Rows	Title	Abstract
1.	Considering antitrust frameworks for multi-Sided markets by assessing the competitive effects of digital platforms	**Introduction** Digital platforms like social media, e-commerce, and search engines exemplify multi-sided markets, facilitating interactions between distinct groups of users. Their indirect network effects, pricing strategies, and competitive dynamics pose challenges for traditional antitrust principles developed largely for one-sided markets. This calls for rethinking antitrust approaches to effectively address emerging competition issues in the digital platform economy. **Background** The digital platforms gain tremendous economic influence, their impact on competition requires re-examining traditional concepts of market definition, dominance, vertical restraints, and effects analysis tailored for one-sided settings. Market definition predicated on direct substitution often misrepresents platform competition driven by cross-side network effects. Relying purely on market shares underestimates potential dominance in platform contexts where winner-takes-most dynamics apply. Complex platform pricing models also complicate theories of harm based on price discrimination and predatory pricing designed for traditional markets. **Objectives** This study reviews limitations of current antitrust tools in assessing multi-sided platforms and proposes more tailored analytical frameworks. It aims to provide guidelines for authorities to account for platform differences in market definition, analyzing dominance, evaluating efficiencies and exclusionary effects, and prohibiting anticompetitive conduct. The goal is balancing innovation incentives and competitive risks in the platform economy. **Methodology** Doctrinal analysis of case law and academic literature identifies where existing theories of harm and tests fall short regarding platforms. Comparative study of international approaches supplements this. Proposed adaptations are applied to real-world cases for analysis. **Results** • Effects-based analysis grounded in empirical examination of competitive conditions rather than reliance solely on market shares

		• Factor business model differences into market definition • Set adjusted thresholds for dominance in platform contexts • Evaluate efficiencies, exclusionary conduct, and vertical restraints more holistically • Prohibit anticompetitive agreements based on overall impacts across platform sides **Recommendations** Specific guidelines for authorities propose legal and policy reforms to implement new tailored frameworks for asserting jurisdiction, defining markets, analyzing dominance, and prohibiting anticompetitive conduct regarding platforms. More economist and tech expertise is advised to develop solutions fitted for the platform economy. Greater international coordination would enable learning and convergence. **Conclusion** The digital platforms rapidly disrupt traditional markets; competition policy must also evolve apace. Rethinking antiquated antitrust toolkits can help stimulate innovation while addressing new challenges related to platforms' market power. This study provides timely analysis and principles to guide necessary adaptation of legal constructs for the platform economy. With tailored rules and expertise, authorities can balance innovation incentives and competitive risks in this complex, fast-changing space.
2.	The Distinction Between Brute Force and Law: An Evaluation of Turkish Competition Penal Policy	"*As soon as competition law began to rebuild the safeguards of criminal procedure law with the aim of preventing violations of free market competition in the most effective way, the basic principles of procedural law could not find a place for themselves in competition law. Thus, competition law has turned into a criminal policy operated at the expense of the rule of law* (Baur / Holle (ZWeR , 2022/4) P. 467)." The two most important issues that distinguish a gang from a state when it comes to punishing someone are; Punishment can be justified for the punished and the punisher is subject to deontological limits - independent of benefit and effectiveness analysis - when using this power to punish. In short, what allows us to distinguish punitive law from brute force is " justifiability towards the punished" and "deontological limits to which the state is subject ". The basis of *Baur / Holle* 's criticism of German competition law, shared in the introductory sentence, is the Law on Amending the German Competition Law, which expands the powers of the German competition authority to request information and documents. Authors, legal entities and real *persons He* harshly criticized the differentiation of trial guarantees in terms of the *tenetur principle, with the expression " criminal policy operated at the expense of the rule of law* ". Based on this justified criticism, it is necessary to rethink Turkish competition (misdemeanor

