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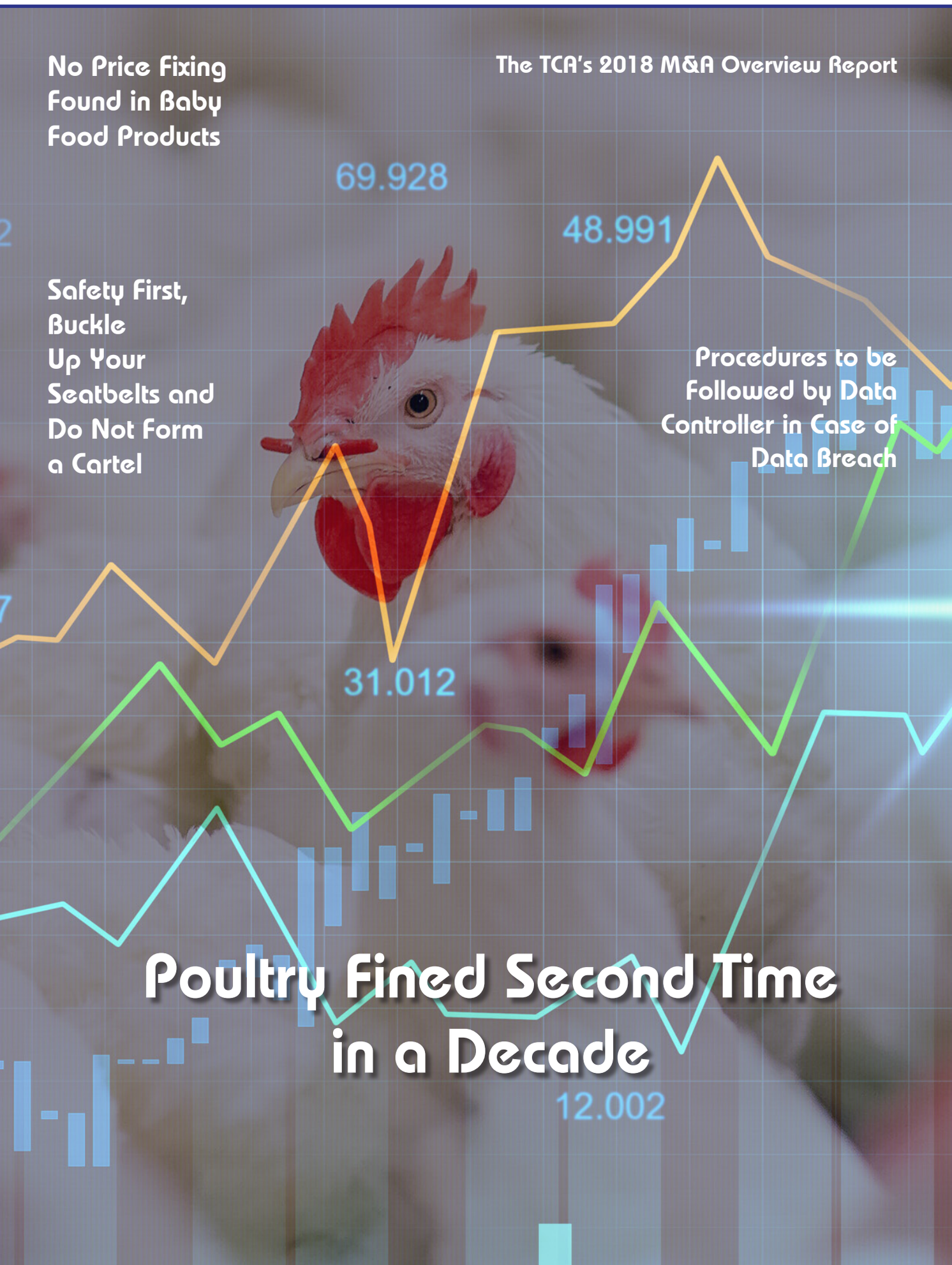

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Poultry Fined Second Time in a Decade

