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QUARTERLY BULLETIN

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Dear reader,

With this fourth quarterly issue of the Output, we would like to draw your attention particularly to several important competition law developments.

First of all, the Turkish Competition Authority ("TCA") has been keeping itself busy with developing and adopting secondary legislation, i.e., Guidelines on the Examination of Digital Data during On-site Inspections, and De Minimis Notice to clarify the respective amendments to the Turkish Competition Law and make them "user friendly".

Secondly, the issue of excessive pricing has been on the agenda of the TCA once again in relation to the largest online platform *Sahibinden.com*. The case was reviewed and annulled by the Turkish administrative court based on the standard of proof, and it is back to the TCA for reassessment. *Apex* case is another one in relation to investigation into excessive pricing (of virus protective face masks), where the fines were imposed by the TCA for violation of procedural rules. It reminds us of importance of providing complete information in due time to the TCA.

Thirdly, the case of the Turkish beverage producer *Mey İçki*, which although initially dates back 2017, brings about interesting developments in the fourth quarter of the year 2020 both from the substantive and procedural law perspective. The main message here is that dominance should be evaluated separately in terms of each product market, i.e. violations in different product markets (although they arise from the behaviours that are part of the same strategy) should be fined separately.

As regards the prominent developments from the EU side, we cannot but mention the Digital Markets Act, which aims at targeting the big undertakings that operate one of the so-called "core platform services", the parallel investigation into Amazon, as well as sanctions for the automotive cartel (in relation to closure systems).

This issue of the Output also includes some updates on the international trade and data protection news.

Kind regards,

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In this issue:

The Turkish Wealth Fund: State-Owned Banks as Same Economic Unit?

*On 9 December 2020, the Turkish Competition Authority (the "**TCA**") published its reasoned decision (in relation to case No 20-39/539-240 dated 24.07.2020) regarding the individual exemption application with respect to bancassurance agreements signed between Güneş Sigorta A.Ş. ("**Güneş**") and Türkiye Vakıflar Bankası T.A.O. ("**Vakıfbank**"), and Vakıf Emeklilik ve Hayat A.Ş. ("**Vakıf Emeklilik**") and Vakıfbank. Concerned bancassurance agreements are aimed to gather non-life insurance services, life insurance services, and personal retirement insurance services under one control.*

After examining the control structure of the concerned undertakings, the TCA decided that aforementioned bancassurance agreements do not fall within the scope of Article 4 of *Law of Turkey No. 4054 on the Protection of Competition (the "***Turkish Competition Law***")* and thus cannot be evaluated under Article 5 of the Turkish Competition Law since Vakıfbank, Güneş, and Vakıf Emeklilik are part to the same economic unity.

The important part of this decision is that the TCA evaluates the current control structure of state-owned depository banks, namely Vakıfbank, T.C. Ziraat Bankası A.Ş. (Ziraatbank) and Türkiye Halk Bankası A.Ş. (Halkbank). In its decision, the TCA recognizes its consistent case law that the government's

control over the banks is realized only as general supervision and overseeing and these banks compete with private sector banks and each other in the market, thus they cannot be deemed to be under the same economic unity.

However, it further highlights that Turkish Wealth Fund ("**TWF**") became a shareholder of these depository banks (as of 24.02.2017 for Ziraatbank, 10.03.2017 for Halkbank and as of 20.05.2020 for Vakıfbank) and states that the TWF is more than a governmental organization with its own commercial agenda and aims to make investments in order to make a profit. Therefore, the TWF is a controlling economic undertaking that steers the companies in which it invested and their strategic decisions in a commercially profitable direction. On the other hand, when it comes to the shareholding of other government bodies, the TCA states that the government only plays an overseeing role and does not get involved in commercial decisions or aims to make a profit and thus does not control the entities it owns. Therefore, the TCA concludes that Ziraatbank, Halkbank, and Vakıfbank are ultimately controlled by TWF and thus are in the same economic unit.

Danfoss-Eaton Concentration moves on to Phase II Investigation

On 7 December 2020, the TCA initiated a Phase II review of the transaction pursuant to the notification made by Danfoss A/S to acquire sole control of Eaton Corporation plc's hydraulics branch.

The TCA decided to initiate a Phase II review for the relevant transaction. The Danfoss and Eaton Hydraulic businesses are leaders in the industry and have many organizational similarities such as R&D. Both businesses are global with complementary geographic footprints and the combined business creates a broader presence across the world. Furthermore, the acquisition will enable Danfoss to enter the industrial hydraulics market that is served by Eaton Hydraulics. Eaton Hydraulics provides products for customers in markets such as agriculture, construction, and in industrial market segments. With the transaction, Danfoss is expected to increase its size by one-third.

The TCA is tasked with scrutinizing mergers and/or acquisitions that would result in a significant impediment of effective competition within a market for goods or services in the entirety or a portion of the country, particularly in the form of creating or strengthening a dominant position.

