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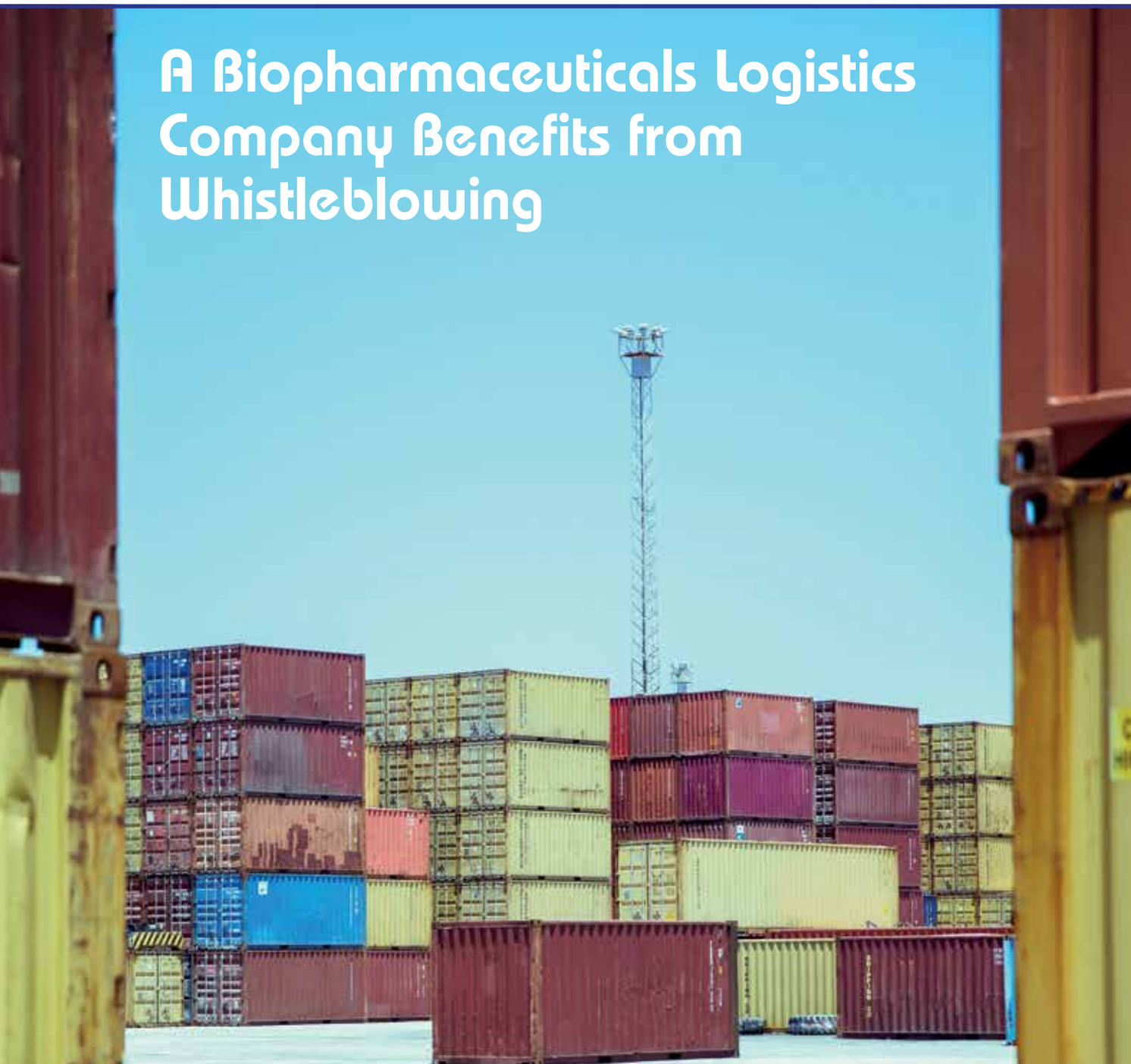

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FOREWORD

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Dear reader,

A lot has been happening in the first quarter of 2023 when it comes to competition law, regulatory and international trade. Let us brief you on some of the developments.

In Turkey, Ellon Musk was faced with a gun-jumping fine. The Turkish Competition Authority's ("**TCA**") decision in this case demonstrates one more time that it keeps a close eye on the digital markets. It is also in line with the TCA's usual practice of fining an undertaking for failure to comply with the merger control formalities, including in the case of foreign-to-foreign transactions. The TCA is willing to act ex officio where it has adequate reasons to believe that a notifiable transaction is closed without receiving its clearance, and particularly where the "technology" undertaking is involved.

No poach/no hire agreements have been under the special attention of the competition authorities worldwide. In the USA, the undertakings have been warned that such agreements would be treated as criminal violations of antitrust law. At the same time, the case law emphasizes that such agreements shall be assessed under the rule of reason standards (e.g., in relation to luxury brands and the restriction of employee mobility in the USA). In Turkey, this issue has also been in the spotlight of the TCA, with the first fines imposed on the private hospitals for the no-poaching schemes. Competition enforcement in the labour markets is likely to be strengthened, and hence employers should refrain from collaborating/exchanging information on wages, thus suppressing wages and/or reducing benefits for the employees. Additionally, a strong competition compliance policy for employees and employers is strongly encouraged.
We also witness first example of the practical application of the Towercast case-law by the Belgian Competition Authority in the investigation into a possible abuse of dominance by the telecom incumbent in the context of takeover of the broadband operator. Such development seems to be falling within the current trend/attempt of the competition authorities to address a concern related to the below-threshold transactions in the tech and pharma industries, where the killer acquisitions are very common.

We cannot leave unnoticed the proposal of the draft Directive addressing green washing/green claims in the European Union ("**EU**"). This is a positive development that is expected to finally establish common rules for companies making green claims. Once adopted and implemented, the consumers may eventually stop questioning if the "ocean-friendly t-shirts" or carbon-neutral bananas" are indeed so. Businesses should also pay attention to the newly adopted Foreign Subsidies Regulation requiring the disclosure of information on the subsidies the companies receive.

We wish you a joyful reading.

