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Dear reader,

Spring is in the air and the first quarter of 2021 is behind us. It has brought about numerous developments in relation to competition, international trade and regulation.

The Turkish Competition Authority has adopted several important documents and may finally boast having its secondary legislation - De Minimis Communique and Commitment Communique - in place. While both documents are in line with the EU rules, there is still some discretion left to the TCA in having a final say on those issues.

The M&A Report 2020 is also released and may be a good read for those who wish to have a fuller picture of the concentration and investment climate in Turkey in 2020, as well as the peculiarities of the merger control formalities in practice.

Among the numerous interesting cases of the first quarter of 2021, we cannot but mention several concentrations approved conditionally in the EU, as well as Turkish beverage producer Mey İçki saga in Turkey, where in February 2021 the Council of State reversed the decision of the Regional Court and held that since the activities of Mey İçki in multiple markets had been the same, applied in the same period, and part of the undertaking's single commercial strategy, imposition of the second administrative monetary fine would be unlawful.

As for the international trade, we would like to draw your attention to the list of antidumping duties to expire in the second half of 2021.

At the Regulation side, the Data Protection Board of Turkey evaluated the use of voice recording security cameras from the data protection law perspective, extended the period of registration with the data controller registry, and approved a letter of undertaking for the application of data protection law. The latter one may serve as a model for the companies that wish to consider the respective alternative way in terms of transferring the personal data abroad.

Kind regards,

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In this issue:

Are You De Minimis in Turkey?

*On 16 March, 2021 the Communiqué on Agreements, Concerted Practices, and Undertaking Association Decisions of Minor Importance Which do not Appreciably Restrict Competition No 2021/3 ("**De Minimis Communiqué**") was finally published on the Official Gazette of Turkey.*

According to Article 4 of the De Minimis Communiqué, the following are accepted to be "*hardcore infringements*" and shall not benefit from the protection provided by the De Minimis Communiqué:

- agreements between competitors aimed at fixing prices, allocating customers, suppliers, territories or commercial channels, the introduction of supply amount restrictions or quotas and collusive bid-rigging in tenders;
- sharing of competitively sensitive information such as future pricing, production or sales amount; and
- determining the fixed or minimum selling price of the buyer in the relationship between the undertakings operating on different levels of the production or distribution chain, i.e., resale price maintenance.

Article 6 of the De Minimis Communiqué awards the Turkish Competition Authority ("TCA") the discretion to terminate or initiate proceedings even if the agreements or decisions fall within the scope of the De Minimis Communiqué as it provides:

"*Pursuant to Article 5, agreements or decisions which do not appreciably restrict competition on the market, may not be subject to an investigation by the Board.*

In the event that an investigation is launched due to the failure to determine the market shares of the parties to the agreement or the members of the association of undertakings in the affected markets, the Board may terminate the investigation if it discovers that the market shares of the undertakings or association of undertakings subject to the investigation do not exceed the thresholds envisaged under Article 5."

Pursuant to Article 5 of the De Minimis Communiqué, an agreement is accepted not to appreciably restrict competition if:

- for agreements concluded between competing undertakings, the aggregate market shares of the parties to the agreements do not exceed 10% in each of the relevant markets; and
- for agreements concluded between undertakings which are not competitors, the market share of each of the parties to the agreement do not exceed 15% in each of the relevant markets.

If similar vertical restraints are covering more than 50% of the relevant market, pursuant to Article 5(4) of the De Minimis Communiqué, the thresholds determined under Article 5 is applied as 5% for both agreements concluded between competitors and non-competitors.

New Practices under the Commitment Communiqué

*On 16 March 2021, the Communiqué No 2021/2 On the Commitments Offered During the Preliminary Investigation and Investigation on Restrictive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position ("**Commitment Communiqué**") was published in the Official Gazette of Turkey.*

On 16 June 2020, the commitment procedure was introduced under Turkey's competition legislation via an amendment made to Article 43 of the Competition Law. The Commitment Communiqué was published and entered into force in accordance with the mentioned article as it provides "*Rules and procedures regarding the application of this paragraph shall be determined with a communiqué published by the Board.*"

The Commitment Communiqué reiterates that commitments cannot be submitted for hardcore infringements. New practices introduced with the Commitment Communiqué to the commitment procedure are as follows:

- Article 5 of the Commitment Communiqué, "Initiation of the Commitment Process» provides that commitments may be submitted to the TCA within three months following the receipt of the investigation notice.
- Article 8 of the Commitment Communiqué prevents the submission of alternative commitments within the commitment text. The text shall include the commitment offered clearly.
- Article 13 of the Commitment Communiqué provides that in cases where the commitment procedure terminates by way of failure to submit commitments in due time or by the withdrawal of the commitments duly submitted, offering commitments shall not be requested for a second time.
- The Commitment Communiqué shall be applied to on-going cases and in cases where it has been more than three months since the investigation decision has been made, the prescribed term shall not be applied.

No Fine for Delayed Response

*On 8 March 2021, the TCA published on its website its reasoned decision regarding the non-provision of information by Yeni Mağazacılık A.Ş. ("**A101**") within the scope of its fast-moving consumer goods sector inquiry ("**Inquiry**"). A101 was not imposed any fines as a result of the TCA's evaluation since the requested information had been received during the examination of the report on the relevant case.*

On 5 February 2021, the TCA published its Preliminary Report on Fast-Moving Consumer Goods Sector Inquiry. Thirty-three retailers, including A101, were sent requests for information ("**RFI**") within the scope of the Inquiry. These retailers were requested to fill the tables included in the RFI's dated 17 July 2020, 27 July 2020, and 02 September 2020, to be able to measure buying power and to make profitability analysis in the relevant market.

Regarding the first two RFIs, A101 first provided responses on 12 August 2020, which missed three tables on information regarding store revenue, store number, etc. After being contacted via e-mail numerous times by the TCA, on 24 September 2020 A101 provided additional information that still did not contain all the data requested. The TCA stated that the profitability and buying power analysis necessary for the market report could not be completed in the relevant process due to A101's failure to provide all the information requested.

Furthermore, A101 also failed to provide information within the scope of the RFI dated 02 September 2020.

After being contacted via phone, an executive of A101 informed the TCA that lately A101 had been asked to provide information so frequently that the mentioned RFI may have gone unnoticed. Later, the relevant information was provided on 07 October 2020 and was entered into the TCA's records the following day. Information requested with the first two RFI's was completed later on 21 October 2020, the day preceding the TCA's decision.

Finally, the TCA decided by a majority voting not to impose any administrative monetary fine on A101, considering that the requested information had been received during the examination of the report on the relevant case.