The Board is obliged to perform a preliminary examination within 15 days and either authorize the merger or acquisition or, if it decides to take the transaction under final examination (Phase II review), to duly notify, with a preliminary objection letter, those concerned of the fact that the merger or acquisition is suspended and cannot be put into effect until the final decision, together with any other measures deemed necessary.

The First Commitment Case in Turkish Competition Law Absent the Secondary Legislation

*The TCA evaluated the commitment submitted by Havaalanları Yer Hizmetleri A.Ş. ("**HAVAŞ**") as part of its investigation into whether HAVAŞ (an undertaking providing customs-bonded temporary storage services) violated Article 6 of the Turkish Competition Law. On 6 November 2020, the TCA closed the investigation without any fine imposed on HAVAŞ.*

After the evaluation of the respective commitment, the TCA concluded that the commitment offered by HAVAŞ would remedy competition concerns.

The commitment mechanism was de jure introduced into the Turkish Competition Law as part of the legal reform in June 2020. Pursuant to Article 43(3) of the Turkish Competition Law, "In the course of a preliminary investigation or investigation in progress, a commitment may be proposed by the concerning undertaking or association of undertakings to eliminate the competition problems arising under Article 4 or 6." It is specified that if the TCA deems that the competition concerns can be resolved through submitting commitments, it may decide not to open an investigation or to terminate the ongoing investigation by making the respective commitments binding for the concerned undertakings or the associations of undertakings. It is also emphasized that no commitment shall be accepted for explicit and severe infringements such as price-fixing among competitors, territory, or customer allocation, or restriction of supply.

The implementation of the commitment mechanism is intended to save time and resources, and so that investigation processes can be concluded in a much shorter time. The foregoing decision is the first example of the implementation of the commitment mechanism after the respective amendments to the Turkish Competition Law.

Diageo's Turkish Business: Mey İçki's Discount and Visibility Practices in Gin and Vodka Markets Sanctioned

*On 23 October 2020 the TCA, following the annulment decision of the Administrative Court of Turkey, decided to impose an administrative fine of TRY 41,542,125 on the Turkish beverage producer Mey İçki Sanayi ve Ticaret A.Ş. ("**Mey İçki**") for violating the Turkish Competition Law (decision no. 20-28/349-163 and dated 11 June 2020 or the "**Mey-III Decision**") by way of abusing its dominant position in the gin and vodka markets via its discount and visibility practices during 2014-2016.*

Mey İçki was previously investigated and fined for its practices. With its decisions in February 2017 ("**Mey-I Decision,**" in relation to raki market), and in October 2017 ("**Mey-II Decision**" in relation to gin and vodka markets), the TCA examined and found certain violations by Mey İçki of Article 6 of the Turkish Competition Law by way of abusing its dominant position in the respective markets in Turkey. Mey İçki was fined by the TCA with regards to its practices in the relevant product market of rakı. With respect to the calculation of the administrative fine, the TCA concluded that since Mey İçki's practices in the vodka, gin, and rakı markets (i) had the same characteristics, (ii) had been realised within the same period, and (iii) were part of a general strategy, and that as Mey İçki had been fined over its total turnover in the Mey-II Decision, there was no need to impose a separate administrative monetary fine on Mey İçki. However, the Administrative Court of Turkey annulled the TCA's Mey-II decision in February 2020. It stated that because vodka, gin, and raki products differ from each other in terms of their qualities, usage purposes, and prices in the eyes of consumers, violations realized in separate product markets (even if they arise from the same general strategy) should be fined separately.

Following this decision, the TCA, with its Mey-III decision, imposed an administrative fine amounting to TRY 41,542,125 on Mey İçki due to its abuse of dominance by means of practices complicating its competitors' activities in the vodka and gin markets.

What Are You Hiding Behind Your Mask? Or Apex's Incomplete Information Fine

*On 13 October 2020, the TCA published two reasoned decisions regarding the imposition of an administrative monetary fine on Apex Teknik Tekstil ve Sağlık Ürünleri San. Tic. Ltd. Şti. ("**Apex**") for providing incomplete information in due time to the TCA within the scope of the Turkish Competition Law.*[1]

Following its preliminary inquiry upon claims of excessive increase in virus protective face mask prices, the TCA initiated an investigation in May 2020 to determine whether the Turkish Competition Law was violated. The TCA requested information to be assessed within the scope of the investigation from Apex regarding its (i) mask fabric production, as well as (ii) mask production. Apex was notified of the necessity to provide the requested information by 10 June 2020 and 16 June 2020, respectively. However, Apex provided the requested information on 23 June 2020 via email. Although the responses were found sufficient in relation to mask fabric production, the information in the said email regarding the mask production was determined as incomplete and requested to be completed. Apex provided the requested information regarding its mask production on 6 July 2020, but the information was still incomplete - different mask types were not listed separately and information regarding production quantity and sales quantity was missing. The TCA indicated that Apex should submit its complete responses by 8 July. However, Apex did not provide the requested information in due time and did not complete the missing information regarding mask production despite having been contacted numerous times.