Fevzi and Bahadır

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In this issue:

Elon Musk Fined in Turkey for Failure to Notify the Twitter Deal

*Following the ex officio examination of the transaction, in March 2023, the Turkish Competition Authority ("**TCA**") decided to fine Elon Musk due to failure to notify his deal to acquire sole control over Twitter.*

The transaction should have been notified to the TCA since it met the notification thresholds under the Turkish Competition Law and the Merger Communique, particularly considering the 2022 amendments to it, which among others, introduced an exception for the "technology undertaking".[1] Twitter is a digital/online platform that qualifies for "the technology undertaking" exception; thus, there was no need to check Twitter's (Target) turnover in Turkey for the thresholds analysis. The only threshold that needed to be met for the Twitter deal was on the buyer side, globally TRY 3 billion (approx. EUR[2] 172,61 million or USD[3] 181,15 million for 2022). While assessing the transaction, the TCA must have deemed companies controlled by Elon Musk as a single economic unit and must have concluded that the buyer side notification threshold was met, thus the Twitter deal was indeed notifiable.

Following the assessment of its effects on the competition in the market, the TCA concluded that there was no significant impediment to the effective competition in the market, hence, it was approved. Nevertheless, due to the non-compliance with the merger control formalities in Turkey, the TCA imposed an administrative fine on Elon Musk/ Acquirer (at the rate of 0,1% of Elon Musk's economic unit's gross income generated in Turkey). The decision may be appealed before the Turkish court within 60 days from the notification of the reasoned decision.

The TCA's decision in this case is an important one showing one more that the TCA keeps a close eye on digital markets. It is also in line with the TCA's usual practice of fining undertaking for failure to comply with the merger control formalities, including foreign-to-foreign transactions. The TCA is willing to act ex officio where it has adequate reasons to believe that a notifiable transaction was closed without receiving its clearance.

[At the time of this publication, the reasoned decision was not available. Full article by Bahadır Balkı and Nabi Can Acar originally published by Concurrences on March 8, 2023]

[1]According to the exception, the TRY 250 million thresholds that are mentioned under the two tests of the thresholds 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. Technology undertakings are defined as undertakings active in areas of digital platforms, software and gaming software, financial technologies, biotechnology, pharmacology, agrochemicals and health technologies.

[2] The EUR figures are converted using the exchange rate of EUR 1= TRY 17.38, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

[3] The USD figures are converted using the exchange rate of USD 1= TRY 16.56, based on the applicable Central Bank of the Republic of Turkey average buying rate for 2022.

A Biopharmaceuticals Logistics Company Benefits from Whistleblowing

*On 15 February 2023, the TCA published its reasoned decision on the investigation initiated against Biopharma Logistics Uluslararası Taşımacılık Sanayi ve Ticaret A.Ş. ("**Biopharma Logistics**"), Transorient Uluslararası Taşımacılık ve Ticaret A.Ş. ("**Transorient**"), and Tunaset Biofarma Lojistik Hizmetleri A.Ş. ("**Tunaset**") further to a leniency application made by Biopharma Logistics.*

The investigation was related to the allegation that the foregoing undertakings operating in the field of biopharmaceutical logistics in the sector of qualified local and international door-to-door transportation services for the health sector had violated Article 4 of Law No. 4054 on the Protection of Competition ("***Competition Law***") by means of executing agreements to allocate customers and establishing indefinite non-compete obligations for the relevant shared customers.

Based on its evaluation, the TCA concluded that the relevant customer allocation agreements constituted a clear cartel behaviour and per se restriction of competition. The TCA indicated no buyer-supplier relationship had existed between the parties to the agreements and the competition violation subject to the complaint was not related to any merger or acquisition transaction. Since the aforementioned agreements arose from an indefinite-term competitor relationship for the future and were subject to mutual customer sharing, it was evaluated that the agreements should be considered directly within the scope of Article 4 of the Competition Law.

Although the base fine was determined based on a hard-core violation, the TCA also considered mitigating factors such as the fact that the revenue generated by Transorient and Tunaset from the relevant customers and biopharma logistics activities was low within their gross revenues, and the relevant agreements subject to the case did not affect all customers of biopharma logistics services in the relevant market. In this regard, the TCA imposed an administrative monetary fine on Transorient and Tunaset of TRY 2,918,622.95 (approx. EUR 144,343) and TRY 242,136.45 (approx. EUR 11,975) respectively. Biopharma Logistics avoided any administrative fine as the leniency applicant.

Settlement in the Baby Food Industry

*On 13 February 2023, the TCA published its reasoned decision regarding the investigation against Numil Gıda Ürünleri San. ve Tic. A.Ş. ("**Numil**"), operating in the baby food industry, which was concluded as a result of a settlement procedure.*

Numil determined the resale prices of its sales channels including discount markets, e-commerce sites, and retail and pharmaceutical undertakings. In addition, the undertaking imposed sanctions on its respective resellers, such as ceasing or reducing product supply and suspending support, in case of non-compliance with the determined prices.

Upon the TCA's consideration within the scope of the file that Numil had violated Article 4 of the Competition Law based on the relevant findings, Numil made a request for settlement. Further to the respective settlement application, the TCA decided to initiate settlement negotiations. In this regard, Numil explicitly accepted the existence and scope of the infringement, the maximum administrative fine rate and the amount stipulated in the settlement interim decision. Accordingly, it was decided that Numil's behaviour regarding the determination of the sales price of its resellers had violated Article 4 of the Competition Law.

As a result of the settlement procedure, the undertaking was imposed an administrative fine of TRY 48,521,080 (approx. EUR 2,399,658) by applying a 15% discount on the fine to be imposed on the gross revenues of 2021.

The TCA's Effect Analysis Report

*On 27 January 2023, the TCA published the Effect Analysis Report ("**Report**") covering 2021 and 2022, which includes evaluations of the economic effects of the TCA's decisions within the relevant period on consumer welfare.*

Within the scope of the Report, 48 decisions were analysed covering the period of 2021-2022. It is found that TCA ruled that the actions subject to investigations constituted a violation in 43 decisions, 37 of which were related to resale price maintenance through cartel and similar agreements, and six of which were related to abuse of dominance. Moreover, the TCA cleared 5 merger/acquisition transactions under certain conditions to eliminate possible anti-competitive effects.