TCA Says "No!" to More Expensive Eye Treatment Drugs: Novartis and Roche Case

*On 22 January 2021, the TCA with its final decision regarding the investigation into Novartis Sağlık Gıda ve Tarım Ürünleri San. ve Tic. A.Ş. ("**Novartis**") and Roche Müstahzarları San. A.Ş. ("**Roche**") fined the companies for their anticompetitive practices.*

TCA conducted an investigation into two pharmaceutical companies, namely Novartis and Roche, in order to determine whether those violated Article 4 of the Law on the Protection of Competition numbered 4054 ("**Competition Law**") to increase the use of Lucentis, which is more expensive than Altuzan, both used for eye diseases.

As a result of the investigation, with its decision dated 21.01.2021 and numbered 21-04/52-21, the TCA unanimously decided that Roche and Novartis had violated Article 4 of the Competition Law. Consequently, the TCA imposed an administrative monetary fine on Novartis and Roche on the basis of their annual gross income generated at the end of the fiscal year 2019, respectively amounting to TRY 165,464,716,48 [approximately USD 22,364,630] and TRY 112,972,552,65 [approximately USD 15,269,656][1]. The TCA's reasoned decision has not been published yet.

1 The average USD buying rate of exchange of January 22, 2021, published by the Central Bank of Turkey was taken basis in the calculation (USD 1 = TRY 7,3985).

TCA's M&A Overview Report 2020

*On 5 March 2021, the TCA published Mergers and Acquisitions Overview Report for 2020 ("**Report**"). The Report provides an overview of the TCA's activities in terms of merger control in 2020 and includes statistical information on the merger control filings by also making a comparison between 2020 and previous years.*

According to the Report, the average review period of the TCA within which the notified transaction concluded was approximately 18 days following the date of final notification. The average review period in 2019 was 14 days.

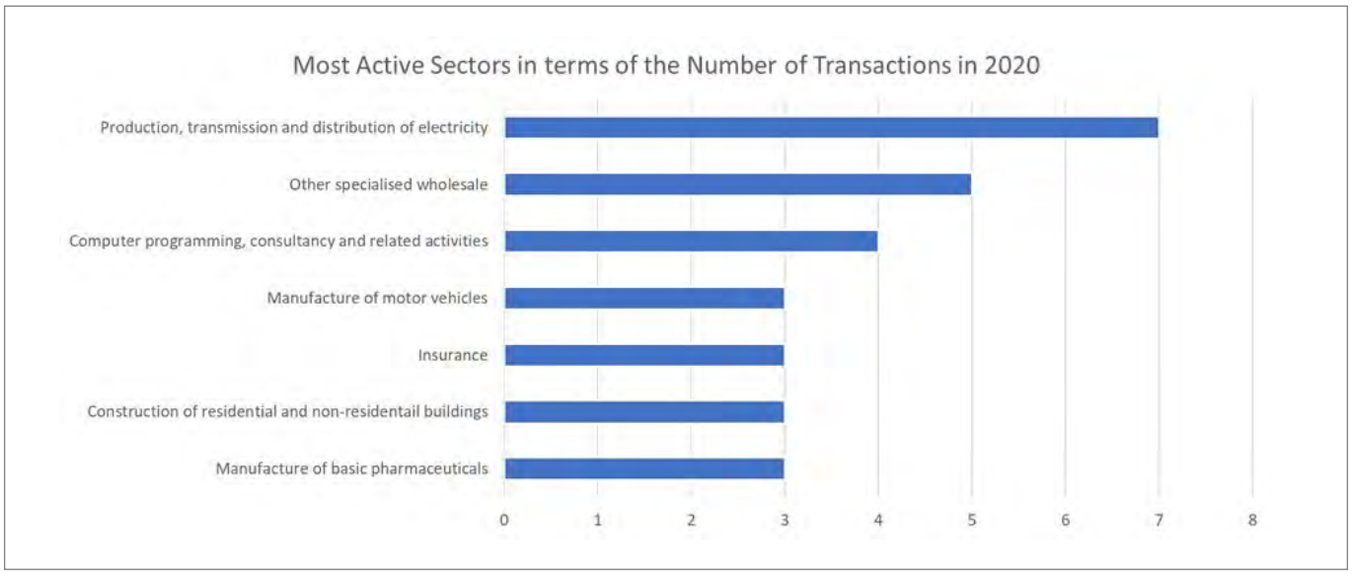
In 2020, the TCA reviewed 220 transactions in total and the total value of the notified transactions was approximately TL 2.7 trillion (approx. EUR 336 billion and USD 385 billion[1]). There is a 6% increase in the number of the reviewed transactions compared to 2019 where 208 transactions were reviewed. The number of the reviewed transactions in 2020 is above the average compared to the last eight years, i.e., 2013-2020, which is 204.

Among the notified transactions in 2020, 11 of them were classified as out-of-scope as they were determined not to result in a change of control, and two out of 220 notified transactions were categorized within the information note / others category. Only three of the transactions in 2020 were taken into a Phase II review, two of which were cleared based on the commitments submitted and one of them was rejected by the TCA. No privatization cases were concluded by the TCA in 2020.

According to the categorization of the transactions based on the origin of the transaction parties, the Report discloses that 30 of 220 transactions in 2020 were solely between the Turkish companies. This reveals a decrease in the number of those transactions compared to 2019, which was reported as 38. The number of foreign-to-foreign transactions increased from 115 (in 2019) to 139 in 2020; and 38 transactions were realized between Turkish and foreign companies, with a total value of TL 21.9 billion (approximately EUR 2.7 billion and USD 3.1 billion), showing a decrease in the number of such transactions compared to 2019, where 51 transactions were realized between Turkish and foreign companies.

The ranking of foreign investors (in terms of transactions in 2020) demonstrates that Germany was leading with five transactions. Luxembourg and United Arab Emirates followed Germany each with four transactions, and subsequently, U.S.A. followed them with three transactions. Although Japan was leading with seven transactions in 2019, only one transaction includes foreign investors from Japan in 2020. Similarly, France followed Japan with five transactions in 2019, whereas there were no transactions in 2020 with French investors.

In terms of the distribution of the number and value of the transactions in 2020 based on their field of activities, most of the M&A transactions were realized in the area of "production, transmission and distribution of electricity" with a number of seven transactions and a total value of TL 1.4 billion (approximately EUR 174.3 million and USD 199.7 million) corresponding to 25.2% of the total value of the transactions in Turkey in 2020. Transactions concerning other specialized wholesale is ranked as the second sector with five transactions, despite having a higher transaction value of TL 3.7 billion (approximately EUR 460.7 million and USD 527.8 million).[2]



1 The figures in EUR and USD in this article are calculated at the average buying rate of exchange of the Central Bank of Turkey. For 2020, this rate was EUR 1 = TL 8.03 and USD 1 = TL 7.01 and for 2019, this rate was EUR 1 = TL 6.35 and USD 1 = TL 5.67.