As a result, in terms of the responses of the Apex regarding *mask fabric production*, the TCA imposed on Apex a fine amounting to 0.1% of its 2019 annual gross revenue determined by the TCA on the ground of its failure to provide the requested information within the time specified. Also, Apex faced periodic fines of 0.05% per day of its 2019 annual gross revenue for 12 days, commencing from 11 June 2020, the day following the final day determined to provide the requested information, until 23 June 2020, the day on which the undertaking provided the requested information.

In terms of its *mask production*, the TCA determined that Apex had obstructed the evaluation of the claims and findings within the scope of the investigation considering that it had not provided the information as requested, had not used ordinary care to provide the requested information where many other undertakings were able to provide the same requested information. Eventually, due to its failure to provide the requested information regarding the mask production within due time, Apex received periodic fines of 0.05% per day of its 2019 annual gross revenue commencing from 9 July 2020, the day following the final day determined to provide the requested information, until the TCA was provided with said information.

1 TCA's decision No 20-34/451-199 dated 17.07.2020 and decision No 20-32/410-187 dated 02.07.2020.

Google Again? A TRY 196 Million Fine in Turkey

*On 13 November 2020, the TCA announced its short decision (No. 20-49/675-295) regarding Google LLC, Google International LLC, and Google Reklamcılık ve Pazarlama Ltd. Şti. (**"Google"**) and its abuse of dominance through the updates it makes to general search services and Adwords advertisements. The TCA imposed an administrative fine of TRY 196,708,054.78 on Google coupled with a remedy package.*

The TCA determined that by way of intensively placing text ads with unclear advertising characteristics at the top of its general search results, Google has made the activities of organic results, from which it does not generate advertisement income, in the content services market difficult and thus violated Article 6 of the Turkish Competition Law. In this regard, the TCA decided to impose an administrative fine of TRY 196,708,054.78 on Google.

In addition, to terminate the breach and to ensure effective competition in the market, the TCA imposed a remedy package on Google. In particular, Google is to (**i**) present text ads in a characteristic, scale, and/or position that will not exclude organic results, (**ii**) submit the compliance remedies it has designed to the TCA, and (**iii**) inform the TCA periodically and annually for a period of 5 years from the beginning of the implementation of the first compliance remedy.

Sahibinden.com's Saga Continues

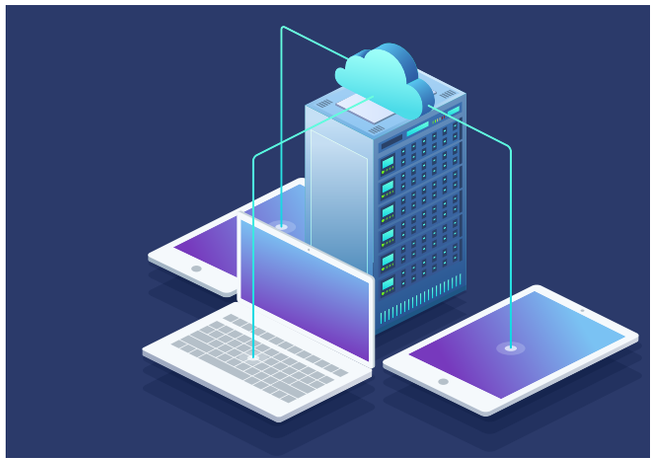
*On 15 October 2020, the TCA decided to initiate a full-fledged investigation into the Turkish online platform Sahibinden Bilgi Teknolojileri Paz. ve Tic. A.Ş. ("**Sahibinden**") to determine whether its practices within the scope of online platform services offered in the markets for vehicles/automobiles and real estate violated Article 6 of the Turkish Competition Law. The investigation was launched following the annulment decision of the Administrative Court of Turkey.*

Sahibinden was investigated by the TCA in 2017 due to its pricing practices within the scope of the online platform services it offers in the automobile and real estate ads markets. It was fined by the TCA for its abuse of dominance by applying excessive pricing in both online automobile and real estate ads markets.

Following this, the Administrative Court of Turkey annulled the TCA's decision on the grounds of standard of proof. One of the main issues the Court pointed out to was that the TCA should have proved the infringement concerning excessive pricing in a certain/indisputable way with the facts surrounding the case at hand (e.g. via the detailed cost-price calculations), which it had not.

Digital Data Examination during On-site Inspections in Turkey with European Flavor

*Following amendments to the Turkish Competition Law in June 2020, on 1 October 2020 the TCA published the awaited Guidelines on the Examination of Digital Data during On-site Inspections ("**Guidelines**") to resolve questions that might arise in practice in relation to the review and collection of digital data in the course of on-site inspections. The remarkable points that the Guidelines include: (i) the possibility of the examination of portable communication devices such as personal mobile phones, based on the scope of their usage, (ii) the use of forensic software and hardware tools during on-site inspections, and (iii) the continuation of inspections at the headquarters of the TCA.*



The amendments to the Turkish Competition Law, among others, changed the wording of the article on on-spot inspection from "any paperwork and documents" to "all types of data and documents […] kept on physical and electronic media and in information systems," as well as the wording "take their copies if needed" to "take copies and physical samples thereof."

