The Output®

QUARTERLY BULLETIN

3rd Quarter 2023

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Dear reader,

Have you made up your mind about the Digital Markets Act ("**DMA**")? Is it a blessing or a curse? We have participated in several discussions on the DMA at international conferences and cannot but agree with the statement that the DMA is a huge experiment the consequences of which are yet to be felt and discovered. While you are deciding, the European Commission ("**EC**") has already designated several gatekeepers. The world is observing the aftermath of that, and Türkiye is considering adopting respective DMA-like amendments to its competition law. We invite you to our "In the focus" article to explore those anticipated changes in more detail.

Apart from the DMA, resale price maintenance ("**RPM**") maintains its actuality, it is timeless. In this issue we would like to update you on resale price maintenance developments in Türkiye. Several new decisions stand out as they considerably raise the standard of proof for RPM allegations and represent a significant departure from the Turkish Competition Authority's ("**TCA**") case law for about five years (albeit it does not change the TCA's position regarding its by-object approach to RPM)

We have also witnessed an interesting development in the EU in this regard. The Court of Justice of the European Union ("**CJEU**") in its preliminary ruling says to the Lisbon Court that the RPM is not necessarily a "by object" infringement. It highlighted that an agreement could not be based on a statement of a purely unilateral policy of one party, and the existence of an agreement may be established not only by means of direct evidence but also based on objective and consistent indicia from which the existence of such an agreement may be inferred.

Finally, labor markets and competition law – one more area of increased attention and scrutiny these days. Various jurisdictions worldwide, including Türkiye and the EU, have been investigating no poaching agreements, due to their impact on the mobility of workers as well as the level of wages.

Another interesting observation that follows from the decisions of the competition authorities in this regard is that labor markets are perceived broadly, i.e., even undertakings operating in different sectors may be viewed as competitors in terms of competition for labor capital.

As always, enjoy your reading and many thanks for staying with us.

Sincerely,

Fevzi and Bahadır

ISSN 2687-3702

Published by

Çamlıca Köşkü Tekkeci Sk.
No:3-5 Arnavutköy Beşiktaş
34345 Tel: 90 212 211 50 11

Editor in Chief
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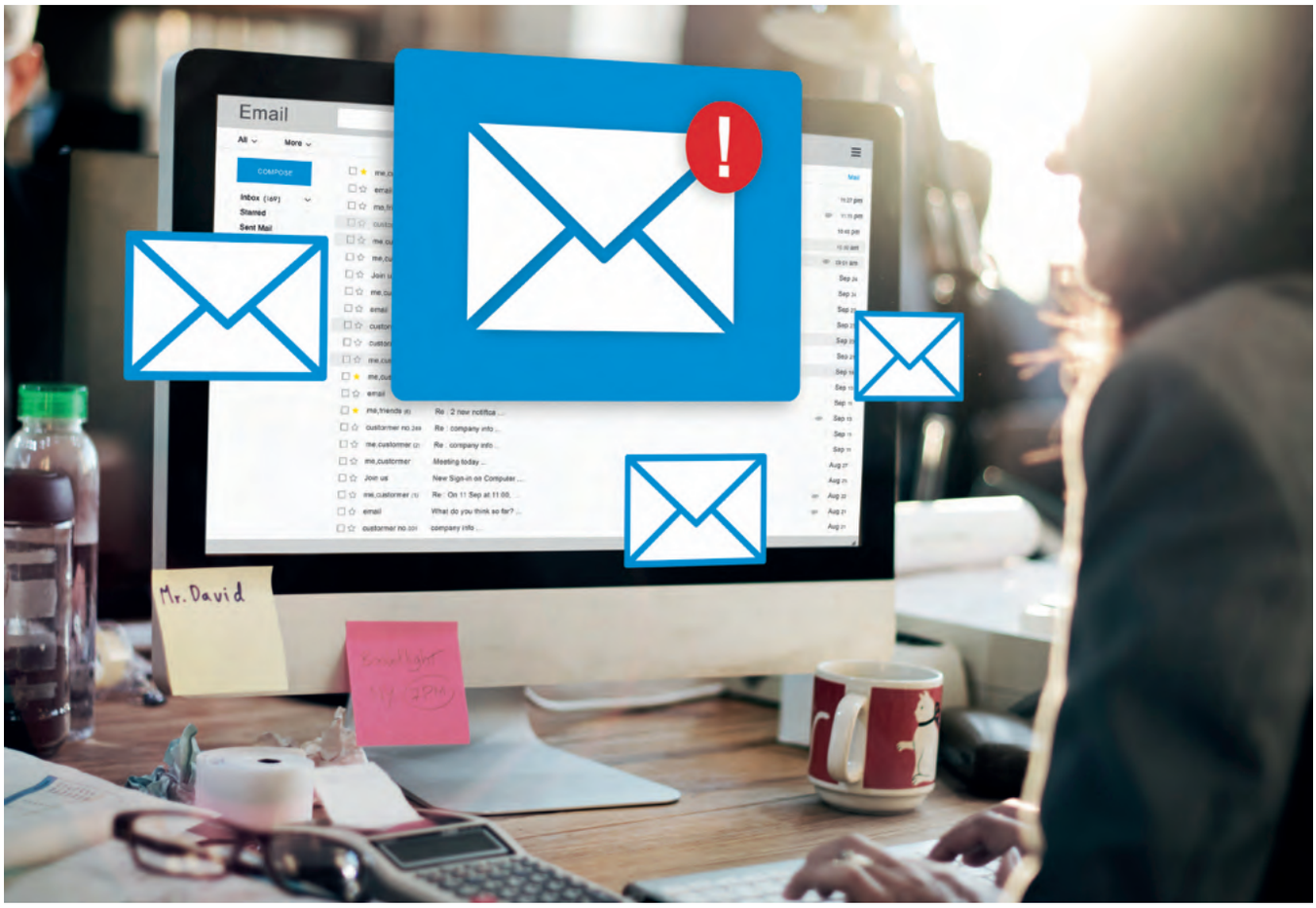
Type of Publication
Periodical

Graphic Design
BARAS MEDYA
barasmedya.com
Tel: +90 212 801 72 18

In this issue:



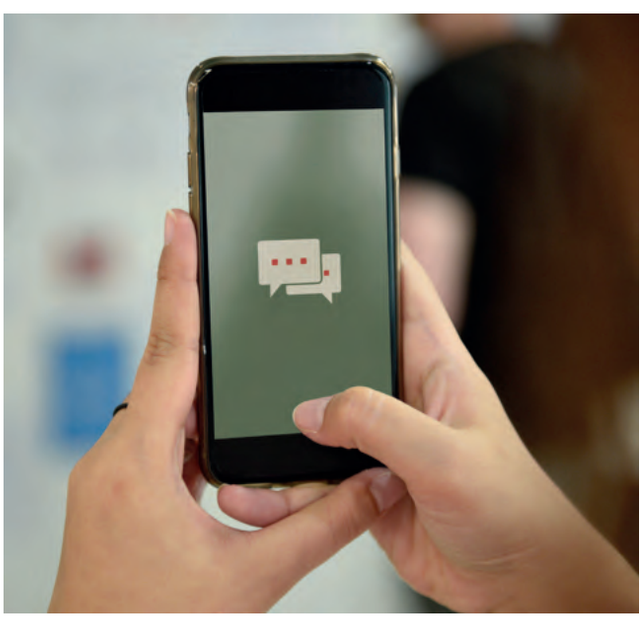
Definition of "Hindrance of On-Site Inspections" Evolves Further

In July 2023, the TCA published new decisions on the hindrance of on-site inspections. Two undertakings were fined because WhatsApp messages and/or emails were deleted during the inspection and another undertaking was hit with a monetary fine for disallowing the case team to conduct a remote inspection on a single e-mail account.

In the SDF case (22-54/835-345), one SDF employee deactivated the Whatsapp application on his work phone during the on-site inspection. The employee stated that he had two telephone lines (one specific to work and the other one specific to personal use), and both were utilized through his work phone. Moreover, he asserted that he had deactivated the WhatsApp application specific to his personal line after the on-site examination started, as the WhatsApp data of his personal line contained private information. Some of the deleted messages has been retrieved by the case handlers and it has been determined that although it was claimed that the line to which the WhatsApp application was associated to was for personal use, the chat history also contained correspondence related to the business. Hence, the relevant behavior of the SDF employee was deemed to result in hindrance of the inspection, and SDF received an administrative monetary fine.

In the Altıparmak case (23-12/180-56), the TCA detected that some employees had deleted email messages during the on-site inspection. Although the content of the deleted emails had been retrieved by the case handlers, the relevant behavior of Altıparmak's employees was deemed to result in hindrance of the inspection, and Altıparmak received an administrative monetary fine.

In the Çözüm case (22-56/878-363), it was stated by the attorney of an employee that his computer could not be examined by remote access on the grounds that the employee had personal correspondence in the device. It was evaluated by the TCA that the absence of the employee at the inspection address was not a situation which may prevent the examination. Accordingly, it was determined that the inspection was hindered, and an administrative monetary fine was issued on the undertaking.



Four Real Estate Agents in Ankara Hindered Dawn Raids

The TCA published four different decisions in which administrative fines were imposed on undertakings operating in the real estate sector in Ankara based on hindered or complicated dawn raids.