2 More on the Report see at https://www.actecon.com/en/news-articles/p/the-turkish-competition-authority-s-m-a-overview-report-for-2020-has-been-published-184

The Same Conduct in Multiple Markets Leads to One Fine Only: The Mey Icki Saga

*On 23 February 2021, the Council of State reversed the decision of the 8th Regional Court of Ankara ("**Regional Court**"), which had annulled the decisions of the TCA and 2nd Administrative Court of Ankara. The Regional Court had decided that two separate fines should be imposed on Mey İçki Sanayi ve Ticaret A.Ş. ("**Mey İçki**") for a single conduct distorting competition in two different markets. The Council of State held that since the activities of Mey İçki in multiple markets had been the same, applied in the same period, and part of the undertaking's single commercial strategy, imposition of the second administrative monetary fine would be unlawful.*

The TCA conducted two investigations to determine whether Mey İçki had violated Article 6 of Law No. 4054 on the Protection of Competition ("**Competition Law**") and rendered two decisions respectively.[1] In its first decision, the TCA determined that Mey İçki had violated the Competition Law by abusing its dominance in the "*raki*" (Turkish strong spirit flavoured with anise) market and imposed an administrative fine based on its annual turnover of 2016. In its second decision, the TCA determined that the same conduct of Mey İçki also constituted an abuse of dominance in the vodka and gin markets, but did not impose any fines since the conduct subject to the investigation had been fined in the previous investigation.

Subsequently, the Regional Court annulled the TCA's decision not to impose any fines with regards to its second investigation and established that since there were two separate markets ([i] the raki market and [ii] the vodka and gin markets) affected by the conduct of Mey İçki, two separate fines shall be imposed.[2]

Subsequently, the Regional Court's decision was appealed before the Council of State. The Council of State, in its assessments, referred to Turkish Criminal Code No. 5237 and explained the "*ne bis in idem*" principle. According to this principle, if a sole conduct results in multiple crimes, the actor of the crime shall be imposed the maximum penalty, instead of being imposed penalties separately for each of the crimes. Additionally, the Council of State referred to the Communiqué on Monetary Fines to be imposed in Cases of Anti-Competitive Agreements, Concerted Practices and Decisions, which provides that fines shall be calculated on a per conduct basis.

Within this context, the Council of State evaluated that multiple violations caused by a single conduct within the framework of a single commercial policy not based on any market distinction shall be deemed as a single act since they are inter-dependent in terms of markets, qualification, and chronological process. Thus, in such cases, no more than a single fine shall be imposed.

In conclusion, the Council of State held that as the conducts of Mey İçki that constituted violations in the raki, vodka, and gin markets were the same, applied in the same time period, and part of the undertaking's single commercial strategy, the imposition of the second administrative monetary fine would be unlawful and thus annulled the decision of the Regional Court.[3]

1 TCA decision no. 17-07/84-34, 16 February 2017; and decision no. 17-34/537-228, 25 October 2017.

2 Ankara Regional 8th Court Decision, no. E. 2019/2944 K. 2020/424, 4 May 2020.

3 13th Chamber of the Council of State Decision, no. E. 2020/1941 K.2020/3508, 2 December 2020.

Biletix to Avoid Exclusivity Agreements

*On 22 January, the TCA announced its final decision regarding the investigation into Biletix Bilet Dağıtım Basım ve Ticaret A.Ş. ("**Biletix**"). No fines were imposed on the company since no unfair pricing policies were confirmed. Biletix was advised to stay away from exclusivity practices.*

The TCA conducted an investigation into Biletix in order to determine whether it had abused its dominant position by means of adding extra and excessive costs such as service, transaction, and shipping fees to the prices of tickets it sells and concerning exclusive agreements made with organizers.

As a result of the investigation, with its decision dated 21 January 2021 and numbered 21-04/53-22, the TCA decided unanimously that:

- Biletix holds a dominant position in "the market for brokering services through a platform for the sale of event tickets (except football matches)",
- Biletix did not violate Article 6 of the Competition Law by means of adding extra costs under various names to ticket prices, making it unnecessary to impose administrative fines on Biletix;
- the Presidency shall be assigned to send an opinion to the Ministry of Trade of the Republic of Turkey that measures might be taken within the scope of Act No. 6502 on the Protection of Consumers about drip pricing, which is considered to harm consumers.

Furthermore, it was decided that:

- the agreements made by Biletix with organizers do not benefit from block exemption under the scope of the Block Exemption Communiqué No. 2002/2 on Vertical Agreements,
- the said agreements cannot be granted individual exemption since the conditions listed in Article 5 of the Competition Law are not fulfilled.

Lastly, it was held that Biletix should not conclude agreements that include exclusivity provisions or provisions that might result in de facto exclusivity, and should avoid such practices as of the notification of the brief decision.

Turkey's Second Ever Terminated Investigation Due to Accepted Commitments

*By accepting the commitments proposed, on 15 January 2021 the TCA decided to terminate the investigation of Türkiye Sigorta, Reasürans ve Emeklilik Şirketleri Birliği ("**TSB**"), the association of Turkish insurance and reinsurance companies, and OSEM Sertifikasyon A.Ş. ("**OSEM**"). It is the second decision (following the Havas case) terminating an investigation due to commitments in Turkey.*

The amendment to Article 43(3) of Turkish Competition Law, made through the Law dated 16 June 2020 and numbered 7246, allows the undertakings subject to investigation to offer commitments to the TCA voluntarily, according to which the TCA may decide not to launch an investigation or terminate an investigation if it evaluates that the proposed commitments eliminate the competitive concerns.

The TCA assessed the commitments proposed by the TSB and OSEM within the scope of the investigation initiated through its decision dated 29 August 2019 and numbered 19-30/453-M decided to terminate the investigation. This decision is important as it is the second decision terminating an investigation due to commitments and it is the first decision in which both structural and behavioural commitments were accepted.

Prior to this, the Havas case or commitments offered by Havaalanları Yer Hizmetleri A.Ş. ("**Havaş**") was the first commitment case without secondary legislation yet in place, where the TCA decided that competitive concerns would be eliminated and excluded Havaş from the investigation initiated through its decision dated 24 July 2020 and numbered 20-35/460-M. The TCA initiated an investigation into five undertakings (including Havaş) providing bonded temporary warehouse services to determine whether Articles 6 and 41 of the Turkish Competition Law had been violated.

