The Output

QUARTERLY BULLETIN

3rd Quarter 2018

ACTECON

The EC Approves Apple/ Shazam Concentration With a "Data Protection" Reservation

The Google Saga: Its Turkish Chapter

Mercedes-Benz Cleared of Alleged Abuse of Dominance in Turkey

Anti-dumping Measures on Vulcanized Rubber Thread and Cords From Thailand Will Remain in Force

The (Liner Shipping) Consortia Block Exemption Regulation is Open to Feedback in the EU

The TCA to Further Investigate Red Bull's Activities

Turkey's Personal Data Protection Board Released Three New Decisions

The Google Saga: Its Turkish Chapter

*Following the investigation initiated in 2017, on 20 September 2018 the Turkish Competition Authority **("TCA")** imposed a $15 million fine on Google for violating the Law on the Protection of Competition **("Turkish Competition Law")**. This follows a similar ruling in the EU in July 2018 in which Google was fined $5 billion - the largest ever fine levied on a single undertaking.*

The TCA found that Google abused its dominance in Turkey via (**i**) abusive practices concerning the supply of its mobile operating system and mobile applications/services and (**ii**) the agreements made between Google and OEMs.
The TCA has in recent years taken a forward leaning position by going after firms abusing their dominant market position. The fast-changing online market is among the priority scrutiny areas.

Mercedes-Benz Cleared of Alleged Abuse of Dominance in Turkey

On 27 August 2018, the TCA concluded its investigation of whether Mercedes-Benz Türk A.Ş. abused its dominance and thus violated Article 6 of the Turkish Competition Law by means of its agreements with concrete pump producers and discount systems offered to them.

The TCA decided that Mercedes-Benz did not violate Article 6 of the Turkish Competition Law; thus, no administrative fines were imposed on the said undertaking.
The reasoned decision will be available later; it can be appealed before the Ankara Administrative Courts.

The TCA to Further Investigate Red Bull's Activities

The TCA concluded its preliminary inquiry conducted in response to the claim that Red Bull Gıda Dağıtım ve Pazarlama Tic. Ltd. Şti. violated the Turkish Competition Law by means of de facto exclusivity and resale price maintenance.

After discussing the information and documents acquired and observations made in the preliminary inquiry in its meeting of 18 July 2018, the TCA concluded that the findings were significant and sufficient, and decided to initiate an investigation into the company's practices.

The TCA Investigates Novartis and Alcon for Abuse of Dominance in Pharmacy Sector

On 19 July 2018, the TCA reported that it has launched an investigation into allegations that Novartis has been abusing its dominant position in the market by refusing to supply and preventing competition in the wholesale market in the pharmacy sector.

The TCA concluded its preliminary inquiry in relation to whether Novartis Sağlık Gıda ve Tarım Ürünleri San. ve Tic. A.Ş. (**"Novartis"**) violated Article 6 of the Turkish Competition Law, which prohibits abuse of dominant position in the market. A complaint submitted to the TCA alleged that Novartis has been (**i**) abusing its dominant position in the market by refusing the supply to the complainant, and (**ii**) preventing competition in the wholesale market in the pharmacy sector by preventing co-operative pharmacy warehouses from selling to other pharmacy warehouses.
In its decision No: 18-20/349-M, the TCA confirms that its preliminary inquiry yielded sufficient evidence to launch an investigation against Novartis and Alcon Laboratuvarları Ticaret A.Ş.

The EC Approves Apple/Shazam Concentration With a "Data Protection" Reservation

*The European Commission **("EC")** unconditionally cleared Apple's acquisition of Shazam on 6 September 2018 following an in-depth investigation. The transaction concerns the digital music streaming market. Since it involves commercially sensitive data, the decision does not release companies from respecting data protection laws. Similar to the WhatsApp/ Facebook deal, the transaction did not meet the European Union Merger Regulation **("EUMR")** financial thresholds, but the EC had jurisdiction to review the case upon the referral request from several EU member states.*

Apple (music streaming service) and Shazam (music recognition application) offer complementary services and do not compete with each other. The main concern was in relation to Apple's access to commercially sensitive data about its competitors' customers for the provision of music streaming services: in particular, whether the acquisition would allow Apple to directly target its competitors' customers and encourage them to switch to Apple Music.