On 2 March 2023, the TCA initiated a preliminary inquiry against real estate agents, brokers, and estate consultants operating in Ankara to determine whether Article 4 of the Competition Law had been violated. Within this scope, the TCA conducted on-site inspections at the premises of Çilek Gayrimenkul Abdurrahman Altunbay ("**Çilek**") and Empa Gayrimenkul A.Ş. ("**Empa**") on 9 March 2023, and Şanal Emlak Tur. Taah. San. ve Dış Tic. Ltd. Şti. ("**Şanal**") and GBK Gayrimenkul İnşaat Araç Kiralama İletişim Prodüksiyon Reklam ve Org. İç ve Dış Tic. Ltd. Şti. ("**GBK**") on 11 March 2023.

Within the scope of the relevant on-site inspections, the following series of events occurred:

- When the on-site inspection at Çilek commenced, three real estate agents left the premises, claiming that their relative had been involved in a serious traffic accident. Further to the submission of the accident report, the TCA found that the accident had occurred approximately three hours before the on-site inspection and had not been so urgent as to necessitate leaving the premises.
- Within the scope of the on-site inspection at Empa, the undertaking owner, who is also the president of the Ankara Real Estate Agents Association (AREA), did not consent to the inspection. He claimed that such inspection, which also might involve the personal data of more than 4,000 AREA members of the relevant association, was not lawful in terms of data protection legislation and that personal devices and e-mail accounts could be inspected only as per court or prosecutor's order.
- Within the scope of the on-site inspection at Şanal, the undertaking owner refused to be present on the premises as well as the option for a remote inspection provided by the TCA experts. He claimed that the WhatsApp application associated with the relevant phone number had been installed on another device that was not readily available. Five days later, Şanal was visited pursuant to a court's order; however, an on-site inspection was hindered once again. Four days later, the relevant device was examined upon the request of the undertaking owner at the premises of the TCA.
- During the on-site inspection at GBK, a representative's phone, which was allegedly for personal use, was found to contain work-related correspondence. The TCA was refused access to the phone. Both the owner and the attorney of GBK declared that the phones could not be examined without a court order and that examination of the phones using forensic devices would not be allowed. The undertaking owner, angered being summoned to the company by telephone, shouted at the experts, and two people who joined the discussion later even made personal accusations against the experts. Pursuant to a court order five days later, both the undertaking owner and the relevant agent's phones were inspected within the scope of the on-site inspection.

In light of the foregoing, the TCA concluded that on-site inspections at the premises of the relevant undertakings had been hindered or complicated. It imposed administrative fines on Çilek, Empa, Şanal, and GBK in the amount of 0.5% of their annual turnover. However, considering that this amount would be below the lower threshold set for administrative fines, the amount was increased to TRY 105,688.00 for each undertaking. Additionally, for Şanal and GBK, the TCA imposed a periodical fine of 0.05% of their turnover for each day the completion of the on-site inspections was delayed.

Data Portability Hits Again: Sahibinden's Fines and Remedies for Abuse of Dominance

*In August 2023, the TCA concluded its investigation concerning allegations that Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret A.Ş. ("**Sahibinden**")[1] abused its dominant position under Article 6 of the Turkish Competition Law. The TCA decided to impose an administrative fine and various remedies on Sahibinden.*

As a result of the investigation, which was initiated back in September 2021, it was concluded that Sahibinden holds a dominant position in the online platform services markets for real estate sales/rental activities and vehicle sales activities of corporate members. The TCA ruled that Sahibinden makes it difficult for corporate members to use more than one platform by preventing them from transferring their data to other platforms. Also, through the non-competition obligations imposed in its contracts, it implements de facto/contractual exclusivity, thus complicating the activities of its competitors. Therefore, the TCA imposed an administrative fine of TRY 40,150,533.15 on Sahibinden for abusing its dominant position. In addition to the monetary fine, the TCA imposed the following remedies to be fulfilled by Sahibinden;

- the modification of contracts signed between Sahibinden and corporate members in a way that does not include the provisions subject to infringement,
- the establishment of the infrastructure that will enable corporate members to transfer the real estate and vehicle ads data effectively on the Sahibinden platform to competitor platforms and to keep the data contained in these ads up-to-date without any charge;
- if the corporate members who have memberships on competitor platforms request to transfer the real estate and vehicle ads data on these platforms to the Sahibinden platform and to keep the data contained in the ads up-to-date on the Sahibinden platform and the competitor platforms accept this request, Sahibinden will ensure that the requests from the competitor platforms are met uninterruptedly and effectively by establishing the infrastructure that will enable members to transfer data and keep their data up-to-date as soon as reasonably possible without delay and free of charge; and
- the submission of reports to the TCA once a year for three years.

[1] *Decision dated 17.08.2023 and numbered 23-39/754-26*

Highlights of Some RPM Investigations, Fines and Settlements

*On 17 August 2023, the TCA concluded the preliminary inquiry concerning allegations that undertakings operating in the cosmetics and personal care products sector had violated Article 4 of the Turkish Competition Law by determining the resale prices of their resellers (**"RPM"**) and restricting Internet sales and participating in a hub-and-spoke cartel. It launched an investigation, which was concluded for several undertakings involved in the preliminary inquiry, as they settled and/or offered commitments based on Article 43 of the Turkish Competition Law.*

The full-fledged investigation covered allegations that the undertakings had determined the resale prices of resellers, restricted sales through online channels, and participated in a hub-and-spoke cartel.[2] The investigation was concluded upon settlement procedure for (**i**) Ashley Joy Kozmetik Tic ve San. AŞ, (**ii**) Ege Teknoloji Kimya Mak. San. Tic. Ltd. Şti. (which also offered commitments regarding its "restriction of online sales" conduct), and (**iii**) Farmakozmetika Sağlık Ürünleri ve Kozmetik Tic. Ltd. Şti.

Earlier, on 9 August 2023 the TCA concluded resale price maintenance investigations for Arçelik Pazarlama A.Ş. ("**Arçelik**"), Samsung Electronics İstanbul Pazarlama ve Ticaret Ltd. Şti ("**Samsung**"), SVS Dayanıklı Tük. Mal. Paz. ve Tic. Ltd. Şti. ("**SVS**"), and LG Electronics Ticaret A.Ş. ("**LG**"). It was found that Article 4 of the Turkish Competition Law had been violated through resale price maintenance.

In September 2021, the TCA initiated an investigation into Arçelik, Samsung, SVS, and LG based on the allegations that they had been determining the resale prices of their resellers. With its decisions dated 3 August 2023, the TCA decided that Arçelik, Samsung, SVS, and LG had infringed Article 4 of the Competition Law by resale price maintenance. The electronic goods companies received administrative monetary fines (Arçelik, TRY 365,379,161.06; Samsung, TRY 227,161,142.04; SVS, TRY 1,984,907; and LG, TRY 33,870,305.21), based on their respective 2021 turnovers.

[2] *The undertakings concerned in this case were (i) CHI Kozmetik İthalat İhracat San. ve Tic. AŞ, (ii) Ayaz ve Ortakları Ltd. Şti., (iii) Ege Teknoloji Kimya Mak. San. Tic. Ltd. Şti., (iv) SB Grup Kozmetik AŞ, (v) Easyvit Sağlık Ürünleri Sanayi AŞ, (vi) ELCA Kozmetik Limited Şirketi, (vii) Farmatek İç ve Dış Tic. AŞ, (viii) Cevher Kozmetik ve Sağlık Sanayi Ticaret AŞ, (ix) Ğlohe Bitkisel Ürünler San. ve Tic. AŞ, (x) Kozmopol Kozmetik Sağlık Ğıda San. ve Tic. AŞ, (xi) Hamzaoğlu Kimya San. ve Tic. AŞ, (xii) L'Oreal Türkiye Kozmetik San. ve Tic. AŞ, (xiii) Neolife İthalat İhracat AŞ, (xiv) Rebul JCR Kozmetik Paz. AŞ, and (xv) Sistem Kozmetik San. ve Tic Ltd. Şti.*

Some Honey in the RPM Debate: Setting a Higher Bar for Proving RPM?

*In July 2023, three reasoned decisions on resale price maintenance were published, signaling a middle ground for the TCA's case law for future cases. Amongst these decisions, the TCA's preliminary investigation into the honey producer Sezen Gıda Mad. Tarım ve Hayvancılık Ürün. Tic. ve San. ("**Anavarza**") stands out as it considerably raises the standard of proof for RPM allegations.*

The TCA's RPM investigation against BSH Ev Aletleri Sanayi ve Ticaret A.Ş. ("**BSH**") ended without any infringement finding as the documents in the case file were not sufficiently clear to establish the existence of an RPM infringement. The correspondence seized during on-the-spot inspections did not meet the standard of proof since they were insufficient to prove an RPM conduct clearly and beyond any doubt.

Another RPM decision involved Hiksan Teknoloji Sanayi ve Ticaret Ltd. Şti. ("**Hiksan**"), the distributor in Türkiye of Mochi-brand breast pumps, with the allegations that the undertaking was interfering with the reselling prices of its resellers, particularly with respect to online sales. Numerous correspondence was discovered during the on-the-spot inspection, indicating that the undertaking corresponded with its resellers to 'correct' the reselling prices. The investigation ended with a settlement decision as the company had admitted the allegations during the investigation period and therefore a 25% discount was applied to the final amount by the TCA.

Importantly, the TCA's Anavarza Decision may represent a significant departure from its strictly formalistic case law for about five years which relied heavily on the wording included in the internal or external communications of the undertakings. In this respect, the TCA rejected the RPM allegations against a honey producer on the grounds that (i) the supplier did not show any efforts to transform the recommended shelf prices into fixed resale prices, (ii) the communication between the supplier and the reseller was only a reminder that new list prices were to be applied, (iii) the internal communications of the supplier did not prove any agreement between the supplier and its reseller, (iv) the TCA did not find any evidence that would show a pressure or threat by the supplier with respect to the enforcement of the reselling prices, and (v) there were no contractual clauses between the parties regarding RPM.