The main topics included in the Guidelines are as follows:

- information systems such as servers, desktop computers/laptops, portable devices that belong to the undertaking, and all storage media, e.g., CD, DVD, USB, external hard disc, backup files, and cloud services can be subject to examination. In addition, the staff of the TCA are authorized to carry out examinations of digital media that contain any kind of data belonging to the concerned undertaking.
- Whilst assessing whether a portable communication device[1] can be subject to examination, it does not take into account the ownership of the device but its area of usage. Accordingly, to assess whether the device contains any digital data that belong to the undertaking, a swift review will be conducted. In particular, portable communication devices that are found to be solely used for personal purposes will not be subject to inspection. On the other hand, devices found to contain data that belong to the undertaking can be inspected via forensic tools.
- During the inspection, in addition to the search tools available within the systems of the undertaking, forensic software and hardware tools that allow for a comprehensive search concerning digital data also can be used. Indeed, the Guidelines bring a parallel approach with European rules by introducing forensic IT tools. In addition, if deemed necessary, any digital data to be examined can be copied to a separate data storage unit as a whole or partially with forensic tools. Upon confirming their originality by calculating hash[2] values, this data can be transferred to and, after indexing, examined on the computers of the TCA staff with forensic tools.
- Undertakings under inspection have the duty to refrain from interfering with the data and the environments where the data is kept. In addition, it is explained that the undertaking is obligated to aid the examination concerning their information systems during the inspection. Accordingly, the undertaking, for example, is obligated to provide information concerning the software and hardware of the information technologies used, assign administrative permissions, grant remote access to an employees' e-mail accounts, isolate computers and servers from the network, restrict access to corporate accounts of users, and recover backup commercial data when needed.
- The Guidelines, excluding the examination of digital data seized from mobile phones, envisages that if deemed necessary, the examination can continue at the forensic information laboratory located on the premises of the TCA. If it is decided that the examination will continue on the premises of the TCA, the necessary digital data, upon calculating and comparing the hash values, will be transported to three separate data storage units, two of which will be taken by the TCA staff in sealed envelopes. The undertaking concerned will receive a written invitation to send an authorized representative to represent the undertaking during the breaking of the seal of the envelope and the continuing examination at the forensics information laboratory.
- Trade secret statements made both during the inspections conducted on the premises of the undertaking and the headquarters of the TCA concerning digital data considered to be evidence will be evaluated under the Communiqué on the Regulation of the Right of Access to the File and Protection of Trade Secrets numbered 2010/3 (akin to Article 28 of Council Regulation No. 1/2003).
- Copied data will benefit from attorney-client privilege where the correspondences were made between an impartial attorney (with whom the undertaking does not have a labor contract) and client with the aim of using the right of defense. Correspondences made not directly related to the right of defense, especially correspondences made to aid a competition violation or to cover a continuous violation or a violation which will take place in the future will not benefit from attorney-client privilege, thereby, from the benefit of this protection.

Generally speaking, the Guidelines are closely modeled after the EC's Explanatory note on inspections pursuant to Article 20(4) of the Council Regulation and aim at establishing a general framework of the examination of all kinds of data kept on electronic media and information systems and/or on the examination and protection of these data in the case that the inspection continues at the headquarters of the TCA.

1 According to On-Site Inspection Guidelines, this definition covers mobile phones, tablets etc.

2 Hash is a mathematical calculation method to confirm the integrity of digital files.

Digital Markets Act: Targeting "Gatekeepers"

*On 15 December 2020, the European Commission ("**EC**") released the Digital Markets Act ("**DMA**"), which aims to regulate "gatekeepers," big undertakings that operate one of the so-called "core platform services" such as search engines, social networking services, certain messages services, operating systems, and online intermediary services) and have a lasting, large user base in multiple EU countries.*

The DMA specifically targets those undertakings labelled as "gatekeepers." The proposal defines the "gatekeeper" as a large company that plays a particularly important role in the internal market because of its size and importance as gateways for business users to reach their customers. These companies are defined as controlling at least one so-called "core platform service" (such as search engines, social networking services, certain messages services, operating systems, and online intermediary services) and have a lasting, large user base in multiple countries in the EU.

There are three main cumulative criteria that bring a company under the scope of the DMA:

1) A size that impacts the internal market. This is presumed to be the case if the company has achieved an annual turnover in the EEA equal to or above EUR 6.5 billion in the last three financial years, or where its average market capitalization or equivalent fair market value amounted to at least EUR 65 billion in the last financial year and it provides a core platform service in at least three Member States;

2) The control of an important gateway for business users towards final consumers. This is presumed to be the case if the company operates a core platform service with more than 45 million monthly active end users established or located in the EU and more than 10,000 yearly active business users established in the EU in the last financial year;

3) An expected entrenched and durable position. This is presumed to be the case if the company met the other two criteria in each of the last three financial years.