The EC's investigation (including feedback from key market players in the digital music industry) alleviated its concerns. The EC found out that the merged entity would not be able to shut out competing providers by gaining access to commercially sensitive information about its competitors' customers. As a result, competitors would not be in a disadvantageous position. The integration of Shazam's and Apple's datasets on user data would not confer an advantage to the merged entity since Shazam's data is not unique, and Apple's competitors can obtain and use similar databases. The clearance decision is subject to compliance with all relevant data protection laws.

The case is a great example of the peculiarities of mergers in the world of Big Data: such concentrations very often do not meet the financial thresholds under the EUMR; however, due to the importance of such transactions for the overall EU market, they are normally referred to the EC by national competition authorities. Additionally, the competition authorities are reluctant to consider data protection issues as part of the general concentration assessment, but they do "throw a ball" to the side of the parties concerned by stating that the clearance decision is subject to compliance with all data protection rules.

The EC Clears Wind Tre/Hutchison Deal Subject to 2016 Structural Remedies

On 31 August 2018, the EC conditionally approved Hutchison's acquisition of sole control of Wind Tre. Hutchison will remain responsible for fulfilling the conditions (structural remedies) of the EC's 2016 decision clearing the establishment of Wind Tre by the third and the fourth largest operators in the Italian retail mobile market. No additional competition concerns were identified, hence no additional remedies were needed.

The EC's 2016 decision clearing incorporation of Wind Tre

Wind Tre was established in 2016 from the combination of the activities of VimpelCom's (now VEON) subsidiary WIND with those of Hutchison's subsidiary H3G. The EC's concerns that Wind Tre would reduce competition in the Italian retail mobile market were fully addressed by structural remedies offered by the parties (allowing entrance of the French Iliad on the Italian market), the implementation of which is still ongoing.

The EC's 2018 decision

The 2018 decision concerns Hutchison's acquisition of a sole control over Wind Tre. The EC concluded that the transaction would not alter the competitive situation in the market, no additional competition concerns were identified, and hence no additional remedies were needed.

The 2016 conditions are still being implemented and the EC concluded that, should this cease to be the case, the new transaction would raise the same concerns identified by the EC in its 2016 clearance decision. Hutchison offered to assume full responsibility for complying with the commitments submitted in 2016. Hence, the 2018 decision is conditional upon full compliance with the commitments.

The Turkish Competition Authority to Reinvent Effects Doctrine in Pharmaceutical Industry: Roche Decision

Introduction

On 27 September 2018, the TCA published its decision[1] concerning the allegations that Roche Müstahzarları A.Ş. (**"Roche"**) had violated articles 4 and 6 of the Turkish Competition Law. Within this scope, the TCA re-evaluated whether (**i**) Roche's agreement with a pharmaceutical wholesaler, Co-Re-Na Ecza Deposu Dış. Tic. Ltd. Şti. (**"CORENA"**), which imposed an export ban on the buyer and (**ii**) its alleged interference with other wholesalers for interrupting their supply of goods to CORENA is in accordance with the law. This decision is crucial as it will shed some light on the TCA's approach towards export ban clauses. As will be explained below, the TCA insisted on its previous conclusion that the export ban in the agreement falls out of the scope of the Competition Law. The details of TCA's reasoning will only be made public when the reasoned decision of the TCA is published.

A Brief History of the Case

The TCA first initiated a preliminary inquiry to analyse CORENA's claims lodged against Roche, which simply indicated that the articles 4 and 6 of the Competition Law has been violated. CORENA alleged that Roche refused to sign a supply agreement with CORENA, in connection with its refusal to remove the export ban in the agreement, despite the objection made by CORENA. The allegations further pointed out that Roche prevented its other wholesalers from dealing with CORENA.