The decision adopts a considerably higher bar for proving the RPM allegation compared to the previous case law in the last five years, albeit it does not change the TCA's position regarding its by-object approach to RPM. The decision is also the first decision that the TCA recognized the Council of State's Henkel decision as a precedent.

Microsoft Announced the Upcoming Changes to Cooperate with the EC

*On 31 August 2023, 2023 Microsoft announced the separation of its communication and collaboration product "Teams" from popular suites for businesses Office 365 and Microsoft 365 to address the concerns of the European Commission ("**EC**").*

The EC initiated a formal investigation regarding Microsoft's tying or bundling of Microsoft Teams with Microsoft 365 and Office 365 suites for business customers upon a complaint by Slack. The EC stated two main concerns in its investigation: (i) customers should be able to choose a business suite without Teams at a price less than those with Teams included and (ii) Microsoft should do more to make interoperability easier between rival communication and collaboration solutions and Microsoft 365 and Office 365 suites.

In this regard, Microsoft announced some proactive steps addressing the concerns of the EC:

- First, Microsoft would sell its offerings without Teams at a lower price (EUR 2 less per month or EUR 24 per year) to Microsoft's core enterprise customers, representing most of their commercial business in the European Economic Area ("EEA") and Switzerland. Moreover, Teams will continue to be sold independently and standalone to new enterprise customers at a list price of EUR 5 per month, or EUR 60 per year. The existing enterprise customers, small businesses, and frontline workers will have options to maintain their current suite with Teams or change it to a "without Teams" version. Also, the latter group will have the opportunity to get "without Teams" option at a lower price.
- Second, considering the feedback obtained during the investigation process, Microsoft announced that they will work on allowing companies like Zoom and Salesforce to create tailored and integrated experiences across Exchange, Outlook, and Teams. In this regard, Microsoft will create new support resources to better organize and point application developers to the existing and publicly available application programming interfaces (APIs) and extensibility in the Microsoft 365 and Office 365 apps and services that connect with Teams. It also will provide additional solutions regarding how data can be removed from Teams.
- Last, to address requests from competitors of Teams that they would like to rely on Microsoft's functionality instead of building their own, Microsoft will create a new technique for hosting the Office online applications within competing apps and services.

In the announcement, Microsoft also emphasized that the investigation process is still at a very early stage, and they will be engaging with the EC to create new pragmatic solutions that benefit both customers and developers in Europe.

The EC Designates Six Gatekeepers: TikTok's Stance with 150 Million European Users

*On 6 September 2023, the EC officially designated six prominent companies as gatekeepers under the Digital Markets Act ("**DMA**"). ByteDance (the parent company of TikTok) has taken a firm stance against its designation as a gatekeeper.*

The EC is entitled to designate digital platforms as "gatekeepers" if they provide an important gateway between businesses and consumers in relation to core platform services. In this regard, the EC officially designated six companies as gatekeepers, but TikTok has taken a firm stance against its designation as a gatekeeper.

The EC also has initiated investigations into four different markets to assess Microsoft's and Apple's submissions regarding that some of their platforms (Microsoft's Bing, Edge, and Microsoft Advertising; Apple's iMessage and iPadOS) cannot be considered as gateways even if they meet the thresholds. Lastly, the EC decided not to designate Gmail, Outlook.com, and Samsung Internet Browser as core platform services as they have successfully made cases to the EC that despite meeting the quantitative criteria for gatekeeper status, they should not be classified as such, providing a degree of flexibility within the DMA framework.

At first glance, apart from TikTok, the other companies stated that they would accept the EC's conclusions and concentrate on adhering to the DMA obligations. However, Apple has voiced concerns regarding potential privacy and data security risks associated with the DMA, particularly regarding its messaging service, iMessage.

TikTok is strongly opposed to being designated a gatekeeper. The company claims that its entry into the European market was driven by the intention to challenge the established gatekeepers, such as Google and Meta, rather than to become one itself. They argue that TikTok's market value does not accurately reflect its role in the European market and express concern that this decision may hinder new competitors, like TikTok, from entering the market, inadvertently protecting the existing gatekeepers. As this regulatory landscape unfolds, it remains a topic of great interest to see whether TikTok will be able to argue effectively against its gatekeeper designation.
Companies designated as gatekeepers must fulfil requirements set out in the DMA within the next six months. By complying with these requirements, more freedom and more choices are expected to be provided to the platform users of the relevant gatekeepers.

In the announcement, Microsoft also emphasized that the investigation process is still at a very early stage, and they will be engaging with the EC to create new pragmatic solutions that benefit both customers and developers in Europe.

La Liga Applies to the EC over Qatari-owned PSG Funding: Foreign Subsidies Regulation in Action

*On 13 August 2023, La Liga, Spain's top football division, submitted a public complaint to the EC alleging that Paris Saint-Germain FC ("**PSG**") had received Qatari investment that "seriously" distorts the internal market. La Liga's complaint is the first of its kind, based on the recently implemented European Regulation on Foreign Subsidies Distorting the Internal Market ("**Foreign Subsidies Regulation**")*

La Liga announced on its website that it had applied to the Commission against PSG, which currently has the fifth-highest revenue in the football world with an annual revenue of EUR 654 million, according to Deloitte, and is the world's seventh-most valuable football club, worth over USD 4 billion, according to Forbes. PSG was acquired in 2011 by Qatar Sports Investments, which has been owned by the Qatari government.

La Liga in its statement claimed that "PSG has received foreign subsidies from the State of Qatar, which has allowed it to improve its competitive position, thus generating significant distortions in several national and EU markets."
According to La Liga, PSG obtains resources on non-market terms, which distorts several closely related markets, allowing PSG to use those foreign subsidies to sign top players and coaches well above its potential in a normal market situation. PSG has top-level footballers and coaches because of the funds of the Qatari government.

La Liga referred to the Foreign Subsidies Regulation and stated that the limitation of companies within the EU funded by foreign states mentioned in the relevant regulation also should be applied to PSG.

The EC Confirmed Its Jurisdiction Over Non-Reportable Transaction (Qualcomm/Autotalks)

*On 8 August 2023, the EC accepted the referral under Article 22 of European Union Merger Regulation ("**EUMR**") Fifteen EU Member States requested that the EC assess the proposed acquisition of Autotalks (an Israeli semiconductor manufacturer) by Qualcomm (a global US-based semiconductor manufacturer) under the EUMR. This is the second referral accepted by the EC under Article 22(1) of the EUMR in application of its Article 22 Guidance adopted on 26 March 2021. It allows a national competition authority to refer a transaction to the EC at any time, including after closing.*

The proposed concentration does not meet the notification thresholds at EU or national levels. Article 22(1) EUMR allows member states to request that the EC examine a concentration that does not have the EU dimension but may affect trade in the single market and significantly affect competition. Belgium, France, Italy, the Netherlands, Poland, Spain, and Sweden submitted initial referral requests to the EC. Czechia, Denmark, Finland, Ireland, Luxembourg, Portugal, Romania, and Slovakia joined the initial referral requests.

The EC considered that the transaction met the criteria for the referral. In particular, the transaction would combine two of the main suppliers of V2X semiconductors in the EEA. The EC asked Qualcomm to notify the transaction.
It should be mentioned that on 18 August 2023, the EC also asserted its jurisdiction over another non-reportable concentration, the acquisition by European Energy Exchange's (EEX) of Nasdaq's European power trading and clearing business (Nasdaq Power).

Not Necessarily a "By Object" Infringement: The CJEU on RPM in Super Bock Bebidas

*On 29 June 2023, CJEU rendered its decision in the Super Bock Bebidas vs. Autoridade de Concorrência (C-211/22) case regarding the questions referred by the Lisbon Court of Appeal (Tribunal da Relaçao de Lisboa, "**LCA**") on RPM. In summary, the Court highlighted that (i) RPM is not necessarily a 'by object' infringement, (ii) an agreement cannot be based on a statement of a purely unilateral policy of one party, and (iii) the existence of an agreement may be established not only by means of direct evidence but also on the basis of objective and consistent indicia from which the existence of such an agreement may be inferred.*

The Portuguese Competition Authority (Autoridade da Concorrência, "**AdC**") established that Super Bock set up and implemented certain commercial conditions to which their distributors were obliged to adhere while reselling products in Portugal. In this context, on a monthly basis, the sales department of Super Bock (i) approved a list of minimum resale prices that were conveyed to the distributors orally or in writing, (ii) monitored the compliance of distributors through a tracking system, and (iii) imposed certain sanctions in cases of non-compliance such as withholding financial incentives (e.g., reimbursement of discounts applied by distributors to resale) and cutting the supply.

During the judiciary review initiated based on an appeal brought by Super Bock, the LCA conveyed six questions for a preliminary ruling with the CJEU, which reviewed the questions in four groups: (i) the concept of a restriction of competition by object, (ii) the concept of agreement, (iii) proof of an agreement, and (iv) the concept of effect on trade between member states within the meaning of Article 101 TFEU.