If an undertaking satisfies the above-mentioned cumulative criteria, it is identified as a gatekeeper. Gatekeeper undertakings carry an extra responsibility to conduct themselves in a way that ensures an open online environment that is fair for business and consumers. Under the DMA, gatekeepers are obligated to implement certain behaviors and will have to refrain from engaging in unfair behaviour, which is defined in the legislation in the light of market experience to date. The DMA also lists some example do's and don'ts for the undertakings concerned such as allowing their business users access to the data generated by their activities on the gatekeeper's platform or allowing third parties to inter-operate with the gatekeeper's own services and using the data obtained from their business users to compete with these business users or may not restrict their users from accessing services that they may have acquired outside of the gatekeeper platform.

If a gatekeeper does not comply with the rules, the EC can impose fines of up to 10% of the undertakings total worldwide annual turnover and periodic penalty payments of up to 5% of the undertakings total worldwide annual turnover. In the case of systematic infringements, the EC can also impose additional remedies, i.e., structural or behavioural remedies.
The EC has the sole authority to apply the DMA but the National Competition Authorities of other Member States can ask the EC to initiate proceedings.[1]

1 https://ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2349

The EC's Second Parallel Investigation into Amazon

*On 10 November 2020, the EC sent a statement of objections ("**SO**") to Amazon on suspicion of their having breached competition rules through the use of non-publicly available data of sellers gathered from its marketplace platform to the benefit of its competing retail businesses. At the same time, the EC opened a second formal investigation into Amazon's possible preferential treatment of its own retail services and marketplace sellers that also use Amazon's logistics and delivery services.*

The EC's second antitrust investigation concerns Amazon's business practices that might artificially favour its own retail offers and offers of marketplace sellers that use Amazon's logistics and delivery services so-called "fulfilment by Amazon or FBA sellers." In particular, the EC will investigate whether the criteria that Amazon sets to select the winner of the *"Buy Box"* and to enable sellers to offer products to Prime users, under the Amazon›s Prime loyalty programme, leads to preferential treatment of Amazon›s retail business or of the sellers that use Amazon›s logistics and delivery services.

In July 2019, the EC officially opened its first antitrust probe over concerns associated with Amazon's dual function as a provider of a marketplace in which independent dealers can sell products directly to customers and as a retailer that sells its own merchandise on its website, in competition with third-party merchants.

The EC has found preliminarily that very large quantities of non-public seller data are available to employees of Amazon's retail business and flow directly into the automated systems of that business. Amazon systems aggregate this data and use it to calibrate Amazon's retail offers and strategic business decisions to the detriment of the other marketplace sellers. In the SO, it is alleged that such use of non-public marketplace seller data allows Amazon to avoid the normal risks of retail competition and to leverage its dominance in the market for the provision of marketplace services in France and Germany, which are the biggest markets for Amazon in the EU.

Cigarettes and Information Exchanges May Harm You: EUR 82 Million Fine in the Netherlands

*The Netherlands Authority for Consumers and Markets ("**ACM**") in the end of September 2020 imposed fines totaling more than EUR 82 million on four major cigarette manufacturers, namely British American Tobacco International B.V. ("**BAT**"), JT International Company Netherlands B.V. ("**JTI**"), Philip Morris Benelux BV ("**PMI**"), and Van Nelle Tabak Nederland B.V. ("**ITN**"), for distorting competition by way of exchanging information between July 2008 and July 2011, through wholesalers among other channels, about future prices of cigarette packs.*

The sales prices of cigarettes are normally determined by each cigarette manufacturer. The new price lists are sent to wholesalers and other buyers several weeks prior to when prices in stores are adjusted in order to allow them to start adjusting their sales systems.

In the case at hand, some buyers passed the price lists sent by the manufacturers to competitor manufacturers and the four aforementioned cigarette manufacturers knowingly asked, received, and accepted this information. Moreover, the manufacturers used the information they received about their competitors when determining their own retail prices for a pack of cigarettes, which allowed them to increase their profit margins. While examining JTI's internal correspondences, the ACM established the fact that BAT, PMI, ITN, and JTI had agreed to increase their retail prices.

As a result, the ACM imposed a fine of approximately EUR 31.1 million on BAT, EUR 13 million on JTI, EUR 27.5 million on PMI, and EUR 10.4 million on ITN for coordinating their pricing strategies by exchanging sensitive information through third parties.

As a general rule, the exchange of general and publicly available information between competitors is not illegal. However, the exchange of any kind of information likely to reduce the uncertainty regarding the market behavior of competitors, even if such information is shared with or received from a competitor through a third party, is not allowed for the purpose of avoiding any distortion of competition.

