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QUARTERLY BULLETIN

3rd Quarter 2024

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Fevzi Toksoy, PhD
Managing Partner

Bahadır Balkı, LL.M.
Managing Partner

Dear reader,

This quarter has seen notable advancements across competition, international trade, and regulatory landscapes. In competition law, Türkiye and other jurisdictions continue to emphasize strict adherence to competition rules. The Turkish Competition Authority ("TCA") has tackled issues ranging from labour market infringements to exclusive agreements in sectors such as digital and construction, reinforcing its commitment to fair practices. Meanwhile, in Europe, the the European Union ("EU") courts issued significant rulings, including the landmark decision on Booking.com's price parity clauses and the confirmation of fines in the Google Shopping case, both underscoring the evolving regulatory environment and its implications for business operations.

In the realm of international trade, new anti-dumping investigations and trade agreements have been reshaping global markets. Türkiye's tightened e-Commerce regulations and ongoing investigations into steel imports highlight the increasing scrutiny faced by exporters. The EU-Angola Sustainable Investment Facilitation Agreement marks a forward-thinking shift towards green growth, while challenges such as China's dispute with the EU over anti-subsidies duties at the WTO remind us of the delicate balance required in trade relations.

In regulatory and data protection, the alignment of Türkiye's Personal Data Protection Law with the EU's General Data Protection Regulation ("GDPR") by 2025 stands out as a landmark initiative. The European Artificial Intelligence ("AI") Act, now in force, sets global standards for trustworthy AI, fostering innovation while safeguarding fundamental rights. With cross-border data flow cooperation between the EU and China, as well as Türkiye's updated data transfer rules, these regulatory shifts aim to strengthen privacy and data security in an increasingly interconnected world.

Lastly, our "In Focus" article examines the TCA's latest decisions in the fast-moving consumer goods ("FMCG") sector. These cases provide key insights into the TCA's approach to resale price maintenance, highlighting the importance of robust evidence in enforcing fair competition.

We hope this edition provides valuable insights into these critical developments. Thank you for reading!

Sincerely,
ACTECON Team

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Editor in Chief
Mahmut Reşat Eraksoy

Editor
Hanna Stakheyeva

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BARAS MEDYA
barasmedya.com
Tel: +90 212 801 72 18

In this issue:

Electrolux Hit by Hefty RPM Fine

Following an investigation launched in June 2022, the TCA on 26 September 2024 found Electrolux Dayanıklı Tüketim Mamülleri Sanayi ve Ticaret AŞ ("Electrolux") in violation of Article 4 of Law on the Protection of Competition No. 4054 ("Turkish Competition Law"). The investigation revealed that Electrolux engaged in resale price maintenance ("RPM"), leading to a fine of approximately TRY 27 million (around EUR 1.6 million).

The TCA determined that Electrolux monitored the resale prices of its products online, actively communicating with resellers who listed Electrolux products below the company's designated prices. When resellers offered lower prices, Electrolux issued prompt warnings, ensuring prices were raised to match its set levels. This direct RPM practice is considered a "by-object" infringement, which eliminates the need for an effects analysis by the TCA.

Although the TCA acknowledged that meeting the conditions from its previous Henkel decision was unnecessary due to the direct nature of this RPM, it noted that the conditions were indeed satisfied. The infringement was found to have persisted for nearly six years, culminating in the substantial penalty imposed on Electrolux.

TCA Seeks Public Input on New Labour Market Competition Guidelines

On 16 September 2024, the TCA released the long-awaited draft Guidelines on Competition Infringements in Labour Markets ((the "Draft Labour Guidelines") for public consultation. This follows a series of investigations into labour markets starting in November 2020 with private hospitals and expanded to digital sector in April 2021.[2]

The Draft Labour Guidelines highlight wage-fixing agreements as a key concern. These occur when companies collaborate to set working conditions, such wages, wage increases, benefits, working hours, compensation, and non-compete obligations. Another issue is no-poaching agreements, where companies agree not to hire each other's employees. Both practices are treated as cartels and considered violations of Act No. 4054 on the Protection of Competition by object. Third parties involved in facilitating or mediating these agreements may also liable.

The Draft Guidelines also address the exchange of sensitive information in labour markets, like wages and benefits, warning that such data sharing—whether (i) unilaterally, through the disclosure of individual data, or (ii) multilaterally, through mutual exchanges, and can be facilitated directly between companies or via intermediaries such as trade associations, employment agencies, or independent market research organizations—can lead to anti-competitive effects. Independent organizations must ensure data is aggregated and anonymized to prevent collusion.

The Guidelines clarify that ancillary restraints are only permissible if they are directly related, necessary, and proportionate to the primary agreement's objectives. Wage-fixing and no-poaching agreements are generally deemed ineligible for exemptions due to their inherently disproportionate restrictions on competition.

The Draft Labour Guidelines also identify potential abuses of dominance in labour markets, focusing on restrictions that affect employee mobility and anti-competitive exclusionary behaviours by dominant firms. For mergers, the document outlines critical factors to determine if a transaction significantly impairs competition, including market shares, concentration levels, similarity of employee qualifications, entry barriers, and labour market organization.

Overall, the TCA aims to provide a comprehensive framework for assessing competition issues in labour markets. As these guidelines are open for public opinion, amendments may follow.

[1] TCA Decision No. 21-59/843-415, 8 December 2021.

[2] Rekabet Kurumu (2021). E-Pazaryeri Platformları Sektör İncelemesi Ön Raporu, April 2021, Ankara. Available at https://www.rekabet.gov.tr/tr/Guncel/e-pazaryeri-platformlari-sektor-inceleme-a197b17532afeb11812e00505694b4c6

RPM and Online Sales Restrictions Penalized in Cleaning and Cosmetic Products Market

On 16 September 2024, the TCA concluded its investigation into Ersağ Organizasyon Temizlik Kozmetik Ürünleri Pazarlama Sanayi ve Ticaret Ltd. Şti. ("Ersağ"), a company that specializes in cleaning and cosmetic products. The investigation found that Ersağ violated Article 4 of Competition Law by engaging in resale price maintenance. The TCA imposed administrative fines after finding that Ersağ had enforced fixed prices for its products sold by resellers and restricted online sales.

The investigation, initiated by the TCA on 17 August 2023, focused on whether Ersağ set the resale prices for its distributors, limiting their ability to sell products online. During the investigation, Ersağ acknowledged and accepted the allegations and requested a settlement.

The TCA's decision revealed that Ersağ not only had imposed restrictions on resale prices by prohibiting resellers from selling products below catalogue prices but also had monitored and sanctioned non-compliant resellers by terminating their contracts. Ersağ also had restricted online sales, allowing such sales only if they adhered to the company's pricing rules.

The case underscores the TCA's strict stance on RPM practices and online sales restrictions. The TCA concluded the investigation through the settlement mechanism and imposed an administrative fine upon Ersağ.

Exclusive Audiobook Deals: TCA Closes Storytel Investigation with Commitments

The TCA concluded its investigation[4] into Storytel Turkey Yayıncılık Hizmetleri A.Ş. ("Storytel") concerning its long-term exclusivity agreements with publishers. Storytel was alleged to have restricted competition by preventing rival companies from entering the Turkish audiobook market through these agreements, violating Articles 4 and 6 of the Competition Law.

The investigation was initiated following a complaint from Kitapyurdu Yayıncılık ve İletişim A.Ş., which claimed that Storytel's exclusivity clauses hindered market competition by blocking competitors from accessing critical content. The agreements allegedly created barriers for other audiobook platforms, preventing them from offering a diverse portfolio of audiobooks and limiting consumer choice.

In response to the investigation, Storytel proposed commitments to address the TCA's concerns. These commitments included several key revisions:

- Elimination of exclusivity clauses: Storytel agreed to remove exclusivity clauses from existing Audio License Agreements (ALAs) and committed to not including them in future ALAs.
- Elimination of automatic renewals: The company pledged to remove automatic renewal provisions from existing and new agreements, ensuring that exclusivity terms could not be extended beyond the agreed timeframe without active consent.
- Revision of contracts with publishers: Storytel committed to reviewing and amending all existing contracts within two months of the TCA's decision to ensure compliance with the new commitments.
- Non-exclusivity in other agreements: Storytel further promised to remove any exclusivity provisions from Content Distribution Agreements and Voice Artist Agreements, and to refrain from including such provisions in future contracts.

The TCA accepted these commitments, concluding that they would effectively mitigate the anti-competitive concerns raised by the investigation. By limiting the duration and scope of exclusivity agreements, the changes are expected to foster a more competitive environment, allowing smaller audiobook platforms to access content and compete more fairly in the market. As a result, the TCA closed the investigation without imposing any fines on Storytel.

[3] *TCA Decision No. 23-49/933-331, 19 October 2023.*

Big Pharma Sanctioned for No-Poach Agreements

On 22 August 2024, the TCA concluded its investigation into pharmaceutical companies Bilim İlaç Sanayii ve Ticaret AŞ and Drogsan İlaçları Sanayi ve Ticaret AŞ for alleged anti-competitive practices in the labour market. The investigation, initiated on 21 February 2024 (Decision No. 24-09/165-M), aimed to determine if these companies had violated Article 4 of the Turkish Competition Law through no-poach agreements that restricted competition by preventing each other from hiring employees.