The Report includes calculations under two different scenarios, one of which is conservative and the other being in line with the methodology suggested by the OECD. Based on the OECD approach, it is calculated that the total contribution to consumer welfare for the relevant two-year period was TRY 134.6 billion (approx. EUR 6,66 billion) and the average annual contribution was TRY 67.3 billion (approx. EUR 3.33 billion).

The Report demonstrates the economic effects of the TCA's activities as well as evaluates the compliance of its decisions in accordance with the principles of transparency and accountability. It also sets forth that the estimated average annual benefit and total benefit corresponds to approximately 7.7 per thousand and 1.5 per cent of Türkiye's gross domestic product, respectively.

Fines for Hindering On-Site Inspection: This Time for the Cosmetics Industry

*On 23 January 2023, the TCA decided to impose administrative fines on L'Oréal Türkiye Kozmetik Sanayi ve Ticaret A.Ş. ("**L'Oréal**") and Naos İstanbul Kozmetik San. ve Tic. Ltd. Şti ("**Naos**") for hindering on-site inspections.[4]*

In June 2022, the TCA decided to conduct a preliminary inquiry into the allegation that undertakings operating in the cosmetics and personal care products industry had violated Article 4 of the Turkish Competition Law by imposing resale price maintenance and online sales restrictions on their resellers. On-site inspections were conducted at the Naos premises, one of the parties to the preliminary inquiry. In the first of these inspections, no call records or contacts list were found on the phone of an employee who apparently did not use the WhatsApp application. The employee was asked whether he had a second phone, to which he responded that he only had one phone. Due to the suspicion arising from this situation, a second on-site inspection was conducted at the company premises, during which the TCA officials still did not find any WhatsApp correspondence on the phone in question. As a result of the subsequent cross-examinations, WhatsApp correspondence with that person was found on the mobile devices of other employees of the undertaking.

It was understood that the correspondence was made from the second phone of the employee in question, which was synchronized with his e-mail account. The said employee's claim that the phone in question belonged to his daughter was not credited. As a result, it was understood that when the relevant employee had given this phone to the TCA officials, he had inserted the SIM card into an empty phone he had not been using after the commencement of the inspection for hindering the on-site inspection.

During the on-site inspection conducted at L'Oréal, another party to the preliminary inquiry, on 13 September 2022, it was determined that two different employees had deleted messages by using the "delete from everyone" feature in WhatsApp. Although L'Oréal claimed that deletion of the said messages had occurred before the actual commencement of the on-site inspection as their employees had been unaware of the content of the inspection until the TCA officials' notification regarding whose devices they would be examining, and this notification was made after the deletion of the said messages by the relevant employees, this defence was not credited. The TCA stated that the employees had been aware of the commencement of the on-site inspection at the time of the deletion of the messages.

In addition, L'Oréal claimed that the deletion of the messages had been regarding the relevant employees' aim to recall the sent messages erroneously. However, considering the content of the correspondences deleted and their relation to the existing messages, the TCA found that the act in question had not been a reversal of an error, but rather reflected the employees' intention to hinder /complicate the on-site inspection through deleting WhatsApp messages. In this regard, the TCA decided to fine the undertakings concerned.

[4] The TCA decisions (i) dated 29 September 2022 and numbered 22-44/646-278; and (ii) dated 06 October 2022 and numbered 22-45/659-283

Dominance Proceedings against Transactions Not Caught by Merger Control Rules - Towercast Judgement

*In its landmark preliminary ruling on 16 March 2023 in Case C-449/21 Towercast, the CJEU introduced the ex post concentration control under the abuse of dominance provisions of Article 102 of the Treaty on the Functioning of the EU ("**TFEU**"). In other words, a transaction that does not reach the thresholds for review under the merger control rules may still be scrutinized post transaction in light of abuse of dominance rules.*

In essence, the CJEU clarified that a concentration which does not meet the thresholds for the ex ante concentration control rules laid down in the law of a Member State, may be assessed by the national competition authority as constituting an abuse of dominant position. The court confirmed additional review powers of the NCA to analyse the non-notifiable concentrations on the basis of the abuse of dominance rules.

Among the first examples of the practical application of the Towercast case-law is the Belgian Competition Authority. On 22 March 2023 it opened an ex officio investigation into a possible abuse of dominance by the telecom incumbent Proximus in the context of takeover of the broadband operator Edpnet. Edpnet's turnover is below the thresholds, nevertheless the abuse of dominance rules will be applied by the Belgian competition authority to review this transaction.

Such development seems to be falling within the current trend/ attempt of the competition authorities to address a concern related to the below-threshold transactions in the tech and pharma industries in particular, where the killer acquisitions are very common.

No Liability for Exclusion of Competitor: Collective Abuse of Dominance Fine Annulled for the Pharmaceuticals

*On 16 February 2023, the Paris Court of Appeal annulled the fine amounting to EUR 444 million imposed on Novartis Pharma SAS, Novartis Groupe France SA, Novartis AG ("**Novartis**"), Roche SAS, Roche Holding AG ("**Roche**"), and Genentech, Inc. ("**Genentech**") for abusive practices intending to preserve the sales of an eye drug to the detriment of another 30 times cheaper.*

The French Competition Authority imposed a fine amounting to EUR 444 million on the above-mentioned undertakings for abusing their dominance in the market for the commercialisation of drugs for the treatment of age-related macular degeneration ("AMD") in September 2020.

To treat AMD, Genentech developed a medicine called Lucentis and a drug to cure cancer entitled Avastin. During the treatments, doctors realised that Avastin also had positive effects on AMD, which led to the prescription of Avastin without marketing authorisation to treat this disease. As for price, Avastin was 30 times cheaper than Lucentis.

The French Competition Authority found that the three firms agreed to maintain the price of Lucentis while blocking the use of Avastin. In addition, it was found that Novartis had launched a communication campaign to denigrate the use of Avastin. The three firms also misled the public about the risks of using Avastin to treat AMD.

However, the Court of Appeal found that according to the law introduced in 2011, Avastin should be considered off-market for the treatment of AMD since authorisation to treat AMD had not been obtained. According to the court, the respective undertakings could not be held liable for the exclusion of a competitor since the two drugs had not been considered competitors at that time. Finally, the court found that Novartis' communication had not been denigrating and that the message spread by the three undertakings had not been alarming.

