The Output

QUARTERLY BULLETIN

2nd Quarter 2018

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Google Android Decision - an astounding €4.34 billion fine - Is EU Competition Law Becoming a Tool to Impose the Union's Industrial Policies – Should Turkey Follow the Commission?

After three years of investigation, on July 18, 2018, The European Commission ("Commission") issued its decision on the well-known Android case and fined Google LLC ("Google") an astounding €4.34 billion for abusing its dominant position. The Commission held that "since 2011, Google has imposed illegal restrictions on Android device manufacturers and mobile network operators to cement its dominant position in general internet search". The fine imposed to Google is the biggest of all times. The decision also opens the door to civil actions under which affected parties may claim compensation for damages incurred due to Google's abusive conduct.

A Brief Summary of the Android Case

Android is the most popular smartphone operating system in the world which is used by various device manufacturers. According to the Commission, about 80% of smartphones in Europe uses Android as their operating system. The Commission determined three types of illegal restrictions imposed by Google on Android device manufacturers. The Commission determined that Google had:

- required manufacturers to pre-install the Google Search and Google Chrome apps, as a condition to access Google Play Store (Application Store),
- made payments to some large manufacturers and mobile network operators on condition that they exclusively pre-installed the Google Search app on their devices and
- prevented manufacturers wishing to pre-install Google apps from selling any smart devices running alternative "forked" versions of Android that were not approved by Google.

Per the Commission, Google was in a dominant position in the markets for general internet search services, licensable smart mobile operating systems and app stores for the Android mobile operating system. The Commission concluded that Google illegally tied the Google Search app and the Google Chrome browser to Play Store and foreclosed the relevant markets to its competitors. Furthermore, the Commission decided that the incentives Google provided to device manufacturers for exclusively pre-installing Google's applications also cemented its dominant position in the relevant markets. The most critical basis behind the Commission's reasoning was that pre-installation of certain services led to market foreclosure due to strong "status-quo bias", which means that the consumers do not prefer to change pre-installed services even if, at least from a technical perspective, they can very easily do so.

Critics from a Competition Law Perspective

The Commission's decision has been viciously criticized immediately after its publication despite the limited available information on the merits. A significant majority of the criticisms pointed out the same exact problem; that the consumers will most likely suffer due to this decision of the Commission. Many agreed with the proclamation of Google's CEO that "Android has created more choice for everyone, not less. A vibrant ecosystem, rapid innovation, and lower prices are classic hallmarks of robust competition." As a matter of fact, since Android is a free to use open source project, it boosts innovation and ultimately benefits the consumers.

Although there seems to be numerous weak points to address in the decision, it seems that the "Achilles Heel" is the market definition. To say the very least, it seems counterintuitive to accept that iOS is not a direct competitor of Android. When the fact that the world is basically divided in two groups as "Android People" and "Apple People", the Commission could have a better chance to defend that Boston Red Sox and New York Yankees are not competitors. As this seems to be too absurd a claim to viably hold, the Commission also points out that there is no substitutability between Android and iOS from the perspective of OEMs, simply because iOS is not available to the OEMs. This approach raises another question: Since iOS constitutes a separate relevant market where Apple enjoys a monopoly, can OEMs claim that Apple controls an essential facility and that it is abusing its dominant position by refusing to allow OEMs access to iOS. As unreasonable as this question might seem, the Commission's claims might justify such a claim.

Moreover, although it is too early to jump to conclusions, it seems very unlikely that the final decision of the Commission will include satisfying economic justifications concerning the concrete effects of the so called "status-quo bias". Yet, it would be very disappointing if the Commission solely relies on empirical data showing the number of customers that actually prefer the competitors of the pre-installed services. This is because; such an approach would completely disregard the fact that the pre-installed services here refers to Google Chrome and Google Search, which are undoubtedly the most preferred products in the market, and it would be comical to simply assume that the customers would not have preferred these services had they been not pre-installed in the first place.

As a final remark, some critics refer to a set of empirical study which shows that the Commission's decisions had effects of slowing down Research & Development ("R&D") in numerous markets[1]. According to "The Global Innovation 1000", Google has the second biggest R&D budget with €11,8 billion[2]. It is probable that the decision of the Commission will force Google to cut its R&D investments. Therefore, considering the market reality, Commission's decision may harm consumers by hindering effective competition and forestalling innovation.

Is it Possible that the Commission may be Pursuing a Different Agenda

This is not the first time Google has been under the Commission's scrutiny. Just one year passed since the Commission has fined Google €2.42 billion for abusing its dominant position by leveraging its dominant position in the search market to provide undue competitive advantage to Google Shopping. In that case, the Commission determined that Google gave featured placement to Google Shopping, in Google search results and therefore restricted competition in comparison shopping markets. Currently, Google's compliance with the EU competition watchdog's decision is being vigorously monitored. Further, it should also be noted that the Commission is currently investigating whether Google has reduced consumer choice by preventing third-party websites from sourcing search ads from Google's search advertising service, AdSense's competitors and expected to render its decision in a little while.