Regarding the concept of a restriction of competition by object, the CJEU stated that to determine whether a vertical price-fixing agreement constituted a restriction of competition by object, the LCA shall ascertain whether the relevant agreement presents a sufficient degree of harm for competition based on the (i) content of its provisions, its objectives, and the economic and legal context; (ii) nature of goods or services affected; (iii) functioning and structure of the market(s) in question; and (iv) potential procompetitive effects. Importantly, the Court stated that exclusory provisions in the block exemption regulations do not contain an indication as to whether those restrictions must be categorized as a restriction 'by object' or 'by effect.' Furthermore, the Court concluded that the concepts of 'hardcore restrictions' and 'restriction by object' are not conceptually interchangeable and do not necessarily overlap.

Regarding the concept of an agreement and proof of agreement, the Court emphasized that an agreement cannot be based on a statement of a purely unilateral policy of one party to a contract for distribution. In this context, the Court established that the existence of an agreement, within the meaning of Article 101(1) TFEU, to the effect that minimum resale prices may be established by means of direct evidence or on the basis of consistent coincidences and indicia, where it may be inferred that a supplier invited its distributors to apply to follow those prices and that the latter, in practice, complied with the prices indicated by the supplier.

Competition Authorities Keep Their Focus on Labor Markets

*Labor markets and anti-competitive human resources ("**HR**") practices have increasingly been under the spotlight of competition authorities worldwide.*

It was reported on 21 June 2023 that the EC initiated an antitrust investigation concerning 'no poach' agreements (although not yet formally announced by the EC). The investigation was reportedly initiated following a leniency application, involving undertakings which operate in radio frequency front-end ("**RFFE**") products. The EC is investigating whether certain RFFE market players "entered into bilateral understandings not to actively solicit or poach each other's employees since at least 2010", according to the news item.

Secondly, the Competition Bureau of Canada ("**CBC**") announced that as of June 23, 2023, wage-fixing and no-poaching agreements between employers will be deemed as a criminal offence in Canada. CBC noted that wage-fixing and no-poaching agreements undermine competition similar to price-fixing agreements between competitors. Moreover, the CBC published its wage-fixing and no-poaching guidelines aimed at providing businesses transparency and clarity on the CBC's enforcement of the newly introduced criminal provisions. Notably, the CBC states in the Guidelines that with respect to pre-existing agreements, the CBC is unlikely to find a wage-fixing or no-poaching agreement problematic when the parties take no steps to reaffirm or implement the restraint on or after June 23, 2023.

Another significant development was that the Competition Council of the Republic of Lithuania ("**CCL**") published a guidance on anticompetitive agreements in labor markets on 23 June 2023. The guidance document provides a succinct overview of (**i**) the root for anticompetitive concerns in the labor market and how these concerns may materialize, (**ii**) examples of such anticompetitive agreements (i.e. no-poaching, wage-fixing and information sharing), (**iii**) suggestions for both employees and employers on how to avoid entering into such agreements, (**iv**) fines that relevant participating parties may face and (**v**) rewards for reporting suspected anticompetitive behavior in this field. The guidance also notes that collective employer-employee agreements (including those with self-employed workers) falls outside the scope of competition law, each agreement must be reviewed on a case-by-case basis to avoid possible anticompetitive conduct such as cartel behavior. Finally, the guidance notes that the prohibition of anti-competitive agreements does not apply in exceptional cases, where the agreement promotes technical or economic progress or improves the quality manufacturing goods or distribution of goods and thereby enables consumers to obtain additional benefits, also where the agreement: (i) does not impose on the parties to the agreement any restrictions which are not necessary for the attainment of the objectives referred to above; (ii) does not grant the parties to the agreement the opportunity to restrict competition in a substantial part of the relevant market.

Finally, on 2 August 2023 the TCA concluded[2] an investigation concerning gentlemen's agreements between various undertakings operating in different sectors. While eleven undertakings settled, administrative fines were imposed on 16. The TCA also concluded the investigation without imposing monetary fines on 21 undertakings. Within the investigation, allegations that several undertakings had infringed the Turkish Competition Law through gentlemen's agreements to not hire employees from each other in the labor market were examined. The TCA concluded that in addition to reducing the mobility of workers between undertakings, these agreements also may have artificially depressed the real value of wages. As a result, inefficiency in the allocation of workers could arise and the competitive structure in labor markets might be harmed, according to the TCA.

The competition authorities' scrutiny of the labor market demonstrates that the labor market is perceived more broadly and that even undertakings operating in different sectors can be considered competitors in terms of competition for labor capital.

[2] Decision dated 26.07.2023 and numbered 23-34/649-218

Three More Years of Safeguard Measures for Imports of Polyesters Originating in Iran

Safeguard measures concerning the imports of "from polyesters"[3] originating in Iran were extended through Presidential Decree No. 7615, dated 14 September 2023.

Upon the original investigation, a safeguard measure was imposed for four years regarding the imports of "from polyesters" originating in Iran ("concerned product"). Subsequently, the measure was reviewed in 2017 and 2020 and it was decided to extend the measure an additional three years. The measures were liberalised by 0.5% each year. Accordingly, a measure amounting to 17.5% was imposed on the concerned product originating in Iran for the period between 21 September 2022 and 20 September 2023. The most recent safeguard extension investigation was initiated on 13 April 2023 upon a request from domestic producers for the extension of the safeguard measures on the imports of the concerned product.

When the economic indicators of the domestic industry were examined along with the trend of imports from Iran, the Turkish Ministry of Trade evaluated that (i) while the general imports had decreased in 2022, imports from Iran increased in 2021 and 2022; (ii) while domestic industry's production, domestic, and export sales had improved in 2021, its production and domestic sales had decreased in 2022; (iii) as the general imports and domestic sales had decreased in 2022, the domestic market had shrunk to a certain extent and the market share of imports from Iran had increased starting from 2021; (iv) imports from Iran had undercut and depressed the domestic industry's prices except in 2020; (v) the domestic industry had adjusted in accordance with their competition compliance plan; and (vi) the fact that Iran has raw material and other production cost advantages gives it a competitive advantage over the domestic industry. Hence, it was evaluated by the Ministry that if the duration of the safeguard measure was not extended, it was likely that exports from Iran would increasingly be directed to Türkiye. Consequently, the Ministry decided to extend the safeguard measure for three years as it was assessed that the conditions necessary for the extension had been met:

[3] *Classified under the CN Code 5503.20.00.00.00.*

Additional Financial Obligation (%)		
1st Period	**2nd Period**	**3rd Period**
21 September 2023 – 20 September 2024	21 September 2024 – 20 September 2025	21 September 2025 – 20 September 2026
17%	16.5%	16%

Anti-dumping Measures Continue to Apply to Solar Modules and Panels Originating in China

*On 15 September 2023, the Turkish Ministry of Trade concluded an expiry review investigation concerning the imports of "photovoltaic (solar) modules and panels"[4] originating in the People's Republic of China ("**China**") through Communiqués numbered 2023/26 on the Prevention of Unfair Competition in Imports.*

In the original investigation concluded on 1 April 2017, definitive measures ranging between USD 20 and USD 25 per meter square were implemented on "photovoltaic (solar) modules and panels" ("**concerned product**") originating in China. The measure was set to expire on 1 April 2022, and it was announced that domestic producers of the concerned product would be able to request the initiation of an expiry review investigation with sufficient evidence supporting the claim that the expiration of the measure would lead to the continuation or reoccurrence of dumping and injury. Subsequently, a request for the initiation of an expiry review investigation was filed by domestic producers.

The information and documents submitted within the scope of the application were evaluated by the Board of Evaluation of Unfair Competition in Imports ("**Board**") and it was concluded that sufficient evidence to justify the initiation of an expiry review was present. Accordingly, on 26 March 2022, through Communiqué no. 2022/10 on the Prevention of Unfair Competition in Imports, an investigation was initiated regarding the concerned product originating in China.

The Ministry evaluated whether the dumping was likely to continue or reoccur if the measure was revoked based on China's production capacity, export capability and export prices. Accordingly, it was determined that (**i**) China was the biggest producer of the concerned product globally, (**ii**) China's share in global exports was 41% on a value basis, (**iii**) China is increasing its share of exports in the global exports, and (iv) China's exports to Türkiye had increased by approximately three times. Moreover, the Ministry calculated the dumping margin by using domestic producers' cost data for 2020 to construct a normal value and the public data extracted from the Turkish Statistical Institute. As a result, a dumping margin ranging between 25% and 30% of the CIF value was calculated for the imports of the concerned product from China. Consequently, through the holistic evaluation of these factors, the Ministry stated that the expiry of the measures would be likely to result in the continuation or reoccurrence of dumping.

With respect to injury determinations, the Ministry examined the imports of the concerned product, the trend in import prices, and the economic indicators of the domestic industry in the period of review. In this regard, the Ministry found that imports from China had shown an increasing trend in the aforementioned period, Chinese exporters knew the Turkish market well and hence, they were able to access importers in the Turkish market without any obstacles. Moreover, when the price effects of the imports were analysed, it was found that imports originating in China had resulted in both price undercutting and depression. Accordingly, it was evaluated by the Ministry that if the measure was revoked, imports of the concerned products originating in China would increase rapidly and cause deteriorations in the economic indicators of the domestic industry.

Consequently, it was found that dumping and injury were likely to continue or reoccur if the applicable anti-dumping measures were revoked and thus, it was decided to continue the imposition of the anti-dumping measure on the imports of the concerned product originating in China at the same level.

[4] *Classified under the CN Code 8541.43.00.00.00.*

Regarding New Additional Financial Obligations for Imports of Certain Products

On 8 August 2023, through Presidential Decision No. 7480, the Decree on the Implementation of Additional Financial Obligations Regarding Imports of Certain Products was put into force.