The TCA concluded that there were no legal grounds to initiate a full-fledged investigation based on these allegations in light of the evidence obtained during the preliminary inquiry[2]. Upon the TCA's decision, CORENA filed an appeal before the Turkish Council of State. In 2016, the Turkish Council of State annulled TCA's decision on the grounds that it contradicts with the Competition Law and thus the TCA was required to make a re-run of the previous case[3]. Following the decision adopted by the Council of State, the TCA has initiated an investigation which it has recently concluded. As the reasoned decision to be published later, the TCA decided that Roche's behaviour put under the scope via allegations, could not be deemed as a violation of the Competition Law and thus Roche shall not be required to pay any administrative fine.

Merits of the Case

When the allegations were first brought before the TCA in 2010, the merits of the case were scrutinized under the following topics:

(**i**) the export ban clause included in the purchase agreement for pharmaceutical products between Roche and CORENA, and

(**ii**) Roche's interference to other suppliers (i.e. other wholesalers) for restricting CORENA's capability to supply.

With regards to the first point set forth by the TCA, the clause restricting exports in the supply agreement was not considered to fall within the scope of the Competition Law. In its assessments, the TCA indicated that the export ban in question did not affect the Turkish pharmaceutical market as the agreement merely prevented the sales of goods abroad and thus only affected the markets outside of Turkey. Pursuant to the *"effect doctrine"* set forth in the Competition Law[4], territorial applicability of the Law is limited with conduct that affects any relevant market within Turkey.

A re-sale restriction, which only prohibits the buyer from exporting the relevant goods, falls outside of the

Competition Law's scope per the effect doctrine, since it only isolates the foreign markets from competitive restraint that the sales of goods in question could have exposed in the absence of such restraint. Nevertheless, this is not the case for export bans that prevent the reseller to conduct sales to customers within Turkey who may then export the goods in question (***i.e.*** indirect export bans). For instance, the TCA distinguishes between direct and indirect export bans as in its Takeda Decision[5], indicating that a direct export ban prohibits a buyer from exporting a given product, whereas indirect export bans disable the buyer from selling such product to a purchaser in Turkey with a potential to export afterwards. Pursuant to this two-pillared approach adopted by the TCA[6], a direct export ban falls outside of the Competition Law's scope, whereas an indirect export ban is within its scope and it may only be valid in case it satisfies the conditions for an individual exemption set forth in the Article 5 of the Competition Law.

In its 2010 decision, the TCA held that the export restriction in the agreement should be deemed as a direct export ban even though the wording of the clause was not unambiguous[7]:

> *"Therefore, it is not possible to undertake direct or indirect sales (exportation, etc.) of the products sold to the warehouse by Roche, to the countries outside the Republic of Turkey and/or to the persons and institutions located in such places or to release such products outside the territory of the Republic of Turkey by different means with commercial purposes."*

The TCA particularly underlined that the relevant clause only prohibits Roche's customers' sales of Roche products outside of Turkey and that it does not include any restrictions as to their sales to customers or regions within Turkey.

With regards to the second allegation, the TCA concluded that the mere refusal of CORENA's purchase request by other wholesalers do not constitute sufficient evidence to establish a violation. The TCA indicated that a violation would be proven only if the wholesalers' refusal could be associated with either the clause restricting exports, or the *de facto* pressure imposed by Roche. Upon further examination and based on the information received from the wholesalers that were pointed out in the allegations of CORENA, the TCA determined that it was not possible to establish a causal link between the agreements or Roche's conduct and wholesalers' refusal to deal with CORENA.