Subsequently, Havaş offered commitments to the TCA regarding its inter-warehouse transfer fees. The TCA determined that the "warehouse change fee» restricted the movement of especially imported goods to competitors' alternative warehouses. Within the scope of the commitments, Havaş offered to take no warehouse transfer fee or any other fee serving the same purpose under a different name. In conclusion, the TCA decided to terminate the relevant investigation with respect to Havaş, establishing that the commitments proposed by Havaş eliminated the existing competitive concerns.

Antitrust Investigation into Teva: Delay of Generics Market Entry?

*On 4 March 2021, the European Commission ("**EC**" or "**Commission**") opened a formal antitrust investigation to assess whether Teva has restricted competition by delaying the market entry and uptake of medicines that compete with its blockbuster multiple sclerosis drug Copaxone, by abusing its dominant market position in breach of EU antitrust rules.*

Copaxone is a drug used widely for the treatment of relapsing forms of multiple sclerosis and includes the active pharmaceutical ingredient glatiramer acetate. It is the best-selling drug of Teva, a global pharmaceutical company based in Israel and operating from several subsidiaries in the EEA.

In October 2019, the Commission carried out unannounced inspections at the properties of several Teva subsidiaries in the EEA and then continued inspections at the Commission's premises in Brussels in January 2020. These inspections were carried out following allegations of market players regarding misuses of patent procedures and exclusionary disparagement as important barriers to the entry of generic or biosimilar medicines.

The potentially anti-competitive practices of Teva the Commission will investigate include:

- Possible artificial extension of the market exclusivity of Copaxone by strategically filing and withdrawing divisional patents in order to delay entry of its generic competitor who was faced to file a new legal challenge each time, and
- A possible campaign directed at healthcare institutions and professionals to unduly hinder the use of competing glatiramer acetate products by way of creating a false perception of health risks associated with their use.

If proven, Teva's behaviour under investigation may amount to an abuse of dominant position in breach of Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement.

The Commission, in its press release, states that it will now carry out its in-depth investigation as a matter of priority as it is the Commission's first formal investigation into potential abuses relating to the misuse of patent procedures and exclusionary disparagement of competing products in the pharmaceutical industry.

Approval of the Varian/Siemens Transaction with 10 Years of Commitments

*On 19 February 2021, the EC approved, under the EU Merger Regulation, the proposed acquisition of Varian Medical Systems ("**Varian**") by Siemens AG, through its subsidiary Siemens Healthineers ("**Siemens**") with the condition that the transaction parties operate in full compliance with the commitments package offered by Siemens.*

Siemens AG, based in Germany, is a technology group active worldwide and focusing on various areas including medical technology and digital healthcare services. Its subsidiary Siemens provides healthcare solutions and services worldwide, including among others imaging healthcare solutions. Varian, based in the US, is a global provider of medical devices and software solutions for treating cancer and other medical conditions with radiotherapy and other advanced treatments.

The transaction regarding the acquisition of Varian by Siemens was notified to the Commission on 23 December 2020. The Commission had concerns that the transaction, as originally notified, would lead to the foreclosure of competitors in the European Economic Area ("EEA») and the United Kingdom[1] ("UK») in the markets for the supply of medical imaging solutions as well as the supply of radiotherapy solutions.

In line with its investigation, the Commission found that the proposed transaction could lead to foreclosure of the parties' rivals in the EEA and the UK as Siemens and Varian are the largest suppliers of medical imaging solutions and radiotherapy solutions, respectively. The Commission stated that a possible degradation of the interoperability between the transaction parties and third parties could lead to reduced choice in products and loss of innovation, to the detriment of customers and patients.

In response to the Commission's concerns, Siemens committed to continue adhering to a de facto industry-wide interoperability standard (DICOM) and to ensure interoperability between **(i)** its medical imaging solutions and rivals' radiotherapy solutions and **(ii)** its radiotherapy solutions and rival's imaging solutions, by **(i)** providing the relevant information and **(ii)** technical assistance to third parties and customers.

Finally, the Commission concluded that the proposed transaction, as modified by the commitments, which will run for an initial term of ten years (which may be extended by an additional five years by the Commission's decision), would no longer raise competition concerns in the EEA and the UK and thus, approved the transaction on condition of full compliance with the commitments.

1 The Commission's investigation covered both the EEA and the UK as the transaction was notified before the end of the transition period laid down in the Withdrawal Agreement between the UK and the EU.

Belchim/ Mitsui Transaction Conditionally Approved in the EU

*On 11 February 2020, the EC approved, under the EU Merger Regulation, the proposed acquisition of Belchim Crop Protection NV/ SA ("**Belchim**") by Mitsui & Co. ("**Mitsui**") with the condition that the Parties act in full compliance with the commitments package offered by Mitsui.*

Mitsui agreed to acquire 62% of the shares of Belchim, a European agrochemical company, from Belchim Management NV/SA ("**BM**"), through Mitsui's wholly owned subsidiary Mitsui AgriScience International SA/NV ("**MASI**") in 2019.[1] Once all relevant conditions including antitrust approval have been fulfilled, MASI will acquire 30% of the shares held by BM, making BCP its consolidated subsidiary. The remaining 32% of shares will be acquired in or after February 2021. The notification was made on 15 December 2020.[2]

Mitsui, based in Japan, is a trading house engaged in a number of worldwide commodity trade and other businesses, including the distribution and supply of products in various industries such as iron and steel, non-ferrous metals, machinery, electronics, chemicals, energy-related commodities, logistics, and investment in infrastructure projects.

Belchim, based in Belgium, is active in the development and commercialisation of agricultural products, mainly in the European crop protection market. Belchim predominantly distributes a wide range of third-party products but also formulates and sells its own crop protection solutions, in particular for potatoes, vines, fruit, and vegetables.

Belchim and Mitsui both distribute third-party crop protection products and supply their own formulated products for high-value crops such as potatoes, vegetables, and vines. For such crops, both companies sell a wide range of products that are mostly based on off-patent active ingredients. In the European Economic Area ("**EAA**"), Mitsui is mainly active in crop protection through its subsidiary Certis, based in the Netherlands.

The EC has evaluated that the proposed transaction would have anti-competitive effects in the plant growth regulators market ("**PGR**") and paraffinic oil market. Mitsui offered certain commitments in order to relieve the EC's competition concerns:

- Mitsui would transfer its distribution agreement and customer relationships for its potato PGRs in one or two packages to one or two remedy takers. The commitment is time-limited and in case Mitsui is unable to realize this commitment, it also has offered to transfer the Belchim distribution agreement and customer relationships for its PGR product under the same terms.
- Mitsui also has offered to transfer the Belchim distribution agreement and other relevant data and agreements for its paraffinic oils for virus control in seed potatoes and flower bulbs in the Netherlands to a remedy taker.