Poultry Fined Second Time in a Decade

*The Turkish Competition Authority (**"TCA"**) has concluded its full-fledged investigation regarding a total of 20 undertakings operating in the poultry sector. In its decision dated 13.03.2019 and numbered 19-12/155-70, the TCA held that the following 9 undertakings violated Article 4 of the Law No. 4054 on the Protection of Competition **("Competition Law")** by way of information exchange regarding future pricing and/or supply restrictions: Abalıoğlu Yem-Soya ve Tekstil Sanayi A.Ş. ; Banvit Bandırma Vitaminli Yem Sanayi A.Ş. ; Beypi Beypazarı Tarımsal Üretim Paz. San. ve Tic. A.Ş. ; CP Standard Gıda San. ve Tic. A.Ş. ; Ege-Tav Ege Tarım Hayvancılık Yat. Tic. ve San. A.Ş. ; Er Piliç Entegre Tavukçuluk Üretim Pazarlama ve Tic. A.Ş. ; Gedik Tavukçuluk ve Tarım Ürünleri Tic. San. A.Ş. ; Keskinoğlu Tavukçuluk ve Damızlık İşl. San. Tic. A.Ş. ; Şenpiliç Gıda San. A.Ş.*

The TCA has further stipulated that Turkish Poultry Meat Producers and Breeders Association (BESD-BİR in Turkish) also violated Article 4 of the Competition Law through its practices facilitating anti-competitive behaviours of the undertakings.

Accordingly, the TCA unanimously resolved to impose a total fine of approx. TL 156 Million (**EUR 26 million**) on the concerned undertakings and association of undertakings corresponding to 0,75% and 1,125% of their turnovers generated during the previous year (i.e. 2018). The reason why some of the undertakings were imposed higher fines was due to that some of the foregoing undertakings had previously violated the Competition Law in 2009 as well and the TCA also considered the recidivism as an aggravating factor in determining the amount of the fine.

During the course of the investigation, the TCA relied on three main categories of evidence:

- Internal notes of one undertaking concerning the contents of certain BESD-BİR meetings, indicating that sensitive information regarding future pricing and production plans may have been discussed between competitors.
- Internal notes concerning the contents of health and safety related meetings held between certain undertakings in the Aegean Region, indicating that sensitive information regarding production may have been discussed between competitors.
- Price lists and other production related potentially sensitive information of competitors found in the premises of certain undertakings.

In the investigation report, administrative fines were requested for all the undertakings subject to the investigation. After the submission of the second written defences, the investigation committee changed its opinion with regard to certain undertakings. In the additional written opinion, the charges regarding the undertakings that did not attend to any meetings (BESD-BİR or Aegean Region meetings) were dropped. Hence, in the end, price lists and other production related information of competitors found in the premises of certain undertakings was not deemed sufficient for proving the existence of an anti-competitive conduct

on their own, in the absence of supporting evidence that show contact among competitors.

It is important to note that the TCA referred to Article 5/1(b) of the Regulation on Fines when characterizing the violation. This means that the relevant violation was not deemed as a "cartel" and was classified under "other infringements". This is noteworthy since the minimum amount of administrative fine to be imposed is considerably different for cartels and other violations. Whereas the amount of base fine to be imposed in case of cartels shall be between 2% and 4% of the undertakings' turnovers, the relevant amounts are 0,5% and 3% for other infringements.

This decision seems to be yet another example where the TCA refrained from characterizing information exchanges regarding future pricing and production strategies as a cartel. However, it should also be noted that up until now, the border between such information exchanges and cartels had never been very clear and there seems to be a considerable amount of legal uncertainty in that respect.

The TCA further resolved that the following undertakings have not infringed the Competition Law and thus no administrative fine has been imposed:

- Ak Piliç Tic. Ltd. Şti.
- As Tavukçuluk Tarım İşl. San. ve Tic. Ltd. Şti.
- Bakpiliç Entegre Tavukçuluk A.Ş. (**"Bakpiliç"**)
- Bupiliç Entegre Gıda San. Tic. A.Ş. (**"Bupiliç"**)
- Garip Tavukçuluk Gıda ve Yem San. Tic. A.Ş.
- Hastavuk Gıda Tarım Hayvancılık San. ve Tic. A.Ş.
- Pilyem Gıda Tarım Sanayi ve Ticaret A.Ş.
- Şahin Tavukçuluk Yem Gıda İnşaat San. ve Tic. A.Ş.
- Tad Piliç Fenni Yem San. ve Tic. Ltd. Şti. (**"Tad Piliç"**)
- Yemsel Tavukçuluk Hayvancılık Yem Hammaddeleri San. ve Tic. A.Ş.