Luxury Brands Escape Anti-Competition Lawsuit Over Job Mobility Restrictions

In March 2023 the lawsuit against Saks Fifth Avenue, and the US arms of Louis Vuitton, Loro Piana, Gucci, Prada, and Brunello Cucinelli in relation to their engagement in a "no poaching" scheme was dismissed by the U.S. District Court for the Eastern District of New York.[5] The luxury brands were accused of attempt to control the wages and certain job conditions of employees in the luxury retail. The case was closed since one of the main plaintiffs in the case failed to submit a new (amended) complaint providing evidence of the adverse effect of the no hire scheme on competition market-wide.

The luxury brands were accused of agreeing not to compete for employees by not hiring luxury retail employees who had worked at Saks within six months of such employment. Restriction of job mobility may be qualified as anticompetitive under Section 1 of the Sherman Act, which prohibits agreements that act as an unreasonable restraint of trade.

The most part of the motion was dismissed by the court as it was barred by the statute of limitations. As for the no-poaching scheme, the court stated that the plaintiff failed to provide sufficient facts to support direct negative effects on competition, and the fact that the defendant held the dominant position in the market. To be considered as a competition law violation, it was important to prove that the no-hire agreements created an adverse effect on competition.

The plaintiff was granted a chance, but it failed to amend its complaint taking into account the significant developments/ case-law in relation to the no-poaching agreements. For instance, the Supreme Court's judgement in NCAA v. Alston clarified that the per se rule should be limited in the no-poaching and no-hire cases, hence urging on the importance of the assessment of the actual effects of those agreements on the competition under the rule of reason standard.

No poach/no hire agreements have been under a special attention of the competition authorities, primarily in the USA. The 2016 Guidance to the HR Professionals, issued by the DOJ and the FTC, warns that such agreements would be treated as criminal violations of antitrust law. The Turkish Competition Authority has also been interested in this issue. It has examined no-poaching agreements in various decisions (TV Series Producers[6], Private Schools[7], Container Carrier[8], and Private Hospitals.[9] The latter case is a landmark one, as it is the fist decision where the TCA fined the undertakings for the no-poaching agreements in the labour markets).

A general message to the undertakings is that the competition enforcement in the labour markets will be strengthened, and hence employers should refrain from collaborating/exchanging information on wages, thus suppressing wages and/or reducing benefits for the employees. Additionally, a strong competition compliance policy for employees and employers is strongly encouraged.

[5] *Giordano et al. v. Saks Incorporated et al., 1:20-cv-00833 (EDNY)*
[6] *Decision dated 28.7.2005 and numbered 05-49/710-195*
[7] *Decision dated 03.03.2011 and numbered 11-12/226-76*
[8] *Decision dated 02.01.2020 and numbered 20-01/3-2*
[9] *Decision dated 24.02.2022 and numbered 22-10/152-62*

Application of Surveillance to New Products

*In January 2023, the Turkish Ministry of Trade ("**Ministry**") decided to apply surveillance on the imports of certain products through Communiqués numbered 2023/2, 2023/3, 2023/4 and dated 27 January 2023, 28 January 2023, 27 January 2023 on the Application of Surveillance in Imports, respectively.*

The list of products on whose imports the Ministry decided to apply surveillance is as follows:

Surveillance is an instrument by which import trends, import conditions, and the effect of imports on the domestic industry may be observed. When the Ministry decides to implement surveillance, every country is subject to the measure. This allows the Ministry to monitor and gain a better outlook on future imports. In other words, surveillance provides warning of the types of products and the number of products that a company plans to export/import to Turkey. Companies that do not have the required surveillance documents may be obliged to pay the relevant duties and taxes by considering the respective unit customs value.

HS Codes	Description of the Product	Unit Customs Value (USD/m3)
8541.42.00.00.00	Photovoltaic cells not assembled in modules or made up into panels	60
2905.45.00.00.00	Glycerol	2.5
7019.11.00.00.00	Chopped yarns from glass fibres with a length not exceeding 50 mm.	2.5
7019.12.00.00.00	Fuses	
7019.13.00.00.00	Other yarns, ribbons	
7019.14.00.00.00	Mechanically bonded reinforcement layers	
7019.15.00.00.00	Chemically bonded reinforcement layers	
7019.19.00.00.00	Others	
7019.90.00.10.00	Fibres suitable for weaving	
7019.90.00.30.00	Felt made of glass fibres	

Regulation on the Exports and Imports of Certain Hazardous Chemicals

*On 28 January 2023, the Turkish Ministry of Environment, Urbanisation, and Climate Change ("**Ministry of Environment**") announced Regulation No 32087On Exports and Imports of Certain Hazardous Chemicals ("**Regulation**").*

The Regulation, prepared within the framework of harmonization with the EU legislation, shall enter into force on 28 July 2023. The purpose of the Regulation is to regulate the procedures and principles regarding the following:

- the application of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("Convention");
- the promotion of efforts based on shared responsibility and cooperation to protect human health and the environment from potential harm during the international movement of hazardous chemicals;
- the use of hazardous chemicals in an environmentally compatible manner;
- the facilitation of sharing information on the characteristics of hazardous chemicals;
- the dissemination, as appropriate, of national precautionary decisions, and
- final regulatory actions taken on hazardous chemicals to assist Parties to the Convention and other countries to complete their national decision-making processes on imports and exports.

Chemicals that have been prohibited or substantially restricted by the Ministry of Environment, Turkish Ministry of Health, Turkish Ministry of Agriculture and Forestry, and Turkish Ministry of Trade, and chemicals subject to the pre-notified acceptance procedure under the Convention fall within the scope of the Regulation and are listed under Annex 1 and Annex 2 of the Regulation. In this regard, if a chemical is listed in Annex 1 or Annex 2 of the Regulation or if a mixture containing this substance is subject to labelling provisions within the scope of the Regulation on Classification, Labelling, and Packaging of Substances and Mixtures published in the Official Gazette dated 11 December 2013 and numbered 28848, the chemical will be subject to an export notification procedure, regardless of its intended use on the importing side or in another country.

Moreover, the Ministry of Environment is to ensure that (**i**) scientific, technical, economic, and legal information concerning the chemicals covered by the Regulation is shared; (**ii**) the prohibitions and restrictions with regard to these chemicals are made publicly available; and (**iii**) the information regarding these prohibitions and restrictions are conveyed to the third countries. Consequently, it is evaluated that the Regulation, which was aimed at harmonization with the EU legislation, regulates the exports and imports of hazardous chemicals significantly.