It is beyond doubt that the Commission must apply the competition rules to the full extent whenever there is a violation and it is not the Commission's problem if this means imposing a fine of approximately €7 billion to a single company (which is higher than the total GDPs of San Marino and Montenegro). However, it is difficult to overlook the Commission's obsession with the American tech giants. Considering Commission's obvious hostility, one inevitably questions whether there may be other motives behind the astronomical fines imposed on the American tech giants. The latest Android decision (in light of the available data) as well as the Google Shopping decision support the doubts regarding the motives of the Commission are not baseless. Hence, one should at least entertain the idea that the Commission is no longer applying the EU competition law in a "purely technical manner" and it is pursuing a wider policy adopted by the European Union against the absolute dominancy of Silicon Valley.

What does this mean for Turkey?

On February 9, 2017, the Turkish Competition Authority ("TCA") has also initiated an investigation against Google to investigate (i) Google's allegedly abusive practices concerning the supply of its mobile operating system and mobile applications/services and (ii) the agreements made between Google and OEMs. The alleged abusive behaviours of Google are probably very similar (if not the same) with those investigated and penalized by the Commission."

The TCA closely follows the case law of the Commission and in a vast majority of the cases it adopts a similar approach with that of the Commission's. Since TCA's following the Commission's footsteps is also welcomed by the administrative courts, the TCA might be tempted to do the same in its ongoing investigation as well. However, the TCA should not disregard the possibility that this case might actually be different. It is crucial that the TCA assesses whether it would be adopting the "technical viewpoints of the Commission" or "its political motives". As the latter merely serves the industrial policies and the goals of the European Union (which are probably quite different than those of Turkey), the TCA should not rely on the Commission's analyses in case it has any doubts in that respect.

If the application of the competition rules is going to be affected by industrial policies (which, we believe is bad for the economy), it should at least be ensured that they are not affected by someone else's industrial policies.

1. The European Commission Is Undermining R&D and Innovation: Here's How to Change It, Thibault Schrepel, Assistant Professor at Utrecht University School of Law.

2. https://www.strategyand.pwc.com/innovation1000

Lesaffre/Dosu Case Highlights Remedy Sufficiency in Mergers

The TCA's clearance decision (No 14-52/903-411, dated 15 December 2014) authorizing Lesaffre et Compagnie to acquire full control of Dosu Maya Mayacılık A.Ş. was annulled by the Ankara 8th Administrative Court in January 2017. Subsequently, the TCA conducted a final examination of this matter and conditionally approved the transaction. Implementation of an effective Competition Compliance Program is among the merger remedies the transaction is conditioned upon.

In its decision No 18-17/316-156, dated 31 May 2018, the TCA announced that:

- the notified transaction is subject to prior authorization by the TCA, since it falls within the scope of Article 7 of the Turkish Competition Law and Merger Communique; and
- the transaction shall be authorized on condition of compliance with the commitments dated 10.11.2014 and 25.04.2018, since the concentration would create a dominant position or strengthen the existing dominant position, thus significantly impeding competition in the market.

The case is one of few instances where the Court reversed a decision by the TCA to authorize a concentration, primarily on the grounds that the TCA approved the proposed remedies without a conducting detailed economic analysis

of the post-clearance effects of the transaction.
The 2018 reasoned decision has not been published yet; therefore, details of new/additional remedies proposed by the parties are not available. According to the 2014 clearance decision, the commitments include the divestiture of certain assets, executing distributorship agreements for a minimum of three years, protecting Dosu Maya's brands fresh yeast brands, expanding the geographical presence of Dosu Maya by maintaining prices at a certain level and removing territoriality or exclusivity clauses from existing agreements between Özmaya and its dealers, initiating competition compliance programs and not entering into an acquisition transaction with Akmaya.

TCA to Investigate Collusion in Insurance Market

The Turkish Competition Authority (TCA) will launch a full-scale investigation into eight undertakings operating in the market for voluntary insurance matters in large-scale projects involving high-risk capacity (including project financing). Acting on a complaint, the TCA conducted a preliminary inquiry into whether the activities of Aksigorta, Allianz Sigorta, Axa Sigorta, Dubai Starr Sigorta, Ergo Sigorta, Eureko Sigorta, Sompo Japan Sigorta, and Zurich Sigorta constituted collusion in the market. In its Decision No 18-13/240-M, dated 3 May 2018, the TCA announced it will launch a full-scale investigation to determine whether the eight companies violated Article 4 of the Turkish Competition Law – equivalent to Article 101 of the Treaty on the Functioning of the EU.

TCA Finds No Abuse of Dominance in Microsoft's Project 3+

The TCA concluded its investigation into whether Microsoft Bilgisayar Yazilim Hizmetleri Ltd Sti violated Article 6 of the Turkish Competition Law (abuse of dominance) with its Project 3+. The investigation was launched after the Court in 2016 overruled the TCA's original 2011 decision.