The purpose of the Decree on the Implementation of Additional Financial Obligations Regarding Imports of Certain Products is to impose additional financial obligations regarding imports of certain products originating in countries other than EU member countries and countries with which a free trade agreement has been signed. Accordingly, in the imports of the products given in the table below, additional financial obligations are levied at the rates shown against them.

The additional financial obligation is collected by the customs authorities separately from the customs duties and other financial obligations levied on imports and is recorded as revenue to the general budget. The decree entered into force on 11 August 2023.

CN Code	Description of the Product	Additional Financial Obligation (%)
7113.19.00.00.11	Jewellery and parts thereof (of gold)	20
7113.19.00.00.12	Jewellery and parts thereof (of gold with diamonds)	20
7113.20.00.00.00	Jewellery and parts thereof (of base metals coated with precious metals)	20
7114.19.00.00.11	Jewellery and parts thereof (of gold)	20
7114.20.00.00.00	Jewellery and parts thereof (of base metals coated with precious metals)	20
7115.90.00.00.21	Jewellery and parts thereof (of gold)	20

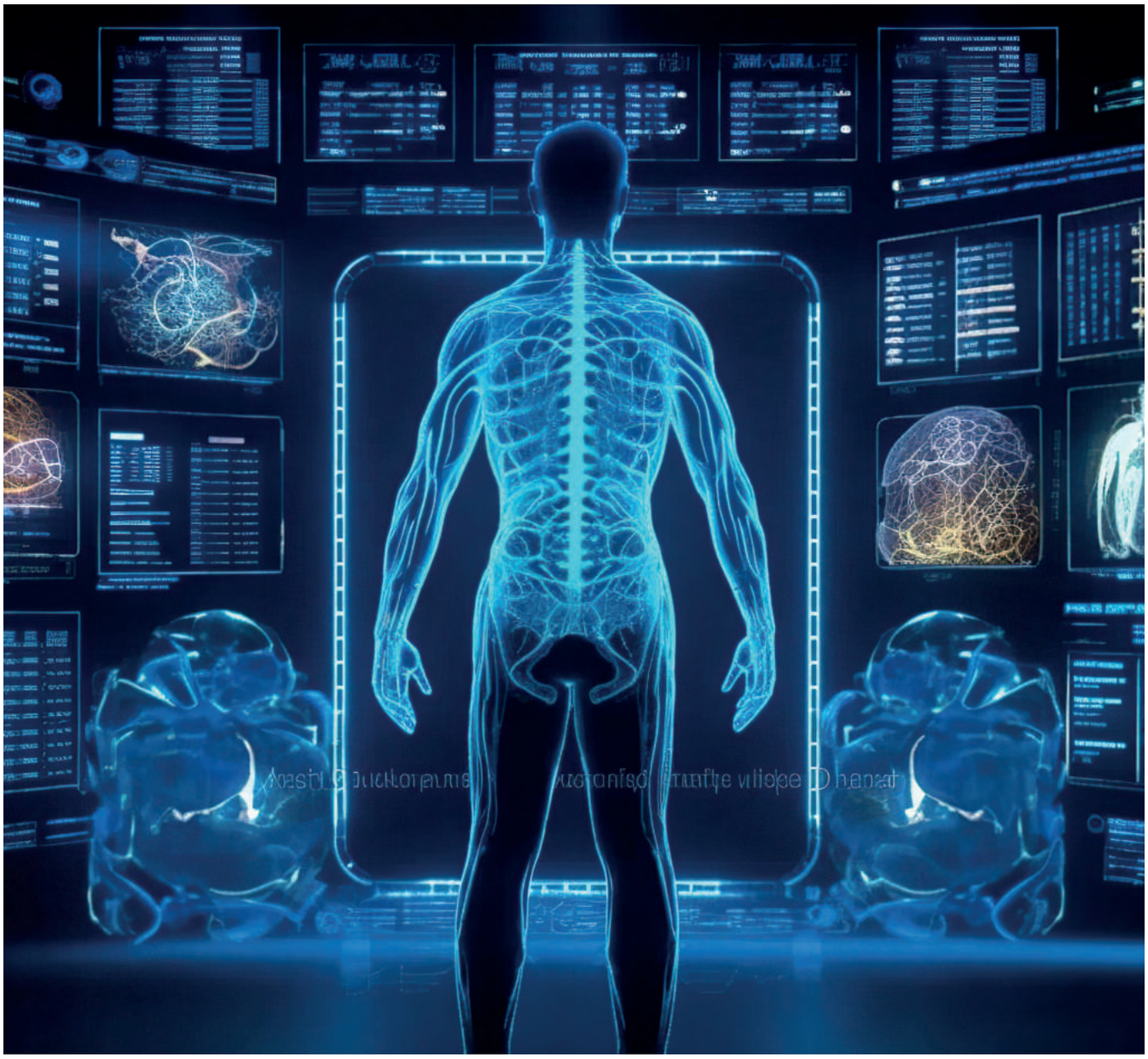
Import Duties and Additional Financial Obligations on Certain Products Originating in Uzbekistan Revoked

On 22 June 2023, the Ministry through Decision numbered 7319 decided to exempt customs duties and additional financial obligations on the imports of certain products originating in Uzbekistan.

Pursuant to the Preferential Trade Agreement signed between Türkiye and Uzbekistan, Türkiye's Ministry of Trade decided to exempt customs duties and additional financial obligations on the imports of several products originating in Uzbekistan based on the tariff quotas indicated in the table below:

Accordingly, the tariff quotas and additional financial obligations applied to the imports of certain products originating from Uzbekistan have been adjusted. Consequently, the customs duties and additional financial obligations payable on imports of the abovementioned products made within the scope of the tariff quotas are zero. This decision entered into force on 1 July 2023.

CN Codes	Description of the products	Tariff Quota Quantity (Ton)
0703.10	Onions and shallots	1,000
0711.90	Other vegetables; vegetable mixtures	4,000
0713.20	Chickpeas (garbanzos)	2,000
0713.31	Vigna mungo (L.) Hepper or vignaradiata (L.) wilczek type beans	1,000
0713.33	Common beans (including white beans) (Phaseolus vulgaris)	3,000
0802.12	Without shell	1,000
0802.32	Without shell	1,000
0806.20	Dried	400
0813.20.00.00.00	Plum	1,000
0813.40	Other fruits	700
0904.21	Dried, not crushed, not grounded	1,000
1202.42.00.00.00	Without Shell (broken or not)	1,000



Employers Be Aware of Your Obligations: Guidelines on Health Data of Employees Published

*On 31 August 2023, the UK's personal data protection authority, the Information Commissioner's Office ("**ICO**") published a guidance titled "Data Protection and Workers' Health Information" ("**Guidelines**") aiming to help employers understand their data protection obligations under the data protection legislation when handling the health information of their employees.*

The Guidelines contain two main sections, one providing an overview of how data protection law applies to the processing of employees' health information and the other assessing some of the most common types of employment practices where employees' health information is processed. In this regard, the Guidelines shed light on various aspects of processing the health data of employees.

The Guidelines provide detailed explanations of how fundamental principles such as fairness, lawfulness, accuracy, security, and data minimization, which must be taken into account when processing personal data, may apply to the collection and processing of employees' health data. The Guidelines delved into details of the lawful grounds for the processing of health data and also explained that it cannot be claimed that the employee has given his/her explicit consent freely unless the employee is provided with a genuine choice when it comes to the relationship between employees and employers.

The Guidance emphasizes the importance of a data protection impact assessment process that employers can implement to identify, minimize and remedy data protection concerns at an early stage. The Guidance ultimately provides various checklists for the employees to consider when employees' health information is collected or used.

Private Healthcare Institution Fined for Data Breach

*On 14 August 2023, the Data Protection Authority of Turkey ("**Turkish DPA**") decided on a complaint that the conditionality of the provision of health care service by a private healthcare institution constitutes a breach of personal data. The DPA imposed an administrative fine on the private health institution on the grounds requiring applicants to consent to the processing of their data and contacting them for this purpose to be informed about the services and announcements during the appointment process on the website of the healthcare institution constitutes a breach of data ("**Data Controller**").*

The notification made to the DPA stated that while filling out the form to make an appointment on the website of the data controller, it is mandatory to give consent to the processing of the data of the applicants for them to be informed about the services and announcements of the data controller and to contact people for this purpose. The appointment process is not completed unless consent is given, and thus, the service is conditioned on explicit consent by the data controller.

The DPA requested a defence from the data controller within the scope of its investigation into these allegations. The data controller stated that the personal data requested for the control of the patient's identity information, the creation of an appointment, and the determination of the phone number to which the clarification text will be sent are needed. It also stated that it is mandatory to process this personal data for the establishment/execution of the contract, fulfilment of the legal obligation, and legitimate interests.

Within the scope of the DPA's examination, it is stated that the failure to complete the appointment process without explicit consent to the personal data processing activity of the data controller within the scope of promotional activities disrupts the element of "given by free choice," which is one of the elements of explicit consent and that basing the health service on the condition of explicit consent processing is deceptive and abuse of right. As a result of its assessments, the DPA imposed an administrative fine of TRY 300,000.

Obtaining Explicit Consent from Patients for Advertising and Promotional Activities Constituted a Data Breach

*On 14 August 2023, the DPA concluded an investigation initiated based on a notification that a hospital ("**Data Controller**") obtaining explicit consent from patients for advertising and promotional activities constituted a data breach. The DPA decided to impose a fine on the data controller due to this data breach.*

The notification to the DPA stated that the data controller had requested explicit consent from patients to share their images and videos with the media organs with which the data is contracted for advertising and promotional purposes. It was argued that data controllers may process personal data only for the purpose of providing healthcare services, provided that it stays within the limits required by the diagnosis and treatment service and may transmit personal data to third parties/institutions limited to proportionate and compulsory cases based on Law No. 6698 on the Protection of Personal Data ("Data Protection Law"). It also stated that the explicit consent requested is against the Data Protection Law.