Mitsui cannot implement the acquisition of Belchim before the EC has formally assessed and approved the transfer of each of the packages to remedy takers. The EC ruled that these commitments fully remove the overlaps between Mitsui and Belchim in the markets where the EC had identified competition concerns.

The EC, therefore, has concluded that the proposed transaction, as modified by the commitments, no longer raise competition concerns in the EEA. The decision is conditional upon full compliance with the commitments.

1 https://www.mitsui.com/jp/en/release/2019/1230236_11219.html

2 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_561

Conditional Clearance of the Refinitiv/London Stock Exchange Group Concentration

*On 13 January 2021, the EC approved the acquisition of Refinitiv by the London Stock Exchange Group ("**LSEG**"). The approval is conditional upon full compliance with the commitments package proposed by the LSEG.*

The proposed transaction, which combines the activities of LSEG and Refinitiv, was notified first on 13 May 2020 and the Commission opened an in-depth investigation on 22 June 2020. During its in-depth investigation, the Commission gathered extensive information and feedback from a large number of competitors and customers of the parties and cooperated with competition authorities around the world.

As a result of the in-depth investigation, the Commission expressed its concern that the transaction, as initially notified, would have harmed competition in several markets. Those concerns were mainly the following:

- the transaction would have led to the creation or the strengthening of a dominant position in the market for European government bonds electronic trading,
- the transaction would have given the LSEG the ability and incentive to foreclose Tradeweb's rival trading venues and middleware providers,
- the transaction would have given LSEG the ability and incentive to refuse or limit the access of Refinitiv's competitors in the London Stock Exchange's venue data and FTSE Russell UK Equity Indices,
- the competitors active in index licensing could be denied access to Refinitiv's necessary input data as no viable alternative to Refinitiv's benchmarks on the market exists.

Eventually, the LSEG offered to address the Commission's competitive concerns taking on responsibilities to (**i**) divest 99.9% stake in the Borsa Italiana group, which includes MTS (the LSEG's trading venue for European government bonds), to a suitable purchaser; (**ii**) continue offering its global over-the-counter interest-rate derivatives clearing services performed by LCH Swapclear (the largest OTC interest rate swap clearing service) on an open-access basis; and (**iii**) provide access to the London Stock Exchange venue data, FTSE UK Equity Indices, and Refinitiv's benchmarks to all existing and future downstream competitors. In addition, the commitments also include a fast track and binding dispute resolution mechanism that can be relied on by third parties who believe that the LSEG does not comply with these commitments.

The Commission concluded that the commitments offered fully addressed the existing competitive concerns and thus decided to approve the transaction on condition of full compliance with the concerned commitments.

The Hot Rolled Steel Saga Continues: Turkey Initiates Anti-Dumping Investigation into Imports of Hot Rolled Flat Steel Originating in the EU and Korea

*On 9 January 2021, through Communiqué No. 2021/4 on the Prevention of Unfair Competition in Imports ("**Communiqué**"),[1] the Ministry of Trade ("**Ministry**") initiated a dumping investigation into the imports of hot-rolled flat steel ("**HRFS**") products[2] originating in the European Union ("**EU**") and Korea.*

*The investigation was initiated upon a complaint lodged by the Turkish Steel Producers Association on behalf of Ereğli Demir ve Çelik Fabrikaları T.A.Ş., Çolakoğlu Metalürji A.Ş., Habaş Sınai ve Tıbbi Gazlar İstihsal Endüstrisi, and Tosçelik Profil ve Saç Endüstrisi A.Ş (all together ("**complainants**"). The complaint was supported by İskenderun Demir ve Çelik A.Ş.*

The complainants asserted that **(i)** the calculated dumping margin was well above the negligible rate (i.e., 2%), **(ii)** the imports of HRFS products had increased both in absolute and relative terms during 2018–2019 Q4 and 2020 Q3, **(iii)** imports originating in the EU and Korea caused price depression as well as price undercutting, and **(iv)** the EU and Korea were amongst the biggest exporters with considerable production capacities, which further supports the risk of material injury or threat thereof.

When calculating the dumping margin, the normal value was constructed by the complainants. Within this scope, general administration/sales expenses, which were calculated in accordance with financial statements of exporters in the EU and Korea, financing expenses, and a reasonable profit margin were added to the unit production price of the like product in Turkey.

Average prices of exports originating in the EU and Korea, based on data gathered from the Turkish Statistical Institute, were used to calculate the export price.

As to the increase of imports of HRFS products in absolute terms, it was indicated by the complainants that imports originating in the EU and Korea had increased by 15% and 108% in volume, respectively, during the period 2018 – 2019 Q4 and 2020 Q3.

It was alleged in the complaint that price undercutting between 2% and 5% on the prices of the domestic industry was caused by imports originating in the EU and Korea, taking into account imports of the CN Codes under which importation was most concentrated. It also was asserted that the price depression caused by the imports **(i)** originating in EU-27 was between 11% and 15% and **(ii)** originating in South Korea was between 13% and 17%. The complainants also stated that the profitability of the domestic sales of the domestic industry had decreased in 2020 more than 50% in comparison with the profitability in 2018 and that domestic producers were forced to set their sales prices without reaching reasonable profit margins because of the pressure created by the low-priced imports.

In addition to the allegation of material injury, the complainants included allegations of a threat of material injury to the domestic industry. The complainants explained that many producers of the subject product in the EU and Korea had increased their capacities and/or production volumes through new improvement investments made in the recent period. Considering also trade restrictions applied by the leading importers of the subject product and worldwide excess capacity, it was asserted that the Turkish market would become the main target of some of the exporters of HFRS products.

The investigation is of significant importance since it is a part of the world-wide trade protectionist approach stemming from the imposition of duties by the United States of America ("**US**").

The "Domino Effect" of Trade Defence Instruments

In the grand scheme of things, the investigation is part of a chain of numerous trade defence investigations as well as other tariff and non-tariff barriers imposed on the global exportation of steel products. On 23 March 2018 and 1 June 2018, the US put into force tariffs of 25% and of 10% for steel and aluminium imports, respectively, under Section 232 the US Trade Expansion Act of 1962, under "national security" considerations, which had not been resorted to for decades.[3] Thereafter, on 26 March 2018, the EU initiated a safeguard investigation[4] with respect to the EU's imports of 26 steel products in order to protect the EU producers from unforeseen excessive imports due to trade diversion from the US market. The safeguard investigation was concluded with the application of measures on the importation of 26 types of steel product categories and consisted of tariff-rate quotas above which a duty of 25% would be applied.[5] As for global responses to the US tariffs, China imposed duties in April 2018 on 128 US products worth 3 billion USD; in June, Mexico instituted duties on US exports worth 3 billion USD, and Canadian duties targeting 16.6 billion Canadian Dollars

in US exports took effect in July 2018. In June 2019, India also imposed tariffs on 28 US products, with some levies reaching 70%, and finally, on 21 June 2018, Turkey became the latest country to impose tariffs on US goods worth 1.8 billion USD in US exports.