As a result of the investigation, the allegations were confirmed. Bilim İlaç was fined TRY 155,488,332.29 (approximately EUR 5.17 million) and Drogsan İlaçları TRY 30,593,234.79 (approximately EUR 1.02 million).

The investigation, part of a broader crackdown on no-poach agreements in the pharmaceutical industry, also saw GlaxoSmithKline İlaçları fined in previous settlements.

This case underscores the TCA's commitment to ensuring competitive practices in all market sectors, including the labour market, where no-poach agreements can significantly impact employee mobility and wage competition. It is part of a broader trend where competition authorities worldwide, including the EU and the USA, are increasingly scrutinizing labour market practices under antitrust laws. The TCA's actions reflect a growing recognition that anti-competitive practices are not limited to product markets but can also manifest in the labour market, affecting the livelihoods of workers.

[4] *TCA Decision No. 23-55/1076-380, 30 November 2023.*

Abuse of Dominance via IP Rights Misuse in Aseptic Packaging Market: Tetra Pak Case

On 19 August 2024, the TCA concluded its investigation into Tetra Laval Holding & Finance SA and Tetra Pak Paketleme Sanayi ve Ticaret Limited Şirketi, which was initiated to determine if the companies had abused their dominant position in the markets for the 'production and sale of filling machines for aseptic liquid food carton packaging' and 'production and sale of aseptic liquid food carton packaging.' The investigation led to significant findings and penalties.

The TCA determined that the economic entity comprising Tetra Pak Türkiye and Tetra Laval Holding & Finance SA holds a dominant position in the relevant markets. It was found to have violated Article 6 of the Turkish Competition Law by abusing its dominant position. This abuse involved the misuse of 3D aseptic prism shape brand and design applications, as well as other 3D brand applications that were under evaluation. As a result of these violations, the TCA imposed an administrative fine of TRY 130,889,523.70 (approximately EUR 4.35 million). Additionally, the TCA ordered the relevant economic entity to waive its brand and design rights related to the subject of the investigation and withdraw its 3D brand applications currently under evaluation. The entity must comply with these directives within 30 days of receiving the reasoned decision and provide compliance certification to the Competition Authority.

This decision underscores the TCA's commitment to enforcing fair competition practices and preventing the abuse of dominant market positions that can harm consumers and competitors alike.

[5] *CA, Decision No. 24-33/782-329, 15 August 2024.*

[6] *TCA, Decision No. 24-33/807-341, 15 August 2024.*

Cracking Down on Cartels: TCA Heavily Fines Construction Sector

On 6 August 2024, the TCA concluded its investigation into several ready-mix concrete producers operating in the Ankara and Kırıkkale provinces. The investigation, which began on 8 December 2022, was launched to determine whether these companies had violated Article 4 of the Turkish Competition Law by engaging in concerted practices such as price-fixing, region and customer allocation, and the exchange of competitively sensitive information.

During the investigation, the TCA reached settlements with five ready-mix concrete producers, resulting in hefty fines. The remaining parties in the investigation were evaluated in a final decision, which led to the following outcomes:

The TCA found no evidence that the following companies had violated Article 4; therefore, no administrative fines were imposed: Baştaş Hazır Beton San. ve Tic. A.Ş. Kolsan İnşaat Otomotiv Sanayi ve Ticaret A.Ş. Limak Çimento San. ve Tic. A.Ş. SY Ankara Hazır Beton İnşaat Nakliyat Turizm Sanayi ve Ticaret Ltd. Şti., and Şerbetci İnşaat Malzemeleri Sanayi ve Ticaret A.Ş. However, several other companies were found guilty of violating Article 4 by engaging in anti-competitive practices, resulting in total fines of TRY 27,982,658.28 (approximately EUR 746,161.00) imposed on Birlik Hazır Beton ve Yapı AŞ ("BİRLİK"), Limmer Beton İnşaat Sanayi ve Ticaret A.Ş. ("LIMMER"), Ozan Hazır Beton İnşaat Madencilik Nakliye Petrol Otomotiv Kuyumculuk Ticaret AŞ, Uğural İnşaat Turizm Petrol Sanayi ve Ticaret AŞ, and Zirve Gurup Hazır Beton İnşaat Petrol Madencilik Nakliyat Sanayi ve Ticaret AŞ ("ZİRVE").

Additionally, the TCA fined Efaş Beton İnşaat Malzemeleri Nakliye Emlak Reklamcılık Kırtasiye Turizm ve Ticaret Ltd. Şti., operating in the Ankara province, for exchanging competitively sensitive information. Ezn Maden İmalat İnşaat Ltd. Şti., operating in the Kırıkkale province, was fined for engaging in region/customer allocation, resale price maintenance, and exchanging competitively sensitive information.

The TCA's decision sends a strong message about the importance of maintaining fair competition in critical sectors like construction materials.

Google Cleared of Abuse of Dominance Allegations for its General Search Services

On 4 July 2024, the TCA concluded its investigation into the economic unity consisting of Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited ve Google Reklamcılık ve Pazarlama Ltd. Şti ("Google") and found no evidence of abuse of its dominant position in the market for general search services.

On 12 January 2023, the TCA initiated an investigation into Google. The investigation assessed claims that Google had violated Article 6 (similar to Article 102 of TFEU) of the Competition Law by abusing its dominant position in the general search services market. Claims that certain Google search features—like 'videos,' 'people also ask,' 'translation box,' 'sports box,' and 'weather box,' ranked other websites adversely and caused them to lose traffic were examined in detail within the scope of the investigation.

The TCA decided that although Google held a dominant position, it did not abuse its position with its search services. The TCA found that the inclusion of specialized search features did not unfairly hinder competition or harm consumer welfare. The features in question were determined to enhance the user experience rather than manipulate market dynamics to the detriment of competitors. Therefore, no administrative fines were imposed against Google.

The TCA also emphasized in its press release that in four investigations conducted, Google had been fined a total of TRY 1.25 billion (approximately EUR 109,212,521.00). The press release also stated that though the most recent investigation ended without any fines, Google is still being investigated for allegedly leveraging demand from demand-side platforms (DSPs) to its own supply-side platform ('SSP) services and also leveraging its SSP (AdX) through its publisher ad server to favour its own products/services in the advertisement technology supply chain.

[7] *TCA, Decision No. 22-54/828-M, 8 December 2022.*

[8] *TCA, Decision No. 24-31/726-308, 25 July 2024.*

Price Parity No More: CJEU Ruling against Booking.com and its Industry Impact

On 19 September 2024, the Court of Justice of the EU ("CJEU") ruled that Booking.com can no longer enforce price parity clauses in its contracts with hotels across the EU. This decision ensures hotels are free to offer better prices through their own channels without being tied to the prices listed on Booking.com.

While the decision directly impacts Booking.com, it could influence other industries where price parity clauses are used, such as e-commerce and digital services. The CJEU found that such clauses, even in their narrow form, hinder competition and disproportionately harm smaller and new market entrants. The CJEU ruled that Booking.com's price parity clauses were unnecessary for the platform's operation and disproportionate to its objectives; as a result, these clauses cannot be classified as ancillary restraints.

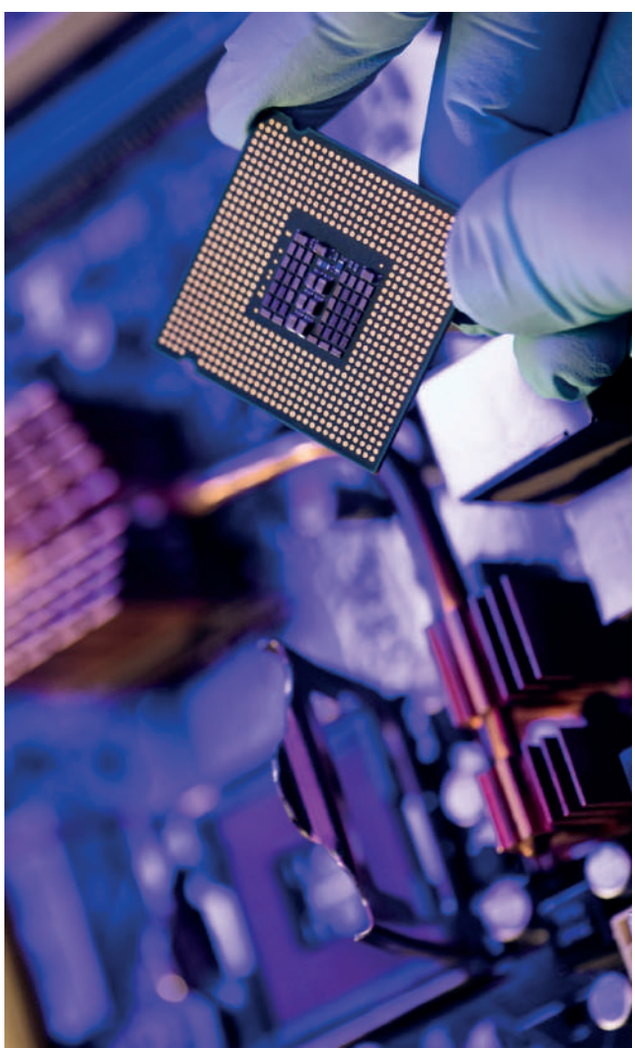
The ruling comes after Booking.com's designation as a "gatekeeper" under the DMA, which imposes stricter regulations on large platforms that dominate market access for other businesses. As a gatekeeper, Booking.com is subject to heightened competition rules, including a prohibition on price parity clauses.

