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TCA Imposes a Daily Fine on Google



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Dear reader,

This is the last quarterly issue of The Output® for 2019. The end of the year is quite special and busy for everybody, as competition law and international trade developments are coupled with the holiday spirit.

Despite the festive season, Competition Authorities in Turkey and the European Union (“EU”) prepared “presents” for certain undertakings. In the EU, Coroos and Groupe CECAB were fined for participation in the canned vegetable cartel. The Court of Justice of the EU (“CJEU”) had a final say in the power cable cartel – it rejected the reduction of fines claims and clarified the principle of equal treatment in the process of calculating the fine in cartel cases. Unilever and Turkish Pharmacists’ Association were fined in Turkey for non-compliance with the procedural rules in relation to on-the-spot inspections and information requests.

In addition, Google saga continues in Turkey. This time the Google’s fine is related to its failure to comply with the earlier offered remedies. The Google case is attracting more spotlights, since shortly after the Turkish Competition Authority’s (“TCA”) decision, Google declared that it will stop approving new Android smartphone models, which use Google’s version of Android wherein Google Play application store and applications such as Google Search, YouTube, Gmail and other Google applications are pre-loaded. The TCA as a

reply to Google’s announcement in its official statement expressed its expectation that Google would comply fully with the TCA’s decision.

As regards international trade news, in the last quarter of the year the Turkish Ministry of Trade dealt with several anti-circumvention measures against products from South Korea and safeguard measures against imports from yarn of nylon/other polyamides. Quartz surface products from Turkey are faced with preliminary anti-dumping duties from the USA. Another notable event for Turkey is the initiation of a safeguard investigation by Sultanate of Oman on behalf of the Gulf Cooperation Council into increase of imports of steel products.

At the regulatory side there were some developments in relation to authority of data gathering vested in Turkey’s telecommunications watchdog, as well as the new regulation on movie screening. Finally, we watch the deadline of end of June 2020 for all the interested parties that are under obligation to officially register their data privacy position to the relevant Data Protection Authority stemming from the data privacy regulation of Turkey.

We will keep updating you on competition, international trade and regulatory news from Turkey and the EU in 2020. In the meantime we wish you a prosperous and peaceful New Year 2020!

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Unilever Fined for Hindering on-the-spot Inspection

On 13 December the TCA fined Unilever Sanayi ve Ticaret Türk A.Ş. (“Unilever”) for hindering an on-the-spot inspection under Article 16 of Law of Turkey No. 4054 on the Protection of Competition (“**Turkish Competition Law**”).

In 2018, the TCA conducted a preliminary inquiry against Unilever to assess whether it violated Articles 4 and 6 of the Turkish Competition Law by means of actual exclusivity via preventing the sale of competing ice-cream products at final sales points. Within the scope of the preliminary inquiry phase, the TCA experts launched an on-the-spot inspection on the premises of Unilever. During the on-the-spot inspection, however, Unilever’s authorized IT personnel stated that the Office 365 application was used for e-mail correspondences through the eDiscovery platform and that global approval was necessary



in order to perform such research within the application.

Even though the TCA’s experts stressed that the examination to be conducted would be limited to Turkey Unilever users and explained their powers and the possible consequences of hindering on-the-spot inspections under the Turkish Competition Law, the Unilever employee did not allow the inspection to proceed until 17:45 on the day, on the ground that the authorization for researching data could not be separated at the global level and in Turkey and therefore they needed a few days to gain access by distinguishing between them.

Ultimately, the TCA decided to impose an administrative monetary fine on Unilever amounting to %0,5 of its 2018 turnover generated in Turkey for hindering the on-the-spot inspection.

Turkish Pharmacists’ Association Fined

On 9 December 2019 the TCA published its reasoned decision regarding the fine levied against the Turkish Pharmacists’ Association for not submitting the responses to the Request for Information on time. The decision emphasizes the importance of compliance with the procedural rules and information requests of the TCA.

Within the scope of the preliminary inquiry conducted against the Turkish Pharmacists’ Association and the Istanbul Chamber of Pharmacists, the TCA sent a request for information to the Turkish Pharmacists’ Association and stated that the response should be submitted by close of

business day 5 July 2019.

However, the requested information and documents were not provided within the time specified. On 5 July 2019, even though the Turkish Pharmacists’ Association sent a letter stating that the responses would be submitted to the TCA after the request for information had been evaluated by the Central Board at the first meeting, the TCA decided to impose an administrative monetary fine on the Turkish Pharmacists’ Association for not submitting the responses to the request for information on time.



EC's In-Depth Investigation into Proposed Acquisition in Shipbuilding Market

On 17 December 2019 the European Commission (“EC”) opened in-depth investigation into the proposed acquisition of Daewoo Shipbuilding & Marine Engineering CO., Ltd (“DSME”, South Korea) by another shipbuilding group, Hyundai Heavy Industries Holdings (“HHIH”, South Korea), due to the concern that the transaction may reduce competition in various global cargo shipbuilding markets.

DSME and HHIH are two of the leading cargo shipbuilders in the world. European shipbuilding companies are the major customers of the DSME and HHIH. The EC carefully assessed the impact of the proposed transaction on the competition in the cargo shipbuilding industry.

Among the EC's main concerns is that the transaction may remove DSME as an important competitor in the markets for large containerships, oil tankers, liquefied natural gas (LNG) and liquefied petroleum gas (LPG) carriers, while the remaining shipbuilders are not strong enough to exercise competitive pressure on the merger entity. In addition, there may be insufficient customer bargaining power as well as high barriers to entry in these markets (due to such factors as know-how, technology, track record, etc.). The transaction may



significantly reduce competition in the market for cargo shipbuilding.

The concentration was notified to the EC in November 2019. The parties did not submit any commitments during the Phase I investigation to address the EC's preliminary concerns. It may take the EC up to May 2020 (90 working days) to take a decision.