Aside from these, although they did not violate the Competition Law in essence, the TCA has unanimously resolved that

- Bakpiliç should be given a fine corresponding to 1‰ of its turnover generated during the previous year, as it did not provide the requested information/document as part of the investigation and
- Tad Piliç should be given a fine corresponding to 1‰ of its turnover generated during the previous year due to providing false or misleading information.

It is important to remind that these two undertakings did not violate Article 4 of the Competition Law. The decision is of importance as it constitutes a concrete example regarding the potential outcomes of submitting false or misleading information/document or not providing any information within the determined duration or at all.

Disclaimer: Bupiliç, one of the undertakings that did not violate the Competition Law according to the TCA decision concerned, was represented by ACTECON during the full-fledged investigation.

1 https://www.rekabet.gov.tr/Dosya/geneldosya/pilic-eti-nihai-karar-pdf

TCA Ready for the Next 5 Years

On 12 March 2019 the TCA published its second Strategic Plan for 2019-2023 ("Strategic Plan") covering the TCA's medium and long-term objectives, priorities, essential principles, performance criteria, and methods to be followed to achieve them. As a result of innovation and digitalization, new markets are emerging, and existing sectors are being transformed. Hence, the TCA must act proactively and behave strategically in order to maximize consumer welfare.

The Strategic Plan states that a pro-active manner adopted by the TCA and efficient communication with public institutions may facilitate maximization of social welfare. As regards the economic factors stated in the Strategic Plan, it would be useful to establish a mechanism to facilitate the application procedures for merger and acquisition transactions subject to authorization and to accelerate the evaluation process. In addition to that, it may be difficult to distinguish between inflationary price increases and price increases arising from cartel agreements. Considering soaring inflation, it is necessary to conduct studies to create a new means of proof in terms of the determination of cartel activities.

Noting that the TCA's existing powers and instruments to obtain evidence are insufficient due to technological development, the Strategic Plan stresses repeatedly that a road map should be determined in order to conduct digital forensics activities, and that the detection of communication and monitoring by the technical instrument may become more of an issue in the future. Big data and infringements based on algorithms necessitate the adoption of the abovementioned pro-active manner by the TCA. Therefore, in order to monitor and restrain such practices, technical infrastructure should be established.

The TCA aims to take steps to legalize de minimis rule, settlement, and commitment, which are not currently covered by the law. The existence of a number of primary and secondary legislation may restrain the possibility of the TCA's intervention in economic areas, and lead to the emergence of anti-competitive markets. Within this framework, the TCA's initiatives to determine and amend the relevant provisions will be continued.

Regarding the environmental factors mentioned in the Strategic Plan, the TCA notes that as environmental policies aim to increase social welfare, environmental and competition policies should be considered as complementary and should be carried out together. In this context, the TCA emphasizes that this approach, which supports environmentally sensitive growth, will be continued.

No Price Fixing Found in Baby Food Products

*In February 2019, the TCA released the public version of its decision (No. 18-40/643-313) in relation to its preliminary inquiry into the undertakings producing and/or selling baby food products. It was found that the concerned undertakings did not breach Article 4 of Law No. 4054 on the Protection of Competition (**"Competition Law"**) and thus the TCA decided not to initiate a full-fledged investigation.*

While ruling on the complaints related to bottle formulae, the TCA defined the relevant product markets as follows: infant milk, for babies 0-6 months; follow-on milk, for babies 6-12 months; and growing-up milk, for babies 12-36 months. The geographic market was defined as Turkey. In defining the relevant product markets, the TCA put emphasis on the following along with the evaluations in its cases and those previously of the EU: the intended use to distinguish the baby food from various foodstuffs; the differences between "infant formulae" and "follow-on formulae" to determine the main categories of baby food products; the baby's stages to sub-segment "baby milk" products; and the nature of and distribution channel used for a baby milk product (i.e., standard and therapeutic) to disclose the non-substitutability.

In order to determine whether the concerned undertakings agreed to increase their prices or colluded to fix their prices, the TCA first evaluated the general structure of each relevant market (by focusing on the market shares) and then the trend of prices between August 2015 and August 2018 in each relevant market as well as currency fluctuations. The findings did not indicate

any coordination or collusion among undertakings to fix their prices; the upward trend in the prices seems to have been in parallel with the increase in currency exchange rates.

The case consolidates the certainty already established in the previous competition case law regarding the market definition. Additionally, the economic analysis conducted by the TCA in determining the correlation between the currency fluctuation and price increases is of importance since this enables the TCA to evaluate the market structure more appropriately.