The Saga of EU Automotive Sector Cartels Continues: Closure Systems This Time

As a result of an investigation carried out by the EC starting in May 2015, by the end of September 2020 Brose and Kiekert, based in Germany, were fined a total of EUR 18 million for taking part in two cartels concerning supplies of closure systems (door modules, window regulators, and latching systems (latches and strikers) for cars in the EEA. Magna was not fined as it had revealed both cartels to the EC.

On the subject of infringements, the three car parts suppliers addressed in the decision coordinated their pricing behavior and exchanged commercially sensitive information. The EC's investigation revealed the existence of two separate infringements in breach of the EU antitrust rules. The first infringement, involving Magna and Brose and comprising the period between 12 August 2010 and 21 February 2011, related to sales of door modules and window regulators for passenger cars to Daimler. The second infringement, involving Magna and Kiekert and comprising the period between 15 June 2009 and 7 May 2012, related to sales of latches and strikers for passenger cars to BMW and Daimler.

As regards the reduction of fines, Magna received full immunity for having revealed both cartels, Brose and Kiekert benefited from reductions of their fines (35% and 40%, respectively) for their cooperation with the investigation, and the EC applied a reduction of 10% to the fines imposed on the companies in view of their acknowledgment of the participation in the cartel and the liability in this respect.

Finally, Brose and Kiekert were fined EUR 3.225 million and EUR 14.971 million, respectively, for the violation of Article 101 of the TFEU. The decision is part of a series of major investigations into cartels in the automotive parts sector starting back in 2013. The decision brings the total amount of EC fines for cartels in this sector to EUR 2.17 billion.

Recycling Consortium's Abuse of Dominance in Italy

*The Autorità garante della Concorrenza e del Mercato ("**AGCM**"), the Italian Competition Authority, on 10 November 2020 imposed a fine of EUR 27 million on Corepla, the plastic recycling consortium for abusing its dominant position in the Italian market for PET bottle recovery and recycling services (for water and soft drinks), which are offered to producers required to comply with their environmental obligations.*

The AGCM indicated that Corepla implemented a strategy to hinder the operation of competitor consortium Coripet, which was created by the producers of plastic bottles for food liquids, which has been authorized to operate provisionally by the Italian Ministry of the Environment since 2018 on the basis of an innovative project aimed at PET recovery and recycling.

In this regard, Coripet was obliged to prove sufficient operational capacity within two years from the date of the provisional authorization by the government to obtain the right to permanently operate in the market; however, Corepla obstructed this development with a series of anti-competitive practices.

Accordingly, the AGCM concluded that Corepla had prevented Coripet from accessing the management of plastic waste attributable to its consortium members, both by hindering an agreement of the new entrant with the waste-collecting National Association of Italian Municipalities (ANCI) to be reached and by refusing to enter into a transitional agreement with Coripet, which was necessary as Coripet could not sign a contract with ANCI directly.

The EU to Register Imports of Hot-Rolled Flat Products Originating in Turkey

*Through Implementing Regulation 2020/1686, on 12 November 2020 the EC announced that the imports of hot-rolled flat products[1] ("**products concerned**") originating in Turkey would be subject to registration. The decision to register the products concerned was taken pursuant to an anti-dumping investigation initiated by the EC on 14 May 2020 concerning the imports of hot-rolled flat products originating in Turkey.*

Pursuant to an application lodged by the European Steel Association ("**EUROFER**"), claiming that the imports of the concerned product originating in Turkey were being dumped and thereby causing injury to the relevant European Union industry, the EC initiated an anti-dumping investigation into the imports of the products concerned originating in Turkey.

After the initiation of the anti-dumping investigation, on 17 September 2020, EUROFER submitted a registration request alleging that there had been a substantial rise in imports following the initiation of the investigation that was likely to seriously undermine the remedial effect of definitive duties. Moreover, the complainant argued that there had been a history of dumping from Turkey over an extended period and that importers were, or should have been, aware of the dumping practices from Turkey. According to Article 14(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures subsequently may be applied against those imports from the date of such registration.

The EC held that (**i**) importers were aware, or should have been aware, of the dumping, the extent of dumping, and the alleged injury; (**ii**) a substantial increase in imports has occurred; and (**iii**) the further rise in imports following the initiation of the investigation is likely to undermine seriously the remedial effect of any definitive duty unless such duty would be applied retroactively. Consequently, the EC determined that imports of the product concerned be made subject to registration to ensure that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties can be levied retroactively on the registered imports.

1 The products subject to registration are flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated, or coated. These products currently fall under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, 7226 91 91 and 7226 91 99.

Turkey to Apply Safeguard Measures on Imports of PET Chips

*Through Presidential Decree No. 3192 ("**Decree**"), on 13 November 2020 it was decided to apply a safeguard measure in the form of additional financial charge on imports of polyethene terephthalate chips ("**PET Chips**"), classified under the HS Code 3907.69.00.00.00 for 3 years.*

The investigation was initiated on 11 June 2020 through Communiqué No. 2020/5 on the Safeguard Measures on Imports upon the complaint submitted by a domestic PET chips producer claiming that imports of PET Chips had increased significantly, thereby causing serious injury to the domestic industry.