An Individual Exemption Granted to the Agreement between Two Leading Banks in Turkey

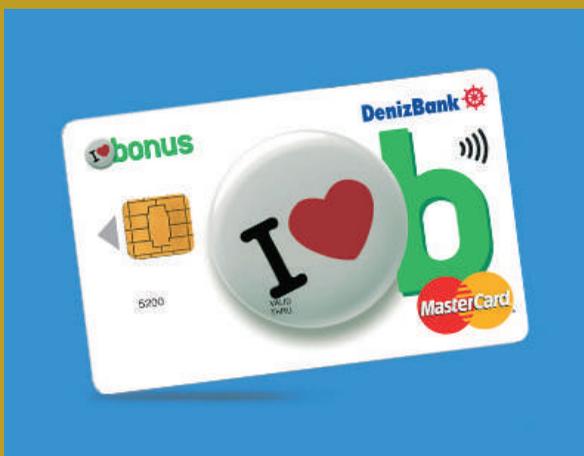
In November 2019 the TCA announced its reasoned decision that an individual exemption was granted in June 2019 to the Bonus Credit Card Program Sharing Agreement (“Agreement”) signed between Türkiye Garanti Bankası A.Ş. (“Garanti”) and Denizbank A.Ş. (“Denizbank”).

The Agreement is related to the activities of the parties in the field of credit cards. Within the Agreement, Denizbank may issue cards with the “Bonus” brand and logo and accordingly may enable consumers to gain installment shopping and rewards in Bonus Card member businesses. In addition, with card acceptor agreements to be signed, Garanti and Denizbank can extend the member business

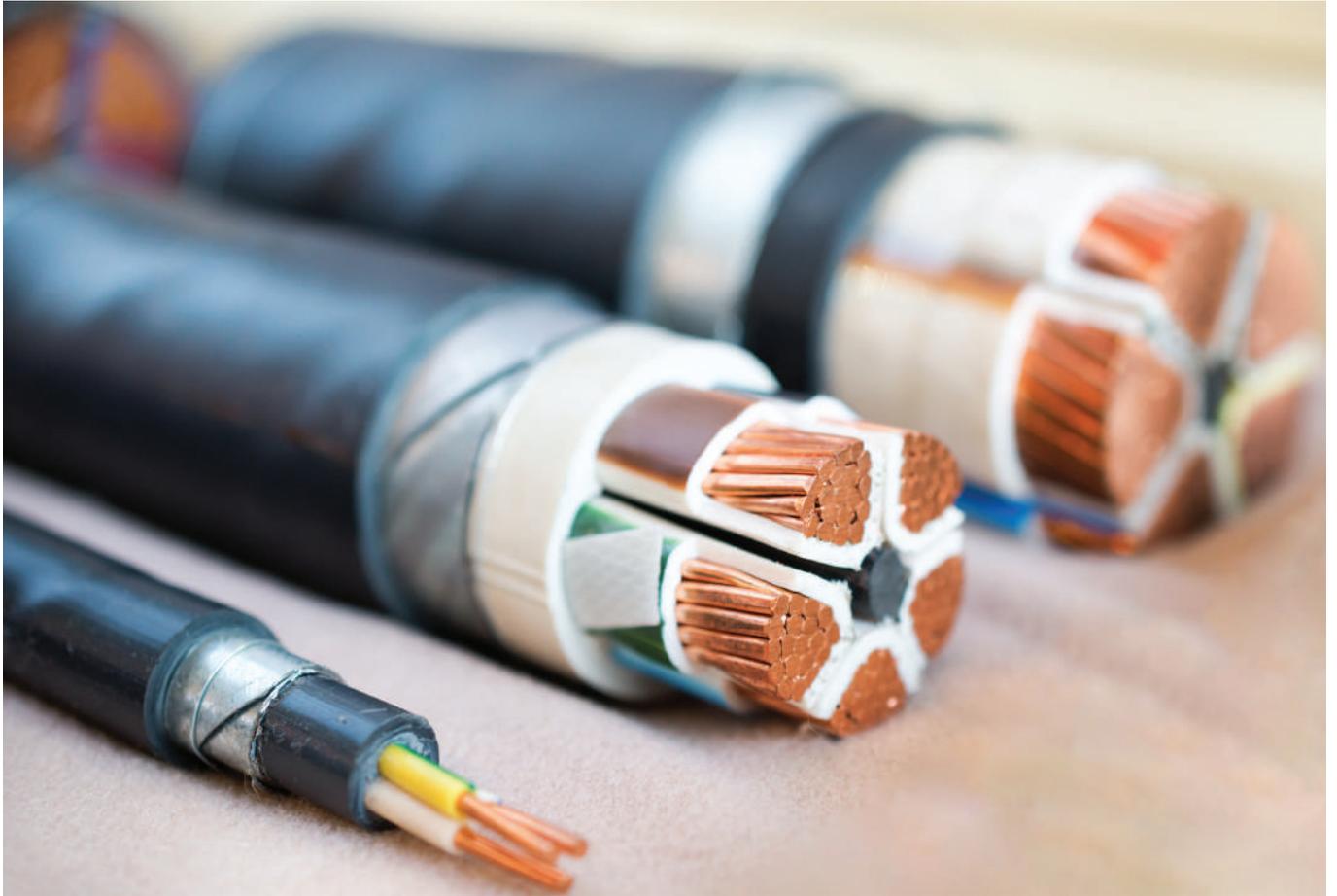
network in which its credit cards can be used. In light of the evaluations within the scope of the individual exemption, the TCA concluded that:

- The Agreement can lead to significant efficiency gains in the provision of card acceptance and member business acquisition services.
- Consumers will benefit from the efficiency gains since they can receive secure services and benefit from the bonus/reward application provided by Bonus (which has a wide network) through the advantages of multi-brand credit card service.
- Competition will not be eliminated in a significant part of the relevant market as a result of the Agreement.
- Competition will not be limited more than what is necessary since, according to Garanti and Denizbank's statements, the aim of the Agreement is to increase the number of member business and card users of the undertakings and, accordingly, to compete more effectively with the competitors. The provisions in the Agreement regarding the code of practice, service standards, communication and brand standards were set forth to protect Garanti's brand image.

Accordingly, the TCA decided to grant an individual exemption to the Agreement, since the Agreement meets all the conditions set forth in Article 5 of the Turkish Competition Law.



CJEU Upheld General Court in Power Cable Cartel Case



Furukawa Electric Co., Fujikura Ltd. and Viscas Corp. lost a case at the CJEU in their attempt to reduce the amount of fines imposed on them by the EC for fixing together with 25 other companies the price of high-voltage power cables sold to energy providers. On 19 December 2019 the CJEU ruled (Case C590/18 P) that there had been no violation of principle of equal treatment by the EC in the process of calculation fines for the European Economic Area (“EEA”) and Japanese cartel participants, stating that differences in situation as regards the participation of an undertaking in an infringement of EU competition law may be taken into consideration at various stages in the calculation of the fine and not necessarily solely at the stage of determining the value of sales.