Monetary Fine After Eight Years Based on Council of State Decision (TURKCELL)

On 10 January 2019 the TCA concluded additional work, which had been initiated upon the ruling of the Council of State, determining this time that Turkcell İletişim Hizmetleri A.Ş. violated Article 4 of the Turkish Competition Law.

The TCA determined that Turkcell violated Article 6 of the Turkish Competition Law by imposing exclusivity on its dealers (decision No. 11-34/742-230, 2011). The Council of State partially annulled the TCA's decision (Judgement No. E. 2011/4560, K. 2017/2573, 2017), stating that Turkcell had conducted acts of resale price maintenance as well as exclusivity.

In other words, whereas the TCA did not find Turkcell in violation of Article 4 (anticompetitive agreements), the Council of State found the company liable for violation of Article 4 and therefore declared the related part of the TCA's decision unlawful.

Following the Council of State's decision, the TCA initiated an additional examination of the Turkcell case, launching a re-evaluation of the information and the documents obtained throughout the investigation while considering the Council of State's decision. Eventually, the TCA concluded (decision No. 19-03/23-10, 2019), in line with the Council of State's ruling, that Turkcell had violated Article 4 of the Turkish Competition Law through its acts of resale price maintenance. The TCA imposed an administrative fine on Turkcell in the amount of TL 91,942,343.31 (approximately EUR 15,104,420.24).

Resale price maintenance is the practice whereby a producer determines the prices of its distributors or significantly limits its distributors' freedom of contract. Such practices are prohibited under Article 4 of the Turkish Competition Law and subject to administrative fines.

The TCA's 2018 M&A Overview Report

The TCA published its Mergers and Acquisitions Overview Report 2018 ("Report") on its website on 9 January 2019. The Report provides information on the Turkish merger control system and makes comparisons between past years and 2018, as well as between Turkish and foreign investments. The Report mainly aims to establish the general scope of the merger control regime in Turkey and assess the position of Turkish companies within the market. Foreign investors continue to be interested in the Turkish market considering the value of Turkish-to-foreign transactions and foreign investments in Turkish companies in 2018.

M&A Statistics. There was an increase in the number of the M&A transactions notified to the TCA in 2018 compared to the number in 2017. In 2018, a total of 223 M&A transactions were notified to the TCA, while in 2017 this number was 184. Only one of the notified transactions, realized in the HVAC (heating, ventilation and air conditioning) industry, was taken into the second phase by the TCA in 2018. Furthermore, three transactions were conditionally approved in 2018.

Parties to the Transaction. When the data are divided into groups based on the nationality of the transaction parties, the number of transactions realized solely between Turkish companies in 2018 was 38, while the number for the same group in 2017 was 31. Additionally, foreign-to-foreign transactions notified to the TCA in 2018 increased by 38 transactions compared to 2017; the number of foreign-to-foreign transactions notified to the TCA was 121 in 2018 and 83 in 2017. Lastly, transactions between Turkish and foreign companies numbered 45 in 2018, and 54 in 2017).

In addition to the number of transactions, the value of those transactions is also emphasized in the Report. Accordingly, the value of the Turkish-to-foreign transactions increased from TL 11 billion (approx. EUR 2.7 billion) in 2017 to TL 19 billion (approx. EUR 3.35 billion) in 2018. Likewise, the value of the transactions between the Turkish companies increased from TL 5.3 billion (approx. EU 1.3 billion) in 2017 to TL 10.6 billion (approx. EUR 1.87 billion) in 2018. Finally, the value of foreign-to-foreign transactions increased from TL 1 trillion (approx. 245 billion) in 2017 to TL 2.8 trillion (approx. EUR 494 billion) in 2018.

Foreign Investments. 2018 saw a decrease in the number of foreign investments in Turkish companies, with 36 in 2018 compared to 47 in 2017. The ranking of foreign investors (in terms of transactions in 2018) demonstrates that Italy led with four transactions, followed by Germany Luxemburg, the Netherlands, and Switzerland, with three each. In acquisition transactions where Turkish companies were acquired, foreign investment amounted almost TL 14.9 billion (approx. EUR 2.63 billion) in 2018, while in 2017 this figure amounted TL 15.1 billion (approx. EUR 3.70 billion).