		and criminal) law on the axis of the distinction between brute force and law. As a matter of fact, the Ford Automotive Decision (Application No. 2019/40991), in which the Constitutional Court (AYM) justified that the duty of the state to ensure free market competition outweighs the freedom of enterprises to operate and the rights to freedom and security of individuals, stated that in the current law, the Turkish competition criminal policy is based on the rule of law. It could not go beyond admitting that it was operated at an expense. The Constitutional Court made an inadequate examination in terms of legality and *ne bis in idem* principles and RKHK art. The unconstitutionality of the investigation procedures regulated in Articles 14 and 15 is only possible due to the mistake made in Article 1 of the Constitution. It was evaluated within the framework of the housing right regulated in 21/1. The question aimed to be answered by this study is: " **Is the Turkish competition criminal policy operated at the expense of the rule of law?"** In order to answer this question, problem areas will first be determined. These areas are the " justifiability " of the use of force on which this punishment or claim is based, against the enterprises that are punished or alleged to be punished, and the "deontological limits" of the state's competition penalty policy. In this regard, the following questions arise: (i) In competition investigations, *negativity* against real persons or legal entities suspected of committing competition crimes *How will the principle of tenetur* be applied? (ii) In competition investigations, is there "unlawful evidence"? (iii) Is it compatible with the principle of the rule of law to reduce the penalty of real or legal persons under the name of "settlement" with real or legal persons who are suspected of committing competition crimes, in return for their confession and waiver of the guarantee of judicial remedy? (iv) Can the effect of "final judgment in material terms" be granted to the decisions made regarding the undertakings that were punished for committing a competition misdemeanor or acquitted against the allegation that they committed a competition misdemeanor? (v) "To what extent" and "to what extent" is the principle of legality and fault recognized in competition law? Although these five problematic areas seem separate from each other, they fundamentally intersect in terms of "justification of punishment" and "deontological boundaries" of the state. *nemo While the principles of tenetur* , *ne bis in idem* , fault and legality draw the boundaries of the state's criminal policy, legal evidence is about the justification of the enterprise's "consent" to be punished under the name of "consensus". While Turkish competition criminal policy will be evaluated in terms of procedural law through these problematic areas, necessary solution suggestions will also be presented. **Key Words:** Turkish competition penalty policy, nemo tenetur , ne bis in idem, legality, culpability, compromise.
3.		

	Market Research and Information Exchange Activities by Associations of Undertakings in Light of Recent Decisions of The Turkish Competition Board	Enterprise unions; It conducts market research, collects data from its members and shares the collected data with its members and the public for various purposes such as ensuring predictability in the relevant sector, increasing investments, developing sectoral policies and providing information to public authorities. The mentioned activities constitute the exchange of information between competitors in the context of competition law, and applications are frequently made to the competition authorities to issue a negative determination certificate or grant an exemption for such practices. These activities carried out by enterprise associations; This can lead to activities such as eliminating the problem of information asymmetry, enabling enterprises to compare themselves with their competitors, planning stocking and supply processes, and reducing research costs for consumers. On the other hand, competition may be restricted if such practices enable undertakings to have information about the market strategies of their competitors. When evaluating the mentioned information exchanges, competition authorities take into consideration issues such as market transparency, degree of concentration, market shares of the relevant undertakings, nature of the information shared, frequency of information exchange and whether the data is aggregated or not. In recent decisions of the Competition Board ("Board"), various data sets have been evaluated as being sensitive to competition; Different determinations have been made in terms of data sharing frequency and data obsolescence periods compared to the decisions made in previous years. In addition, different approaches have been put forward in negative determination and exemption applications, which are similar in content. For example, in 2020 given *IMDER I*[1] in his decision; To İMDER member Enterprises with companies constitute 95% of the market and will be shared the one which... data between attempt based sales amount No negative determination certificate was given to the application, and no exemption was granted. The Board adopted a very similar approach with *the İMDER I decision on the same day as İSDER.*[2] In its decision, it rejected the requests for a negative determination certificate or exemption for the relevant application. *İMDER II* [3]awarded in 2022 In its decision, issues such as the change in the type of data subject to the previous application, its geographical region, the frequency of sharing, and the transition

[1] Board's decision dated 19.11.2020 and numbered 20-50/688-302 decision .
[2]Board's decision dated 19.11.2020 and numbered 20-50/687-301.
[3]Board's decision dated 07.04.2022 and numbered 22-16/269-121.