Two Investigative Tools Under the New EU Foreign Subsidies Regulation Businesses Should Be Aware of

*On 12 January 2023, the EU Foreign Subsidies Regulation ("**FSR**") entered into force. It will be applicable as of 12 July 2023. This new set of rules aims to keep the EU open for trade and investment and to ensure a level playing field for all companies operating in the single market by combating distortions caused by foreign subsidies to the internal market of the EU.*

The FSR applies to all economic activities in the EU, including concentrations (mergers and acquisitions), public procurement procedures, and all other market situations. The new rules empower the EC to investigate and, if necessary, redress the distorting effects of financial contributions made by non-EU Member States to companies engaged in economic activity in the EU.

The EC is empowered with two investigative tools: ex-ante notification procedure and ex-officio investigation.

- The ex-ante notification procedure requires companies carrying out economic activities in the EU to mandatorily notify the EC. As of 12 October 2023, the following thresholds for notification will apply:

  - In the case of any merger and acquisition transactions, where (i) the acquired company, one of the merging parties, or the joint venture established in the EU generates an EU turnover of at least EUR 500 million in the previous financial year; and (ii) the foreign financial contribution involved is more than EUR 50 million in the previous three years.

  - In case of a public procurement process, where (**i**) the estimated contract value is at least EUR 250 million, and (**ii**) the foreign financial contribution involved is at least EUR 4 million per non-EU country in the previous three years.

- The EC may initiate an investigation ex officio, by examining information from any source, including Member States and EU companies, concerning external subsidies allegedly distorting the internal market.

Notified transactions and public procurements also can be subject to full-fledged investigation when deemed necessary by the EC in case of any sufficient evidence of distortive foreign subsidies. In addition, the actions subject to an investigation cannot be completed. Further to its investigations, the EC may allow or prohibit the completion of the relevant transactions or public procurement.

To summarise, the FSR constitutes a significant development that will ensure fair competition within the EU and increase transparency and accountability by requiring companies to disclose information on the subsidies they receive and allowing stakeholders to better understand the potential impact of these subsidies on the EU internal market.

The Outcome of the Expiry Review Investigation into the Imports of Baby Carriages and Only Chassis of Baby Carriages

On 6 January 2023, the Ministry concluded its expiry review investigation concerning anti-dumping duties on imports of "baby carriages"[2] and "only the chassis of baby carriages"[1] originating in the People's Republic of China through Communiqué No. 2023/1 on the Prevention of Unfair Competition in Imports.

The original investigation that constituted the basis of the expiry review investigation regarding imports of children's carriages, pushchairs, strollers, and similar vehicles for the transport of children and only the chassis originating in the People's Republic of China was concluded on 01 August 2004 through Communiqué No. 2004/15 on the Prevention of Unfair Competition in Imports. This investigation resulted in the imposition of anti-dumping measures of USD 8/piece for "baby carriages, strollers and similar vehicles for carrying children" and USD 5/piece for "only the chassis." The latest expiry review investigation, dated 23 May 2010, was concluded with the decision of redetermination of anti-dumping measures of USD 12/piece for "baby carriages" and USD 8/piece for "only the chassis of baby carriages."

With the present expiry review investigation at hand, the Ministry concluded that dumping and damage are likely to continue or reoccur if the existing measures were repealed. Therefore, it was decided to continue the anti-dumping measures of USD 12/piece for "baby carriages" and USD 8/piece for "only the chassis of baby carriages" for the products originating in the People's Republic of China.

[1] *Classified under CN code 8715.00.10.00.00*

[2] *Classified under CN code 8715.00.90.00.00*

The EU's Approach to Cookies: The Cookie Banner Task Force

*Various data protection authorities in the European Union (**"EU"**) and the European Economic Area (**"EEA"**) gathered between May 2021 and August 2022 to analyse several issues raised by complaints about the features of cookie banners and issued a report regarding these issues on 17 January 2023.*

The Report of the Work Undertaken by the Cookie Banner Taskforce ("**Report**") stated that many authorities had accepted that not providing a "reject" option on any layer with a consent button is an infringement of the E-Privacy Directive. It also stated that pre-ticked boxes did not provide consent pursuant to recital 32 of the General Data Protection Regulation ("**GDPR**")[1]: "Silence, pre-ticked boxes or inactivity should not, therefore, constitute consent" as well as to the E-Privacy Directive. Additionally, the Report underlined that withdrawing consent must be as easy as providing consent to the disposition of cookies.

The Report also determined that the subscribers of websites should not get the impression that they have to allow cookies to access the relevant websites. As "link design" could lead to this type of misunderstanding, to avoid confusion, sufficient visual support was required.

It was observed that some cookies are evaluated as "essential" or "strictly necessary" cookies but determining the necessity of cookies presents some difficulties in practice. Some controllers classify some cookies as "essential" even though these cookies can't be classified in this way pursuant to Article 5(3) of the E-Privacy Directive or the GDPR. Website owners are required to keep a list of these "essential" cookies and demonstrate their "essentiality" to the competent authorities if needed, according to the Report.

Regarding the criteria given to determine which cookies are essential, and in particular, the idea that cookies allowing website owners to retain the preferences expressed by users regarding a service, should be deemed essential, the Opinion 04/2012 on Cookie Consent Exemption was also recalled within the Report.

The report stated that some controllers deliberately put the banner in a place that leads the average users to assume that he/she has no possibility of objection to the deposit of cookies at all or they utilize colour and contrast to deceive their subscribers. However, the parties to the Report decided that as these practices cannot be deemed unlawful on their own, the matter should be evaluated considering a concrete case.

Furthermore, the Report states that additional processing of cookies would be considered lawful only if (**i**) the storing and accessing of information through cookies or similar technologies is done in compliance with Article 5(3) of the E-Privacy Directive (and the national implementing rules), and (**ii**) additional processing is carried out in accordance with the GDPR.

Consequently, the Report shed light on various issues concerning cookies; and the data protection authorities of different countries will probably consider this Report as an example for their future practices regarding the deposition of cookies.