Market Breakdown. In 2018, the production and distribution of electricity, gas, steam, and the ventilating systems market led in terms of the number of transactions realized. The highest transaction value in Turkey in 2018 was realized in the field of supplementary services for transportation. The transaction value in the said area constituted 20.6 percent of the total value of all transactions in 2018 (excluding privatizations). The number of markets not affected in terms of activities in Turkey was 66 out of 223 transactions notified to the TCA in 2018. The number of affected markets exceeding the 40 percent market share threshold was 14 and the number of affected markets below this rate was 236.

Conclusion. According to the Report, the period during which the notified M&A transactions were concluded by the TCA in 2018 was approximately 14.9 days following the date of final notification. The Report provides a clear picture of the merger control regime in Turkey and determines the place of Turkish companies in the market. Foreign investors continue to be interested in the Turkish market, considering the increased value of Turkish-to-foreign transactions in 2018.

Competition Law Lowers Limit for Administrative Fines Adjusted in Turkey

The TCA adjusted the lower limit of the administrative fine regulated in Article 16(1) of the Turkish Competition Law.

Article 16(1) of the Turkish Competition Law governs the administrative fines to be imposed in cases of (i) providing false or misleading information in exemption, negative clearance and authorization applications for mergers and acquisitions; (ii) mergers and acquisitions that are subject to authorization realized without authorization; (iii) providing false, incomplete, or misleading information in the implementation of Articles 14 and 15; and (iv) hindering or complicating on-the-spot inspections. The article determines the said fines to be one in 1,000 of the annual gross revenues of concerned undertakings for the first three violations and five in 1,000 of annual gross revenues for the last one. The said provision defines a lower limit for competition law violation fines.

On 12 December 2018, the TCA published Communiqué No. 2019/1, Regarding the Lower Limit of the Administrative Fine Envisaged in Article 16 of Law No. 4054, On the Protection of Competition. The communiqué explained that the lower limit of the fine had been adjusted according to the reappraisal rate for 2018, amounting to 23.73%, an amount determined by the Tax Communiqué. The new lower limit was declared to be TL26,028. This lower limit will be in effect until 31 December 2019, starting from 01 January 2019.

Safety First, Buckle Up Your Seatbelts and Do Not Form a Cartel

On 5 March 2019 the EC fined car safety equipment (seatbelts, airbags and steering wheels) suppliers Autoliv and TRW approx. EUR 368 million in a cartel settlement. Takata obtained full immunity from a fine due to having revealed the cartel. All three perpetrators acknowledged their involvement in the cartel and agreed to settle the case.

The companies concerned were found to have exchanged commercially sensitive information and coordinated their market behavior for the supply of car safety equipment to the **Volkswagen** Group and the **BMW** Group. The coordination to form and run the cartel took place mainly through meetings on the business premises of the suppliers, in restaurants and hotels, as well as through phone calls and email.

Two separate infringements were revealed: (i) sales of seatbelts, airbags, and steering wheels to Volkswagen Group; and (ii) sales of seatbelts, airbags, and steering wheels to BMW Group.

In setting up the fines, the EC took into account the serious nature of the infringement, its geographic scope and duration, and the sales value in the EEA achieved by the cartel participants for the product in question.

Takata avoided a fine of EUR 195 million for revealing the two cartels. Autoliv and TRW received reductions of their fines for their cooperation with the EC under the Leniency Notice. Additionally, all three companies benefited from a 10% reduction of fines under the Settlement Notice.

The decision is part of a series of major car parts sector cartels (e.g., bearings, wire harnesses in cars, flexible foam used in car seats, parking heaters, air conditioning and engine cooling systems, and lightning systems). Previously, Autoliv, and Takata had been fined for participating in cartels regarding the supply of occupant safety systems to certain Japanese car manufacturers, and TWR in a carted for the provision of hydraulic braking systems to Daimler and BMW.

In total, the EC has fined car parts cartels over EUR 2 billion since 2013.

Confess it with a Click, eLeniency!

*On 19 March 2019 the European Commission ("**EC**") launched its new "eLeniency" tool, designed to make it easier for companies to submit their statements as well as documents in course of their leniency applications concerning both cartel cases and non-cartel cooperation cases under Article 101 and 102 of the TFEU.*

Even though the companies and their legal representatives have been allowed to submit documents and statements both in writing and orally as part of the standard leniency procedure. with the new eLeniency tool, parties will be able to complete their procedures online and will no longer be required to provide oral statements in person which was the required procedure until now. The eLeniency tool also grants a secure and restricted use to applicants, guaranteeing confidentiality and legal protection, and ensuring that the relevant uploaded data will be transferred securely and will not be copied or printed.