Opinion of the Turkish Council of State and the TCA's Contrasting Approach

The Turkish Council of State has annulled the decision of the TCA, indicating that the alleged conduct could affect Turkish markets and thus the allegations shall be assessed in light of the evidence obtained throughout the case and further elaboration of findings within the scope of an investigation was necessary. The reasoning of the Council of State was as follows[8]:

> *"(…) when the scope of the Law is considered, it is evident that the allegations included in the application regarding the complaint of the plaintiff would have effect in the Turkish market, and with regards to the other allegations, that the evidence provided by the plaintiff enclosed to its letter of complaint shall be evaluated in detail, acutely."*

The critical issue with respect to Council of State's foregoing assessment is that it does not specify whether it deems that direct export bans may affect Turkish markets or the relevant clause in Roche's distribution agreements include an indirect export ban.

The outcome of the TCA's investigation, which was initiated following the Council of State's decision was long awaited as it could finally show how the TCA interpreted Council of State's remarks and it could clarify how the TCA determines whether a certain restriction constitutes a direct or an indirect export ban. The short decision of the TCA lacks any detail whatsoever and it only states that the TCA did not find a violation.

The reasoned decision would clarify how the TCA reached this conclusion. There are two alternatives depending on TCA's interpretation of Council of State's decision.

If the TCA considered that the Council of State had disagreed with its position that the relevant clause did not include an indirect export ban, the reasoned decision will probably include an individual exemption analysis with respect to the indirect export ban imposed by Roche. The established precedents of the TCA show that it generally grants individual exemptions to indirect export bans in the pharmaceutical industry[9]. This is the most likely outcome and would come as a relief.

If, on the other hand, the TCA considered that the Council of State had disagreed with its position that a direct export ban is outside the scope of the Competition Law, the reasoned decision would be the first of its kind where a direct export ban is deemed to be within the scope of the Competition Act and is subjected to an individual exemption assessment. If this unlikely scenario is realized, this could potentially have significant impacts not only on the pharmaceutical industry but on many other industries as well since direct export bans are extremely common in Turkey.

To sum up, the short decision did not eliminate the current uncertainty concerning the evaluation of direct export bans under Turkish competition law. Although the chances of seeing an unexpected decision is very low, the suspense still remains due to the high stakes.

1 Decision of the TCA dated 26.09.2018 and numbered 18-34/577-283.

2 Decision of the TCA dated 17.06.2010 and numbered 10-44/785-262.

3 Decision of the Council of State numbered E. 2010/4617, K. 2016/4241.

4 The effects doctrine is founded by the Article 2 of the Competition Law, which reads as the following: *"This Law covers all agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Turkey; abuse of dominance by dominant undertakings in the market; any kind of legal transactions and behavior having the nature of mergers and acquisitions which may significantly decrease competition; and transactions concerning the measures, observations, regulations and supervisions aimed at the protection of competition."*

5 Decision of the TCA dated 03.04.2014 and numbered 14-13/242-107.

6 Decision of the TCA dated 03.04.2014 and numbered 14-13/242-107, para 28.

7 Decision of the TCA dated 17.06.2010 and numbered 10-44/785-262, para 70.

8 Decision of the Council of State numbered E. 2010/4617, K. 2016/4241, p. 8.

9 Decision of the TCA dated 05.02.2015 and numbered 15-06/71-29.

The EC Fines Asus, Denon & Marantz, Philips and Pioneer for Price-Fixing

On 24 July 2018, the EC fined Asus, Denon & Marantz, Philips and Pioneer EUR 111 million for imposing fixed/minimum resale prices on their online retailers. The fines were reduced by 40-50% due to active cooperation by the companies with the EC and their express acknowledgement of the infringements of EU competition law.

The companies' use of resale price maintenance (**"RPM"**) restricted the ability of their online retailers to set their own prices for consumer electronics products (e.g., notebooks, displays, headphones, speakers, kitchen appliances, coffee machines, vacuum cleaners, home cinema and video systems, electric toothbrushes, hair dryers and trimmers). Those retailers who offered the products at lower prices were faced with threats or sanctions (e.g., blocking of product supplies). The four companies effectively tracked price decreases with the help of special software. Once a deviation from the minimum resale price was detected, the companies intervened and requested price increases. All of this limited price competition among online retailers and resulted in higher prices for consumers. The anticompetitive practices had been in place since 2011.