Qualcomm's Antitrust Fine for Predation Confirmed by GC with Minor Adjustment

On 18 September 2024, the General Court ("GC") upheld the European Commission's 2019 antitrust decision against Qualcomm, confirming the majority of the EUR 242 million fine for predatory pricing, although it slightly reduced the total to EUR 238.7 million. Qualcomm was accused of selling its 3G chipsets below cost between 2009 and 2011 to eliminate its British rival Icera, now part of Nvidia. Qualcomm had argued that the chipsets represented only 0.7% of the market, claiming this was insufficient to exclude rivals.

The GC rejected most of Qualcomm's arguments but agreed that part of the fine's calculation was flawed, resulting in a minor reduction. The GC's decision reflects an economically minded approach, using the "as-efficient competitor" test to affirm that Qualcomm's pricing could drive an equally capable competitor out of the market. According to the court, prices below average variable costs ("AVC") are deemed abusive when used by undertakings in dominant positions to eliminate competition. Prices below average total costs ("AVC") but above AVC are considered abusive if part of a strategy to eliminate rivals, even without the need to demonstrate actual exclusionary effects.

While Qualcomm has the right to appeal on points of law to the CJEU, this ruling marks a significant step in the EU's ongoing scrutiny of anti-competitive practices. The Court clarified that, for predatory pricing cases, there is no need to demonstrate that the practice affected a substantial share of the market, as even selective predatory practices targeting specific customers could eliminate an equally efficient competitor.



[9] Case C-264/23 Booking.com BV and Booking.com (Deutschland) GmbH v 25hours Hotel Company Berlin GmbH and Others [2024].

Google's EUR 1.49 billion AdSense Fine Overturned

On 18 September 2024, the annulled a EUR 1.49 billion fine imposed by the Commission on Google for anticompetitive practices related to its AdSense product. The court's ruling marks a setback for the Commission in one of its antitrust cases against the tech giant.

The fine was originally imposed in March 2019 after the Commission found that Google had abused its dominant position in the online search advertising intermediation market by imposing restrictive clauses in contracts with third-party websites using its AdSense for Search product. These clauses allegedly had prevented competitors from displaying ads on the websites, limiting competition in the market between 2006 and 2016. In its ruling, the GC upheld the majority of the Commission's findings but determined that the Commission had failed to account for all relevant factors in its assessment of the duration of Google's contract clauses and the market definition. The court concluded that the clauses did not constitute an abuse of dominant position as defined by EU law, resulting in the annulment of the fine.

Google welcomed the ruling, with a company spokesperson stating that the firm had already changed its contracts in 2016 to remove the provisions at the heart of the Commission's case. The Commission has just over two months to appeal the decision to the CJEU. This case is part of a broader legal battle between Google and the Commission, which has fined Google in three major antitrust cases, including a EUR 2.42 billion fine confirmed earlier this month for Google's self-preferencing of its Shopping service. A separate EUR 4.34 billion fine related to Google's Android operating system remains under appeal, although the GC had trimmed the fine to EUR 4.125 billion in 2022.

[10] Case T-671/19 CJEU, General Court, Qualcomm v Commission (Qualcomm - predatory pricing) [2024].
[11] Case T-334/19 Google LLC and Alphabet Inc. v European Commission [2024].

Apple Faces EUR 62 million Class Action for Unfair Pricing Practices

Euroconsumers, a leading consumer rights group, has launched a coordinated class action lawsuit against Apple in Belgium, Italy, Spain, and Portugal. The lawsuit follows a EUR 1.8 billion fine imposed on Apple by the Commission in March 2024 for abusing its dominant market position in the App Store by imposing unfair charges on non-Apple music streaming services, including Spotify, YouTube Music, and SoundCloud.

The Commission's investigation found that since 2013, Apple had been charging up to 30% in commission fees for non-Apple music streaming subscriptions purchased via its App Store. These fees forced music streaming services to raise their prices for iPhone and iPad users. For example, to offset the costs of Apple's commissions, Spotify increased its monthly subscription fee from EUR 9.99 to EUR 12.99, leading to inflated consumer prices. In contrast, Apple's own music service, Apple Music, was exempt from these charges.

In addition to the inflated fees, Apple further restricted competition by prohibiting developers from informing users about cheaper subscription options available outside of the App Store, such as through direct purchases on their websites. This behaviour was condemned as anti-competitive by the Commission, resulting in a significant fine earlier this year.
The lawsuit seeks to recover approximately EUR 62 million in damages for over 500,000 affected consumers, with eligible consumers potentially receiving around EUR 3.00 for each month they paid inflated prices due to Apple's practices.

Google Shopping: CJEU Confirms Fine for Abusing Dominance in Online Search

On 10 September 2024, the CJEU confirmed the EUR 2.4 billion fine on Google for abusing its dominant position in the online general search market through self-preferencing its own comparison-shopping service. This ruling upholds the 2017 decision by the EC.

The CJEU upheld the General Court's earlier ruling, affirming that while self-preferencing is not inherently anticompetitive, Google's specific actions were discriminatory and went beyond normal competition. The CJEU rejected Google's argument that the "refusal to supply" criteria established in the Bronner8 applied, emphasizing that this case did not involve a refusal of access. Instead, it concerned a disadvantage resulting from Google's preferential positioning of its own comparison-shopping service within the general search results, alongside the algorithmic demotion of competitors' services. The access had been granted but under discriminatory conditions.

The CJEU further concluded that the favourable positioning of Google's comparison-shopping service, combined with the demotion of rivals' services, was significant in characterizing the legal practices as falling outside the scope of competition on the merits. The ruling also clarified that the "as-efficient competitor" test only applies when the investigated company argues its conduct could not exclude equally efficient competitors.

Although the ruling does not directly pertain to the Digital Markets Act ("DMA"), the discussion surrounding Google's preferential treatment of its own vertical search service is likely to play a significant role in the ongoing investigation regarding Google's compliance with its DMA Article 6(5) obligations.

[12] *Euroconsumers. (2024). Apple doesn't play fair! Euroconsumers strikes back with class action over music streaming overcharges. Retrieved from https://www.euroconsumers.org/apple-doesnt-play-fair/*

[13] *Case AT.40437 – Apple – App Store Practices (music streaming) [2024]. European Commission.*

EC's Power in Below-Threshold Mergers Curtailed: CJEU in Illumina/GRAIL

On 3 September 2024, the CJEU delivered a landmark ruling in favour of Illumina Inc., concluding that the European Commission had no jurisdiction to review, and subsequently block, Illumina's proposed acquisition of Grail. This decision clarifies the Commission's inability to assess mergers that fall below the EU competition law thresholds.

In 2020, Illumina, a U.S.-based company planned to acquire Grail, a biotech firm. The acquisition did not trigger EU merger control thresholds, as Grail had no turnover outside the U.S. Despite this, the Commission, following a third-party complaint, accepted a referral under Article 22 of the EU Merger Regulation ("EUMR") from France (which also lacked jurisdiction) and blocked the acquisition in 2022. The Commission also imposed a record gun-jumping fine of EUR 432 million on Illumina for completing the merger without clearance.

Illumina challenged the Commission's decision, arguing that the Commission had overstepped its authority. While the GC dismissed Illumina's action, the CJEU ruled that the Commission had erred in interpreting Article 22 EUMR as having jurisdiction to assess the deal, as Member States cannot refer cases for review if they lack jurisdiction under their national merger control laws. The CJEU emphasized that turnover thresholds are critical for ensuring legal predictability and clarity in the EU merger control regime, allowing companies to easily identify which authority is responsible for reviewing a transaction. The CJEU determined that the Commission's broad interpretation of Article 22 undermined the effectiveness, predictability, and legal certainty guaranteed to parties in a concentration. This interpretation was also found to be inconsistent with the objectives pursued by the EUMR. The CJEU noted that the current thresholds may need legislative review, allowing Member to revise their thresholds for merger control competence, to allow future referrals.

The CJEU's ruling may impact "killer acquisitions" in industries like biotech and AI, where companies often generate little or no turnover. Several EU Member States have already introduced national thresholds or call-in powers to review such acquisitions, potentially allowing future referrals to the Commission. The judgment also does not preclude national authorities from using EU antitrust laws to review mergers post-closure, as seen in the CJEU's recent Towercast ruling.