In Communiqué No. 2020/6 on Safeguard Measures on Imports, which constitutes the legal basis of the Decree, it was determined that imports of PET chips have increased consistently in both absolute and relative terms. The main economic indicators of the domestic industry demonstrated serious deterioration and there had been a direct causality between the sharp increase in imports and the serious injury suffered by the domestic industry. Indeed, it was observed that the profitability of the domestic had decreased substantially and stocks of PET chips had increased significantly. It also was assessed that imports of PET chips, particularly those originating in China, Malaysia and Korea, would continue to increase in the future and that the worldwide increase of capacity and production of PET chips will be diverted into the Turkish market is likely.

Consequently, it was decided that the safeguard measure will be applied in the form of additional financial charges for three years and will be liberalized progressively. The safeguard measure entered into force on 13 December and will be applied as 0.060 USD/kg, 0.058 USD/kg and 0.056 USD/kg for each consecutive year.

Welcome the Regulation on the Processing of Personal Data and the Protection of Confidentiality in the Electronic Communications Sector

*The Regulation on the Processing of Personal Data and the Protection of Confidentiality in the Electronic Communications Sector ("**Regulation**"), which will enter into force on 4 June 2021, was published in the Official Gazette of 4 December 2020, following the efforts and draft process conducted by the Turkish Information Technologies and Communication Authority.*

The Regulation is placed in a parallel position with Law No. 6698 on the Protection of Personal Data ("**Law No. 6698**"), especially in terms of definitions and data processing principles, along with liability topics. It also prohibits the cross-border transfer of location and traffic data with respect to national security concerns, together with the obligation to notify the subscribers or users as soon as possible to prevent security risks and personal data breaches. In line with the expectations of Law No. 6698 and the Turkish Data Protection Authority ("**Turkish DPA**"), the Regulation also provides for the framework of obtaining consent, by setting the conditions prior to sending messages, data, etc., and also for informing the subscribers/users about the processing of their data, with an additional article on the obligation to inform especially about the traffic and location data.

The Regulation seems to be more restrictive in certain issues,

such as the processing of traffic and location data, compared to the Law No. 6698; thus, it is important for data controllers and operators to be cautious and prepare for compliance in order to establish a concrete approach, as privacy by design always puts companies in the safe zone.

Registration with the Data Controllers' Registry in Turkey: Right Now, Right Here

*On 1 October 2020, the Turkish DPA announced that the deadline to register with the Data Controllers' Registry ("**VERBIS**") would not be extended any further and that some data controllers have not registered yet.*

The Turkish DPA stated that it had observed that not all data controllers who employ more than 50 employees or whose total annual financial statements were more than 25 million Turkish Liras had registered with VERBIS. In line with this observation, considering the current circumstances due to the COVID-19 outbreak which affected the compliance of data controllers with their obligation, the DPA published its decision No 2020/760 dated 01 October 2020, declaring the related data controllers would be notified, within the scope of Article 8 of the Guidelines for Data Controllers› Registry Information System and Provisional Article 1 of Law No. 6698.

The notified data controllers will be obliged to fulfil their obligation to register within the timeframe given by the DPA to each notified data controller. Failure to register then may result in administrative fines up to TRY 1,800,000 or lead to a restriction of the data processing activities of the controller.

The Status Personal Data that Have Been Made Public by the Data Subject – An Update from the DPA

On 16 December 2020, the Turkish DPA published its public announcement on personal data that have been made public by the data subject to underline the importance of compliance with the general principles provided within Article 4 of Law No. 6698.

In a recent announcement, the Turkish DPA first provided a brief definition, continued with the conditions for personal data to be accepted to be made public by the data subject himself/herself, by underlining the necessity of the will of the data subject to state that data that is open to public access shall not mean that it is legally publicised, but the will is crucial.

The Turkish DPA also explained that some borders are needed with the purpose of stating the lawful process path. As such, the data subject has to know the reason why his/her personal data will be made public, and also the process must be limited to the provided purpose and not exceed the limits unless it is based on another data processing reason. This announcement simply explains that personal data that have been made public can only be used for the particular purpose for which it was been made public in the first place and shall not mean that the data can be used for another purpose just because it is available. For instance, a data subject cannot be e-mailed or contacted for commercial advertising simply because he or she had provided the relevant information to sign up on for a social media platform in the first place.

In sum, the Turkish DPA aimed to repeat its warnings and provide the necessary guidance on this particular topic, informing the data controllers/processors always have to comply with the general principles provided under Article 4 of Law No. 6698.