All four companies cooperated with the EC by providing evidence with significant added value and by expressly

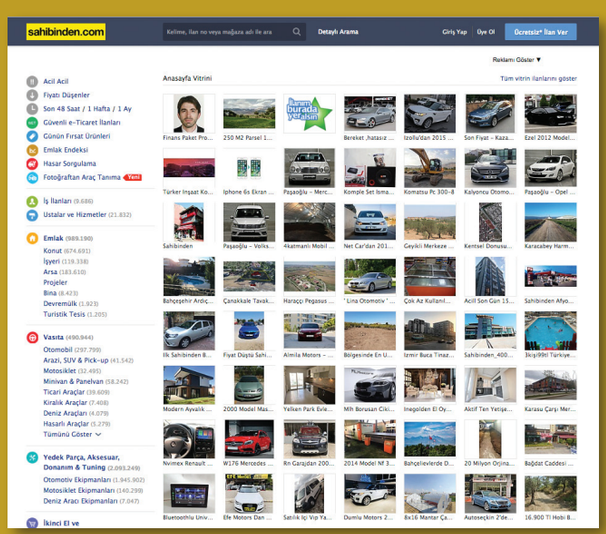
acknowledging their infringements of EU competition law. The EC therefore granted reductions in the fines depending on the extent of this cooperation ranging from 40% (for Asus, Denon & Marantz and Philips) to 50% (for Pioneer).

According to the EC, RPM restrictions are among the most widespread restrictions of competition in e-commerce markets.

Any person affected by the anticompetitive behavior may bring action for damages before the national courts of EU member states and claim compensation.

Excessive pricing in online markets as an abuse: **The TCA vs. Sahibinden**

The Turkish Competition Authority (**"TCA"**) fined Sahibinden.com (online platform service provider) approx. EUR 1,525,801 for excessive pricing. The TCA initiated two full-fledged investigations against Sahibinden.com back in 2017. Consequently, the TCA concluded on 1 October 2018 that Sahibinden.com has been in dominant position in the markets for (**i**) online platform services for real estate sales/rental and (**ii**) online platform services for vehicle sales, and it has been abusing its dominant position in the relevant markets via excessive pricing.



The question of excessive pricing as an abusive practice has been notoriously complex and competition authorities refrain from interfering in such cases normally. One of the main reasons for non-intervention of the competition authorities in such cases is the difficulty in evaluating what constitutes excessive. This is confirmed by a limited case law and practice currently in place. Some jurisdictions, e.g. the USA do not consider conduct of undertakings with market power which merely exploit customers as an infringement of law at all. Turkey follows the EU approach where excessive pricing is regarded as one of the practices that may be prohibited if practiced by a dominant company (indirectly via "unfair pricing" concept under Article 102 of the Treaty on Functioning of the EU (**"TFEU"**). Specific parameters for establishing the excessive prices as a violation of the EU competition law were first determined by the Court of Justice of the EU (**"CJEU"**) in the United Brands Case 27/76 back in 1978. This test has been frequently applied by the EC, as well as confirmed by the CJEU in its AKKA/LAA judgement dated 14 September 2017. The reasoned decision of the TCA on Sahibinden is expected to be published within the next months. It is very much awaited since it (hopefully) will provide detailed explanation of the issues of the dominant position and excessive pricing in online platforms and clarify the TCA's respective approach.

The EC's In-Depth Investigation into Possible Collusion Among German Car Manufacturers on Clean Emission Technology

On 18 September 2018, the EC opened a full-fledged investigation regarding the possible collusion among the German car manufacturers (BMW, Daimler, Volkswagen, Audi, and Porsche) known as the "Circle of Five". It will be examined whether these manufacturers entered into illegal agreements concerning the technological development of passenger cars, which may have denied consumers the opportunity to buy less polluting cars, despite the technology being available to the manufacturers.