The Istanbul Chamber of Artisans of Cybercafés submitted a complaint to the TCA in July 2011, claiming that Microsoft abused its dominant position by forcing cybercafés to buy several Microsoft products under a project called "Project 3+"; intentionally decreased the number of distributors/authorized dealers by setting unjust requirements; and paying an illegal commission fee to certain chambers for each sale. Microsoft argued that each product could be purchased individually, that Microsoft Turkey has the right to set certain requirements for its distributors/dealers, and that its requirements were fair and logical.
The TCA agreed, and decided not to initiate an investigation (decision No 11-60/1555-550). However, in October 2016 the Council of State reversed the decision, thus forcing the TCA to reexamine the case. The TCA concluded its investigation, finding that the company did not violate Article 6 of the Turkish Competition Law, i.e., did not abuse its dominant position.

TCA Approves Bayer-Monsanto Merger Based on Commitments to EC

In its final examination of Bayer Aktiengesellschaft's acquisition of sole control over Monsanto, the TCA considered the resulting concentration in light of Bayer's commitments submitted to the EC.

In its decision No 18-14/261-126, dated 8 May 2018, the TCA decided that:

- The notified transaction was subject to authorization under Article 7 of the Turkish Competition Law; and
- The commitments that Bayer submitted to EC regarding vegetable seeds, cotton seed, corn seed and insecticides used for corn seeds eliminate horizontal and vertical overlaps in Turkey; therefore,
- The transaction would not significantly impede competition by creating a dominant position or strengthening an existing dominant position. Accordingly, it shall be authorized within the framework of the commitments submitted to and accepted by the EC.

The EC conditionally cleared the transaction in March 2018, based on Bayer's commitments to divest many of its businesses. In particular, Bayer is to:

- remove all existing overlaps in the parties' seed and pesticide markets, where concerns were raised in the EU, by divesting Bayer businesses and assets;
- cover Bayer's global R&D organization for seeds and traits as well as Bayer's research activities to develop a product to challenge Monsanto's glyphosate. Bayer further is to cover certain Monsanto assets, which in future would have competed with a Bayer seed treatment against nematode worms; and
- grant a license to its entire global digital agriculture product portfolio and pipeline products to ensure continued competition in this emerging market.

TCA Fines 14 Auto Gas Dealers for Anticompetitive Practices

The TCA concluded its investigation of 30 auto gas dealers operating in Adıyaman province. Fourteen companies were fined for anticompetitive practices. The remaining 16 companies were cleared, with no fines imposed.

The TCA found that 14 companies violated Article 4 of the Turkish Competition Law by colluding and increasing prices. The list of companies and their respective fines can be found at http://www.rekabet.gov.tr/Dosya/geneldosya/adiyaman-otogaz.pdf

A Price Comparison System for Advertisers: yurddaş + partners Case

The TCA concluded its investigation of Media Barometer services of Diye Danışmanlık Eğitim ve Medya Hizmetleri Tic A.Ş. ("yurddaş + partners"), deciding that Media Barometer did not violate Turkish Competition Law. The undertaking had been under TCA and judicial review since October 2014.

Media Barometer is a media analyst and auditor that provides a price comparison system for advertisers. With multiple investigations by the TCA as well as judicial reviews by administrative courts, Media Barometer had been under scrutiny since October 2014.
In its preliminary investigation, the TCA found no evidence demonstrating anti-competitive agreements among advertisers using Media Barometer, and declined to open a full-fledged investigation. However, concerned that Media Barometer may lead to the establishment of a purchase cartel in favor of advertisers, the TCA submitted an opinion letter pursuant to Article 9(3), indicating that yurddas + partners must cease its Media Barometer system; and that advertisers must stop buying the service. Such notifications are rare. In this case, the TCA indicated that failure to comply would trigger full-fledged investigations both of yurddaş and purchasers of its service (advertisers).
Yurddaş + partners challenged the TCA's decision in the Administrative Court of Ankara. The 3rd Administrative Court annulled the TCA's decision, finding that the TCA had failed to demonstrate how such a price comparison system could affect competition in the market. Separately, the Association of TV Broadcasters also challenged the TCA's decision, which led to another judicial review by the Administrative Court of Ankara. The 16th Administrative Court also annulled the TCA's decision, but for a different reason: the Court found the TCA's decision to send an opinion letter (notification) but *not* to initiate a full-fledged investigation contradictory and not in compliance with the law, and therefore annulled the TCA's decision. The TCA appealed both court decisions to the Council of State.
Update: The Council of State ruled that the TCA should have opened an investigation rather than issuing a notification. As a result, the TCA opened full-fledged investigation of yurddaş, and found no violation in its Media Barometer service.

TCA Finds No Violation by Turkish Automotive Company

The TCA concluded its investigation to determine whether Karsan Otomotiv Sanayi Mamulleri Pazarlama A.Ş. violated Turkish Competition Law by determining resale prices and discount rates to be applied by authorized dealers; preventing authorized dealers from selling vehicles at different prices and passive sales out of the region; eliminating competition by making the market transparent and discriminating among authorized dealers.