Viscas, a Japanese company owned in equal shares by Furukawa and Fujikura, was formed on 1 October 2001. According to the EC’s findings, the Joint Venture (“JV”) parent companies participated in cartel initially directly, and secondly indirectly, through Viscas, over which they exercised a decisive influence.

To calculate the amount of the fines, the EC applied the methodology set out in the 2006 Guidelines and imposed on Fujikura a fine of EUR 8,152,000, in respect to its direct participation in the cartel at issue during the period from 18 February 1999 to 30 September 2001, and on Viscas a fine of EUR 34,992,000 in respect of its participation in the cartel at issue during the period from 1 October 2001 to 28 January 2009, jointly and severally with Fujikura and with Furukawa.

As regards the alleged infringement of the principle of equal treatment, Fujikura argued that the application by the EC of the method of calculating fines favoured European

producers and was incorrect since, having regard to the nature of the infringement at issue, which consisted inter alia in restricting access by the Japanese producers to the EEA market, the share of sales actually made by the European producers in the EEA could not be used as the basis for assessing their weight in the cartel. In Fujikura’s opinion, in the present case the European producers were proportionately penalised less than the Japanese and South Korean producers.

In its ruling, the CJEU recalls that the principle of equal treatment is a general principle of EU law, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. The EC classified the participants of the cartel depending on the role they played in cartel implementation into three groups: (i) undertakings that formed the core group of the cartel, (ii) the undertakings that were not part of the core group but which nevertheless could not be regarded as fringe players in the cartel, and (iii) fringe players in the cartel. Fujikura belonged to the first of these groups.

The CJEU ruled that it was for the EC to “calculate the fines appropriate for penalising that infringement, and not fines aimed at one or the other of the configurations of that cartel.” Moreover, differences in situation as regards the participation of an undertaking in an infringement of EU competition law may be taken into consideration at various stages in the calculation of the fine, and not necessarily solely at the stage of determining the value of sales.

TCA Imposes a Daily Fine on Google

TCA recently published its decision (“**Review Decision**”) reviewing the obligations that ought to be fulfilled by the economic integrity comprised of Google LLC, Google International LLC and Google Reklamcılık ve Pazarlama Ltd. Şti. (will be referred to as “Google” collectively, hereinafter) pursuant to the TCA’s decision dated 19.09.2018 and numbered 18-33/555-273 (“**Infringement Decision**”).

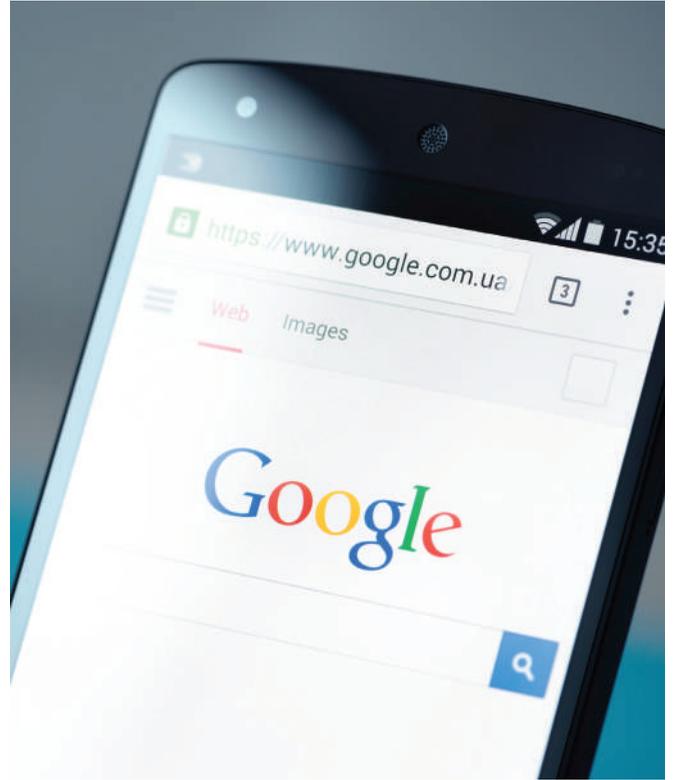
Review Decision focuses on Google’s activities that took place in the 6-months period, wherein it had been required to become fully compliant with the obligations imposed by the TCA in the Infringement Decision. To fulfil its obligations, Google had made two submissions, namely a general draft of the measures to be taken to eliminate the infringing conducts and a compliance package. After assessing these submissions, the TCA concluded that Google’s compliance package was not sufficient for the fulfilment of its obligations and for being fully compliant with the competition rules. Consequently, the TCA decided to impose a daily fine on Google at a rate of five per ten thousand of its turnover generated in Turkey, starting from the end of the 6-month period. Google is obliged to pay daily fines until it meets all the obligations fully.

Background of the Case

In 2015, upon a complaint submitted by Limited Liability Company Yandex (“**Yandex**”), which alleged that Google had abused its dominant position by imposing agreement clauses to the device manufacturers to place Google Search products exclusively in the smart phones that are run by Android Operating System (“**Android**”), the TCA had conducted a preliminary inquiry and concluded that a full-fledged investigation was not necessary. However, the TCA’s decision was annulled by Ankara 5th Administrative Court and Administrative Court’s Decision was upheld by Ankara Regional Administrative Court. To comply with the requirements of the administrative review process, the TCA initiated a full-fledged investigation in 2017. The investigation was concluded in 2018 and the TCA decided that Google had violated Article 6 of the Competition Law by tying Android with its search and Webview services as well as concluding agreements (i.e. Revenue Share Agreements or RSAs) with device manufacturers to incentivise the exclusive usage of the said services. Google faced an administrative fine amounting to TRY 93,083,422.30 (approx. EUR 12,6 million as of the Investigation Decision’s date of issue), and also was required to comply with the set of obligations, put forth by the TCA for putting an end to Google’s anti-competitive conducts.

Respective obligations aim to tackle specific terms stipulated in a series of agreements, setting the framework for Android’s usage, made between Google and the device manufacturers, since the TCA considers that Google’s anti-competitive tying and exclusivity conducts were put into practice via said agreements.