"Circle of Five" case

The EC will carry out a full-fledged investigation to assess whether BMW, Daimler, and VW (Volkswagen, Audi, Porsche) colluded to restrict competition on the development and roll-out of the emission control systems for cars. The investigation primarily focuses on information illustrating that the companies participated in meetings where they discussed collectively limiting the technical development or preventing the roll-out of technical devices. Although the current investigation deals only with certain emissions control systems, the EC notes that, various other technical topics were discussed by the companies, including common quality requirements for car parts, common quality testing procedures or exchanges concerning their own car models that were already on the market, maximum speed at which the roofs of convertible cars can open or close and at which the cruise control will work. However, the EC concluded that there was no sufficient indication to merit further investigation on the ground that these discussions between the companies constituted anti-competitive conduct.

In addition, the EC notes that it has no indications so far, showing that the companies coordinated with each other in relation to the use of illegal defeat devices to cheat regulatory testing.

Similar case of truck manufacturers

Anti-competitive agreements concerning emission standards compliance is not a new topic in EU competition law. In 2016, the EC imposed fines totaling €2.93 billion on four truck producers, which is the highest fine imposed on members of a cartel. The EC concluded that MAN, Volvo/Renault, Daimler, Iveco, and DAF were parties to an anti-competitive agreement that lasted for 14 years in the market for the manufacturing of medium/heavy truck. In 2017, the EC also fined Scania €880 million for participating trucks cartel, since Scania decided not to settle this cartel case with the EC, in 2016. The EC had found that; (**i**) coordinating the timing for the introduction of emission technologies for medium and heavy trucks to comply with the European emissions standards (from Euro III through to the currently applicable Euro VI) and (**ii**) collectively determining how the costs for the emissions technologies required to meet the European emissions standards (from Euro III through to the currently applicable Euro VI) to be passed on to customers were among the subjects of the anticompetitive agreement.

The EC emphasized the said decision's importance, as it reveals the need for a functioning competitive market to promote the development and dissemination of cost-efficient low-emission technologies, which is one of the elements of the upcoming European Strategy for low-emission mobility.

European emission regulations

European emission regulations that are commonly referred to as Euro I, II, III, IV, V and VI, were originally introduced by the Directive 88/777EEC and were followed by several amendments. The first EU standard, known as Euro I, was introduced in 1992. In 2013, Euro VI emission standard came into force by Regulation 595/2009. The aim of clean emission technology is to reduce the levels of harmful exhaust emissions and to make passenger cars less damaging to the environment.

Concluding remarks

The recent investigation initiated against the Circle of Five and the exorbitant fine imposed on the truck manufacturers show that the EC is quite sensitive when it comes to competition concerning the implementation and progress of environmental technologies which are closely related with public welfare. This investigation should be a reminder that the competition authorities are not only concerned with the sales activities and expect companies to act independently of their competitors in every aspect of their business from compliance to human resources.

The (Liner Shipping) Consortia Block Exemption Regulation is Open to Feedback in the EU

On 27 September 2018 the EC announced the call for comments on the legal framework exempting liner shipping consortia from the EU competition law, i.e. the Consortia Block Exemption Regulation No 906/2009 (BER).

The EU competition law prohibits agreements between undertakings that restrict competition. At the same time, the Consortia BER, under certain conditions, allows shipping lines (with a combined market share below 30%) to enter into consortia, i.e. cooperation agreements with a view to providing joint cargo transport services.

The Consortia BER expires on 25 April 2020, and the EC has launched the consultations to assess the effectiveness of the documents and its future. Shipping companies, shippers, freight forwarders, port operators and their respective associations are invited to express their views on the BER by 20 December 2018.