EVENTS

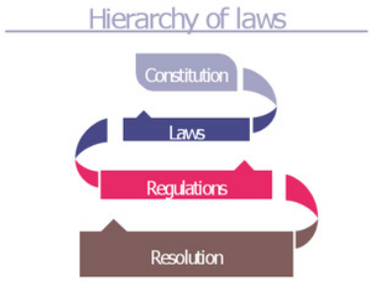
Our managing partner Bahadir BALKI conducted "Competition Compliance Program Elements" training course in Turkish Ethics & Reputation Society's 7th term Corporate Ethics and Compliance Management Certificate Program, on October 9, 2020.

Our managing partner Fevzi TOKSOY conducted "Public and Private Sector Tenders and Determining Competition Law Based Non-Compliance Issues" training course in Turkish Ethics & Reputation Society's 7th term Corporate Ethics and Compliance Management Certificate Program, on October 9, 2020.

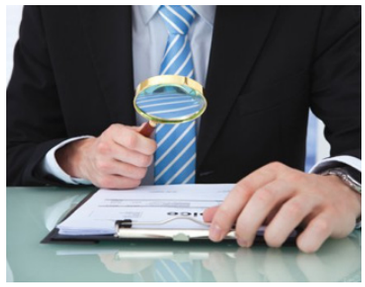
ACTECON's latest publications (https://www.actecon.com/en/news-articles)

The Turkish Competition Authority Fines Auto Expertise Service Providers for Price Fixing and Supply Cartel (Auto / Çözüm / Dyno Max...)

The Turkish Administrative Court Decided that the Practices based on Secondary Legislation in Force Cannot be Deemed as Violation of the Competition Law



Guards Up for Multinational Companies in Case of an On-The-Spot Inspection



Commitment Mechanism: The TCA's First Rejection Decision

A Reflection of the Turkish Competition Authority's Enforcement History for Examination of Digital Data During On-Site Inspections: Guidelines on Examination of Digital Data During On- Site Inspections Has Been Published

Towards a More Effective Enforcement? - Turkish Competition Authority Steps into the Realm of De Minimis

No Excuses to Not Responding to Information Requests: Financial Institutions Case in Turkey

After Almost 13 Years Long Fight, the Constitutional Court Ruled that the Principle of Legality of Crimes and Punishments Violated with Respect to Determination of Administrative Fine by the Turkish Competition Authority (Onmed)

A Record Fine Was Imposed by the Turkish Competition Authority on Four Major Players Operating in the Fuel Distribution Sector

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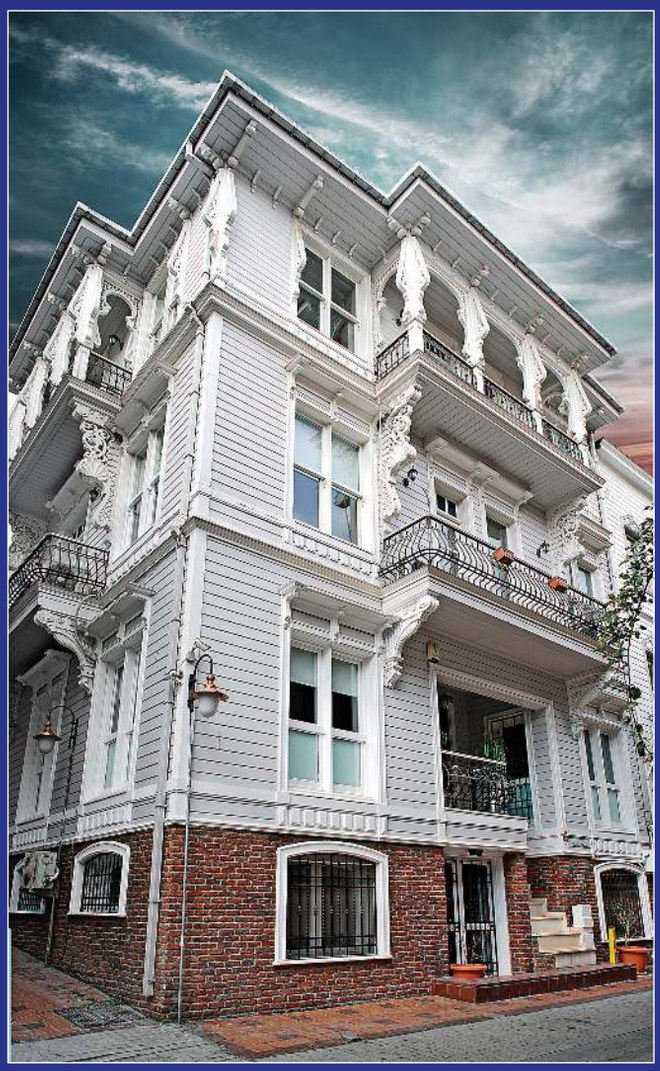

ACTECON is a corporately governed firm combining competition law, international trade remedies and regulatory affairs. We offer effective strategies from law & economics perspective, ensuring that strategic business objectives, practices, and economic activities comply with competition law, international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