		from enterprise-based sharing to collective sharing were evaluated and a negative determination certificate was given to some shares, while individual exemption was granted to other shares "in order to see the effects of the sharing in the market". *SERFED I,*[4] which was given in 2020 with the opposing votes of one rapporteur and one Board member. In its decision, a negative determination certificate was not given for the information exchange subject to the application and no exemption was granted; *SERFED II* [5]awarded in 2022 In the decision, individual exemption was granted to the application regarding changing the information sharing frequency and data aging period. In addition, in these decisions, data such as the electrical energy consumption and carbon emission amount of the enterprises were also considered as strategic information. *OSD III* [6]released in 2021 in his decision; The relevant application was given a negative determination certificate, considering that the data planned to be collected and shared were cumulative, did not affect the sales and pricing decisions of the undertakings, did not create coordination, and would not have a market closing effect. Similarly, *TÖDEB given in 2022*[7] In his decision; It was decided to give a negative determination certificate to the relevant application, stating that the data to be shared will be sufficiently aged, that data will be shared at low frequency, that the market has a non-concentrated structure, that data sharing will be done in accordance with the legislative provisions, and that the information exchange will benefit the growth of the sector and potential investors. In this context, within the scope of the notification to be presented, the Board's recent decisions; It will be discussed comparatively with the past Board decisions and the approaches and legislation of different competition authorities, and the implementation methods accepted by the competition authorities will be tried to be put forward.
4.	Recent Decisions of The European Supreme Courts on Dawn Raids	In recent years, the number of on-site inspections carried out by the Competition Authority and the number of files imposed penalties due to obstruction of on-site inspection have increased significantly. Recently, the Constitutional

[4]Board's decision dated 20.08.2020 and numbered 20-38/526-234.
[5]Board's decision dated 22.09.2022 and numbered 22-43/638-268.
[6]Board's decision dated 21.10.2021 and numbered 21-51/714-355.
[7]Board's decision dated 01.12.2022 and numbered 22-53/806-332.

		Court (“AYM”) ruled that on-site inspections carried out without a judge's order violate the immunity of residence. [8]In addition, it is known that Article 15 of the Law on the Protection of Competition regarding on-site inspections is also being examined by the Constitutional Court. In this regard, on-site inspections are one of the most discussed competition law issues in our country recently. When we look at the European Union ("EU") competition law practice, which is the basis for Turkish competition law, we see that recently the Court of Justice of the European Union ("CJEU"), the European Court of Human Rights ("ECHR") and the high courts in the member countries have also made significant contributions regarding on-site review processes. appears to be making decisions. *Orde given* by the CJEU in 2022 *van Vlaamse In the Balies* [9]decision, it was established that the privilege of confidentiality between independent lawyers and their clients covers all communications between the parties, and that this privilege is not limited to communications regarding the exercise of the right to defense. In addition, *the Whirlpool decision of the French Supreme Court in 2022*[10] In its decision, it was ruled that correspondence prepared by consultants who are employees of the relevant enterprise and explaining the information and defense strategies conveyed by the independent lawyers of the enterprise benefit from the privilege of attorney-client privilege. *Prysmian decision* [11]of the ECJ in 2020 In its decision, it was stipulated that the European Commission could create copies of these documents and examine them on its own premises, regardless of the nature of the documents found on the drives of the computers of the employees of the enterprise where it carried out on-site inspection and their relevance to the subject of on-site inspection. *Kesko* decision of the ECHR in 2023 *Senukai*[12] In the dispute subject to the decision, an application was made to the Lithuanian Competition Authority (“LRO”) to destroy or return the documents in question, on the grounds that a large number of documents that were not related to the investigation were collected during the on-site inspection carried out

[8]Decision of the Constitutional Court dated 23.03.2022 and application number 2019/40991.
[9] Case C-694/20 *Orde van Vlaamse Balies and Others.*
[10] French Supreme Court dated 26.01.2022 and numbered 17-87.359 decision .
[11] C-601/18 P - *Prysmian and Prysmian Cavie System v Commission.*
[12] *UAB Kesko Senukai Lithuania v. Lithuania .*