For instance, set of obligations tackling the pre-requisites



stipulated by Google for licensing the commercial version of Android that includes Google Play Store and Google Play Services (“**Commercial Android**”) in the Mobile Application Distribution Agreement (“**MADA**”) requires Google to comply with the following rules:

- to remove the provisions and conditions that directly or indirectly introduce the obligation to install Google search widget in a preferential manner on the home screen, which restrict device manufacturers’ right and freedom to choose between Google and its competitors,
- to remove the provisions and conditions forcing device manufacturers to put Google Search in all search access points as default and to avoid creating further obligations to a similar effect in the future,
- to remove provisions requiring device manufacturers to install Google Webview component as default and exclusive in-app internet browser.

Furthermore, Google was required to remove and to prevent from becoming effective all provisions included in Revenue Share Agreement (“**RSA**”) and other related agreements made or to be made with the device manufacturers that grant incentive payments in return for not pre-installing products competing with Google search and not using such products in any search access points in devices.

Why was Google Found to be Incompliant?

The TCA’s Review Decision is of particular significance since it provides a further insight as to the standpoint regarding Google’s tying and exclusivity conducts, which had been initially revealed by the assessment made in the Infringement Decision.

First, the TCA determined that the compliance package introduced by Google is not sufficient to remove the conditions tying Google's search services (i.e. Google search and the search widget) to Android, although Google dismantled relevant provisions in MADA that require device manufacturers to set Google search services as default in all search access points in devices and placing Google search widget in the home screen.

The underlying reason for that is the new design put forth by Google in the compliance package. Google introduced a financial incentive for the device manufacturers, that agreed to place Google search widget in the home screen of their devices, while removing the clauses that render such conducts mandatory for usage of Commercial Android. Google created an incentive by offering to give Commercial Android for free in case device manufacturers agreed to place Google search widget in the home screen of their devices, whereas the device manufacturers were required to pay a license fee otherwise.

Review Decision puts forth that the financial incentives introduced by the compliance package could have similar effects with a naked obligation to place Google's search widget in the home screen. According to the TCA, Google's competitors would have to make additional payments to convince the device manufacturers for placing their search widgets in the home screen of devices instead of Google's widget and to compensate the license fee paid by device manufacturers for using Commercial Android without placing Google's search widget on the home screen.

It is undisputable that the TCA has the authority to challenge the said incentives as the obligations imposed on Google in the Infringement Decision also prohibited "financial and other kinds of incentives that would give rise to similar consequences" with a naked obligation imposed on device manufacturers.

That being said, adopting such a wide interpretation and prohibiting all forms of incentives, without further assessing their effects could create significant negative unintended consequences for the Turkish device manufacturers such as Vestel and GM. That is because, to comply with this such a blanket prohibition on incentives, Google may have to implement a new business model whereby it requests license fees from all device manufacturers that would like to use Commercial Android. Although this may not be a concern of competition law, from a wider industrial policy/societal welfare perspective, the Review Decision may have some adverse effects on the competitiveness of Turkish device manufacturers vis-à-vis their already strong international competitors. It should be noted that the TCA's preference of not taking into consideration the potential impacts of its decision on national producers is a strong indication that the Turkish competition law practice is not affected from protectionist policies and that the TCA follows a purely technical approach.

Secondly, the TCA's opinion concerning Google's obligation to remove any clause (particularly the clauses

included in the MADA) that requires device manufacturers to use Webview component for displaying a web page on an exclusive basis and to set Webview as default is also noteworthy. With the compliance package, Google propounded a revised version of MADA, which enables the device manufacturers to freely determine among competing components with the functionality of displaying web pages. However, compliance package also introduces additional security and update requirements that the competing components would have to comply with in order to be preloaded and set as default.

As regards the steps taken by Google to comply with its obligations regarding Webview, Review Decision initially reminded in reference to Google's defences in the Infringement Decision that there had been no provision in MADA (or imposed by Google to the device manufacturers by other agreements) that prevented device manufacturers from preloading competing web page display components. The Review Decision emphasized that device manufacturers' discretion to choose between alternative web page display components would be ensured simply by removing the clause in MADA which prevented it. The TCA also indicated that while there is no clause that prevents device manufacturers from preloading competing web page display components, introducing additional security and update requirements as a prerequisite for preloading would contradict with the purposes of the obligations set forth by the Infringement Decision.

It should be noted that the extent of the next steps to be taken by Google to comply with its obligations are not clear in the Review Decision. That is because, relevant section of the decision starts off with indicating that introduction of new requirements for preloading Webview and setting it as default, is incompatible with Google's original obligations. Then, the Decision continues by focusing on the fact that new requirements would contradict with the aims of the obligations, since there had been no restriction regarding preloading of competing services and the new requirements may imply a restriction thereof. Consequently, there is certain vagueness (at least in the public version of the Review Decision) as to how Google is expected to comply with the obligations put forth by the TCA in the Infringement Decision. To be more specific, it is not clear whether Google will satisfy the obligations if it removes the new security and update requirements precisely for preloading Webview or setting it as default or for both.

Lastly, the approach adopted in the Review Decision as to the obligations on Webview may be interpreted as rigid, since it seems that Google was not provided with the opportunity to demonstrate that there are objective justifications for introducing new security and update related requirements, such as providing a secure and consistent operation of Android-run devices. On the other hand, the TCA's refusal to entertain the validity of such justifications may be understandable when it is considered that had already dealt with Google's defences that setting Webview as default is necessary for ensuring technical/consumer security in the Infringement Decision and concluded that there is no causality between them.

COMPETITION

Preventing Damage to Competition via Interim Measures: TV and Modem Chipset Markets



On 16 October 2019 the EC invoked Article 8(1) of Regulation 1/2003 (“Antitrust Regulation”) on interim measures against Broadcom for it to stop applying certain provisions in agreements with six of its main customers. Interim measures are applied in the cases where at first sight there is an infringement of competition law rules, as well as an urgent need for protective measures due to the risk of serious and irreparable harm to competition. Such measures normally are required to ensure the effectiveness of any final decision taken by the EC.

The antitrust investigation into the activities of Broadcom, the world leader in the supply of chipsets for TV set-top boxes and modems, was opened in June 2019 to assess whether Broadcom had restricted competition by abusing its dominant position in various markets for these chipsets by means of certain practices, i.e., exclusivity, tying, bundling, interoperability degradation, and abusive use of intellectual property rights. At the same time, the EC



issued a Statement of Objections where it preliminarily concluded that interim measures with respect to certain aspects of Broadcom’s conduct may be required to ensure the effectiveness of any final decision taken by the Commission in the future.