The DPA requested a defence from the data controller within the scope of its investigation of these allegations. The data controller stated that it is possible to provide health-protective and health-promoting information to provide information, raise social awareness, and promotion. In the use of patients' data for these purposes, explicit consent is obtained without any imposition.

Within the scope of the DPA's examination, the DPA stated that the promotions on the website of the data controller exceeded the scope of the information and promotional activities permitted by the legislation. They are advertisements and cause unfair competition against other health institutions. Considering that the principle of proportionality means establishing a reasonable balance between the data processing activity and the purpose to be achieved, it is not mandatory to process personal health data to achieve the purpose in question since it is only possible to provide information about the relevant diseases without processing any personal data; therefore, the personal data processing activity carried out in the concrete case was contrary to the principle of proportionality.

The DPA imposed an administrative fine of TRY 250,000 on the data controller. In addition, the DPA also instructed the data controller to cease the processing of personal data for the purposes in question, to destroy the personal data processed and stored to date, and if personal data is transferred to third parties, to ensure that the third parties to whom these data are transferred are notified of the procedures for the destruction of personal data and to inform the DPA of the result.

EC Adopted Adequacy Decision for the EU-U.S. Data Privacy Framework

*The EC adopted its adequacy decision on 10 July 2023 regarding the EU-U.S. Data Privacy Framework which will enable the data flow between the EU and the U.S. However, the EC Decision may still be declared invalid by the Court of Justice of the EU ("**ECJ**") just like the former agreements of 'Safe Harbour Privacy Principles' and 'EU-U.S. Privacy Shield'.*

Under Article 45 of the EU General Data Protection Regulation ("**GDPR**"), data transfer to a third country or an international organisation may occur without any further requirements, if permitted by EC. By issuing an adequacy decision, the EC determines whether personal data can flow freely and safely from the EEA to a third country, without being subject to any further conditions or authorisations.

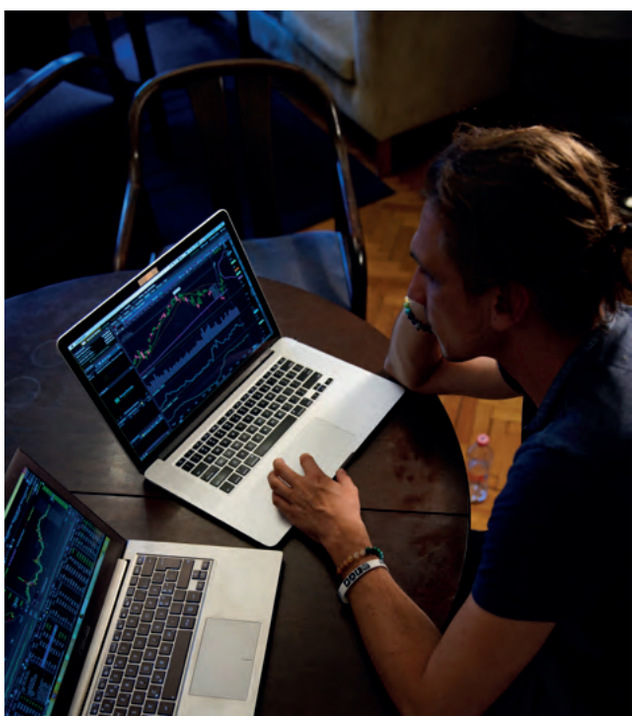
The EU-U.S. Data Privacy Framework hinge on a certification system by which U.S. organizations commit to certain privacy principles that are issued by the U.S. Department of Commerce ("**DoC**"). In this regard, the EC assessed the adequacy of the level of protection within the EU-U.S. Data Privacy Framework and declared that the U.S. provides an adequate level of protection for the transfer of personal data from the EU to U.S. companies participating in the EU-U.S. Data Privacy Framework.

Furthermore, in order to overcome the concerns raised at the previous agreements rejected by ECJ, certain safeguards were adopted by the US:

- Binding safeguards that limit access to data by US intelligence authorities to what is necessary and proportionate to protect national security;
- Enhanced oversight of activities by US intelligence services to ensure compliance with limitations on surveillance activities; and
- The establishment of an independent and impartial redress mechanism, which includes a new Data Protection Review Court to investigate and resolve complaints regarding access to their data by US national security authorities.

Personal Data Protection Board Increased the Annual Financial Balance Sheet Threshold

*The Personal Data Protection Board ("**PDPB**") increased the annual financial balance sheet threshold for the obligation to register with the Data Controllers' Registry Information System ("**VERBIS**") from 25 million Turkish liras to 100 million Turkish liras.*



Pursuant to the PDPB's decision dated 19.07.2018 and numbered 2018/87, data controllers whose main activity is not processing sensitive personal data were exempted from the obligation to register with the VERBİS in case (i) their annual number of employees was less than 50 and (ii) the total value of their annual financial balance sheet was less than 25 million Turkish liras. With the PDP Board's decision dated 06.07.2023 and numbered 2023/1154 published in the Official Gazette dated 25.07.2023, the annual financial balance sheet threshold is to 100 million TL in line with the economic conditions in the country.

As a final note, it should also be reminded that the administrative monetary fine stipulated for the violation of the obligation to register is between 119,436 Turkish liras and 5,972,040 Turkish liras for the year 2023.

A New Age for Digital Markets in Türkiye? Exploring Draft Amendments

by B.Balkı, E. Aktekin, N.C. Acar, H. Yüksel, M. M. Demir and S. Eliri

*The DMA developments in the EU cannot but have impact on the laws of other jurisdictions, and Türkiye is a good example of that. We invite you to explore with us the draft amendment (the "**Draft Amendment**") to Turkish Competition Law ("**Law No. 4054**"), the key points of which concern: (i) the main definitions, (ii) the obligations to be imposed on the undertakings, (iii) the processes envisaged for compliance with these obligations, including sanctions for any non-compliance, and finally (iv) amendments regarding the article about on-site inspections that are included in the Draft Amendment.*

Key Definitions Brought by the Draft Amendment

The Draft Amendment primarily amends Articles 1 and 2 of Law No. 4054, which regulate the purpose and scope of the Law, and extends the scope of it 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. The Draft Amendment provides additional definitions in Article 3 of Law No. 4054. These definitions include detailed descriptions of the undertakings operating in digital markets and the services they offer, such as: (i) data that is not publicly available, (ii) undertaking holding significant market power, (iii) end-user, (iv) core platform services, (v) online intermediation services, (vi) online search engine services, (vii) online social networking services, (viii) video sharing platform services, (ix) number-independent interpersonal communications services, (x) operating systems, (xi) web browsers, (xii) virtual assistants, (xiii) cloud computing services, (xiv) online advertising services, (xv) business users and (xvi) ancillary services. "Undertaking holding significant market power" and "core platform service" are at the centre of the amendments, and described as:

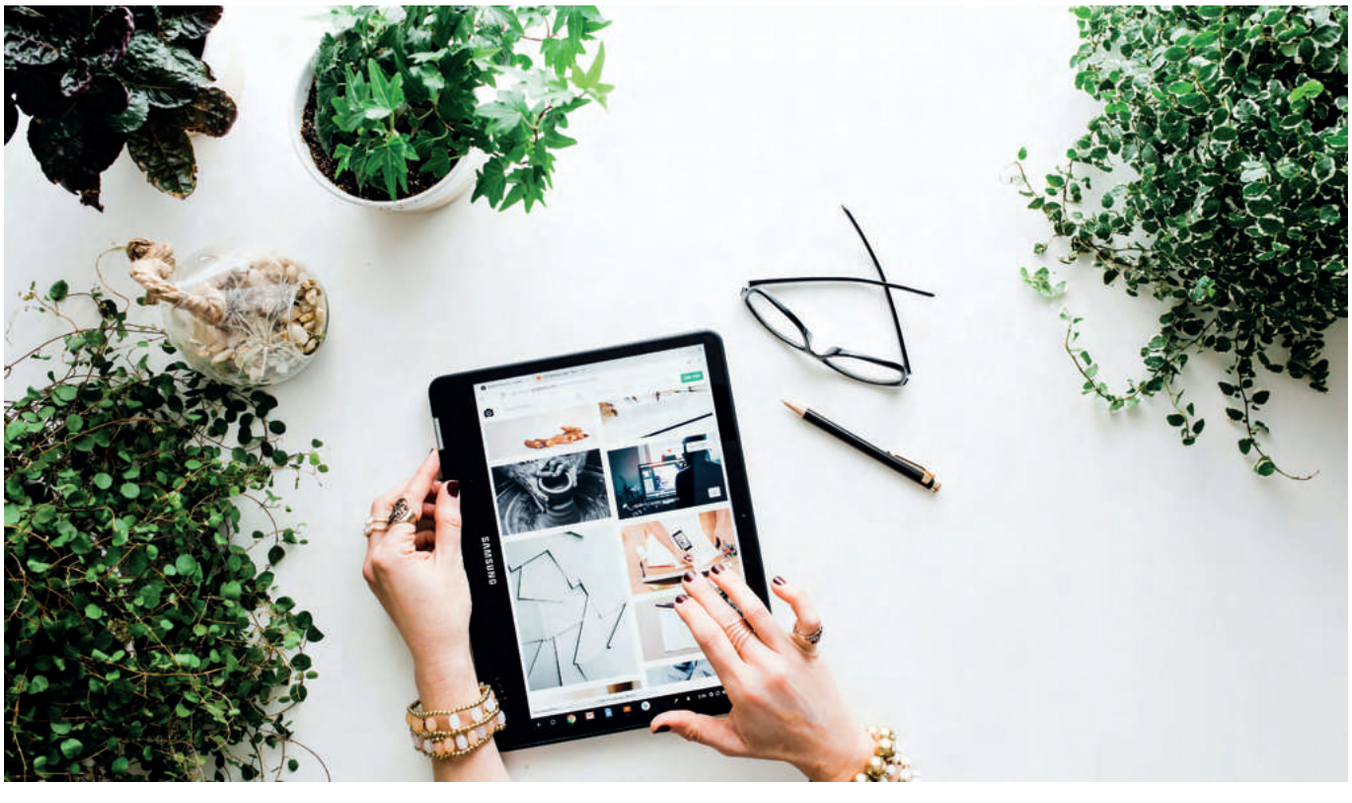
- Core platform services: online intermediation services, online search engines, online social networking services, video/sound sharing and broadcasting services, operating systems, number-independent interpersonal communication services, cloud computing services, web browsers, and virtual assistants, and online advertising services provided by the provider of any of the mentioned services.
- Undertaking holding significant market power: undertaking that has a certain scale in terms of one or more core platform services and operates in a way that has a significant impact on access to end users or on the activities of business users and which has the power or is foreseen to be able to have the power to maintain this impact in an established and permanent manner.