[14] *Joined Cases C-611/22 P and C-625/22 P Illumina v. Commission [2024] ECLI:EU:C:2024:677.*

[15] *For more details, please see: https://www.reuters.com/markets/deals/illumina-spin-off-grail-june-2024-06-03/*

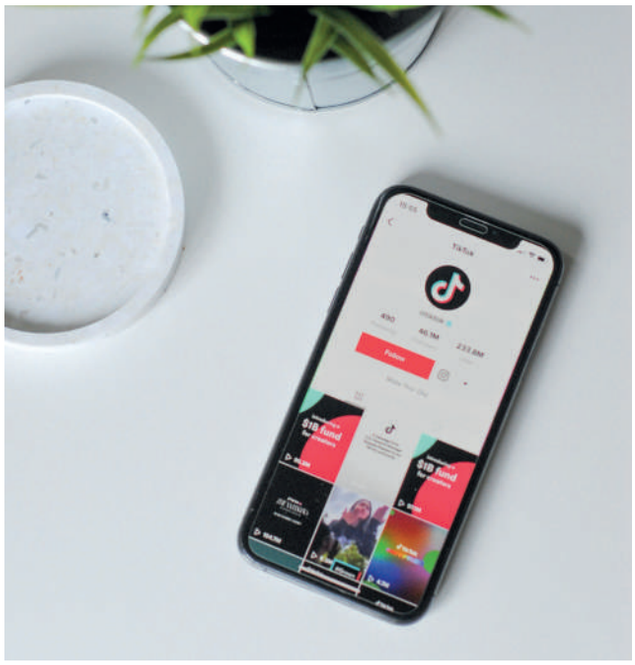
TikTok Binds to DSA Rules: Lite Rewards Program Withdrawn

On 5 August 2024, the EC made TikTok's commitment to permanently withdraw its TikTok Lite Rewards program from the EU legally binding. These commitments were offered by TikTok to address the EC's concerns and ensure compliance with the Digital Services Act ("DSA") following formal proceedings initiated on 22 April 2024. This decision is particularly notable as it marks the first case the EC has closed under the DSA and the first time it has accepted commitments from a designated online platform under this regulation.

TikTok has committed to permanently withdrawing the TikTok Lite Rewards program from the EU and has pledged not to launch any alternative programs that will circumvent this withdrawal.

These commitments are now legally binding, meaning any breach would constitute a violation of the DSA, potentially leading to significant fines. As a result, the EC has closed the formal proceedings against TikTok that began in April.

For context, TikTok Lite is a new version of the TikTok app that launched in Spain and France in April 2024. The EC raised concerns that the TikTok Lite Rewards program, which incentivizes users to engage with the platform by offering rewards for various activities, could have harmful effects, particularly on minors. These concerns stemmed from the program's potential to foster addictive behaviour without adequate risk assessments or mitigation measures in place. The decision underscores the EC's commitment to safeguarding user safety and well-being, particularly under the stringent requirements of the Digital Services Act.



Deja Vu: IAG Abandons Air Europa Takeover Amid EC's Competition Concerns

On 2 August 2024, the EC has acknowledged the decision of the International Airlines Group ("IAG") to withdraw from its proposed acquisition of Air Europa. This decision follows ongoing discussions and an in-depth investigation by the EC, which had raised significant competition concerns about the merger's impact on the airline market in Spain.

The IAG, which owns airlines such as Iberia and Vueling, is Spain's largest airline operator, while Air Europa ranks as the third largest. The proposed merger had the potential to negatively affect competition, particularly on routes where the two airlines compete closely, including domestic, short-haul, and long-haul flights within Spain, to the rest of Europe, and to the Americas.

Despite IAG offering a package of remedies, the EC concluded that these measures were insufficient to fully address the competition concerns, particularly the risk of higher prices and reduced service quality for passengers. This marks the second time the EC has assessed an IAG attempt to acquire Air Europa, following a similar outcome in 2021.

Executive Vice-President Margrethe Vestager, responsible for competition policy, highlighted the importance of ensuring competitive air travel markets, noting that Air Europa is now in a stronger market position than during the previous acquisition attempt, making the challenge of finding adequate remedies even greater.

[16] Case C-449/21 Towercast SASU v Autorité de la concurrence And Ministre chargé de l'économie [2023]

EC Launches Landmark Probe into No-Poach Practices by Delivery Hero and Glovo

The EC's investigation into no-poach agreements in the online food delivery sector, announced in July 2024, marks a significant step in EC efforts to address labour market competition issues. The investigation specifically targets Delivery Hero and Glovo, two of the largest players in the European food delivery market.

The investigation centres on the period before Delivery Hero fully acquired Glovo in July 2022. When Delivery Hero held only a minority stake in Glovo, the two companies were suspected of engaging in anti-competitive practices. These practices included market allocation, where they divided geographic markets to reduce competition, and no-poach agreements, where they agreed not to hire each other's employees. Such agreements could have restricted competition for talent in the fast-growing food delivery sector.

This investigation is notable because it reflects the EC's growing focus on how competition law applies to labour markets. The EC is increasingly concerned about how practices like no-poach agreements can harm workers by limiting their employment opportunities and suppressing wages. This case is particularly significant because it is the first formal investigation by the EC into no-poach agreements. It sets a precedent for how such agreements will be scrutinized under EU competition law.
The investigation is ongoing, and the EC will continue to gather evidence and assess the impact of the alleged practices.

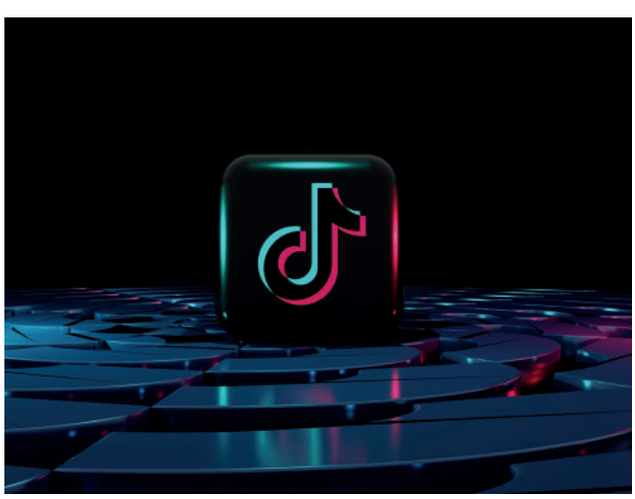
TikTok's Gatekeeper Designation under DMA Upheld by General Court

On 17 July 2024, the GC dismissed the action brought by Bytedance ("TikTok") against the European Commission's decision to designate it as a gatekeeper as per the DMA. In September 2023, the EC designated TikTok as a gatekeeper. TikTok subsequently sought to annul this decision, but eight months later, the GC ruled against Bytedance through an expedited procedure.

The GC reiterated the legislative intent of the DMA, which aims to ensure market fairness and contestability in the digital sector, particularly for the business and end users of core platform services provided by gatekeepers. Following that, the GC found that TikTok met the DMA's quantitative thresholds, such as global market value and the number of TikTok users in the EU, justifying its designation as a gatekeeper.

TikTok's arguments against its designation were deemed unsubstantiated. The GC dismissed claims that TikTok's significant global market value, primarily from China, did not reflect its impact on the EU market. The substantial number of TikTok users in the EU indicated TikTok's financial capacity and potential to monetize these users. Additionally, despite not having an ecosystem or network effects like Facebook and Instagram, TikTok's rapid user growth and high engagement rates, especially among young users, demonstrated its role as a crucial gateway for business users to reach end users.

Furthermore, the Court rejected TikTok's argument that it lacked an entrenched and durable position, noting that TikTok had quickly consolidated its market position despite competition from services like Meta's Reels and Alphabet's Shorts. The GC also acknowledged that although EC had made some errors in assessing TikTok's arguments, these errors did not impact the validity of the decision. Lastly, the GC dismissed TikTok's claims of infringement of the rights of defense and breach of the principle of equal treatment.



X Found in Breach of DSA

On 12 July 2024, the EC issued preliminary findings indicating that X (formerly known as Twitter) was in breach of the DSA concerning dark patterns, advertising transparency, and data access for researchers. This conclusion followed an extensive investigation involving internal company documents, expert interviews, and collaboration with national Digital Services Coordinators.

The EU's DSA designated X a Very Large Online Platform (VLOP) on 25 April 2023, following its declaration of more than 45 million monthly active users in the EU. Formal proceedings to assess potential breaches of the DSA by X were opened on 18 December 2023, focusing on dark patterns, advertising transparency, and data access for researchers.

The EC found that X's design and operation of the 'verified accounts' with the 'blue checkmark' mislead users by deviating from industry practices, allowing anyone to obtain verified status, which malicious actors could exploit. Additionally, X's failure to provide a functional and accessible advertisement repository undermined transparency and hindered research into advertising risks. The EC also noted that X did not grant researchers proper access to its public data as required by the DSA, imposing prohibitive conditions and high fees that discouraged research. X is now expected to respond to these preliminary findings. If these findings are confirmed, X could face fines of up to 6% of its total worldwide annual turnover and be required to take measures on that account.

EC Accepts Apple's Commitments to Open NFC Technology for Competition: Mobile Wallets Case

On 11 July 2024, the EC officially accepted Apple's commitments to provide free access to its Near-Field-Communication ("NFC") technology to rival companies. This technology enables contactless payments on iPhones, and the decision marks a significant step toward promoting fair competition and consumer choice in the mobile wallet market.

The EC's investigation, launched in June 2020, revealed concerns that Apple had abused its dominant market position by restricting access to NFC technology for third-party payment providers. By limiting this access to its proprietary platform, Apple Pay, the company was accused of stifling competition and innovation while reducing consumer options. Apple's commitments aim to address these concerns by leveling the playing field for all developers.

Under the agreed commitments, Apple will grant third-party mobile wallet providers free access to NFC inputs on iOS devices through Host Card Emulation ("HCE"), a technology that allows software-based emulation of physical payment cards. Users will also be able to set these third-party apps as defaults for contactless payments and use essential features such as Field Detect, Double-click, and authentication tools seamlessly.

To ensure fairness, Apple has committed to implementing a transparent process for granting NFC access, backed by independent monitoring and dispute resolution mechanisms. Apple will also align its NFC technology with evolving industry standards and allow HCE-based payments on a wider range of certified terminals. These steps aim to foster innovation and enable smaller developers to compete effectively.