The EC’s interim measures particularly concern certain anticompetitive provisions of Broadcom’s agreements with six manufacturers of TV set-top boxes and modems, such as: (i) clauses containing exclusive or quasi-exclusive purchasing obligations and commercial advantages, such as rebates and other non-price related advantages (for example, early access to its technology and premium technical support) that are conditional on the customer buying these products exclusively or quasi-exclusively from Broadcom; and (ii) clauses granting customers price and non-price advantages that are conditional on the customer buying systems-on-a-chip for cable modems exclusively or quasi-exclusively from Broadcom.

The reasoning for the EC’s decision on the interim measure is that if Broadcom’s ongoing conduct were allowed to continue, it likely would affect a number of tenders that would be launched in the future, also in relation to the upcoming introduction of the WiFi 6 standard for modems and TV set-top boxes. This likely would lead to other chipset suppliers being unable to compete on the merits with Broadcom and ultimately could result in serious and irreparable harm to competition in the form of exit of Broadcom’s competitors.

The company is obliged within 30 days to cease application of those provisions and to refrain from including the same provisions in agreements with these customers. The substantive investigation into the merits of all parts of the case is ongoing.

EUR 31.6 Million Canned Vegetables Cartel

On 27 September 2019 the EC fined Coroos and Groupe CECAB a total of EUR 31,647,000 for running a cartel for more than 13 years in the market for canned vegetables. Bonduelle was not fined as it had revealed the existence of the cartel to the EC, thereby avoiding a fine of approximately EUR 250 million.

The companies set prices, agreed on market shares and volume quotas, allocated customers and markets, coordinated their replies to tenders, and exchanged commercially sensitive information.

The investigation in this case started with unannounced inspections in 2013, following Bonduelle’s leniency application. Bonduelle, Coroos, and Groupe CECAB participated for more than 13 years (from 19 January 2000 to 11 June 2013 for Bonduelle, and to 1 2013 for Coroos and Groupe CECAB) in a cartel for the supply of certain types of canned vegetables to retailers. They admitted their involvement in the cartel and agreed to settle the case. The EC will continue to investigate Conserve Italia, which is not covered by this settlement decision.

In setting the level of fines, the EC took into account, in particular, the sales value in the EEA achieved by the cartel participants for the products in question, the serious nature of the infringement, its geographic scope, and its duration. As a result, Bonduelle received full immunity for revealing the existence of the cartel, Coroos and Groupe CECAB benefited from 15% and 30% reductions of their fines respectively for their cooperation with the EC. The EC also applied a reduction of 10% to the fines imposed on the companies since they admitted their participation in the cartel and of the liability in this respect. One



company invoked its inability to pay the fine. Following a thorough assessment of the application, the EC granted a reduction of the fine.

This is the second cartel case relating to canned food. In the canned mushrooms cartel case in 2014, the EC fined Bonduelle, Lutèce, and Prochamp a total of around Euro 32 million, and in 2016, the EC fined Riberebro EUR 5.2 million.

Any person/company affected by anti-competitive behaviour may bring an action for damages before the courts of the Member States. A decision of the EC constitutes binding proof for the courts that the behaviour took place and was illegal.

Assessing Legality of Purchasing Alliances between Grocery Retailers in the EU

Following unannounced inspections in February and May 2019, and upon its own initiative inquiry, on 4 November 2019 the EC opened an investigation into two French groups of retailers, Casino Guichard-Perrachon (“**Casino**”) and Les Mousquetaires (“**Intermarché**”) to assess whether their coordinated conduct in the market in the form of a purchasing alliance was in breach of EU competition law.

Casino and Intermarché in November 2014 set up a joint venture for the joint procurement alliance of their branded products, INCA.

Grocery supply chains tend to enter into buying alliances to lower prices and/or better product quality for consumers. At the same time, such alliances may serve as a tool for collusion on sales activities due to multiple contacts between the parties.

There is a concern that the alliance has gone

beyond its purpose and has become anticompetitive, particularly in relation to the pricing policy towards consumers. If proven so, the parties would be liable for breach of Article 101 of the Treaty on the Functioning of the EU (“TFEU”).



Morocco Withdrew Its Claims of Inconsistency of WTO Panel Finding

On 4 December 2019, Morocco informed the World Trade Organization (“WTO”) Appellate Body of its decision to withdraw its appeal in the dispute on anti-dumping measures on certain hot-rolled steel from Turkey. The anti-dumping measure underlying the dispute expired on 26 September 2019 so that the Panel’s findings have become moot with the expiration of the measure. Accordingly, on the same day, Turkey joined Morocco and withdrew its counter-appeal. Consequently, on 10 December 2019, the Appellate Body proceeded to issue a short report noting the withdrawal of the appeal to be circulated among the WTO members.

The decision of the Moroccan authorities came into force on 26 September 2014, imposing an anti-dumping duty of 11% on imports made by Turkish steel exporters. The Panel report regarding this was circulated on 31 October 2018. In the report, the Panel concluded that the Moroccan authorities acted inconsistently with the Anti-dumping Agreement (“ADA”) on the following grounds: (i) failure to conclude the investigation within the 18-month time limit stipulated in the ADA, (ii) establishment of dumping margins regarding two Turkish steel producers (Erdemir and Çolakoğlu) based on the facts available, (iii) failure to inform all the interested parties of essential facts in certain regards (e.g., regarding the adjustments used or the C&F prices), (iv) determination that the domestic industry is “unestablished” and that such establishment was materially retarded, (v) an erroneously conducted injury analysis in



the form of “material retardation of the establishment of the domestic industry”, (vi) failure to evaluate five of the non-exhaustive 15 injury factors listed in the ADA, (vii) exclusion of the captive market in the injury analysis while this segment of the market accounts for nearly 50% of the domestic market, and (viii) use of the so-called McLellan report (for the injury analysis), without properly investigating the significance of the inaccuracies it contains.

The Panel’s findings were appealed on 20 November 2018 by Morocco and on 10 December 2018 by Turkey. However, the measure taken by the Moroccan authorities expired on 26 September 2019, rendering moot the legal ground for the appeal proceedings. Accordingly, the parties notified the WTO of their decision to withdraw their respective appeal requests made before the Appellate Body.