Following the EU, Turkey also initiated a safeguard investigation[6] on 27 April 2018 concerning imports of certain steel products in an effort to protect its domestic producers from a trade diversion resulting from the additional duties imposed on steel products by the US and the EU. The provisional measures took effect as of 17 October 2018 on the imports of the concerned products. On 7 May 2019, Turkey terminated its investigation, not imposing any measures on steel products.[7] During the investigation process, it was evaluated that the subject imports had not featured a sudden, recent, significant, and sharp increase and that the economic indicators of the Turkish steel industry demonstrated that it could endure any future trade diversions.

The constructive approach of Turkey did not earn its merit as the EU launched an anti-dumping investigation[8] concerning imports of hot-rolled flat steel products originating in Turkey on 14 May 2020. This investigation may be considered as a "response" to the consultation process[9] with the EU, triggered by Turkey at the World Trade Organization ("**WTO**") on 19 March 2020, claiming that the EU safeguard measures, in the form of tariff-rate quotas and additional duties, and the underlying investigation were inconsistent with several provisions of the Agreement on Safeguards and the GATT 1994. Moreover, Turkey also put forward that the EU had failed to make reasoned and adequate findings with respect to its determinations relating **(i)** to like products, **(ii)** to the unforeseen developments and how those unforeseen developments resulted in increased imports, **(iii)** to the products concerned threatening to cause serious injury to domestic producers, **(iv)** to the increase in imports of the products concerned, in absolute or relative terms, **(v)** to the existence of a threat of serious injury to the domestic industry, and **(vi)** to finding of a causal link between the increase in imports and the threat of serious injury to the domestic industry. As the dispute could not be resolved and a satisfactory solution

was not found, Turkey requested the establishment of a panel[10] before the WTO on 16 July 2020, which was composed on 30 September 2020.

Not long after the aforementioned anti-dumping investigation, on 12 June 2020, the EU launched an anti-subsidy investigation[11] regarding the imports of hot-rolled flat steel products originating in Turkey. The investigation was initiated on assertations that the Turkish producers had received subsidies through **(i)** direct transfer of funds, **(ii)** waiver and non-collection of government revenues that are due, and **(iii)** government provision of goods or services for less than adequate remuneration.

Moreover, through the anti-dumping proceeding, the EC accepted claims that a substantial increase in imports had occurred and that the further rise in imports following the initiation of the investigation was likely to undermine seriously the remedial effect of any definitive duty unless such duty would be applied retroactively. Consequently, the EC determined that imports of the product concerned be made subject to registration to ensure that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties could be levied retroactively on the registered imports. Additionally, on 6 January 2021, a provisional anti-dumping duty[12] ranging between 4.8% and 7.6% was applied on imports of hot-rolled flat steel products originating in Turkey as the EC evaluated dumping, injury, causation, and the interest of the EU and determined that provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

Following the proceedings of the EU, only three days after publication of the EC's decision regarding the application of provisional anti-dumping duties on imports of hot-rolled flat steel products originating in Turkey, on 9 January 2021, Turkey initiated a dumping investigation into the imports of hot-rolled flat steel products originating in the EU and Korea through Communiqué No. 2021/4 on the Prevention of Unfair Competition in Imports.

Conclusion

Upon examination of the course of events triggered by the imposition of tariffs on imports of steel by the US, it can be said that the trade defence instruments started to serve the escalating worldwide protectionist approach instead of protecting domestic producers from unfairly dumped or subsidised imports and dramatic shifts in trade flows that are harmful to national economies. Although Turkey showed a constructive approach by terminating its safeguard investigation without imposing any measures, it is uncertain whether it will take an active role in the trade wars upon the termination of the anti-dumping investigation into imports of HRFS products originating in the EU and Korea. The result of the panel request by Turkey before the WTO claiming that the EU safeguard measures, and the underlying investigation, are inconsistent with several provisions of the Agreement on Safeguards and the GATT 1994 will be of significant importance as it may draw the line between countries' national interests and their responsibilities stemming from international law.

1 The Communiqué in Turkish: https://www.resmigazete.gov.tr/eskiler/2021/01/20210109-4.htm

2 Product subject to the complaint is hot rolled flat steel products, alloyed or non-alloyed, not coated (except cladding) and classified under following Turkish CN Codes: 7208.10.00, 7208.25.00, 7208.26.00, 7208.27.00, 7208.36.00, 7208.37.00, 7208.38.00, 7208.39.00, 7208.40.00, 7208.52.10, 7208.52.99, 7208.53.10, 7208.53.90, 7208.54.00, 7211.13.00, 7211.14.00, 7211.19.00, 7212.60.00, 7225.19.10, 7225.30.10, 7225.30.30, 7225.30.90, 7225.40.15, 7225.40.90, 7226.91.20, 7226.91.91, 7226.91.99. It should be noted that the CN Codes provided by the Ministry are for information purposes only therefore not binding.

3 The US Department of Commerce's report on the effect of imports of steel on the national security. Available at: https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf

4 Initiation notice of the safeguard investigation. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0326(02)&from=EN

5 The relevant regulation imposing definitive safeguard measures. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0159&from=EN

6 The initiation notice of the safeguard investigation in Turkish. Available at: https://www.resmigazete.gov.tr/eskiler/2018/04/20180427-5.htm

7 Turkey's termination notification to the WTO. Available at: https://ticaret.gov.tr/data/5cdac7de13b87605dc497b0e/N7TUR13S1.pdf

8 Initiation notice of the anti-dumping investigation. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0612(02)&from=EN

9 News on the consultation process published on the WTO's website: Available at: https://www.wto.org/english/news_e/news20_e/ds595rfc_19mar20_e.htm

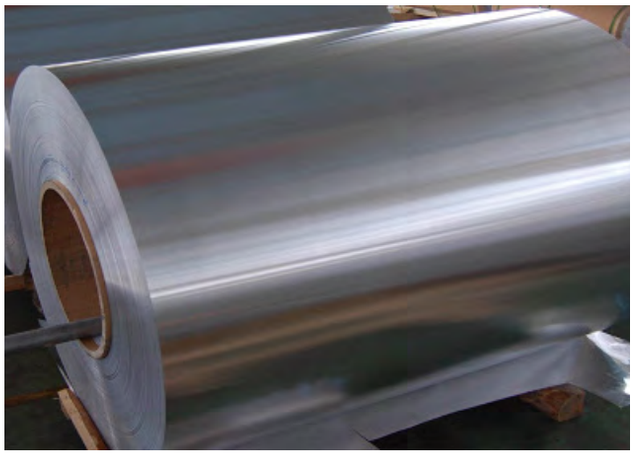
10 Summary of the dispute. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds595_e.htm