The commitments also address broader concerns. Apple will no longer require developers to hold a Payment Service Provider license to access NFC technology, ensuring fewer barriers to entry. Developers' confidential information will be safeguarded, and the trustee overseeing compliance will operate with greater independence and procedural guarantees.

Following feedback from the EC's market testing, Apple strengthened its commitments by expanding NFC functionality to additional payment terminals and updating the HCE architecture to support future advancements. These updates ensure Apple's compliance with industry standards and reflect its acknowledgment of the evolving needs of the market.

The EC concluded that Apple's commitments adequately address the competition concerns, making them legally binding for ten years across the European Economic Area. The Commission will closely monitor Apple's compliance to ensure these commitments are upheld and that consumers and businesses benefit from increased choice and innovation.

This decision is significant for competition and consumers, as it opens the door for rival companies to innovate and offer new payment solutions. It also reinforces the EC's stance on promoting fair practices in digital markets, setting a precedent for future cases involving dominant tech companies.

Türkiye Extends Anti-Dumping Measures to Solar Panel Imports from Multiple Countries

On 27 September 2024, the Turkish Ministry of Trade ("Ministry") concluded its circumvention investigation on imports of "photovoltaic cells assembled in modules or made up into panels" originating from or consigned through Vietnam, Malaysia, Thailand, Croatia, and Jordan.

Through Communique No. 2024/30 on the Prevention of Unfair Competition in Imports, the Ministry determined that anti-dumping measures previously applied to imports from China would also be extended to these countries.

As a result, a duty of 25 USD/m² will be imposed on imports from the subject countries, with the exception of products manufactured by certain cooperating companies specifically listed in Communique No. 2024/30.

Paving the Way for Green Growth: The EU-Angola Sustainable Investment Agreement Takes Effect

The EU-Angola Sustainable Investment Facilitation Agreement ("SIFA") officially entered into force on 1 September 2024, marking the first-ever EU agreement focused on investment facilitation. This landmark agreement is designed to boost foreign investments that support sustainable development goals, creating a more transparent, efficient, and predictable business environment in Angola. It aims to attract sustainable investments from EU businesses, fostering economic growth while upholding environmental, climate, and labour standards.

The SIFA introduces measures to enhance the business climate in Angola, such as increased transparency in investment regulations, the promotion of e-government for authorisations, and greater stakeholder involvement. These improvements are expected to benefit both foreign and local investors, with a particular emphasis on supporting small and medium-sized enterprises.

The agreement is aligned with Angola's ambitions to diversify its economy beyond fossil fuels by unlocking investments in sectors like green energy, agri-food, digital innovation, fisheries, logistics, and critical raw materials. This initiative is part of the EU's broader strategy to strengthen ties with Africa, complementing the Africa-EU Global Gateway Investment Package, which aims to channel EUR 150 billion into African economies. Moving forward, the EU and Angola will collaborate closely to implement the agreement, with the EU providing targeted technical support to promote trade and investment. A Committee on Investment Facilitation, composed of representatives from both sides, will oversee the agreement's implementation and work to enhance investment relations further. This agreement reflects the EU's commitment to sustainable investment, as outlined in its 2021 Trade Policy Review, and paves the way for similar agreements with other African nations.

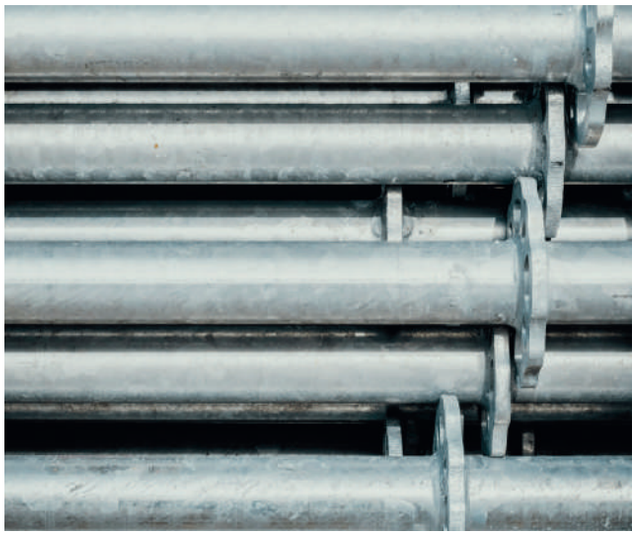
US Anti-Dumping Investigation into Corrosion-Resistant Steel Imports from Türkiye and Nine Other Countries

On 6 September 2024, the United States initiated an anti-dumping investigation targeting corrosion-resistant steel imports from Türkiye and nine other countries: Australia, Brazil, Canada, Mexico, the Netherlands, South Africa, Taiwan, the United Arab Emirates, and Vietnam. This action follows a petition by domestic producers in the U.S., who have expressed concerns that imports from these countries are adversely affecting domestic industry.

The U.S. Department of Commerce ("DoC") and the U.S. International Trade Commission ("USITC") have received the petition, and the USITC has already begun preliminary injury investigations. The products under investigation are classified under specific tariff positions in the U.S. Harmonized Tariff Schedule, primarily covering corrosion-resistant steel. A detailed list of these products has been outlined in the official U.S. government notification.

The DoC will determine within 20 days whether to proceed with a full-fledged investigation into the presence of dumping and subsidies, while the USITC is expected to release its preliminary findings within 45 days. Turkish exporters are advised to apply to the USITC within seven days of the publication of the investigation notice in the U.S. Federal Register on 11 September 2024, to ensure their participation in the case.

This marks a significant development for Turkish steel producers, who exported approximately 48,340 tons of corrosion-resistant steel products to the U.S. between January and August 2024. The Turkish Ministry of Trade will provide further information to exporters regarding the next steps, including the possibility of legal and consultancy support, pending the outcome of the investigation.



Türkiye Tightens B2C e-Commerce Rules: Lower Thresholds and Higher Duties Take Effect

On 20 August 2024, Türkiye implemented significant regulatory changes affecting B2C e-Commerce shipments. The Turkish government has reduced the low-value threshold for imported goods from EUR 150 to EUR 30. Additionally, the duty on these shipments has been increased from 30% to 60% of the total value of the goods.

International businesses shipping to Türkiye should reassess their pricing strategies to accommodate these increased costs and heightened regulatory requirements. Staying compliant with these new rules will be essential to avoiding delays and additional expenses.

China Challenges EU's Anti-Subsidy Duties at WTO

On 14 August 2024, China initiated a complaint at the World Trade Organisation ("WTO") against the European Union over the EU's anti-subsidy investigation and subsequent imposition of provisional countervailing duties on imported battery electric vehicles from China. The request for WTO dispute consultations was circulated to members on 14 August 2024.

China argues that the EU's measures violate Article VI of the General Agreement on Tariffs and Trade 1994 and several provisions of the WTO's Agreement on Subsidies and Countervailing Measures. This dispute reflects growing tensions between the two trading powers over the burgeoning electric vehicle market.

The consultation requests mark the formal beginning of a WTO dispute, providing both parties an opportunity to negotiate and seek a resolution without escalating litigation. If the consultations do not lead to a resolution within 60 days, China may request that the case be adjudicated by a WTO panel. Further details can be found in document WT/DS626/1.

Brazil Initiates Anti-Dumping Investigation into Imports of Colourless Floated Flat Glass from Türkiye

According to the August 2024 announcement from the Ministry Brazil has initiated an anti-dumping investigation concerning imports of colourless floated flat glass originating in Türkiye, Malaysia, and Pakistan following a complaint by the Brazilian Glass Manufacturers Association ("ABIVIDRO"). The investigation, officially launched by Brazil's Ministry of Development, Industry, Commerce, and Services ("MDIC") through Circular No. 36, focuses on claims that imports of colourless floated flat glass, ranging in thickness from 1.8 mm to 20.0 mm, are being dumped at below-market prices, allegedly causing material injury to Brazil's domestic industry.

According to information from the São Paulo Commercial Attaché, Brazilian authorities are evaluating whether these imports, including those from Türkiye, have caused significant injury to the domestic glass production industry. If the investigation confirms these claims, anti-dumping duties could be imposed on imports from the subject countries, including Türkiye.

Exporters from Türkiye have been notified of the investigation and are invited to submit responses to the Brazilian authorities within 30 days of receiving official notification. Failure to cooperate could lead to the imposition of duties based on the best available information, which may result in less favourable outcomes for the exporters.

The Ministry stated that it is closely monitoring the case and is expected to submit both written and oral defences to safeguard the interests of Turkish exporters. Companies involved in the export of floated flat glass to Brazil are encouraged to actively participate in the investigation to ensure that their positions are effectively represented.

[17] T.C. Ticaret Bakanlığı. (2024, August 9). "Brezilya Tarafından Ülkemiz Menşeli Renksiz Düz Cam İthalatına Karşı Anti-Damping Soruşturması Başlatılmıştır." Retrieved from http:www.ticaret.gov.tr

[18] Classified under the CN Code 7005.29.00.