Core platform services are regulated in a way to cover a range of services in digital markets. The Draft Amendment adopts the same approach for the core platform services as in the DMA. The Draft Amendment foresees issuing an additional Communiqué by the Competition Board (the "**Board**") to determine the thresholds that will be relevant to make an assessment for the concept of undertakings holding significant market power (i.e., gatekeepers).

Determining Undertakings Holding Significant Market Power/ Gatekeepers

According to Article 3 of the Draft Amendment, for a core platform service provider to be considered as an undertaking holding significant market power/gatekeeper, the following conditions are required to be satisfied cumulatively:

- Having a certain scale in terms of one or more core platform services;



■ Operating in a way that has a significant impact on access to end users or on the activities of business users; and
■ Having the power or being foreseen to be able to reach the power to maintain this impact in an established and permanent manner.

These concepts are in line with the criteria for the designation of the gatekeepers under the DMA. However, unlike the DMA, the Draft Amendment does not set out the limits of the criteria to be taken into account for an undertaking to be designated as an undertaking holding significant market power. These requirements will be introduced in detail by a separate communiqué ("**Communiqué on the Implementation of Article 8/A of Law No. 4054**") to be issued by the Board within six months following the entry into force of the new amendments. The Draft Amendment stipulates that the Board shall take into account two types of criteria while designating the undertakings holding significant market power: (**i**) quantitative, such as annual gross revenue, the number of end-users or the number of business users will be considered; and (**ii**) qualitative, such as network effects, data ownership, vertically integration and conglomerate structure, economies of scale and scope, lock-in and tipping effect, switching costs, multi-homing, user trends, mergers and acquisitions carried out by the undertaking will also be analysed.

Therefore, an undertaking may be designated as an undertaking holding significant market power by the Board either ex officio or upon third party complaint, based on qualitative requirements, even if the limits to be specified by the quantitative thresholds in the Communiqué are not exceeded.

Designation process in Türkiye

First, the undertakings providing core platform services shall apply to TCA within 30 days in case they exceed the thresholds that will be determined by the Communiqué on the Implementation of Article 8/A of Law No. 4054. Along with the application, undertakings may also submit their objections to the TCA, if any, about why they think they do not hold significant market power.

As a result of the evaluation to be carried out within 60 days the TCA shall determine whether the undertaking holds significant market power and which of the obligations listed under Article 6/A of Law No. 4054 shall apply for each platform service offered. The TCA may also make the same determination ex officio or upon complaint. The TCA shall determine a reasonable period of time, not exceeding 6 months, for the undertaking to comply with the provisions of Article 6/A.

The undertaking that is designated to hold significant market power may submit its objective justification defence regarding its inability to fulfil its obligations, together with sufficiently substantiated and concrete information and documents, if any, within 6 months starting from the service of the decision. The TCA shall evaluate and decide on it within 60 days.

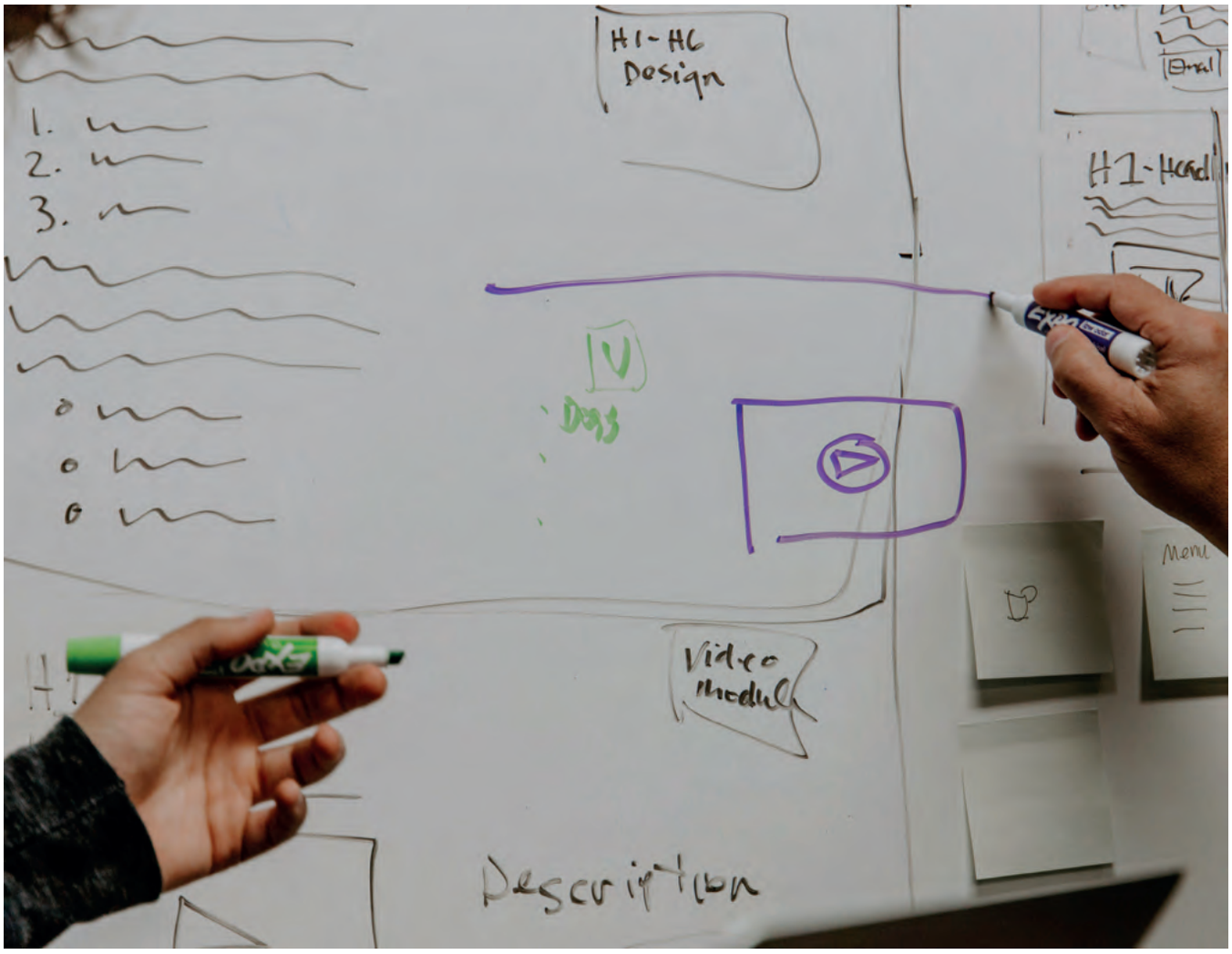
In addition, the Board may, upon request or ex officio, change, review or withdraw its decision, in any of the following cases where: there is a significant change in any of the facts on which the decision designating the undertaking as holding significant market power was based on; the decision is based on incomplete, incorrect or misleading information provided by the undertakings; and/or the obligations imposed are insufficient.

The designation decision will be valid for three years. In case the undertaking does not apply to the TCA within 90 days prior to the expiration of the three-year period, the relevant undertaking is deemed to hold significant market power for another three years.