The TCA initiated its investigation after the 13th Chamber of the Council of State in 2016 overruled the TCA's 2011 decision (No 11-60/1561-554, dated 07.11.2011) to reject the complaint and not initiate an investigation. After its investigation, the TCA concluded that Karsan Otomotiv Sanayi Mamulleri Pazarlama A.Ş. did not violate the Turkish Competition Law, and therefore did not impose any administrative fines on the undertaking.

European Commission's Annual Report on Competition Policy 2017

18 June 2018 -*The Annual Report on Competition Policy 2017 has been adopted by the European Parliament. It summarizes activities undertaken by the EC in the field of competition policy over the year 2017. Below we provide highlights of the Report and main policy areas.*

1. Enhancing the effectiveness of competition enforcement

- ECN +: The EC proposed new rules to provide Member States' national competition authorities common tools for effective enforcement of EU antitrust rules (the "European Competition Network +");
- A new whistleblower tool: The EC launched a new anonymous whistleblower tool, which allows individuals who have knowledge of the existence or functioning of a cartel, or other types of antitrust violations, to help end such practices;
- "Small on small" state aid policy: The EC extended the scope of the General Block Exemption Regulation, exempting from prior notification ports and airports, and included further simplifications in other areas, such as cultural projects and multi-purpose sport arenas and compensation for companies operating in the EU's outermost regions.

2. Tapping the full potential of the Digital Single Market

- Antitrust enforcement to uphold innovation in online markets: the Commission fined Google €2.42 billion for breaching EU antitrust rules and was ordered to comply with the principle of giving equal treatment to rival comparison shopping services and its own service. The EC also investigated Amazon's distribution agreements with e-book publishers in Europe. To address the EC's concerns, Amazon committed not to enforce, introduce or to change the terms of its agreements with publishers.
- Antitrust enforcement in sports markets: The EC investigated and found that the International Skating Union (ISU)'s eligibility rules were in breach of Article 101 TFEU.
- E-commerce sector inquiry: the EC published the final report on its inquiry to identify possible competition concerns in European e-commerce markets. One of the main goals of the Commission's Digital Single Market strategy is to grant better access for consumers and businesses to goods and services, for example by ensuring compliance with EU competition rules, ending unjustified geo-blocking and enabling cross- border portability of online content services.
- Competition in the media sector: the EC cleared the proposed acquisition of Sky by 21st Century Fox; the acquisition of de facto control over Telecom Italia by Vivendi; and approved two aid schemes supporting the development and promotion of educational and culturally valuable digital video games in Germany and Denmark.

- The importance of providing correct information in merger control: the EC fined Facebook €110 million for providing incorrect or misleading information in its acquisition of WhatsApp.

3. Promoting fair competition in concentrated markets, to the benefit of citizens and businesses

- Antitrust enforcement in the pharmaceutical sector: the EC opened a formal investigation over concerns that Aspen Pharma has engaged in excessive pricing of five life-saving cancer medicines; and sent a Statement of Objections to Teva pharmaceutical Industries for the allegedly anticompetitive pay-for-delay agreement with Cephalon;
- Merger control: the EC approved the acquisition of Actelion by Johnson & Johnson, subject to remedies; approved mergers between Dow and Dupont, Syngenta and ChemChina, and Bayer and Monsanto; prohibited the proposed takeover of Cemex Croatia by HeidelbergCement and Schwenk under the EU Merger Regulation, and the proposed merger between Deutsche Börse and London Stock Exchange Group.

4. Promoting an open and integrated market for gas

- Gazprom: Having found that Gazprom had been breaking EU antitrust rules in Central and Eastern Europe, the Commission submitted Gazprom's offered commitments to a market test. In light of the comments received from interested parties, the Commission may ask for modifications to the commitments and then adopt a decision making the commitments legally binding on Gazprom.

The full Report is available here:
http://ec.europa.eu/competition/publications/annual_report/2017/part1_en.pdf

EC Investigating Four-to-Three Consolidation in Dutch Telecom Market

The European Commission (EC) opened a Phase II (in-depth) investigation into a proposed acquisition of Tele2 NL by T-Mobile NL in the Netherlands, to ensure that the merger will not lead to higher prices or less choice in mobile services for Dutch consumers. The transaction was notified to the EC on 2 May 2018. The EC is to finalize its in-depth investigation and take a decision within 90 working days, by 17 October 2018.

The merger would combine the third and fourth largest operators in the Dutch retail mobile telecom market, reducing the number of network operators from four to three. The EC's initial market investigation raised concerns that the merger could lead to higher prices, and reduced choice and innovation for customers in the Netherlands. Now the EC will investigate whether the merger may weaken competitive pressure, increasing the likelihood that operators would coordinate their competitive behavior and raise prices on the retail markets; and whether prospective and existing mobile virtual network operators would face more difficulties in obtaining favourable wholesale access terms from mobile network operators. In particular, the EC will examine the extent to which the parties are close competitors, the potential response of the merged entity's competitors, and the importance of fixed/mobile bundles in the Netherlands.