EU's Provisional Anti-Dumping Duty for Erythritol Imports from China

On 17 July 2024, the EC imposed a provisional anti-dumping duty into the importation of erythritol, a four-carbon sugar alcohol (polyol) sweetener made from sugar or glucose, in its pure form or contained in blends containing less than 10% of other products by weight, originating from the People's Republic of China ("China") through Communiqué number 2024/20 on the Prevention of Unfair Competition in Imports

From 2022 onwards, the EU industry experienced a dramatic downturn in its performance, with nearly all injury indicators showing significant deterioration. During the investigation period, key indicators such as profitability, cash flow, and return on investments reached notably negative levels. This decline coincided with a substantial increase in imports from China, which were sold at prices 20% lower than before and significantly undercut Union sales prices, thereby suppressing EU industry's prices.

Furthermore, the EC analysed and distinguished the impact of all known factors on the EU industry's situation from the harmful effects of the dumped imports. It concluded that these other factors had only a limited impact on the industry's negative developments.

For the reasons explained, with the decision of EC, it was decided to impose a provisional anti-dumping duty ranging between 31.9% to 235.6% for the products originating from China.

Alignment of Türkiye's Personal Data Protection Law with GDPR by 2025

The Medium-Term Program for 2025-2027 published by the Strategy and Budget Directorate of the Presidency of the Republic of Türkiye outlines plan to complete the alignment of the Personal Data Protection Law ("KVKK") with the EU GDPR by the end of 2025. This initiative aims at ensuring compliance with EU regulations, particularly concerning aspects that impact the export of goods and services in the context of the digital economy.

This initiative builds on earlier efforts to harmonize the KVKK with the GDPR. In March 2024, Türkiye introduced several key amendments, marking the first steps in this alignment process. These changes included revisions to the processing of special categories of personal data and the establishment of a new framework for international data transfers.

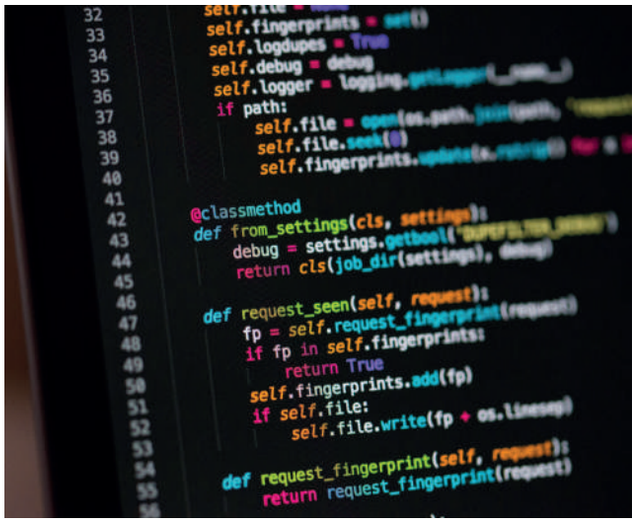
The outdated "open consent" model for cross-border data sharing was replaced with a system based on adequacy decisions, appropriate safeguards, and limited exceptions. The amendments aim to remove obstacles for businesses that rely on cloud-based services and international operations, thereby ensuring compliance with global standards.

Looking ahead, the upcoming changes, expectantly, will further streamline Türkiye's data protection regulations, fostering greater alignment with EU laws. Companies operating in Türkiye are urged to stay proactive, updating their privacy impact assessments and documentation to ensure smooth compliance with current and forthcoming regulations.

[19] Classified under CN Codes 2905 49 00, 2106 90 92, 2106 90 98

[20] T.C. Cumhurbaşkanlığı Strateji ve Bütçe Başkanlığı. Orta Vadeli Program (2025-2027). Retrieved 05 September 2024 from https://www.sbb.gov.tr/wp-content/uploads/2024/09/Orta-Vadeli-Program_2025-2027.pdf

[21] Kişisel Verileri Koruma Kurumu, 6698 Sayılı Kişisel Verilerin Korunması Kanununda Yapılan Değişiklikler Hakkında Kamuoyu Duyurusu, 12 March 2024.



EU and China Launch Historic Mechanism for Cross-Border Data Flow Cooperation

On 27 August 2024, the EU and China initiated their first discussions under the newly established Cross-Border Data Flow Communication Mechanism. This initiative is a direct outcome of the political agreements reached in 2023 during high-level dialogues between EU and Chinese leaders.

The primary goal of this mechanism is to facilitate the cross-border transfer of non-personal data for European businesses operating in China, ensuring they can comply with Chinese data laws. The issue has been a significant concern for European companies, particularly in sectors such as finance, insurance, pharmaceuticals, automotive, and Information and Communication Technology ("ICT"), where the ability to manage data across borders is crucial for their operations and R&D activities.

During the inaugural meeting, the EU highlighted the need to address the specific challenges European businesses encounter, particularly the difficulties in exporting data from China due to the stringent security approvals required under China's 2022 Data Export Security Assessment law. The vague and broad definition of 'important data' has further exacerbated these concerns, contributing to declining confidence among European investors in China.

This new mechanism represents the first of its kind in EU-China relations and marks a significant step towards enhancing cooperation on data flows. Future engagements at expert and technical levels are planned to review progress at the political level in upcoming EU-China meetings.

Zero Pollution Push: New EU Rules on Industrial and Livestock Emissions Take Effect

On 4 August 2024, the EU's updated directive on industrial and livestock rearing emissions came into force, marking a significant step in the EU's Zero Pollution ambition under the European Green Deal. This revised directive replaces the former Industrial Emissions Directive ("IED") and introduces stricter rules aimed at reducing emissions from large industrial installations and pig and poultry farms, promoting greener practices, and fostering innovation in emerging technologies.

The new rules are expected to drastically cut emissions of key air pollutants by up to 40% by 2050 compared to 2020 levels. They will provide a level playing field for industries across the EU by ensuring that all operators adhere to the same stringent environmental standards, thereby boosting investment certainty. Importantly, these rules also enshrine a historic right for EU citizens to seek compensation for health damage caused by illegal pollution, a first in EU environmental law.

Key updates in the directive include broader coverage of emission sources, stricter emission limit values, and the inclusion of sectors like metal mining and large-scale battery manufacturing. The updated rules also introduce more dissuasive penalties, including fines of at least 3% of a company's annual EU turnover for severe infringements. Additionally, authorities are granted greater powers to suspend non-compliant operations.

To support the transition to a greener economy, the directive promotes the adoption of the best available techniques for waste landfills and pushes for circular economy practices and resource efficiency. Additionally, the newly established Innovation Centre for Industrial Transformation and Emissions ("INCITE") will drive research and innovation in pollution prevention and control technologies, offering insights through a public online platform.

As Member States begin transposing these rules over the next 22 months, the EU is set to enter a new era of environmental accountability and industrial transformation, aligning with its broader goals of climate neutrality and zero pollution.

European Landmark AI Act Takes Effect: Setting Global Standards for Trustworthy AI

On 1 August 2024, the AI Act came into force, marking the world's first comprehensive regulation aimed to ensure that AI developed and used within the EU is trustworthy and respects fundamental rights. This groundbreaking legislation aims to harmonise the internal market for AI in the EU, fostering innovation and investment while safeguarding citizens from the potential risks associated with AI technologies.

The AI Act categorizes AI systems based on their risk levels, from minimal to unacceptable risks. Minimal-risk systems, such as AI-enabled spam filters, face no obligations, while high-risk systems, like those used for recruitment or loan assessments, must comply with strict requirements. Additionally, the Act imposes a ban on AI systems deemed to pose an unacceptable risk to fundamental rights, including certain types of biometric identification and predictive policing.

Moreover, the AI Act introduces rules for general-purpose AI models, ensuring transparency along the value chain and addressing systemic risks associated with highly capable AI systems like those used for generating human-like text. Member States have until 2 August 2025 to designate national authorities responsible for enforcing these rules, with the EC's AI Office playing a central role in oversight.

To support the transition, the EC has launched the AI Pact, encouraging developers to adopt key obligations voluntarily ahead of the official deadlines. Additionally, the EC is developing guidelines and co-regulatory instruments, including standards and codes of practice, to facilitate the effective implementation of the AI Act. The majority of the Act's rules will apply from 2 August 2026, but prohibitions on the highest-risk AI systems will take effect earlier.

This regulation positions the EU as a global leader in AI governance, setting a precedent for how AI should be managed responsibly to balance innovation with public safety and fundamental rights.

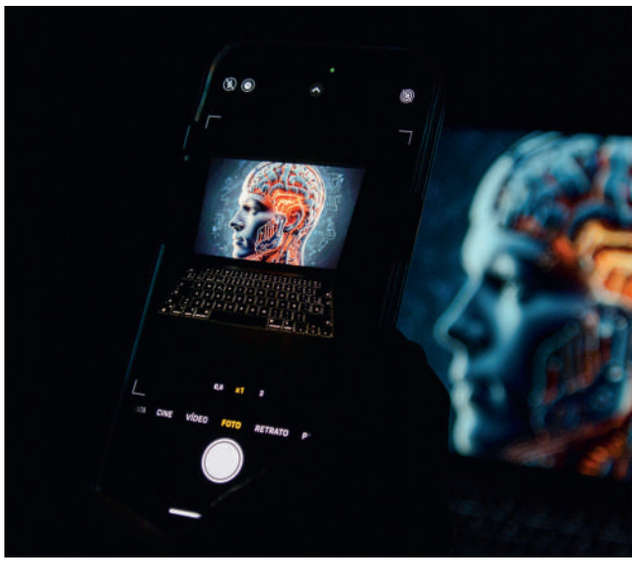
EDPB Boosts Data Protection: EU-U.S. Data Privacy Guidance, and EuroPriSe Certification

On 17 July 2024, the European Data Protection Board ("EDPB") adopted several important statements and documents aimed at enhancing data protection and regulatory coordination, including recommendations on the role of Data Protection Authorities in the AI Act, ("EDPB") on the EU-U.S. Data Privacy Framework, and the approval of the EuroPriSe Criteria Catalogue for a European Data Protection Seal.