Anti-dumping Measures on Vulcanized Rubber Thread and Cords From Thailand Will Remain in Force

The Turkish Ministry of Trade ***("Ministry")*** *on 8 September 2018 decided that the current anti-dumping measures against vulcanized rubber thread and cords from Thailand will remain in force. The case is a reminder that companies may benefit from cooperation with the Ministry by having lower antidumping duties imposed.*

In 2012, upon the complaint lodged by a Turkish domestic producer, the Ministry started an anti-dumping investigation of vulcanized rubber thread and cords under the CN Code of 4007.00 and originating from Thailand. Upon its investigation, the Ministry found that imports of the said product from Thailand to Turkey were dumped, therefore an anti-dumping duty of 8.75% was applied to the exporters. One exporter was granted by an anti-dumping duty of 4.37% since it cooperated with the Ministry throughout the investigation and submitted its answers to the exporter questionnaire. It should always be kept in mind that Turkish national legislation enables the Ministry to grant lower duties for the companies that cooperate with the Ministry.

In 2017, again pursuant to a complaint submitted by a Turkish domestic producer, the Ministry initiated an expiry review investigation into the said product. The Ministry found that the expiry of the current measures in force would likely lead to a continuation or recurrence of dumping. Therefore, the Ministry decided that the current measures would be kept in force in relation to the said imports from Thailand. Again, the cooperating exporter was granted a lower duty.

Turkey Initiates WTO Proceedings Against US Additional Tariffs

Turkey has requested WTO dispute consultations concerning additional import duties imposed by the US on steel and aluminum products (25% and 10% respectively, with the further doubling of the rate amounts). The request was circulated to WTO members on 20 August 2018.

Turkey claims that the measures are inconsistent with a number of provisions of the WTO's Agreement on Safeguards and the GATT 1994.

The request for consultations formally initiates a dispute in the WTO. Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further with litigation. After 60 days, if consultations have failed to resolve the dispute, the complainant may request adjudication by a panel of the Dispute Settlement Body.

The US is the world's biggest steel importer, while Turkey is the sixth-largest steel exporter to the US.

Export Revenues Must Now Be Brought to Turkey:
Novelties Under Communiqué on the Protection of the Value of Turkish Lira

In September 2018, to avoid further devaluation of the Turkish Lira, the Turkish government published its communiqué[1], which brings strict rules in relation to the export sales of the Turkish companies. The Communiqué is of significance since: ***(i)*** *it will cause the contracts to be redesigned in compliance with the legislation;* ***(ii)*** *exporting companies whose production depends on imported inputs will be heavily affected from the fluctuations in the currency because they will have to convert currencies multiple times as the legislation requires, and* ***(iii)*** *potential foreign investors' decisions will be affected at least to some extent.*

Obligation Regarding Export Revenues

Exporters are obliged to bring at least 80% of their export revenue to Turkey and to *sell*[2] the foreign currency to a bank operating in Turkey within 180 days. A change to the old regulation is that exporters are left with a 20% window that they can reserve abroad. The Communiqué will remain in force for six months starting from September 4, 2018.

Obligation to Reshape the Payment Methods

The acceptable payment methods for bringing the revenues are as follows: Letter of credit payment, payment against documents, payment against goods, acceptance letter of credit payment, payment against documents with acceptance credit, payment against goods with acceptance credit, and payment in cash. Customs administrations must be notified in case that the revenue is brought back by a passenger entering Turkey.

Specific Time Periods For Specific Exports

The Communiqué brought various specifications for several certain goods. These specifications consist of different time periods for certain goods. The specifications can be listed as follows:

- Export transactions in exchange of foreign currency (cash) must be realized in 24 months.
- Export revenues of contractor firms must be brought back into Turkey and sold to a bank within 365 days.
- Revenues of exports through consignment must be brought back to Turkey and sold to a bank within 180 days.
- Revenues of products that are exported temporarily must be brought back to country and sold to a bank within 90 days from expiration or date of sale in case that the products did not return in time or sold.
- Revenues of exports through leasing or credit must be brought back to the country and sold to a bank within 90 days.