In Turkey, no such online tool exists. Parties wishing to submit a leniency application must present the related documents physically to the TCA or give an oral statement on the issue according to the Regulation on Active Cooperation for Detecting Cartels ("Active Cooperation/ Leniency Regulation").

Siemens-Alstom Proposed Acquisition Derailed by EU

On 6 February 2019 the EC prohibited Siemens' proposed acquisition of Alstom due to significant impediment of effective competition in markets for railway signaling systems and very high-speed trains. The parties were not willing to offer remedies sufficient to address the EC's competition concerns.

The prohibited transaction would have combined the transport equipment and service activities of Siemens and Alstom in a new company fully controlled by Siemens. The merger would have created the market leader in some signaling markets and a dominant player in very high-speed trains.

In the course of the in-depth investigation, the EC received several complaints from customers, competitors, industry associations, and trade unions. It also received negative comments from several National Competition Authorities in the EEA. There were concerns that the transaction would reduce innovation in signaling systems and very high-speed rolling stock, lead to the foreclosure of smaller players, high prices, and fewer choices for customers.

The main rule in relation to the remedies is that they must fully address the EC's competition concerns on a lasting basis. Remedies providing a structural divestiture are generally preferable to other types of remedies as they immediately replace the competition in the markets that would have been lost from the transaction. In this case, the remedies offered by the parties did not adequately address the EC's competition concerns. In particular:

- In mainline signaling systems, the proposed remedy did not consist of a stand-alone and future proof business that a buyer could have used to compete effectively and independently against the merged company (the remedy proposed was a complex mix of Siemens and Alstom assets with some assets transferred in whole or part and others licensed or copied; and the buyer of the assets would have had to continue to be dependent on the merged entity for a number of licence and service agreements);
- In very high-speed rolling stock, the parties offered to divest a train currently not capable of running at very high speeds (Alstom's Pendolino), or alternatively, a licence for Siemens' Velaro very high-speed technology. The licence was subject to multiple restrictive terms and carve-outs, which essentially would not have given the buyer the ability or incentive to develop a competing very high-speed train in the first place.

Following the negative feedback from the market participants, which confirmed the EC's view that the remedies were not enough to address the competition concerns, the EC blocked the transaction.

Right of Defense in Competition Proceedings: Do Not Change the Rules of the Game After It Started (EC V United Parcel Service)

*On 16 January 2019 the Court of Justice of the EU ("**CJEU**") upheld the General Court's ("**GC**") ruling annulling the EC's 2013 decision on the UPS/TNT merger. It was determined that the EC had infringed UPS's rights to defense. The judgment emphasizes the importance of the rights of defense in competition proceedings, in particularly that parties to transactions must be given sufficient opportunity to comment and respond to the economic/econometric analysis upon which the EC relies in concentration cases.*

The EC's 2013 prohibition decision. In 2013, the EC prohibited acquisition by UPS of TNT Express due to significant impediment of effective competition in the market for the international express delivery of small parcels within the EEA. The decision (Case COMP/M.6570, UPS v TNT Express) was based on an econometric analysis that forecasted prices would increase in the majority of relevant markets.

The GC's ruling. In 2017, the GC ruled (T-194/13, United Parcel Service v Commission) in favor of UPS and annulled the EC's decision on the grounds that there had been an infringement of the right to defense as the econometric model ultimately employed by the EC differed considerable from the one that had been disclosed to UPS during the merger review. In other words, UPS had not been given the opportunity to submit its observations on the amendments made.

The CJEU's ruling. The CJEU confirmed the GC's position. The right of defense entitles the parties to a transaction to make their views/comments/observations to the EC (before the adoption of a decision) on the accuracy and relevance of all the factors on which the EC is about to base its decision. Thus, in this case, the parties should have been given the opportunity to submit their observations on the econometric model according to which the EC based its decision. The EC must not, after disclosure of the statement of objections, modify the substance of an econometric model on which it intends to base its objections without that modification being brought to the attention of the undertakings concerned.

Failure of the EC to disclose the final econometric analysis model to the parties could lead to the annulment of the EC's decision where it can be proved that the parties could have defended themselves better otherwise (although there is no need to prove that the decision would have different content otherwise).

The case emphasizes the importance of the right to defense in merger control proceedings and the transparency obligation of the competition authorities.