The EDPB recommended that DPAs should be designated as Market Surveillance Authorities ("MSAs") under the AI Act. This designation would enhance the coordination and enforcement of AI and data protection laws. The AI Act requires EU member states to appoint MSAs by 2 August 2025. The EDPB's statement emphasizes that DPAs, due to their expertise in AI's impact on fundamental rights, are well-suited for this role. The EDPB also suggests clear cooperation procedures between MSAs and other regulatory authorities and calls for the EU AI Office to work closely with DPAs.

Secondly, the EDPB issued two FAQ documents to clarify aspects of the EU-U.S. Data Privacy Framework, one for individuals and one for businesses. The FAQs for individuals explain how to benefit from the framework, lodge complaints, and understand the complaint-handling process. The FAQs for businesses outline the eligibility of U.S. companies to join the framework and provide guidance on transferring personal data to Data Privacy Framework-certified companies.

Finally, the EDPB approved the EuroPriSe Criteria Catalogue for certifying processing activities carried out by processors, establishing it as a European Data Protection Seal. This seal serves as a valuable tool for GDPR compliance, enhancing transparency and trust in data processing products, services, and systems. The EuroPriSe certification scheme was updated to be applicable throughout the EU/EEA, following an earlier recognition in Germany in September 2022.



New Rules for Cross-Border Data Transfers under Turkish DPA

On 10 July 2024, the Turkish Data Protection Authority ("DPA") published the Regulation on Cross-Border Transfers of Personal Data ("Regulation"), which takes immediate effect. The Regulation is part of significant amendments made to the Law on Personal Data Protection ("PDPL"), effective as of 1 June 2024, aimed at aligning the PDPL with the EU General Data Protection Regulation. It establishes a structured framework for managing cross-border data transfers to ensure compliance with the Regulation and minimise the risk of fines.

In the Regulation, terms like 'Cross-Border Transfer of Personal Data,' 'Data Exporter,' and 'Data Importer' are clearly defined, providing a concise understanding of these concepts.

According to the Regulation, the DPA is authorised to issue an 'adequacy decision' recognising certain countries or organisations that are proven to provide a sufficient level of comparable data protection. These decisions are to be reevaluated every four years considering factors such as compliance with international agreements, the efficacy of data protection authorities, and regulatory frameworks. In the absence of an adequacy decision, the rights and legal remedies of data subjects must be protected by using appropriate safeguards such as Standard Contractual Clauses ("SCC"), Binding Corporate Rules ("BCR"), undertakings, and special transfer reasons for public institutions and organisations or professional organisations that qualify as public institutions. Comprehensive instructions are given on how to implement and notify the DPA of SCCs. Any modifications made to SCCs must be reported within five business days to maintain integrity and enforceability. For multinational companies, the Regulation specifies the process for obtaining DPA approval for BCRs, ensuring consistent data protection across corporate groups. BCRs must be legally binding and enforceable and include provisions for adequate protection of data transfers incorporating relevant information such as the goal, scope, legal foundation, rights of data subjects, and technical safeguards.

Applications must include necessary documents and translations. Non-recurring data transfers are permitted under specific circumstances where there is no adequacy decision or alternative safeguards. These transfers must not be part of regular business operations, should occur only occasionally, and must not represent ongoing activities.

In conclusion, the Regulation aims to enhance data protection standards and ensure robust mechanisms for the secure transfer of personal data across borders, emphasising the importance of compliance and accountability for data controllers and processors.

DPA Addresses Data Breach Concerns: Call for Vigilance and Enhanced Data Security

Amid recent claims of a massive data breach affecting the personal information of 108 million citizens, the DPA has issued a statement to reassure the public, emphasizing that it has not received any official notifications regarding such incidents. This announcement aims to quell public anxiety while reinforcing the DPA's role as the primary guardian of personal data rights under Turkish law.

The DPA, established under the Personal Data Protection Law No. 6698, wields significant authority to ensure compliance with data protection regulations. Article 22 of the law empowers the DPA to investigate allegations of unauthorized data processing, take necessary temporary measures to prevent further risks, and impose administrative sanctions on violators. Complementing this, Article 12 obligates data controllers to adopt effective technical and administrative measures to protect personal data from unauthorized processing and access. Moreover, in the event of a confirmed data breach, data controllers must notify the DPA and affected individuals within 72 hours, enabling immediate action to address potential harm.

The recent media reports about the potential compromise of sensitive data on such a large scale have caused widespread concern. However, the DPA's assertion of no formal breach notifications raises questions about the accuracy of these claims or the transparency of involved parties. This situation is particularly concerning, as it mirrors a pattern observed during the pandemic when similar allegations of significant data leaks surfaced. In response, the DPA has proactively initiated investigations and is actively coordinating with relevant public institutions to uncover any potential threats and ensure accountability.

While the DPA's commitment to transparency is commendable, the recurring nature of such reports underscores the urgent need for heightened data security measures across all sectors. Organizations must prioritize robust safeguards to prevent unauthorized access, while individuals should remain vigilant about protecting their personal information. Additionally, the DPA must remain steadfast in enforcing strict compliance with existing laws while adapting to emerging challenges in data protection.

This incident serves as a stark reminder of the critical importance of collaboration among regulatory authorities, organizations, and the public to protect personal data in an increasingly interconnected digital age. Only through sustained vigilance and proactive measures can the risks of data breaches be minimized and public trust in digital systems be preserved.

Standard Contractual Clauses for Cross-Border Data Transfers

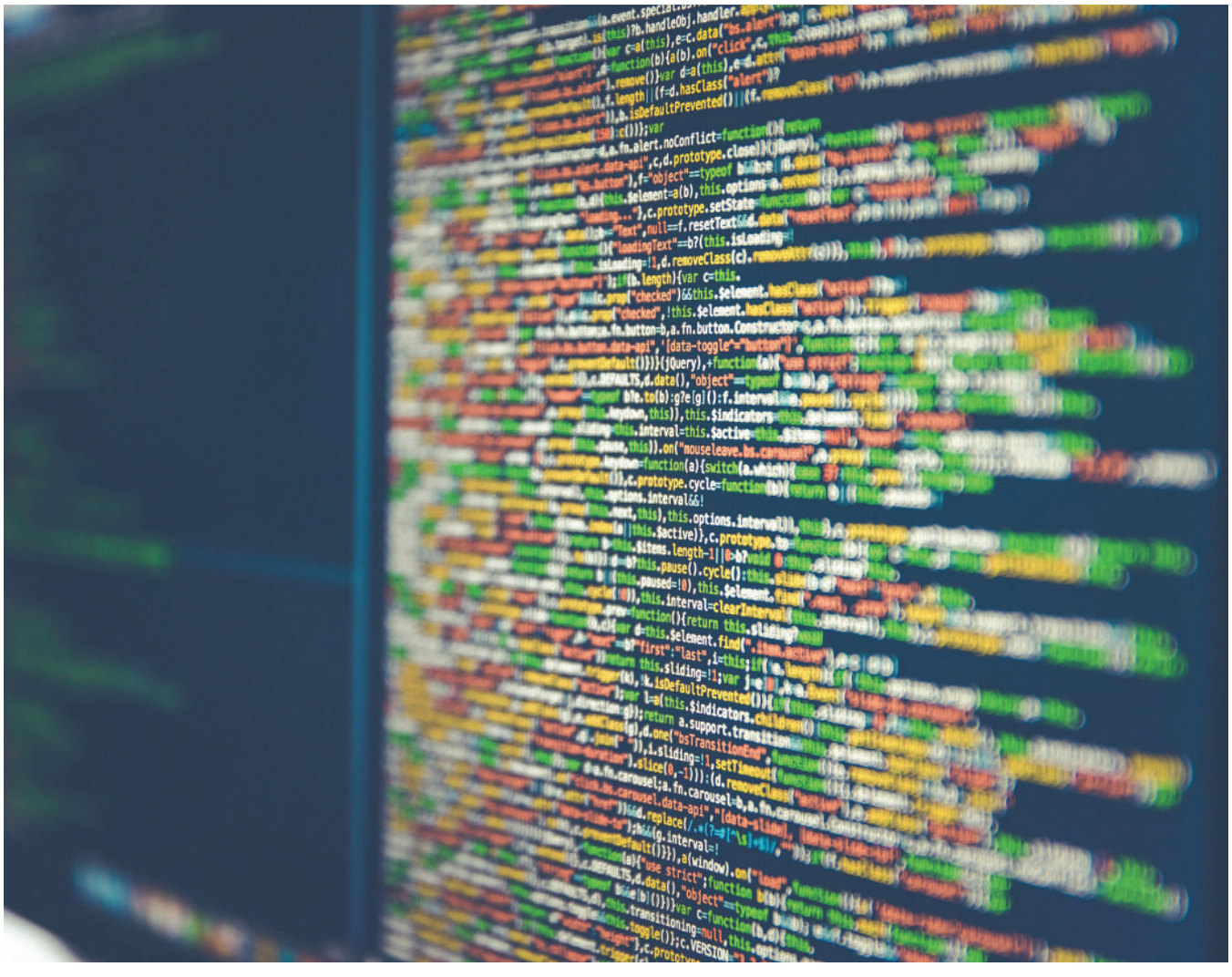
In July 2024, the DPA has officially finalized and approved the draft documents for SCCs and BCRs, recognizing them as valid mechanisms for safeguarding cross-border transfers of personal data under the PDPL. These newly approved safeguards, along with their guidelines and application forms, are now available on the DPA's website for public reference and implementation.