		at the relevant enterprise. After the LRO rejected this application, the relevant enterprise filed a lawsuit before the local courts. However, local courts rejected the case on the grounds that trials could only be made on issues that would have legal consequences and completed investigations. After the dispute was referred to the ECHR, the ECHR decided that the local courts' abstinence from holding a trial violated the immunity of residence and freedom of communication and that the applicant enterprise should be provided with the right to judicial review. With three different decisions given in 2023, the ECJ ruled that the on-site inspections carried out by the French Competition Authority in supermarket operating enterprises were unlawful. The ECJ stated that the meetings with the suppliers of the supermarkets were cited as the basis for the on-site inspection decision, but it was understood that these meetings were not recorded, and ruled that the on-site inspection decision lacked legal basis due to the lack of concrete evidence revealing the relevant meetings, and annulled the on-site inspection decisions. Finally, *the Altadis decision of the Spanish Supreme Court ("IYM") in 2023*[13] In its decision, the on-site examination panel stated that there was "no court decision that would prevent an on-site examination" when asked whether permission was obtained from the court for an on-site examination. However, upon understanding that there was no court permission, a lawsuit was filed by the relevant enterprise for the cancellation of the on-site inspection and the return of the documents received from the enterprise. In this context, the IYM ruled that the answer given by the on-site inspection committee to the question of whether there was court permission was misleading and invalidated the consent of the plaintiff enterprise for an on-site inspection, and decided to cancel the on-site inspection and return the documents collected. In this regard, within the scope of the presentation, the above-mentioned decisions will be discussed in comparison with Turkish competition law, and past decisions and practices will also be mentioned.
5.	Turkish Competition Authority as an Independent Regualtory Agency in the Presidential Government System	The emergence of independent administrative authorities or regulatory supervisory organizations is explained by many reasons. Some of these reasons are to ensure that markets function properly and are supervised by institutions that require expertise and are free from political influence, that it is wrong for the State to be both referee and player, and that globalization requires impartial institutions. The Competition Authority was established as an independent

[13] IYM's decision dated 28.02.2023 and numbered 253/2023.

		administrative authority in accordance with the Law on the Protection of Competition No. 4054 ("RKHK") for the purpose of "ensuring the formation and development of goods and services markets in a free and healthy competitive environment". The Competition Authority, which is responsible for protecting competition and taking action to ensure the re-establishment of this order in line with the powers given to it in the law when disruptive behavior occurs, carries out economic law enforcement activities and acts in the field of fundamental rights and freedoms. In this regard, the independence feature of the Competition Authority, which is one of the distinguishing features of independent administrative authorities and is granted to strengthen the position of these authorities vis-à-vis the executive, is of importance. Although the Constitution of the Republic of Turkey does not explicitly guarantee the independence of the Competition Authority, it allows the interpretation that this institution should be independent. RKHK also underlines the independence of the institution and provides various guarantees. However, the powers of the central administration over the Competition Authority, amounting to administrative tutelage, can be determined. In the European Union Commission 2023 Turkey (Country) Report, although it is said that the Competition Authority has independence guarantees, there are determinations that the regulatory institutions are not independent. This work Within the scope of this study, it is planned to first address the Competition Authority in general. In this context, the authority and duties of the institution in terms of fundamental rights and freedoms must be determined within the scope of economic law enforcement activities. It is aimed to demonstrate the importance of intervening in markets in terms of competition and the independence feature, with constitutional justifications. Secondly, it is planned to evaluate whether the Competition Authority is independent as an administrative authority. During and after the transition to the Presidential government system, with guarantees to ensure the independence of the institution central administration the one which... President's Rivalry of the institution Their authority over their organs and operations must be demonstrated. In this context, after theoretically evaluating how organic and functional independence can be achieved, basically examining the RKHK, the Decree Law No. 375, the Presidential Decree No. 3 on Appointment Procedures for Upper Level Public Administrators and Public Institutions and Organizations and the Presidential Decree on the Official Gazette No. 10. is planned. While carrying out this review, the status of the envisaged powers against the hierarchy of norms must also be evaluated. In addition to what the powers in question are, it is important to evaluate how these powers should be interpreted, considering the purpose of the Competition Authority's establishment. Within the scope of this study, it is aimed to comparatively evaluate the independence of competition authorities in the United States law, where the first examples of independent administrative authorities are encountered.