EC's Gazprom Decision a "Tailor-Made Rule Book" for Future Practices

The EC adopted its decision on Gazprom (Case AT 39816), imposing a set of obligations to address competition concerns by changing the way the dominant company operates in the Central and Eastern European gas markets and ensuring a free flow of gas at competitive prices. The obligations will remain in place for eight years. If Gazprom fails to uphold them, it faces a fine of up to 10% of the company's worldwide turnover.

Competition concerns

The EC found that Gazprom breached EU competition law by, among others, (i) creating barriers to the free flow of gas and partitioning gas markets along national borders in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia via restrictions in its supply agreements (e.g., export bans, destination clauses); and consequently (ii) charging higher prices in these member states.

Highlights of Gazprom's obligations

- Remove contractual restrictions for customers to re-sell gas cross-border. Those restrictions include export bans and destination clauses in supply agreements;
- Facilitate gas flows to and from isolated markets (swaps), e.g., the Baltic states and Bulgaria. Customers shall have the possibility to request that Gazprom deliver their gas to the Baltics and Bulgaria instead of the originally agreed destination points;
- Provide customers with the possibility to demand lower prices when their gas prices diverge from the Western European price benchmark;
- Set new gas price in line with the price level in competitive Continental Western European gas markets.

In case Gazprom and its customers do not agree on a new price within 120 days, the dispute can be referred to an arbitration tribunal within the EU. Arbitration tribunals in the EU are under obligation to respect and apply EU competition law.

Multinational Fined for Implementing Acquisition Before EC Approval

The EC imposed a €124.5 million fine on Altice (the telecommunications and cable company based in the Netherlands) for implementing its acquisition of PT Portugal (Portuguese telecommunications operator) before notifying the merger to the EC. This is an example of how costly a violation of the notification and stand-still obligation in merger control can be. The heavy fine reflects the seriousness of the infringement.

EU merger control rules envisage a notification and stand-still obligation, meaning that a notifiable transaction cannot be implemented without prior notification to and approval by the EC. In fact, the transaction was notified and conditionally approved by the EC in April 2015. However, the EC discovered that Altice implemented the acquisition prior to the adoption of the EC's clearance decision, and in some instances, prior to its notification. In particular, (i) the purchase agreement between the two companies put Altice in a position to exercise decisive influence over PT Portugal before notification or clearance of the transaction, and (ii) in certain instances Altice exercised decisive influence over PT Portugal, for instance by giving instructions on how to carry out marketing campaigns and by seeking/receiving detailed commercially sensitive information. The decision will not affect the EC's April 2015 merger clearance decision; but the fine is to be paid.

Price Discrimination Under EU Competition Law: a Preliminary Ruling in MEO v GDA

The Court of Justice of the EU (CJEU) delivered its ruling in request for preliminary ruling in MEO vs GDA (Case C 525/16). The case clarifies conditions for the application of Article 102, second paragraph, point (c) TFEU. In particular, a dominant player may distort competition by charging different prices only if such price discrimination impacts costs, profits etc. of the trading partner(s), so that this conduct affects the competitive situation in the downstream market. The ruling emphasizes the importance of the effects-based approach in such cases.

The request for preliminary ruling was made by the Portuguese Tribunal for Competition, Regulation and Supervision (Portuguese Tribunal) in a dispute between MEO (a branch of Portugal Telecom) and the Portuguese Competition Authority (PCA). The PCA rejected MEO's complaint alleging that it paid higher rates for use of audiovisual content licensed by GDA (a collecting society that manages the performing rights of its members in Portugal). MEO argued that GDA's pricing practices amounted to unlawful price discrimination under Article 102(2)(c) TFEU. MEO appealed the PCA's decision to the Portuguese Tribunal.

In its ruling, the CJEU clarified that the commercial behavior of the undertaking in a dominant position may not distort competition in an upstream or a downstream market (para 24 of the Judgement). For the conditions for applying point (c) of the second paragraph of Article 102 TFEU to be met, there must be a finding, not only that the behavior of an undertaking in a dominant market position is discriminatory, but also that it tends to distort that competitive relationship, in other words, to hinder the competitive position of some of the business partners of that undertaking in relation to the others (para 25 of the Judgement).

To sum up, the CJEU confirmed that a discriminatory pricing policy of a dominant company is not, in itself, anticompetitive. It is an abuse if it results in a "competitive disadvantage" between competitors and, in doing so, distorts competition between the "favoured" company and those companies which enjoy allegedly less advantageous conditions.