Quartz Surface Products from Turkey Face Preliminary Anti-Dumping Duties from the United States

The United States Department of Commerce (“DoC”) determined to impose affirmative preliminary anti-dumping duties on imports of quartz surface products originating in Turkey and India. The products under investigation are certain quartz surface products consisting of slabs and other surfaces created from a mixture of materials that include predominately silica, as well as a resin binder, which is classified under HS Code 6810.99.0010. However, the scope of the investigation is limited to quartz surface products where the silica content is greater than any other single material, by actual weight. The preliminary anti-dumping duty varies between 0.00% and 4.88% for imports originating in Turkey.

The DoC preliminarily determined that certain quartz surface products from Turkey are being, or are likely to be, sold in the U.S. market at less than their fair value. Accordingly, the DoC established the following weighted average dumping margins: (i) 4.88% for Belenco Dış

Ticaret A.Ş., Peker Yüzey Tasarımları A.Ş., and other exporters from Turkey and (ii) 0% for Ermaş Madencilik A.Ş., on which no preliminary anti-dumping duty has been imposed.

In addition, the DoC is currently carrying out an anti-subsidy investigation to determine whether the Turkish government granted unfair subsidies to quartz production. In October 2019, the DoC imposed a countervailing duty on imports of quartz from Turkey, ranging up to 3.81%.

Should the DoC’s final determinations be affirmative, the U.S. International Trade Commission (“ITC”) will make its final injury determination. Accordingly, if the DoC makes affirmative final determinations of dumping and the ITC issues affirmative final injury determinations, the DoC will publish anti-dumping orders through which definitive anti-dumping duties will be imposed on the concerned imports. If either of those authorities makes negative final determinations, the investigation will be terminated without the imposition of any anti-dumping duty.

When considered at the level of the imports of quartz surface products from Turkey (estimated to have amounted to \$28 million in 2018), it is deemed that the cooperation with the competent U.S. authorities will be of utmost importance for Turkish exporters.



The GCC's Safeguard Investigation into Certain Steel Products

On behalf of the Gulf Cooperation Council (“GCC”) member states, in November 2019 the Sultanate of Oman notified the WTO that a competent GCC authority initiated a safeguard investigation into the increase of imports of certain steel products. The GCC member states are Saudi Arabia, Kuwait, United Arab Emirates, Qatar, Bahrain and Oman. The investigation is of importance for Turkey, since Gulf countries are among the exporting markets for Turkish steel and iron exporters.

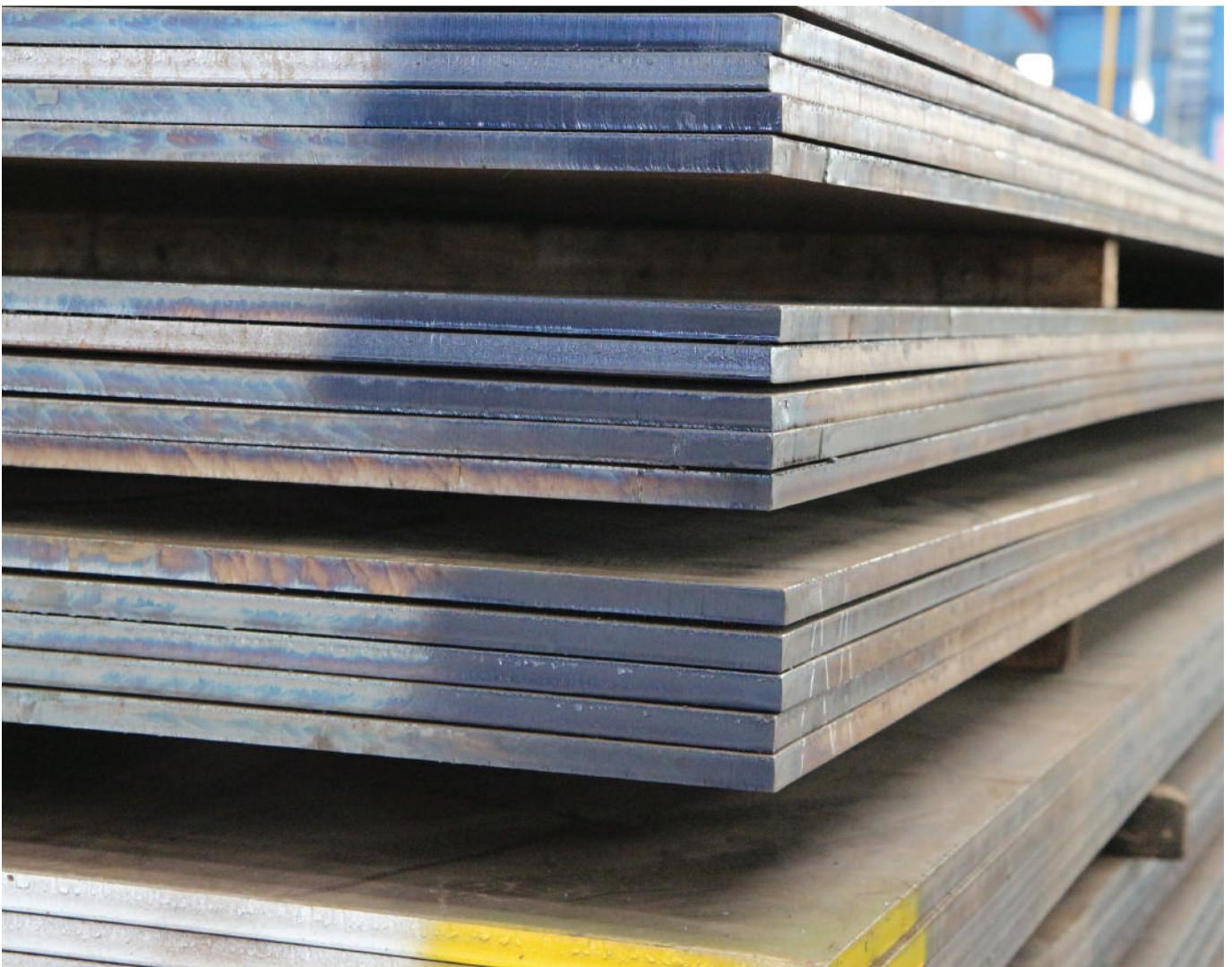
Turkey was the world’s eighth-largest steel exporter in 2018 and the volume of Turkey’s steel exports constituted 4% of all steel exported globally in 2017. Additionally, steel exports ranked the fourth biggest export sector in Turkey, after the automotive, textile, and chemicals sectors with 15.6 billion USD in value and 9.3% of the total share in exports.