[1]Article 32 of the GDPR: "Silence, pre-ticked boxes or inactivity should not, therefore, constitute consent"

News

On its 20th anniversary, ACTECON is proud to present the first-ever children's picture book set in the field of competition rules and ethics.

Founded in 2003, ACTECON provides advisory services in the areas of competition and antitrust. As our main goal, we strive for fair competition. Throughout years of experience in the sector, we have realised how valuable it is to introduce competition principles and ethics to our children in the early stages of their lives. So, we have teamed up with two talented artists, Naz Elkorek and Gizem Darendelioğlu, to produce our own books, The Secret Agreement and The Greatest Artist.

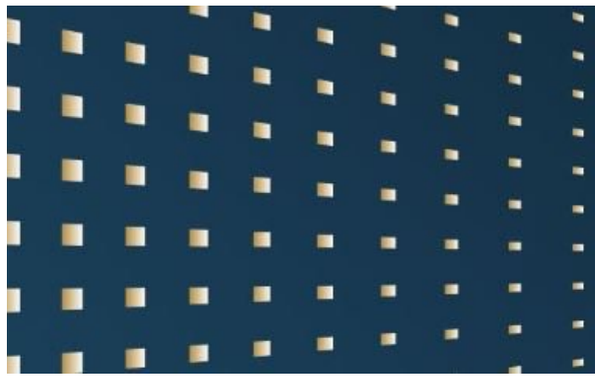
The Secret Agreement talks about anticompetitive agreements through the story of a group of animals attending skateboarding contests, while The Greatest Artist explores the abuse of dominance at a series of art competitions.

To reach more children, we will be happy to donate copies of our books to children's charities. If you would like to share our books with any charity, organisation, or school, please contact us at competitionstories@actecon.com.

ACTECON is delighted to share the teaser of the "Competition Authority's On-Site Inspections Training" prepared in cooperation with the Compliance House. In the training, we touch upon the main points with the dos and don'ts on the topic. Please visit the following link to watch it: https://www.actecon.com/en/videos-podcasts

Members of ELSA visited ACTECON's offices on Friday, March 31, 2023, as part of the Lawyers@Work event organised by ELSA, and discussed competition law with our Senior Associates, Muhammed Safa Uygur and Alper Karafil.

ACTECON contributed to The Legal 500's "Focus On", with its article titled "A New Age for Digital Markets in Turkey? The Draft Amendment to the Law No. 4054 on the Protection of Competition". The Draft Amendment primarily amends the Articles 1 and 2 of the Law No. 4054, which regulate the purpose and scope of the Law, and extends the scope of the law to cover the prohibited conducts and obligations to be imposed on the undertakings holding significant market power in core platform services to prevent them from abusing their market power. Our article takes the reader through the key definitions, obligations, and consequences of non-compliance, as introduced by the Draft Amendment.



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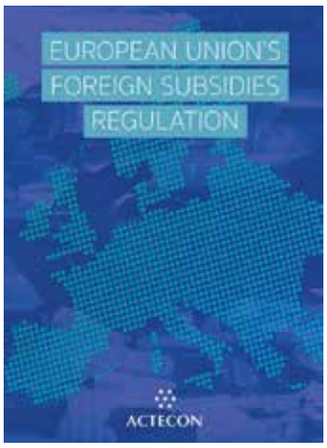
European Union's Foreign Subsidies Regulation March 2023



Filo ve rent a car
March – April 2023

Filo ve rent a car
January – February 2023

Çimento İşveren March 2023

Çimento İşveren January 2023

The Public Competition Enforcement Review
15th Edition

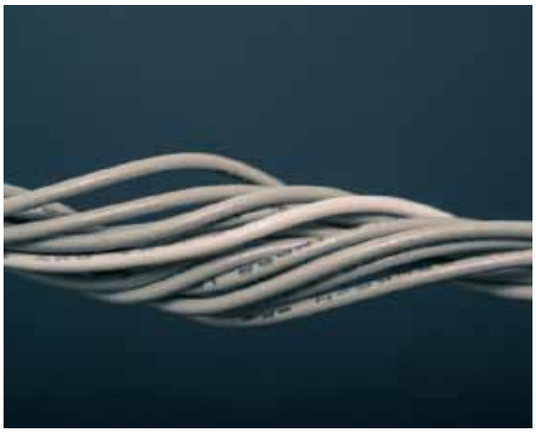
The Private Competition Enforcement Review
16th Edition

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

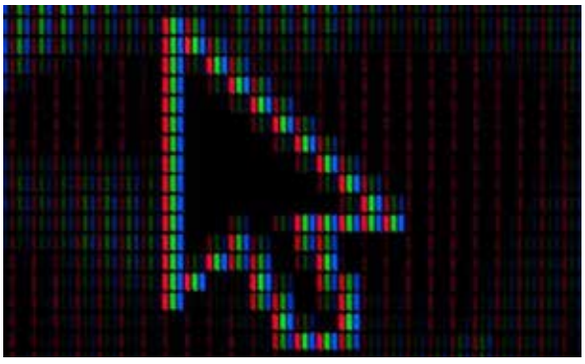
Trendyol Avoids a Full-Fledged Investigation by the Turkish Competition Authority and Gets Block Exemption

Where to Draw the Line of the Scope of Right to Access to Personal Data? The Constitutional Court Ruled on One's Right to Access Their Own Personal Data

Badmouthing—Abuse under Turkish Competition Law?



The Turkish Competition Authority Takes a Wide Interpretation of the "Technology Undertaking" Exception Applicable to the Turkey's Merger Control Thresholds



The TCA Publishes Pioneer Decisions on the Simultaneous Implementation of the Leniency and Settlement Procedures

Main Developments in Competition Law and Policy 2022 – Turkey

The Turkish Competition Authority Concluded Its Preliminary Investigation Regarding Car Rental Services Market

The Turkish Competition Authority Fines Elon Musk due to Failure to Notify the Twitter Deal

Turkish Council of State's Landmark Decision on Special Responsibility of Dominant SEP Holders and Non-Challenge and Termination Clauses

New Rules on Agricultural Research and Development Support Programme

Brief Note on the Turkish Ministry's Assessments Regarding Certain Arguments in Some of Its Trade Remedies Investigations Completed in 2022

State Aids – Does New Regulation Bring Precision?