EU's Provisional Safeguard Measures On Steel Products And A Practical Guide For Importers

Introduction

The countries in the world trading ecosystem have been taking steps to establish a freer trade since 1947- the time when the General Agreement on Tariff and Trade (GATT) was created. Especially after the establishment of the World Trade Organization in 1995 following the last round of the GATT (Uruguay Round of 1994), the restrictions and bans have rapidly been removed from the exchange of goods between the countries. It is without dispute that the world economy has extensively benefited from the trade liberalization.

The recent events, however, suggest that the nations started to stray away from the trade liberalization by implementing protectionist approaches such as imposing tariff obstacles, duties and quotas. It is further considered that the United States' recent restrictions triggered the concerned backwards trend (For more on the recent restrictions: Turkey Initiated A Safeguard Investigation To Steel Imports and Customs Updates In Turkey For The Import Of Various Goods).

As a result of this protectionist approaches, the European Commission announced that it had initiated a safeguard investigation on imports of twenty-six different steel product categories to prevent trade diversion into the EU by publishing a notice dated 06.03.2018 and numbered 2018/C 111/101. The scope of the investigation was extended to include two additional product categories on 28.06.2018.

The preliminary assessments carried out by the Commission revealed that there exists a threat of serious injury on the EU's steel producers and increase of imports as a result of unforeseen developments. Therefore, the Commission imposed a provisional safeguard duty of 25% on imports of 23 different product categories on 17.07.20182.

Although the Commission alleges it has found that all necessary requirements are present in the case at hand to impose a provisional safeguard measure, it is considered that the investigating authorities in trade defense investigations should thoroughly observe the interest of all parties who may be affected from the measures, especially the dynamics of the downstream markets (i.e. interest of the EU surrounding the free imports of the products concerned).

How are Turkey and other Developing Countries Affected?

It has been decided that a provisional safeguard duty of 25% on the import of twenty-three product categories to the European Union will be applied for a period of maximum 200 days starting from 19.07.2018 regardless of their origin except for developing countries.

The relevant safeguard measure is to be imposed once imports exceed a certain amount in quantity on the basis of each product category and will expire on 04.02.2019 at the latest. Therefore, no safeguard measures will be applied unless the relevant quota is exceeded. A list that includes the product categories, relevant HS Codes and

quotas can be found here under Annex 5.

Furthermore, in accordance with the applicable rules, the Commission undertook a separate evaluation for the developing countries including Turkey. In this context, WTO member developing countries, whose shares in the European Union market are less than 3%, are excluded from the relevant safeguard measure, provided that the total market share of all WTO member developing countries is less than 9%. Moreover, exclusion from the relevant safeguard measure on a product basis has been granted for some developing countries with low levels of imports into the European Union. A list that shows the measures to be applied on each developing country can be found here under Annex 4.

Product categories on which the measure will be imposed on the import from Turkey, relevant HS Codes and the quotas mentioned above are presented in the table below:

Finally, it should also be noted that imports from Norway, Liechtenstein and Iceland, which are members of the European Economic Area, will not be subject to the relevant safeguard measures.

Competition between the product categories.

The Commission undertook a comprehensive analysis for the competition among the product categories in order to decide whether the products of the EU producers are like or directly competitive with the ones being imported. It has been reached there is a strong competition between imported products and products produced by the EU producers under the same categories. This is because they are similar in terms of physical and chemical characteristics, price, quality and sales channel.

The Commission has also determined a significant relationship and strong competition among the products covered under different product categories. It has been evaluated that products under different categories can easily be transformed into a competitive product following simple processes. Therefore, the Commission considered that the products, if not protected under the provisional

safeguard measure, may be converted into a different product in the country of import and imported under different HS Code, which would result in circumventing the measures.
As a result, it has been evaluated that competitive pressures can easily be shifted from one product to another and accordingly, it has been decided to apply the provisional safeguard to all twenty-three product categories.

How will the duties be imposed on importers?
A practical guide.
As explained above, the provisional safeguard measures to be imposed will be implemented following a certain import amount on the basis of product category is reached.
Relevant quotas, which are not country-specific, will be allocated in accordance with the chronological order of the date of acceptance of the customs declarations for entry to free circulation. Therefore, quotas will be allocated on a first come first served basis.
The relevant quotas may be tracked on the following website with the "order number" set out here under Annex 5:
http://ec.europa.eu/taxation_customs/dds2/taric/quota_consultation.jsp?Lang=en
Accordingly, concerned customs administrations will examine the exporters' customs and requests for customs quota pursuant to the legislation of the EU and if such request is found appropriate, the request containing the date of acceptance and the exact amount will be forwarded to the Commission without delay.
The Commission will conduct the allocation of quantities on basis of the date of acceptance of relevant customs declarations to extent permitted by remaining balance of the customs tariff quota. On the day of allocation, if the sum of the amounts for all customs tariff quotas accepted on the same day is higher than the remaining balance of the customs tariff quota, the Commission will allocate the quantities on a pro rata basis.
In practice, quotas are allocated at the end of each business day. Accordingly, the relevant customs authorities will forward to the Commission the customs declarations at the end of each business day and the Commission will carry out the necessary duties in accordance with the customs declarations and requests attached to it. However, a blocking period has been envisaged until 01.08.2018 and the Commission will not allocate the quota at the end of each day until that date. Customs declarations and requests received by the date of 01.08.2018 will be allocated collectively at the end of the blockage period.