Sanctions For Non-Compliance

The Communiqué states that exporters must close the export accounts after the relevant payment has been timely brought to Turkey. In case that an account is not closed, the intermediary banks must notify the Tax Offices within five days along with a statement describing the stage of transaction. Then the relevant Tax Office must issue a warning providing a 90-day period to the exporter to close the account. Time extensions may be granted to the exporters upon reasonable request or force majeure events[3]. An exporter violating the time periods shall **be fined up to 5%** of the current value of their export revenue. However, a certain period of time is allowed to the exporter following the issuance of the fine, in which the amount of fine to be paid is reduced to between TRY 3,000 and 25,000 so long as the exporter brings the revenue to Turkey.

1 Communiqué No. 2018-32/48 regarding Decree No. 32 on the Protection of the Value of the Turkish Currency dated 04.09.2018

2 The term sell used in the said Decree refers to converting the currency into Turkish Lira through banks.

3 Listed as banktruptcy, dissolution, arrangement for bankruptcy, death of the firm owner, strike, lockout, impossbility due to official decisions or banks' actions, natural disasters, war, blockade, lsos, impairment or extinhuisment of assets, lawsuits or arbitration.

Turkey's Personal Data Protection Board Released Three New Decisions

The Turkish Data Protection Authority ***("DPA")*** *in August 2018 announced three decisions that may provide guidance for freedom of the press, social media platforms, and job application processes. Interestingly, none of the decisions refers to the amount or the method of calculating the fines imposed on the concerned data controllers.*

One decision relates to the application by an individual requesting that a column in a newspaper, which gives a reference to her/his name, be deleted. In this regard, the DPA concluded that, considering the concerned individual is a *"public figure"*, the relevant column is protected under the press freedom (***i.e.*** freedom of speech), according to the Turkish data protection legislation. There, the concerned individual's request has been rejected.

Another recent decision concerns the sharing of the applicant's medical report, which is deemed one of the *"special categories of personal data"* under the Turkish data protection legislation. In its short decision, the DPA stated that the doctors involved in the treatment took photos of a screenshot (concerning the data subject's health report) obtained from the data controller's mobile application and shared them on their social media platforms. Accordingly, the DPA imposed a fine on the data controller because it failed to take all the necessary technical and organizational measures to safeguard personal data.

Lastly, the DPA imposed fines on an online human resources services company and a company group, based upon unlawful sharing of personal data of job applicants. In this regard, the DPA found that: (**i**) after the online job application made by a data subject via a platform, sharing of information about the application, name/surname, and e-mail address of the applicant with other job applicants without a legal basis constituted a violation of the obligations of a data controller under the Turkish data protection legislation; and (**ii**) transfer of personal data between the data controller companies within the same group is considered as a transfer of data to third parties and any transfer between those companies of a job applicant's data without his/her consent violates the Turkish data protection legislation.

In the light of this, it appears that the Turkish companies are having problems ensuring that all necessary technical and organizational measures are taken to provide an appropriate level of security in compliance with the Turkish data protection legislation. Furthermore, those decisions also highlight that (**i**) analyses conducted under the Turkish data protection law take into account other fundamental legal principles such as freedom of speech and (**ii**) special attention should be paid by online service providers and company groups. Consequently, it appears that, as anticipated, the DPA has become more and more complicated in each year.

Getting the Deal Through – Trade & Customs - Turkey

ACTECON authored the Trade and Customs section of Getting The Deal Through 2018, which is available at http://www.actecon.com/en-us/reports-and-publications

Getting the Deal Through – Private Antitrust Litigation - Turkey

ACTECON authored the Private Antitrust Litigation section of Getting The Deal Through 2018, which is available at http://www.actecon.com/en-us/reports-and-publications

International Trade Law Review - Turkey

ACTECON contributed to the International Trade Law Review-2018 Turkey Chapter, which is available at http://www.actecon.com/en-us/reports-and-publications

ACTECON

Çamlıca Köşkü - Francalacı Sokak No: 28 Arnavutköy - Beşiktaş 34345 İstanbul - Turkey
+90 (212) 211 50 11
+90 (212) 211 32 22
info@actecon.com www.actecon.com

ACTECON is a corporately-governed firm combining competition law, regulatory affairs and international trade remedies. 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.