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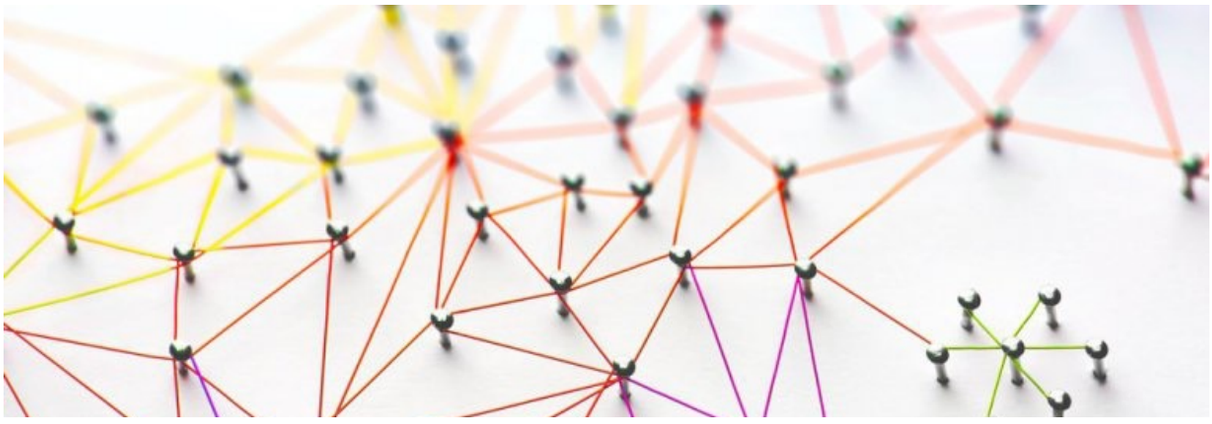
The Constitutional Court of Turkey Examined the Constitutionality of the Amendments Made in 2020 to Turkish Competition Law

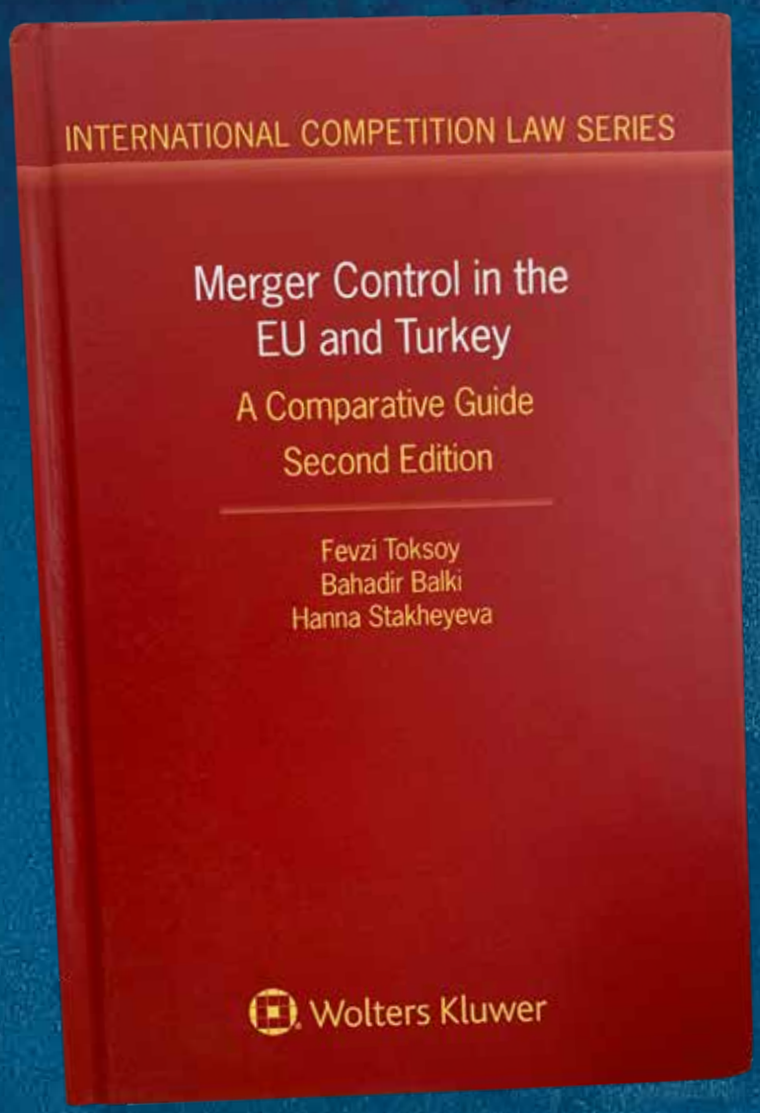
Establishment of the Rebar Monitoring System: New Obligations for Rebar Producers, Importers and Taxpayers Operating in the Construction Sector?

The New Regulation Sets Out the Framework for the Authority and Social Network Providers – Interested Parties Should Scrutinise



The Turkish Competition Authority Publishes the Final Report on the Turkish FMCG Retailing Sector Inquiry

We are pleased to present the second edition of our book "Merger Control in the EU and Turkey: A Comparative Guide"



In the run up to the EU membership, Turkey follows the EU principles in establishing, implementing and where necessary revising its competition policy. So, as expected, Turkey's merger control regime is very similar to the EU. Nevertheless, the number of the multijurisdictional mergers submitted to the Turkish Competition Authority shows the key position of Turkey at the global merger control scale.

Since 2003, ACTECON has shown a strong presence in Turkey's competition law practice. Speaking of merger control, ACTECON delicately handled filing of a multitude of transactions. These include a great number of cross-border filings as well as significant local ones. Thanks to its unparalleled expertise, sector-specific know-how and hands-on approach, ACTECON has become the firm that clients and international firms would like to cooperate in handling competition law cases.

Published by prominent legal publisher Wolters Kluwer, this book compiles our expertise. It compares substantive, procedural, and jurisdictional issues and draws parallels on their regulation in the EU and Turkish merger control regime. The updated edition covers the amendments introduced to the Turkish merger control regime between 2020 and 2022, including (i) the introduction of the SIEC test; (ii) the revised thresholds as a response to the national currency devaluation and developments in technology/digital markets, with (iii) a special threshold for the concentrations involving technology undertakings effective as of May 2022. The book supports each issue under the discussion with the case law of the Turkish Competition Authority and the courts, with most of the Turkish decisions available in English for the first time.