Footnotes
1. http://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156657.init-safe.en.C111-2018.pdf
2. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.181.01.0039.01.ENG&toc=OJ:L:2018:181:TOC

Product Category	HS Codes	Quota	Duty
Non Alloy and Other Alloy Hot Rolled Sheets and Strips	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 99, 7208 53 90, 7208 54 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 19 10, 7226 91 20, 7226 91 91, 7226 91 99	4,269,009	25%
Non Alloy and Other Alloy Cold Rolled Sheets	7209 15 00, 7209 16 90, 7209 17 90, 7209 18 91, 7209 25 00, 7209 26 90, 7209 27 90, 7209 28 90, 7209 90 20 7209 90 80, 7211 23 20, 7211 23 30, 7211 23 80, 7211 29 00, 7211 90 20, 7211 90 80, 7225 50 20, 7225 50 80, 7226 20 00, 7226 92 00	1,318,865	25%
Metallic Coated Sheets	7210 20 00, 7210 30 00, 7210 41 00, 7210 49 00, 7210 61 00, 7210 69 00, 7210 90 80, 7212 20 00, 7212 30 00, 7212 50 20, 7212 50 30, 7212 50 40, 7212 50 61, 7212 50 69, 7212 50 90, 7225 91 00, 7225 92 00, 7226 99 10, 7226 99 30, 7226 99 70	2,115,054	25%
Organic Coated Sheets	7210 70 80, 7212 40 80	414,324	25%
Stainless Cold Rolled Sheets and Strips	7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90, 7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20, 7220 90 80	476,161	25%
Non Alloy and Other Alloy Merchant Bars and Light Sections	7214 30 00, 7214 91 10, 7214 91 90, 7214 99 31, 7214 99 39, 7214 99 50, 7214 99 71, 7214 99 79, 7214 99 95, 7215 90 00, 7216 10 00, 7216 21 00, 7216 22 00, 7216 40 10, 7216 40 90, 7216 50 10, 7216 50 91, 7216 50 99, 7216 99 00, 7228 10 20, 7228 20 10, 7228 20 91, 7228 30 20, 7228 30 41, 7228 30 49, 7228 30 61, 7228 30 69, 7228 30 70, 7228 30 89, 7228 60 20, 7228 60 80, 7229 70 10, 7228 70 90, 7228 80 00	728,270	25%
Rebars	7214 20 00, 7214 99 10	714,964	25%
Gas Pipes	7306 30 41, 7306 30 49, 7306 30 72, 7306 30 77	185,280	25%
Hollow Sections	7306 61 10, 7306 61 92, 7306 61 99	387,343	25%
Large Welded Tubes	7305 11 00, 7305 12 00, 7305 19 00, 7305 20 00, 7305 31 00, 7305 39 00, 7305 90 00	258,133	25%
Other Welded Tubes	7306 11 10, 7306 11 90, 7306 19 10, 7306 19 90, 7306 21 00, 7306 29 00, 7306 30 11, 7306 30 19, 7306 30 80, 7306 40 20, 7306 40 80, 7306 50 20, 7306 50 80, 7306 69 10, 7306 69 90, 7306 90 00	296,274	25%
Non Alloy Wire	7217 10 10, 7217 10 31, 7217 10 39, 7217 10 50, 7217 10 90, 7217 20 10, 7217 20 30, 7217 20 50, 7217 20 90, 7217 30 41, 7217 30 49, 7217 30 50, 7217 30 90, 7217 90 20, 7217 90 50, 7217 90 90	393,091	25%

Chinese Granite Imports Circumvented Through Iran

The Ministry of Economy of the Turkish Republic (Ministry) imposed an anti-dumping duty on imports of granite from Iran (under the CN Code of 6802.23 and 6802.93) since they have been used to circumvent the current duty on the same product originating from China.

Turkey has been practicing supervision of imports of granite regardless of the country of origin. In 2006, the Ministry found that granite imports from China were dumped and imposed an anti-dumping duty of $90/ton on such imports. In 2012, the Ministry increased the duty to $174/ton, after its evaluation resulting from final expiry review. Finally, in 2016, national producers claimed that imports originating from Vietnam had been used to circumvent the duty imposed on the imports from China. Following that claim, the Ministry extended the anti-dumping duty to the imports from Vietnam. Only two companies were excluded from the application of that duty, since they were genuine producers located in Vietnam and had no motive to circumvent the duty.