Procedures to be Followed by Data Controller in Case of Data Breach

*On 8 February 2019 the Turkish Data Protection Authority (**"DPA"**) announced the procedures that should be followed by data controllers when a data breach occurs. In accordance with it:*

- the data controller shall notify the data breach to the DPA not later than 72 hours after becoming aware of such breach;
- the data controller shall notify the concerned data subjects in the shortest time possible following the determination of the affected individuals (i) directly if the contact information is known and (ii) through its website if the contact information is not known;
- where the notification to the DPA is not made within 72 hours, the notification shall also explain the reasons that caused the delay;
- the "Personal Data Breach Notification Form," published on the DPA's website, shall be used for the notifications to be made to the DPA;
- where it is not possible to provide the information included in the form at the same time as the notification, the concerned information may be provided following the notification without undue delay;
- the facts, effects, and measures taken regarding the data breach shall be documented by the data controller and the records thereof shall be kept available for the DPA's examination:
- in case personal data held by the data processors is acquired by others through unlawful means through the data processor, the data processor shall notify the data controller without undue delay;
- if the data breach is related to a data controller located abroad and the results of such breach affects individuals residing in Turkey or if the concerned data subjects benefit from the products and services of the data controller in Turkey, then the data controller shall notify the DPA under the same principals stated herein;

- the data controllers shall prepare and periodically review a "Data Breach Response Plan," which clarifies such the issues as (i) to whom the data breach will be internally reported, and (ii) the responsible person for the notifications and for the evaluations regarding the possible consequences of the data breach.

Some Clarifications on the Statute of Limitations for Data Protection Complaints in Turkey

On 13 February 2019 the DPA published a decision clarifying the statute of limitations for complaints to be lodged with the DPA in cases where a data processor rejects a data subject's request as to his or her personal data or does not respond at all within 30 days.

Article 13 of Law No. 6698 on Turkish Personal Data Protection ("Data Protection Law") provides data subjects with the right to submit requests to the concerned data controller relating to the enforcement of the Data Protection Law. These requests, among others, may be about being informed whether or not his/her personal data have been processed or about requesting the deletion or destruction of such data. As the same article suggests, upon such request, the data controllers are obliged to conclude these requests as soon as possible and within 30 days at the latest. Data controllers are also given the option to reject these requests so long as the rejection is accompanied by the reasons explaining it (which may be subject to a review by the DPA).

In addition, Article 14 regulates another mechanism which enables the data subjects to file complaints with the DPA in relation with these applications made to data controllers. This mechanism is known as the complaint remedy. It cannot be applied without exhausting Article 13, i.e., application to the data controller. According to Article 14, data subjects are entitled to file complaints with the DPA in cases where the application made pursuant to Article 13 is (i) rejected, (ii) responded to insufficiently, or (iii) not responded to in 30 days. The durations determined for these complaints are provided in Article 14/1 as "within 30 days following the date he/she learns the reply of the data controller and, in any event, within 60 days following the date of application." However, the DPA noted that this provision had led to ambiguities and confusion among data subjects. Therefore, the DPA felt the need to clarify the issue regarding the complaint mechanism and made the mentioned public announcement. The decision clarifies the issues as follows:

- In case the data controller responds to the data subject's request, the data subject can lodge a complaint with the DPA within 30 days following the date the response is received. In this event, the 60-day period is not applicable.
- The 60-day period is applicable if the data controller fails to respond to the request made through the application of the data subject.
- Data subjects are not under obligation to wait for the response after the 30-day period has passed. In such situation, data subjects may file a complaint with the DPA within 60 days following the date of their application and not within 30 days after the belated response.

Potential Trade Remedy Investigations in Turkey

*While the trade war triggered by the U.S. and the corresponding conservative approaches adopted by most importing countries continues, on 19 January 2019, the Turkish Ministry of Trade (**"Ministry"**) published a Communiqué reminding the relevant domestic industries that they can apply for the initiation of an expiry review investigation with regard to trade remedy measures the expiry date of which is approaching.*

Turkish anti-dumping legislation, in line with WTO anti-dumping rules, provides that a definitive measure shall expire five years from its imposition or five years from the date of the conclusion of the anti-dumping investigation or most recent review. In this regard, the Turkish anti-dumping legislation also entitles exporters, importers, or domestic producers (of the product whose import is subject to an anti-damping measure) to request the Ministry initiate an expiry review investigation. The Ministry also may launch an ex officio expiry review investigation to re-examine the need for the continuation of the anti-dumping duty at the same rate or at a different rate.