11 Initiation notice of the anti-subsidy investigation. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0612(02)&from=EN

12 The relevant regulation imposing provisional anti-dumping duties. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0009&from=EN

US Anti-Dumping and Countervailing Duties on the Imports of Aluminium Sheets Originating in Turkey

*On 2 March 2021, the United States Department of Commerce ("**DoC**") announced its affirmative final determination within the scope of the anti-dumping investigation concerning the imports of common alloy aluminium sheet[1] ("**aluminium sheet**") originating in Turkey and 18 other countries. Additionally, the DoC reached an affirmative final determination regarding the anti-subsidy investigation concerning the imports of aluminium sheet originating in Turkey, Bahrain, and India.*



The product subject to investigations, aluminium sheet, is a flat-rolled product used in building facades and a variety of products, such as truck trailer bodies and street signs. Turkey exported USD 122.8 million worth of aluminium sheet to the United States in 2019.

The anti-dumping investigation, along with the anti-subsidy investigation, was initiated in March 2020, pursuant to a complaint lodged by the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group. In its affirmative final determination, the DoC stated that Turkish producers had a dumping rate ranging from 2.02% to 13.56% and a subsidy rate ranging from 2.56% to 4.34%.

Subsequent to the DoC's affirmative determination, the United States International Trade Commission ("**USITC**"), an independent body, must make affirmative final injury determinations in order for the anti-dumping and the countervailing duties to be imposed on the based on the rate determined by the DoC.

1 The products subject to investigation are listed under the HS Codes 7606113060, 7606116000, 7606123090, 7606126000, 7606913090, 7606913095, 7606916080, 7606916095, 7606923035, 7606923090, 7606926080, and 7606926095.

Safeguard Measure on Imports of Toothbrushes to be Extended for Another Three Years

According to Communiqué No 2021/2 on Safeguard Measures for Imports, on 2 February 2021 the Ministry of Trade concluded the safeguard investigation concerning the imports of toothbrushes. In accordance with the safeguard legislation, the Ministry's decision has been put into effect through Presidential Decree No. 3472.

The original safeguard investigation was concluded in 2018 and foresaw the application of safeguard measure in form of additional fiscal liability for three years. In this regard, the safeguard measure was applied as 0.23 USD/piece between 03 February 2018 and 02 February 2019, 0.22 USD/piece between 03 February 2019 and 02 February 2020 and 0.21 USD/piece between 03 February 2020 and 02 February 2021. Upon the application from Turkish toothbrush producers (Banat Fırça ve Plastik A.Ş. and Difaş Fırça ve Plastik A.Ş.), the Ministry initiated an investigation to determine whether the extension of the safeguard measure is necessary to prevent or remedy serious injury suffered by the domestic producers.

Consequently, the Ministry determined that even though imports of toothbrushes have decreased, and domestic producers have been on the path to adapt to competition, it nevertheless concluded that the domestic industry needs time to obtain results from its investments and the continuation of the measure is necessary to prevent or remedy the serious injury. In accordance with the World Trade Organization Agreement on Safeguards and Turkish legislation on safeguard measures, the applicable safeguard measure was designed in a way to progressively liberalize the trade at regular intervals during the period of its application. In this vein, the safeguard measure will be applied as 0.19 USD/piece between 03 February 2021 and 02 February 2022, 0.17 USD/piece between 03 February 2022 and 02 February 2023 and 0.15 USD/piece between 03 February 2023 and 02 February 2024.

Overview of the Antidumping Duties to Expire in the Second Half of 2021

*Through Communiqué No. 2021/5 on the Prevention of Unfair Competition in Imports ("**Communiqué**"), the Ministry announced the anti-dumping duties that will expire in the second half of 2021.*

According to Article 35 of the Regulation on the Prevention of Unfair Competition in Imports, definitive duties expire five years from their imposition or five years from the date of the conclusion of the most recent review covering both dumping/subsidy and injury, and the Ministry publishes a notice of "*impending expiry*" whereby lists all definitive anti-dumping and anti-subsidy measures that will expire if no domestic producer submits a written request to the Directorate General of Imports containing sufficient evidence, for the initiation of a review investigation.

The relevant anti-dumping duties listed in the Communiqué are as follows:

- Refrigerating or freezing equipment (excluding refrigerating and freezing furniture) originating in the People's Republic of China ("PRC»);
- Glass mirrors, not framed, originating in the PRC;
- Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated originating in the PRC and Russia;
- Baby carriages and parts thereof originating in the PRC;
- New pneumatic tyres, of rubber, of a kind used for motorcycles; inner tubes, of rubber (excluding those of a kind used on motor cars, incl. station wagons and racing cars, buses, lorries and bicycles); and parts and accessories of motorcycles, including mopeds originating in Taiwan and Vietnam;
- Tubes, pipes, and hollow profiles, seamless, of iron or steel (excluding products of cast iron) originating in the PRC;
- New pneumatic tyres, of rubber, of a kind used for bicycles; inner tubes, of rubber, of a kind used for bicycles; and parts and accessories, for bicycles originating in the PRC, Vietnam and Sri Lanka;
- Metallised yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405 of textile fibres, combined with metal in the form of thread, strip or powder or covered with metal (excluding yarns manufactured from a mixture of textile fibres and metal fibres, with anti-static properties; yarns reinforced with metal wire; articles with the character of trimmings) originating in the PRC, Taiwan, South Korea, and India;
- Slide fasteners fitted with chain scoops of base metal originating in the PRC;
- Textile fabrics impregnated, coated, covered or laminated with polyurethane (excluding wallcoverings of textile materials impregnated or covered with polyurethane; floor coverings consisting of a textile backing and a top layer or covering of polyurethane) originating in the PRC;
- Glass fibres, including glass wool, and articles thereof (excluding mineral wools and articles thereof, optical fibres, fibre bundles or cable, electrical insulators or parts thereof, brushes of glass fibres, dolls' wigs) originating in the PRC;
- Textured filament yarn of polyester originating in Thailand and Vietnam;
- Tools for drilling, interchangeable (excluding rock-drilling or earth-boring tools and tools for tapping); and interchangeable tools for milling originating in the PRC; and
- Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal originating in the PRC.