We hope that our book will be of value for lawyers, clients, academics, and policymakers dealing with or interested in the multi-jurisdictional merger control.

ACTECON's Story Books

A generation who learns to compete fairly means innovation and a better world!

On its 20th anniversary, ACTECON proudly presents the first-ever children's storybooks in the field of competition rules and ethics. Founded in 2003, ACTECON provides advisory services in the areas of competition and antitrust. Throughout years of experience in the sector, we have realised how valuable it is to introduce competition principles and ethics to our children in the early stages of their lives. So, we have teamed up with two talented artists to produce our own books, The Secret Agreement and The Greatest Artist.

The Secret Agreement talks about anticompetitive agreements through the story of a group of animals attending skateboarding contests, while The Greatest Artist explores the abuse of dominance at a series of art competitions. Through our two publications, we aim to give children a perspective on the concepts of competition and ethics. We also expect our colourful stories to help grown-ups develop a communication channel with children on these topics. To reach more children, we will be happy to donate copies of our books to children's charities. If you would like to share our books with any charity, organisation, or school, please do not hesitate to contact us at competitionstories@actecon.com.

Come and join Henri, Frida, Gustav, Tamara, Pablo, Hilma, Misha, Ruda, and Tata on their great adventures.

Hooray for fair play!

Testimonials

"This is a great project, I am speechless – a fantastic idea, great execution."

"The books are very well-thought, they address a strategic and essential need …"

"It is an innovative idea and an excellent work to raise awareness on competition principles starting from childhood."

"My heartfelt congratulations to you on your efforts to give a perspective to children on the notion of competition and ethics." ACTECON family is a firm striving for fair competition in the market and accordingly, they brought us together around two beautiful books to tell about competition and ethics to children."

"… Competition and unfair benefits could not have been addressed better. Great job. Many thanks."

"It is a great idea to tell children about the behaviours that may result in disputes in their future, and this idea has been put into practice by ACTECON in cooperation with Can Yayınları through these two books authored by Naz Elkorek and illustrated by Gizem Darendelioğlu"

"The books are wonderful; the theme, illustrations and print quality."

"It is a great project, the illustrations are so dynamic. To reach more children, the books are delivered free of charge to children and the institutions associated with children…"

20 Years Dedicated to Competition

ACTECON

proudly presents

A generation who learns to compete fairly means innovation and a better world!

At ACTECON, we strive for fair competition in the markets we touch upon. Throughout years of experience in the field, we realised how valuable it is to introduce competition principles and ethics to our children in the early stages of their lives. So, we teamed up with two talented artists to work on our own books.

Çamlıca Köşkü, Tekkeci Sokak No:3-5 Arnavutköy Beşiktaş 34345 İstanbul / Turkey
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Hooray for fair play!

Here, we are excited to publish our story books; *The Secret Agreement* and *The Greatest Artist*.

The Secret Agreement tells us about anticompetitive agreements while *The Greatest Artist* explores the abuse of dominance. With simplified stories, we aim to give children of age 5+ a perspective on the concepts of competition and ethics, great additions to their personal toolboxes. We also expect our colourful stories to help grown-ups in gaining a communication channel with children on these topics.

Our books are published by a prominent publisher in Turkey, Can Yayınları. If you would like to receive a copy of our books or share these with any charity, organisation or school, please do not hesitate to contact us at **competitionstories@actecon.com.**

Come and join Henri, Misha, Ruda and Tata on their great adventures!

20 Years Dedicated to Competition

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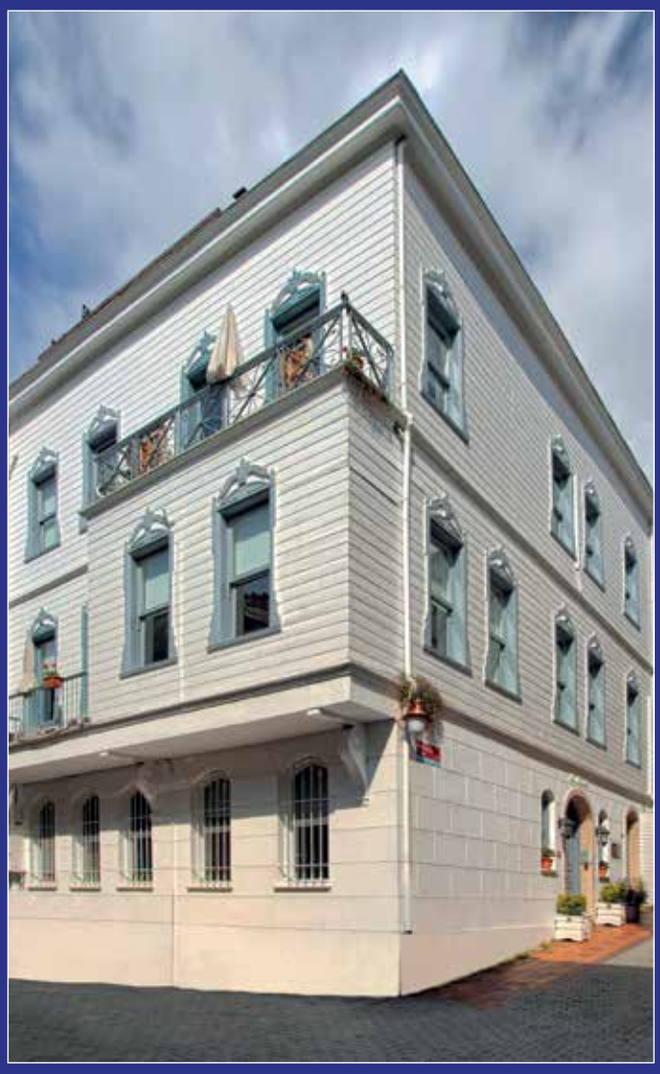

ACTECON is an advisory firm combining competition law, international trade remedies and regulatory affairs. We offer effective strategies from law & economics perspective, ensuring that strategic business objectives, practices, and economic activities comply with competition law, international trade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