Products subject to investigation include flat and cold hot rolled sheets and coils, metallic and organic coated steel, reinforced steel bars and wire rods, circular square, and rectangular sticks and rods, and welded and seamless pipes and tubes including items for transporting water, gas, and oil.

Agreement on Safeguard states that customs unions may apply a safeguard measure as a single unit or on behalf of a

member state. Accordingly, when a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in the customs union as a whole. Thus, determinations with respect to serious injury or threat of serious injury are based on the economic indices of all GCC member states. It has been stated that there was an increase of GCC imports of the products under investigation, either in absolute terms or relative to the GCC production during the period of 2014-2018. It was also found that the increase in imports under investigation was due to unforeseen developments, namely the increase in the global production of steel, as well as the trade procedures and measures adopted by many countries in the world against their imports of steel products, which contributed to the significant increase in GCC imports of steel products.

The investigation aims to determine whether the products under investigation are being imported in GCC countries as results of unforeseen developments in such increased quantities, and under such conditions as to cause or threaten to cause a serious injury to the GCC’s domestic industry that produces like or directly competitive products.



Safeguard Measures against Imports of Yarn of Nylon or Other Polyamides

In October 2019 the The Ministry of Trade of Turkey (“**Ministry**”) imposed safeguard measures for three years through Communiqué No. 2019/2 on Safeguard Measures in Imports following a safeguard investigation into imports of “yarn of nylon or other polyamides” (HS Codes 5402.31, 5402.32.00.00.00, 5402.45, 5402.51 and 5402.61, namely partially oriented nylon yarn (“**POY**”), drawn textured yarn (“**DTY**”), fully drawn yarn (“**FDY**”) and other nylon yarns (“**products under investigation**”).

The Ministry examined the import trends and evaluated the domestic industry’s economic indicators and concluded (i) that imports of the products under investigation had increased by 33% between 2015-2018, and by 15% and 14% in 2016 and 2017, respectively; (ii) that the production, sales, capacity utilization rate, and profitability of the domestic industry had decreased drastically between 2015-2018; and (iii) that no other factors had effected the injury suffered by the domestic industry.

The Ministry evaluated that a recent, significant, substantial and sharp increase had occurred in imports of the products under investigation. Moreover, the economic indicators of the domestic producers such as production, sales, capacity utilization rate, and profitability had declined from 2015 to 2018, indicating according to the Ministry that the domestic industry had sustained a serious injury caused by the subject imports.

The Ministry further determined that price is the most important factor in domestic competition and that



the low unit prices of the subject imports account for the serious injury sustained by the domestic industry. Accordingly, the Ministry considered that the safeguard measure shall be applied on a kilogram basis in order to target imported products with low unit prices. Eventually, the Ministry assessed whether a safeguard measure would be in line with Turkey’s interests and decided to take into account the interests of the downstream markets. Indeed, the measure will be applied for three years (with decreasing rates) and a lower rate was imposed to certain of the subject products: while imports of textured nylon yarns and other yarns will be subject to a duty of 0.30 USD/kg (0.29 USD/kg and 0.28 USD/kg the following two years), imports of POY and FDY will be subject to a 0.10 USD/kg safeguard measure (0.09 USD/kg and 0.08 USD/kg the following two years).

Anti-Circumvention Measures against Other Compound Plasticisers for Rubber or Plastics from South Korea

The Ministry imposed via Communiqué No. 2019/32, dated 09 November 2019, an anti-circumvention measure concerning imports of other compound plasticisers for rubber or plastics (HS Code 3812.20.90.00.00) (“**product under investigation**”) originating in South Korea. The investigation had been conducted following allegations that the anti-dumping measure imposed on imports of dioctyl phthalate (“**DOTP**”) (HS Code 2917.39.95.90.13) from South Korea was being circumvented through imports of the product under investigation from the concerned country.

Indeed, Communiqué No. 2017/24, dated 20 October 2017, imposed an anti-dumping measure against imports of DOTP at an individual rate of 7.99% for LG Chem Ltd. and of 12.57% for other companies. On 19 March 2019, the Ministry initiated an anti-circumvention investigation with Communiqué No. 2019/9 to determine whether the concerned anti-dumping duty had been circumvented by means of slightly modifying the DOTP.

The Ministry determined that while imports of DOTP fell considerably after the imposition of the anti-dumping duty mentioned above, imports of the product under investigation had increased. The Ministry further found that the pattern of trade between Turkey and South Korea with respect to the product under investigation had changed and that the change stemmed from a practice, process, or work for which there was insufficient due cause or economic justification other than the avoidance of the anti-dumping measure in force. Moreover, the Ministry determined that imports of the product under investigation had been undermining, in terms of quantity and price, the remedial effect of the anti-dumping duty in force.

Consequently, the Ministry decided to extend the imposition of the anti-dumping measure on imports of DOTP from South Korea to imports of the products classified under HS Code 3812.20.90.00.00 from South Korea.

Turkish Constitutional Court Approves Wide Authority of Data Gathering



With decision No. 2017/16 dated 24 July 2019, the Constitutional Court of the Republic of Turkey rejected the action for annulment of the new rules (“**the amendment**”) introduced by Legislative Decree No. 671/25 amending Electronic Communication Law No. 5809 (“**Electronic Communication Law**”), which grants far-reaching authority to the Information and Communication Technologies Authority (“**ICTA**”) for the collection of information pertaining to natural and legal persons, *inter alia*, personal data. The decision is of importance since it highlights the telecommunication regulator’s authority to collect data, which exempts it from being subject to the rules for collecting data as per the Law on the Protection of Personal Data No. 6698 (“**Data Protection Law**”).

The amendment introduced with Legislative Decree No. 671/25 enables the ICTA to obtain information, documents, data, and records from the relevant ministries, governmental bodies, or institutions and to utilize archives, electronic data process centres and communication infrastructures that are possessed by them, and to take necessary measures thereof. The case had been brought before the Constitutional Court, on the grounds that the authority vested in the ICTA with Legislative Decree No. 671/25 is extremely wide and does not provide any protection or privacy for personal data.