Evaluation of the Use of Voice Recording Security Cameras from the Data Protection Law Perspective

*On 2 March 2021, the Turkish Data Protection Board ("**Board**") published on its official website its decision dated 12 March 2021 and numbered 2020/212, regarding the use of voice recording security cameras. The Board decided that voice recording in addition to video recording would constitute a violation of the right of personal data protection in case it is not necessary.*

The Board initially established that the right of personal data protection may only be restricted in accordance with Articles 4 and 5 of Law No. 6698 on the Protection of Personal Data ("**KVKK law**") and Article 13 of the Constitution. It was explained that Article 5 of the KVKK provides that personal data may not be processed without the explicit consent of the data subject or may be processed in exceptional conditions specified within the same article. Also, it is stated that within the scope of Article 4 of the KVKK, the data to be processed should be in accordance with the following principles:

- Processed lawfully and fairly;
- Accurate and where necessary, kept up to date;
- Processed for specified, explicit and legitimate purposes;
- Relevant, limited, and proportionate to the purposes for which they are processed; and
- Retained for the period determined by the relevant legislation or the period deemed necessary for the processing.

Subsequently, the Board explained that the right of personal data protection is a part of fundamental rights and freedoms and thus, their restriction shall only be possible to the extent necessary in a democratic society and in a way that the effect of the protection of the right would not be taken away. Accordingly, it is stated that regulations restricting the right of personal data protection shall be interpreted narrowly.

In conclusion, the Board held that in cases where the purpose of the recording can be attained with only video recording, voice recording would distort the balance between personal data processing and its purpose, violating the principle of proportionality. Additionally, it was evaluated that the use of voice recording cameras for security purposes could lead to a general practice of their use in any kind of environment, which would harm the right of personal data protection.

Special Consumption Tax on Electric Cars Increased

*According to Presidential Decree No. 3471 ("**Decree**"), as of 2 February 2021 Turkey has increased the Special Consumption Tax on passenger cars with electric motors.*

The Decree modifies the special consumption tax on the passenger cars with electric motors with the following rates:

- 10% for passenger cars with less than 85 kW engine power,
- 25% for passenger cars with engine power between 85 kW and 120 kW, and

60% for passenger cars with engine power more than 120 kW.

Period of Registration with the Data Controller Registry Information System Extended

*On 11 March 2021, the Board published on its official website its decision regarding a time extension for completing registrations with the Data Controller Registry Information System ("**Verbis**").*

Upon evaluation of time extension requests lodged by data controllers, various sector representatives, and certain public institutions regarding registration to Verbis on the grounds of difficulties experienced due to the Covid-19 pandemic, the Board decided to extend the registration period to 31 December 2021, with its decision dated 11 March 2021 and numbered 2021/238, with regards to following:

- Natural person or legal entity data controllers with more than 50 employees annually or whose annual financial statements exceed TRY 25 million and the natural person or legal entity data controllers located abroad;
- Natural person or legal entity data controllers with less than 50 employees annually, whose annual financial statements do not exceed TRY 25 million and whose main area of activity is processing sensitive personal data; and
- Public institutions and public professional organizations.

First Approval of a Letter of Undertaking for Application of Data Protection Law

*On 9 February 2021, the Turkish Data Protection Board published its announcement regarding its first approval of a letter of undertaking for the application of the Protection of Personal Data Law ("**KVKK law**"). The Board announced that it will allow the transfer of personal data abroad by TEB Arval Araç Filo Kiralama Anonim Şirketi ("**TEB Arval**"), a fleet management company, based on the letter of undertaking submitted to the Board.*

This approval is of high importance due to its being the first time the Board has approved a letter of undertaking regarding the transfer of personal data across borders, for the application of the KVKK. Pursuant to the KVKK, a data controller may transfer personal data to a third country only by acquiring the data subject's explicit consent or confirming that the third country to which the personal data shall be transferred provides adequate protection for personal data.

Nonetheless, the list of the safe countries providing adequate protection has not been published by the Board yet. Accordingly, submitting a letter of undertaking to the Board by the data controllers in both the data transferring and transferee countries undertaking that the personal data of the data subjects shall be adequately protected was the third alternative provided that the Board's approval has been acquired. In this regard, the Board's respective approval regarding the transfer of personal data abroad is expected to serve as a model for other companies that also wish to consider the respective alternative way in terms of transferring the personal data abroad.

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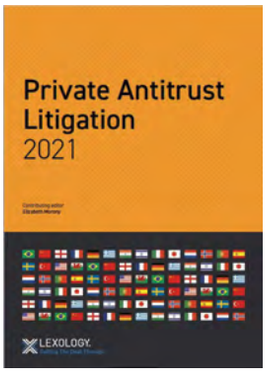

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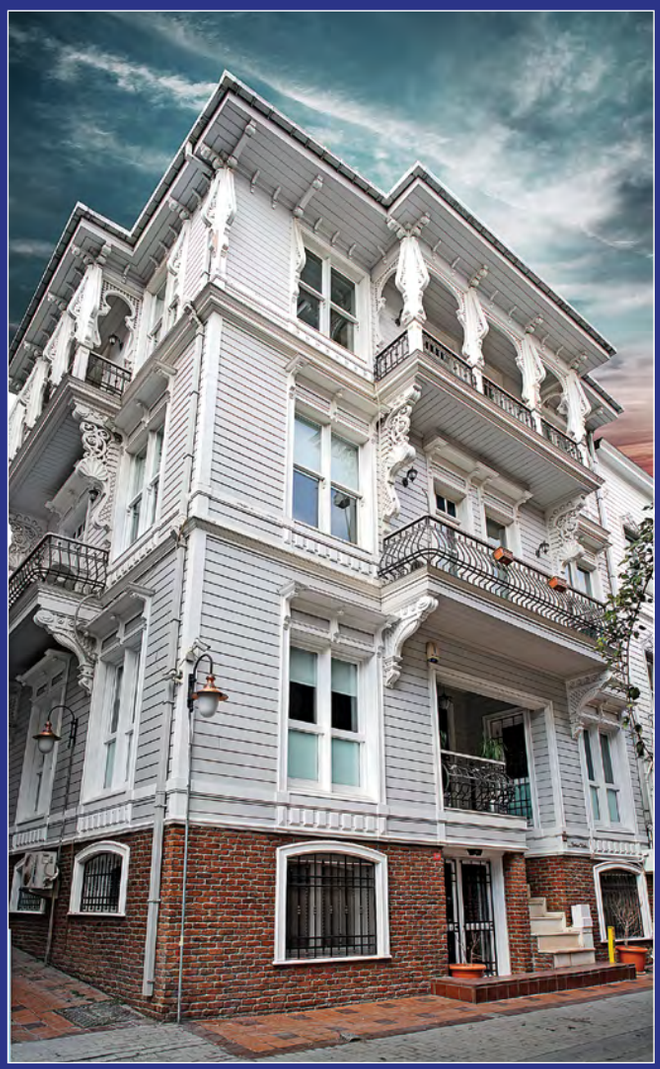

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