In December 2017, the Ministry opened an anti-circumvention investigation *ex officio* to discover whether granite imports originating from Iran were used to circumvent the duty. Upon its first examination, the Ministry determined that the volume of imports originating from Iran increased while their unit price decreased. Only two Iranian companies were deemed as cooperating parties in the scope of the investigation since they submitted their responses in time. Other Iranian companies (which did not submit their responses in time and were not deemed as cooperating) were not excluded from the duty imposed. As a result, a duty of $174/ton was also imposed on the imports from Iran, except for the two Iranian companies that successfully cooperated with the Ministry.

Anti-Dumping Duty Imposed on Lighters From China

The Ministry concluded its investigation of imports of lighters from China (that are only to be used in stoves and ovens as an ignitor) under the CN Code of 9613.80.00.00.11. An anti-dumping duty was imposed.

In November 2017, after receiving an application from the domestic industry, the Ministry initiated an anti-dumping investigation into lighters originating from China. In its first evaluation, the Ministry noted that the consumption rate of the product increased during the first half of 2017, resulting in an increase in the market shares of both the domestic industry and imports from China. However, during this time, imports from China gained a higher market share than the domestic industry's. The Ministry found that import prices did not undercut the domestic industry's prices; however, they depressed them.

According to the Ministry's Information Report, questionnaires were sent to 32 firms located in China; however, none of them answered the questionnaires. Moreover, the Ministry reiterated its findings in the first evaluation, and found causal link between the dumped imports and the injury incurred by the domestic industry. As a result, the Ministry imposed an anti-dumping duty of 24.55% (CIF %) on the imports.

GDPR Brings New Rights to Individuals, New Obligations to Companies

25 May 2018 - The General Data Protection Regulation (GDPR), which was approved in 2016, enters into force in all EU Member states beginning 25 May 2018. The GDPR brings new rights to individuals and new obligations to companies. It is vital to comply with its rules, otherwise fines for non-compliance are high: €10 million or 2% of worldwide consolidated group turnover, whichever is higher; or €20 million or 4% of worldwide consolidated group turnover, again whichever is higher. The main aim of the GDPR is to ensure better protection of natural persons' rights, particularly in the digital age.

One of the biggest changes the GDPR brings is that companies may not contact the data subject unless they have explicit consent to do that. The consent of individuals, including minors, must be an active, affirmative action taken by the data subject, rather than passive acceptance, as under some current models that allow for pre-ticked boxes or opt-outs. Regarding minors' consent for processing their personal data, a child must be at least 16 years old to be able to give consent for the lawful processing of personal data (the GDPR allows the EU member states to lower this threshold up to 13 years); otherwise, consent shall be given by holders of parental responsibility over the child. Additionally, it shall be possible to easily withdraw consent at any time if the natural person changes his/her mind.

Under the GDPR, data shall be kept no longer than is necessary for the purposes for which personal data are processed. It may be erased even earlier upon the request of the individual concerned. The individual is entitled to exercise their 'right to be forgotten' and request the controller to erase personal data about him/her without undue delay where the data are no longer necessary for the purpose they were collected/processed, if the data were unlawfully processed, etc.

By now, businesses should have reviewed and revised their processes by which they obtain consent to make sure they are fully compliant with the stricter rules under the GDPR, while individuals are in a much stronger position now to control their personal data.

ELSA Summer School

Every year ACTECON organizes a seminar on EU and Turkish merger control regimes at the ELSA Law School on Mergers and Acquisitions. This year at ACTECON Day, more than 40 students from all over Europe received training on merger control as well as a briefing on recent developments in this area in the EU and Turkey.

Evaluating Turkey's 20 Years of Experience with Competition Law

ACTECON's managing partner Dr. M. Fevzi Toksoy evaluates Turkey's 20-years experience with Competition Law in his article in the May/June 2018 issue of "Finans Dünyası". Dr. Toksoy argues that the Turkish Competition Authority should encourage entrepreneurship, support innovation, address the adverse effects of trade wars on consumers by considering consumer welfare in competition analysis, and stand firm against competition-distorting regulations of the government.

Read the article in Turkish: http://www.actecon.com/assets/upload/services/turkiyenin-20-yillik-rekabet-macerasi-pdf29052018023500.pdf

Read the article in English :
http://www.actecon.com/assets/upload/services/competition-law-in-turkey-the-next-20-years-pdf23072018120631.pdf

ACTECON at Bilgi University's Competition Law and Policy Research Center

ACTECON's Managing Partner Bahadır Balkı, LL.M., presented a lecture on the Turkish Competition Authority's investigations of the banking sector at Istanbul Bilgi University's Competition Law and Policy Research Center. Balkı was a guest lecturer, presenting, "A Discussion on the Application of Article 4 of Law No. 4054 in Terms of Competition Law Mechanism and Policy in the Framework of the Competition Board's Banking Investigations".

Getting The Deal Through 2018

ACTECON authored the Competition Compliance section of Getting The Deal Through 2018. The online research platform is used by thousands of law firms, universities, regulators, and corporate counsel at leading multinational organizations worldwide.
// https://gettingthedealthrough.com/area/97/jurisdiction/54/competition-compliance-turkey/)

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