Gatekeepers' Obligations

The Draft Amendment provides a list of conducts to be added as Article 6/A to Law No. 4054, which should be complied with by the undertakings holding significant market power. These are ex-ante obligations that undertakings should comply with in order to prevent anti-competitive conduct in the core platform markets for goods and services. **Communiqué on the Implementation of Article 6/A of Law No. 4054**, which is envisaged to be issued by the Board within six months following the entry into force of the new amendments, will provide further information on the implementation of these obligations. In parallel with the DMA, under the Draft Amendment, undertakings holding significant market power should:

- Refrain from discriminating their own goods and services in ranking, scanning, indexing or in other conditions, compared to the goods or services of business users and ensure that the relevant conditions are fair and transparent;
- Refrain from using data that are not publicly available while competing with other business users;
- Refrain from making goods or services offered to business users and end users dependent on other goods or services offered by themselves;
- Refrain from requiring business users or end users to subscribe or register with any core platform services of this undertaking holding significant market power as a condition for accessing, logging in or registering any core platform services;
- Allow end users to easily uninstall software, applications or app stores that have been preinstalled into the operating system of the devices, to switch to different software, applications or app stores, to install and effectively use third-party software, applications or app stores, to allow default settings to be easily changed, to allow third-party software, applications or app stores to be offered to user preference and chose by default and fulfil technical requirements in that regard;
- Refrain from restricting or obstructing business users, from working with competitor undertakings, from making offers to or making agreements with end users over platforms or other channels, from advertising their goods and services via these channels, and refrain from preventing them to offer different prices or conditions for a certain good or service while working with competitor undertakings over their own channels or over different channels;
- Provide relevant business users free, efficient, continuous, and real-time access to the aggregated and non-aggregated data which is provided by business users while using core platform services or ancillary services, or by end users of these business users or is produced within the scope of the activities of these parties on the relevant platform, upon request of the relevant business users and third parties authorized by them;
- Enable end-users using core platform services or ancillary services, business users, or end-users of such business users to, free of charge and effectively, transfer their data provided by them or generated within the scope of activities of these parties on the relevant platform, upon their request and provide free of charge tools to facilitate data portability;
- Enable the interoperability of core platforms services and/or ancillary services with other related products or services, efficiently and free of charge and fulfil the technical requirements for this;
- In order to maintain provision of core platform services or ancillary services by other undertakings, provide free of charge access to the necessary operating system, hardware or software features, limited to the relevant core platform service, and fulfil the technical requirements for this;
- Upon their request, provide business users with adequate information on the scope, quality and performance of core platform services and ancillary services, as well as pricing principles and conditions of access to these services;
- Provide to advertisers, publishers, advertising intermediaries which it provides online advertising service or to third parties that



are authorized by those, free, continuous, and real-time complete information about the commercial terms regarding offers and access to advertising verification and performance measurement tools and the data required for the use of these tools, and

- Refrain from discriminating between business users by imposing unfair or unreasonable terms on business users.

In Case of Non-Compliance

The Draft Amendment also includes provisions on administrative fines and remedies to be applied in case of a failure to comply with the above-mentioned obligations. In case of a violation of Articles 4, 6 and 7 of Law No. 4054, the relevant undertaking may be imposed an administrative fine up to ten percent of its annual gross revenues. With the Draft Amendment, this rate has been increased twice, i.e., up to twenty percent of their annual gross revenues, in case that undertaking holding significant market power violates the obligations stipulated under Article 6/A.

Moreover, in case the Board determines that undertakings holding significant market power violated Article 6/A at least two times within five years, it may prohibit mergers or acquisitions by these undertakings for up to five years, in order to eliminate damages arising from repeated violations or to prevent serious or irreparable damages that may arise.

TCA's On-Site Inspection Powers

One of the most important tools used by the Board in revealing competition violations is on-site inspection. However, the online nature of digital services complicates this process. With the Draft Amendment, undertakings offering at least one core platform service in Türkiye to fulfill certain technical and administrative requirements that will facilitate the Board's on-site inspection power for undertakings that do not have headquarters in Türkiye or do not have centralized technical and administrative equipment. Similar to the DMA, if deemed necessary when implementing Article 6/A, independent third parties with technical knowledge could be assigned by the Board to participate in the examination, in addition to the experts already working under the Board's authority.

In conclusion

Currently, there is no draft regulation on the quantitative criteria to be taken into account for the determination of undertakings holding significant market power. The Draft Amendment sets out in detail the conducts that undertakings holding significant market power should refrain from while operating in the market and sets the fines to be imposed in case of non-compliance with these obligations considerably high. This confirms that the relevant undertakings operating in digital markets, which have been under the scrutiny of competition authorities for a long time, will be given some additional responsibilities.

Unlike the DMA, in Türkiye the draft amendments, once adopted, will require certain secondary legislation. The process may take some time. But it may be a good idea for the undertakings operating in the digital markets to initiate their compliance processes with the new regulations as soon as possible by taking into consideration the framework outlined under the DMA, which is very similar to the anticipated amendments (likely to be adopted) under the Turkish law.

Events

Lear Competition Festival
We are delighted to have attended the Lear Competition Festival (LCF) on 24-27 September 2023, as a gold partner.

Our panel addressed procedural aspects highlighting what has been done to tackle one of the main challenges, that is the jurisdictional reach of merger control in relation to the acquisition of start-ups, focusing on the EC (case referrals and DMA), Turkish Competition Authority's technology undertaking exception, and Italian Competition Authority's powers. We also discussed substantive issues, innovation digitalisation and in particular the theories of harm in digital mergers.

Many thanks to our panel Pınar Akman, (Professor of Competition Law & Member, Competition Appeal Tribunal) Gian Luca Zampa (Partner at Freshfields Bruckhaus Deringer), M. Fevzi Toksoy, PhD and Hanna Stakheyeva, PhD from ACTECON.
We thank Paolo Buccirossi (Director at Lear) and LCF team for the excellent organisation!

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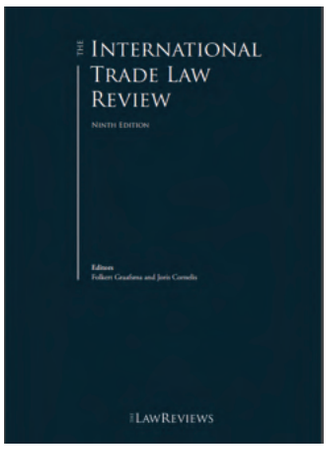
https://www.actecon.com/en/publications

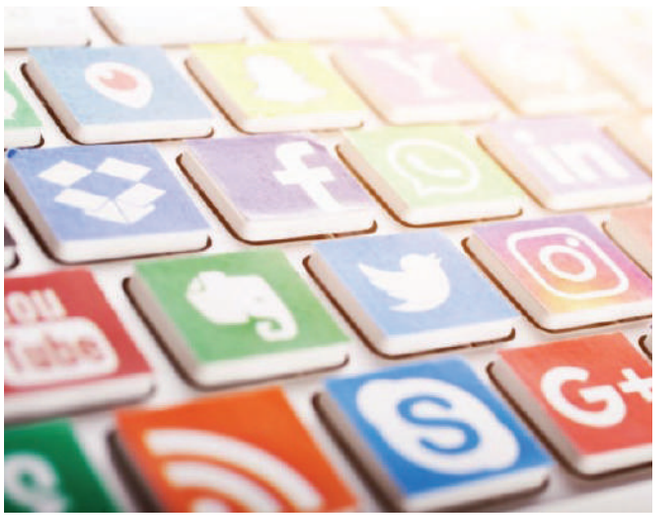
Trade & Customs, 2024,
Lexology Türkiye Chapter

International Trade Law Review,
Türkiye Chapter 9th Edition



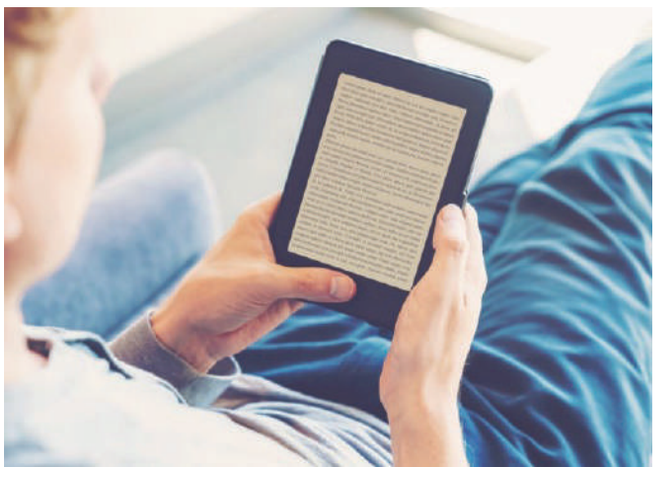
Filo ve Rent A Car Magazine
September-October 2023

Are You a "Technology Undertaking" within the Scope of Merger Control in Turkey?

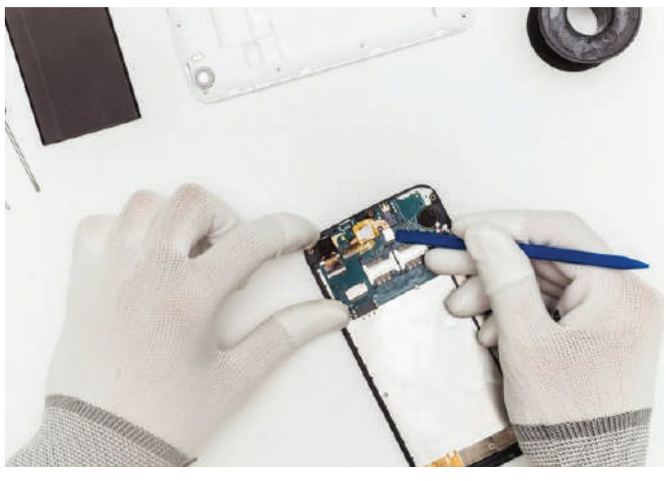


Q&A with Dr. Fevzi Toksoy and
Bahadir Balki

The Turkish Competition Authority Reaffirmed Its View on Attorney-Client Privilege Limited to Right of Defence: A Stark Contrast with the EU



LG and Its Authorized Services Cleared of Allegations: No Room for Investigation



Publications

Filo ve Rent A Car Magazine July-August 2023

Çimento İşveren Magazine September 2023

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