The Constitutional Court determined that the amendment made in the Electronic Communication Law via Legislative Decree No. 671/25 authorizes the ICTA to obtain information from various governmental bodies and institutions when only fulfilling its obligations to ensure cybersecurity. The Court indicated that the amendment aims to remove the threats and dangers related to the state of emergency and, however, determines that its duration of effect continues after the state of emergency is terminated. On that account, the Court deemed the amendment as a general provision that has no limited duration of effect bounded by the state of emergency and thus determined that Article 13 of the Constitution shall be considered applicable for its judicial review. As per

Article 13, fundamental rights and freedoms may only be restricted due to the reasons provided in the Constitution and only by the provisions of an act, and such restrictions cannot be contrary to the essence of the constitution and the principle of proportionality.

In its assessment as to whether the amendment contradicts Article 20 of the Constitution, which requires explicit consent or an exception stipulated by an act to process personal data, the Court set forth that the amendment would be deemed compliant with the constitution if it is clear, comprehensible, and suitable for people who would like to exercise their rights deriving from data protection rules. Additionally, the Court set forth that a constitutional limitation of such right would exclude the arbitrary interference of personal data by governmental bodies.

Consequently, the Court determined that the amendment clearly sets forth the purpose, scope, and limitations for obtaining personal data by the ICTA and thus does not contradict the principle of clarity.

As regards the principle of proportionality, the Court indicated that the limitation placed on the right of personal data protection will not be critically hampered by the amendment since the ICTA’s authority to access personal data is limited with the aim of ensuring cyber security. Furthermore, the Court also pointed out that the rules that require the ICTA to protect personal data and trade secrets would constitute pre-emptive safeguards that prevent the arbitrary usage of the information obtained via the authority vested by the amendment.

In light of the foregoing, the Constitutional Court determined that the amendment introduced by Legislative Decree No. 671/25 is in compliance with the constitution and thus the request for annulment should be rejected.

New Regulation on Movie Screening

The Regulation on the Procedure and Principles concerning Evaluation and Classification of Cinematic Movies was published in the Official Gazette on 22 October 2019. The Regulation aims to evaluate and classify cinematic movies either produced locally or imported and their trailers and to set forth the rules to supervise movie screenings.

The Regulation maintains some of the rules stipulated in the Regulation, promulgated with the same title on 18 February 2005 (“**Old Regulation**”), such as those that require the producer or importer to apply to the Evaluation and Classification Board (“**Board**”) for evaluation and classification of the movie prior to its screening or commercial distribution. The Old Regulation is abrogated as per Article 20 of the Regulation.

As distinct from the Old Regulation, the Regulation puts forth new and detailed rules regarding cinematic movie screening and distribution. For instance, as per Article 10 of the Regulation, movies that will be distributed to the cinemas for the first time and that have already been classified by the Board cannot be broadcasted commercially or publicised on channels such as cable, satellite, terrestrial or Internet broadcasting, prior to five months of its screening date if the channel is paid, and prior to six months of its screening date if the channel is unpaid.

Additionally, the Regulation puts forth new rules regarding the duration spared for commercials. As per Article 15 of the Regulation, pre-screening ads shall be limited to ten minutes at most. The Regulation stipulates that the trailers shall be between three to five minutes in length and the mid-break shall not exceed fifteen minutes.

The Regulation also sets forth a framework regarding

promotional activities and discounts concerning movie tickets. Pursuant to Article 16 of the Regulation, movie theatre operators or other persons that sell tickets are not allowed to perform activities such as promotion, campaigns and bulk sales based on movie tickets. The same article provides for a strict classification of movie ticket discounts and sets forth the percentage of discount that can be made. According to Article 16, movie tickets are allowed to be sold at discount to the following customer groups or through the following sales channels or on the following dates: (i) people above a certain age (to be determined collectively by the movie theatre operator and producer or distributor of the movie), (ii) disabled people, (iii) relatives of martyrs and war veterans, (iv) bargain matinee day sales, (v) Internet purchases, (vi) civil servants, (vii) students, and (viii) morning screenings.

Lastly, Article 16 of the Regulation also forbids movie theatre operators or other persons that sell tickets from tying the sale of movie tickets with that of other products. However, ticket sales for film festivals are exempted from the tying prohibition.

The Regulation is a milestone for movie producers, distributors, and movie theatre operators since their business model will be affected by the new rules. For instance, the Ministry of Culture and Tourism, which prepared the Regulation, made a crowd-pleasing decision that prohibited movie theatre operators from selling popcorn menus tied to movie tickets, while widely regulating discounts. Additionally, the rule forbidding newly released movies from being broadcasted on TV or the Internet also will be a game-changer, especially for platforms like Netflix.



EVENTS



Guest Lecturer in International Economic Law Course

In December, our associate Baran Can Yıldırım gave a lecture on the Enforcement of International Arbitration Awards at Bogazici University as a guest lecturer in the International Economic Law course of the International Trade Department.

Presentation on Deepfake

In November, our associate Celal Duruhan Aydınli gave a presentation on DeepFake: Legal Issues and Solutions in an event organized by Istanbul Bar's Informatics Law Commission



Istanbul Competition Forum

ACTECON had a chance to join the Istanbul Competition Forum (“ICF”), organized by the TCA with collaboration of UNCTAD on 25-26 November 2019 and with the attendance from around 30 countries, including participants from the UN, OECD, and competition authorities of various jurisdictions.

The ICF's panels included discussions of “Digitalization and Competition Law and Policy”, “International Cooperation in Competition Law Enforcement” and “Effective Enforcement Against Cartels”.

9th International Quality in Construction Sector Summit

Our managing partner Mr. Fevzi TOKSOY participated in “Disruptors of Competition- Maverick Syndrome” panel in the summit. He stated although the TCA performs in line with international standards, other less performing public institutions should communicate more with the TCA for better governance in Turkey. He further commented, other public institutions should grasp the meaning of competition and professional associations of private sector should assist the Government to make all its institutions work harmoniously for an integrated competition policy.



Özveğin University Work Ethics & Corporate Social Responsibility Course

Our managing partner Mr. Fevzi TOKSOY participated in Mr. Fikret Sebilcioğlu's E-MBA class as a guest lecturer. His lecture contained brief information about the relation between work ethics, corporate social responsibility and competition. His presentation also contained information about unfair competition, cartels, ethical dilemmas when a company competed unfairly, consumers' lack of freedom in an uncompetitive market to buy the best product with the best price in a competitive market.

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