The adoption of SCCs and BCRs as legal frameworks for global data transfers aligns with the amendments made to Article 9 of the PDPL. These amendments, introduced by Article 34 of the Law Amending Certain Laws, Including the Code of Criminal Procedures, clarify and solidify the legal basis for such mechanisms. SCCs and BCRs serve as critical tools to ensure that personal data transferred to foreign jurisdictions remains protected and compliant with the stringent requirements of Turkish data protection law.

The approval process for these mechanisms was comprehensive. The DPA initially prepared draft versions of the SCCs and BCRs and opened them for public consultation, inviting feedback from stakeholders, industry experts, and the general public. After considering the input received, the DPA, in its decision numbered 2024/959 and dated June 4, 2024, formally approved the final documents. These include the final versions of SCCs, application forms for entities seeking BCRs, and detailed guidelines on the adoption and application of BCRs within organizations.

The DPA's announcement aims to ensure transparency and compliance with the updated regulations governing international data transfers. By adopting SCCs and BCRs, organizations operating in Turkey can now establish legally sound and internationally recognized frameworks for transferring personal data to other countries, addressing concerns about privacy and data protection in the global digital economy.

These mechanisms provide a dual advantage. SCCs offer pre-defined contractual terms that entities can adopt to ensure compliance when transferring data to external parties in foreign jurisdictions. BCRs, on the other hand, cater to multinational corporations seeking to establish internal rules for global data flows within their corporate group, ensuring that data protection standards are upheld across all subsidiaries and affiliates. The DPA's decision underscores its commitment to harmonizing local data protection practices with global standards, fostering trust in cross-border data transfers, and ensuring the protection of individual rights. This move not only strengthens the legal framework for international data transfers but also provides clarity and assurance to businesses navigating the complexities of global data protection compliance.



TCA Sets Precedents in FMCG Sector: Key Takeaways from Recent Decisions on RPM

By Mustafa Ayna, Arda Diler, Selim Turan, and Mithat Can Kaçar

Introduction

Resale price maintenance has always been an area of heightened focus for the Turkish Competition Authority. To understand its approach to such cases, we would like to bring to your attention several precedents, particularly focusing of the fast-moving consumer goods sector. In May 2024, the Turkish Competition Authority published the reasoned decisions from two separate investigations involving suppliers in the FMCG.

1. The Uludağ Settlement Decision

(Erbak Uludağ Pazarlama Satış ve Dağıtım A.Ş)

The TCA's investigation into Uludağ addressed allegations that the company enforced RPM among organized retail sellers. Through a settlement, Uludağ acknowledged that its practices constituted RPM under Article 4 of the Competition Law. The TCA's on-site investigation uncovered 26 pieces of evidence showing Uludağ's strategy to enforce resale prices. For instance, one internal communication from Uludağ stated:

"Friends, as you know, shelf prices have increased in national supermarkets. There should be no local supermarket that does not raise its shelf prices; otherwise, there will be a problem (Evidence 4)."

The TCA noted that this indicated Uludağ's intent to maintain consistent shelf prices across both national and local markets. Additional internal correspondence revealed that Uludağ enforced sanctions by "suspending delivery" to retailers who set "low" or "spoiled" prices, as illustrated by the message:

"Both companies were not provided with these products on the relevant dates due to their spoiled prices, and their purchasing managers were also contacted and warned not to sell our products below the prices we recommended (Evidence 2)."

In another instance, Uludağ directed local market chains to observe minimum prices, specifying:

"Local market chains may participate in the campaign under the control of regional managers, provided that they do not spoil the price (minimum shelf price of 1 litre, 2.25 TRY and 2 litres, 3.95 TRY) (Evidence 3)."

External communications with local retailers also reinforced these practices, as shown in one message to GIMSA:

"The price of Nevgros lemonade is TRY 2.00 as of today, but I kindly request you increase the price to TRY 2.00 immediately as of today (Evidence 1)."

Through this settlement application, Uludağ acknowledged that its behaviours towards its buyers constituted resale price maintenance within Article 4 of the Turkish Competition Law. The TCA concluded that Uludağ's methods included (i) monitoring shelf prices, (ii) intervening when prices fell below the set level, (iii) incentivizing compliance through discounts, and (iv) applying pressure mechanisms, like delivery suspension, to maintain the resale prices. Ultimately, the TCA determined a base fine of TRY 22,442,256 (EUR 873,920), which was reduced to TRY 16,831,692 (EUR 655,440) following a settlement discount.

2. The Pasta Sector Decision

The TCA also conducted an investigation into allegations that Nuh Makarna and its distributor İsra Gıda attempted to maintain resale prices. However, the TCA found insufficient evidence to support a violation of Article 4 of the Turkish Competition Law. The TCA reviewed internal communications at Nuh Makarna, including one directive:

"As of 1 February 2018, the price of our Nuhun Ankara 500 gr pasta insert (Action) in local and national markets in all regions should fall not below TRY 1.55… I kindly request your sensitivity regarding this matter."

Despite such recommendations, the TCA found no action or intervention enforcing these prices. Similarly, İsra Gıda's communications did not indicate collusion or RPM practices. For example, in correspondence between İsra Gıda and a retailer:

"The shelf prices of pasta at local markets in our region have been updated to TRY 5.95. We kindly ask you to update the shelf prices accordingly."

Follow-up checks confirmed that the retailer remained free to set prices above the recommended level, indicating no restrictive agreements were in place. Consequently, the TCA imposed no fines on either company.

Conclusion

The TCA's decisions on Uludağ and the pasta suppliers underscore its firm approach to RPM in the FMCG sector, particularly since the pandemic. These cases highlight the importance of concrete evidence, such as directives to "correct" or avoid "spoiled prices," as key indicators of RPM. The Uludağ decision also reflects a trend toward settlements in TCA investigations, offering insights into RPM enforcement moving forward.

From Compliance Challenges to Best Practices: Key Takeaways from the Ethics Summit Fireside Chat

At the 11th International Ethics Summit hosted by Etik ve İtibar Derneği ("TEİD") - the Ethics and Reputation Society, Dr M. Fevzi Toksoy led a fireside chat with Ninette Dodoo of Freshfields, offering attendees an engaging discussion on competition law compliance.

Ninette shared her deep expertise, covering recent trends and addressing critical challenges in compliance. The conversation highlighted the complex, shifting regulatory landscape and the risks of severe penalties and reputational impacts, emphasizing that a one-size-fits-all approach is ineffective due to varied regional rules and case-specific nuances.

Key insights from the discussion included the importance of strong leadership support, a commitment to integrity, and the necessity of a robust competition compliance program.

Our thanks to TEİD for orchestrating a day filled with enriching talks and for fostering a space that connected esteemed speakers with an active audience.

Engaging Global Perspectives at the Lear Competition Festival in Rome

It was a pleasure to return to the Lear Competition Festival ("LCF") in the Eternal City of Rome! This year, we explored labour markets across EU, US, UK, and Turkish jurisdictions, sparking enriching discussions with our esteemed panelists: Dr M. Fevzi Toksoy, Bahadır Balkı, Pınar Akman, Ermelinda Spinelli, and Valeria Losco.

The festival once again provided an outstanding platform to connect with thought leaders and peers from around the world. Heartfelt thanks to Paolo Buccirossi, Silvia Caporale, and the LCF team for the flawless organization!

Introducing the First Global Competition Law Dictionary: Now Published

We're thrilled to announce the publication of Concurrences' Competition Law Dictionary. ACTECON, represented by Dr M. Fevzi Toksoy, Bahadır Balkı, Hanna Stakheyeva, and Ayberk Kurt, is honoured to contribute to this pioneering global project dedicated to competition law. Edited by esteemed experts Deborah Healey (UNSW), Bill Kovacic (The George Washington University), Pablo Trevisán (IDC), and Richard Whish (King's College London), this is the first dictionary exclusively authored by competition law professionals.

Featuring over 220 key definitions, this resource is essential for understanding the intricacies of global competition law, economics, and policy.

Access the free electronic version here:
https://lnkd.in/dUpKtSzQ or order the paperback here: https://lnkd.in/dZarwxsA.

ACTECON Engages Future Legal Leaders at ELSA's Summer Law School

Our Senior Associate Ayberk Kurt presented an insightful session at ELSA's Summer Law School, exploring Türkiye's merger filing regime and sharing key precedents from the Turkish Competition Authority.

We at ACTECON are grateful for the opportunity provided by ELSA to connect with the next generation of international legal professionals and share our expertise on this essential topic.

Çamlıca Köşkü - Tekkeci Sokak No:3-5 Arnavutköy - Beşiktaş 34345 İstanbul - Türkiye
+90 (212) 211 50 11
+90 (212) 211 32 22
info@actecon.com www.actecon.com

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