Imposing Fines on Five International Banks for Not Providing the Requested Information

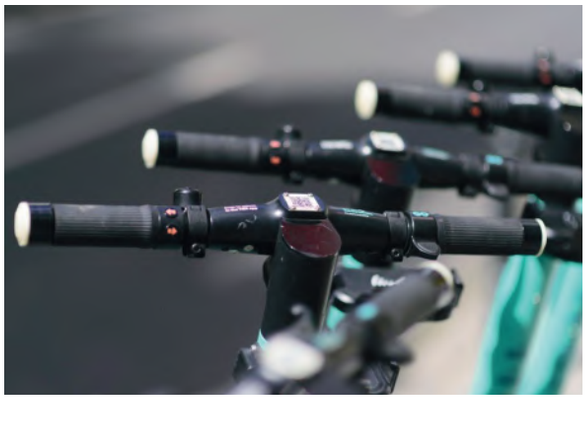
TCA Imposed Interim Measures on Krea

The Ankara 13th Administrative Court Rules for the Annulment of Turkish Competition Authority's Cartel Decision Due to Failure of Standard of Proof (Kronospan)

Adidas Cleared of Allegations Regarding Resale Price Maintenance and Discrimination

First Decision by the TCA to Impose Fine to the Labour Market!

Be Warned! TCA Fines Türkiye's Leading Electric Scooter Rental Company For False and Misleading Information (MARTI)



New Regulation on Waste Electrical and Electronic Equipment Was Adopted

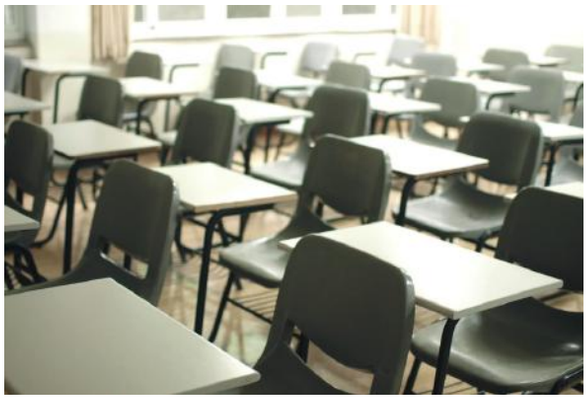
Anti-Dumping Measures Which Are to Expire in 2023 and What Kind of Connotations This Might Have on Interested Parties

The Turkish Competition Authority Published Mergers and Acquisitions Overview Report for 2022

Continuation of Anti-Dumping Measures Concerning The Baby Carriages and Parts of Baby Carriages

Two Edges of Europe Cross Lines: The CMA Fines BMW AG for Failing to Comply with an Information Request

Private Schools' Practices Are Under the Scrutiny of Turkish Competition Authority



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ACTECON is a corporately governed firm combining competition law, international trade remedies and regulatory affairs. We offer effective strategies from law & economics perspective, ensuring that strategic business objectives, practices, and economic activities comply with competition law, international trade rules and regulations.