Accordingly, the list of the measures to expire within 2019 is as follows:

- instantaneous gas water heaters (CN code 8419.11.00.00.00), originating in China;
- aluminum foil (of a thickness not exceeding 0,2 mm, not backed) (CN code 7607.11), originating in China;
- pencils with leads of graphite and pencils with leads of crayon encased in a rigid sheath (CN code 9609.10), originating in China;
- fully drawn yarn (CN code 5402.47), originating in China, India, and Malaysia;
- tarpaulin made of polyethylene/polypropylene (CN Code 3921.90.60.00.11, 3921.90.60.00.13, 3926.90.92.00.00, 3926.90.97.90.18, 5407.20.11.90.00, 5407.20.19.90.00, 5903.90.91.90.00, and 6306.12.00.00.00), originating in China and Vietnam;
- hook & loop (CN codes 5806.32.90.00.11 and 5806.32.90.00.19), originating in China and Taiwan;
- oriented strand board (OSB) (CN code 4410.12), originating in the U.S. and Canada;
- polyester textured yarn (CN code 5402.33), originating in China, Indonesia, and Malaysia.

Eventually, the Ministry also provided a list of the measures that expired under Article 3 of the concerned communiqué: uncolored float glasses (CN code 7005.29), originating in Romania; and diesel engines (CN code 8408.90.41.90.00), originating in India and China.

To sum up, taking into account (i) that certain domestic industries criticize the current economic situation in Turkey as their costs mostly depend on exchange rates, and (ii) that most of the above described products involve sectors where the concerned domestic industries have a strong presence in both domestic and foreign markets, we believe that the domestic producers and the customers of the mentioned products as well as the exporters will fight for their own interests in case of investigation.

Final Decision of Anti-Circumvention into Certain Articulated Link Chain and Parts Thereof Announced

*On 9 March 2019 the Turkish Ministry of Trade (**"Ministry"**) announced its final decision regarding an anti-circumvention investigation concerning the import of certain articulated link chain and parts thereof with Communiqué No. 2019/10 on the Prevention of Unfair Competition in Imports ("Decision Communiqué"). The Ministry decided to impose measures against circumvention on products originating in/consigned from India, Thailand, Sri Lanka, and Spain. Certain producers who showed active cooperation with the Ministry are excluded from the scope of said measures. This case is of significance as it confirms explicitly once more that the exporting companies may enjoy a competitive advantage owing to the proper cooperation with the Ministry.*

The Ministry has imposed anti-dumping measures on certain articulated link chains and parts thereof originating in/consigned from the PRC, South Korea, Malaysia, and Taiwan since 2016. However, with Communiqué No. 2018/9 on the Prevention of Unfair Competition in Imports ("Initiating Communiqué") dated 9 March 2018, the Ministry initiated an anti-circumvention investigation upon allegations of circumvention in imports of the aforementioned products originating in/consigned from India, Sri Lanka, Thailand, and Spain.

The Ministry evaluated certain aspects of the import trend of the concerned products, focusing on (i) Turkey's import trends (in terms of both quantity and value); (ii) the subject countries' import trends from China, Taiwan, South Korea, and Malaysia; (iii) the production capacities and production of the cooperating companies; and (iv) the data submitted by the cooperating companies and verified by the Ministry.

The Ministry determined that circumvention had been taking place in the imports of the concerned products originating in/consigned from India, Thailand, Sri Lanka, and Spain. The governing body decided that the imposition of anti-circumvention measures on imports of certain articulated link chains (and parts thereof) was necessary. The imports of the concerned products originating in/consigned from these countries were made subject to measures at the same level as those taken for imports from China that had been circumvented. Three of the companies under investigation, Tube Investments Limited and Galaxy Chains Pvt. Ltd. from India, and Tien Yuen Machinery Mfg (Thailand) Co., Ltd. from Thailand were excluded from the measures in return for having actively cooperated with the Ministry and provided information related to the investigation.

Consequently, this case underlines the importance of cooperation with investigating authorities in trade remedy investigations through the preparation and due submission of all documents such as to help investigating authorities in conducting their analyses and making determinations in line with the facts of the case and in a genuine way. Therefore, a well structured management of the cooperation process mostly ensures more favourable results for exporters/foreign producers.

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