		Key words: Competition Authority, Independent Administrative Authorities, Independence, Presidential Government System
6.	Pricing Algorithms – How do they work? When do they cause for concern? How to examine?	Pricing algorithms have been in the spotlight of competition authorities[14] and international organizations[15] in recent years. In recent months, the Competition Authority announced an investigation into three major e-commerce platforms that implement automated pricing mechanisms.[16] Thus, not only in other countries but also in Turkey, pricing algorithms will be at the center of competition law discussions in 2024. We have prepared this study in order to contribute to the debate from both a legal and an economic perspective. In doing so, we have concretely sought answers to the following three questions: What is a pricing algorithm and how does it work? Under what circumstances might it potentially raise concerns in terms of collusion? Is there a need for a change in the current competition law approach when analyzing concerns about algorithms? In the first part of the study - although it is difficult in terms of its diversity and functionality - we examined pricing algorithms in two basic categories in order to reveal the differences in the concerns they may create in terms of competition law. Based on the emerging literature, we divided them into two: (1) "rule-based algorithms" and (2) "learning algorithms". [17]We reinforced it with real-life examples for better understanding. We found that making a distinction based on the type of algorithms (origin) rather than the type of collusion (outcome), as is done in the literature [18]or in the reports of competition authorities, [19]helps us better understand competition law concerns.

[14] See . Bundeskartellamt and Autorité de la Concurrence, "Algorithms and Competition," 2019; CMA, "Algorithms: How They Can Reduce Competition and Harm Consumers," 2021.
[15] OECD, "Algorithms and Collusion: Competition Policy in the Digital Age," 2017.
[16]Competition Authority announcement. Access date 01.12.2023, https://www.rekabet.gov.tr/tr/Guncel/d-market-elektronik-hizmetler-ve-ticaret-2166a359be83ee118eca00505685da39 .
[17] See . Lea Bernhardt and Ralf Dewenter , "Collusion by Code or Algorithmic Collusion? When Pricing Algorithms Take Over," *European Competition Journal* 16, no. 2–3 (2020): 312–42; Emilio Calvano et al., "What Implications of Algorithmic Pricing for Competition Policy?, " *Review of Industrial Organization* 55, no. 1 (2019): 155–71.
[18] See . Ezrachi , Ariel and Maurice E. Stucke, "Artificial Intelligence & Collusion: When Computers Inhibit Competition," *University of Illinois Law Review* 2017, no. 5 (2017): 1775–1810.
[19] See . CMA, "Pricing Algorithms Economic Working Paper on the Use of Algorithms to Facilitate Collusion and Personalized Pricing," 2018.

		In the second part, considering that the most critical concern about algorithms is pricing collusion, we discussed whether algorithms play an additional role in collusion. We aimed to reveal the possible effects of different types of algorithms in establishing and maintaining collusion in a simple and understandable way through game theory. Taking into account the emerging literature, our findings showed that rule-based algorithms and learning algorithms may have different implications for collusion. In the third part, while examining the concerns about algorithms, we questioned whether there is a need for a change in the current understanding of competition law. Within the framework of our conclusions in the first two sections, the preservation of the current competition law approach in terms of rule-based algorithms - seeking the existence of an agreement, agreement of will, etc. – We have come to the conclusion that it is necessary. For learning algorithms, we saw that the current understanding of competition law may need a revision in terms of both the establishment and maintenance of collusion. We also touched upon new experimental studies on this subject and pointed out that the debate will be shaped by the attitude of competition authorities in the coming period.
7.	A New Paradigm in Competition Law: Digital Ecosystems	When we look closely at successful companies operating in digital markets, we often encounter businesses with a wide range of products and services integrated into each other. The number of these companies, which offer consumers multiple products and services together, as an 'ecosystem', is rapidly increasing, and a large portion of companies, especially those new to digital markets, are adopting "ecosystemisation" as a strategy. Indeed, according to a forecast made by McKinsey & Company in 2019, it is predicted that 30% of the world economy will consist of companies (in other words, ecosystems) that provide integrated products and services, such as Amazon, Alibaba, Google and Facebook, in the next decade [20]. In this regard, recently both *Competition oath markets* It is observed that the concept of 'ecosystem' is emphasized in the decisions of both *the Authority* (" ***CMA*** ") and the European Commission (" **Commission ") and the number of harm theories created around this concept is increasing.** Recent examples of this situation include the CMA's decision on

[20] Catherine Fong , Jess Huang, Kelsey Robinson and Kelly Ungerman , 'Prime Day ' oath the broad reach of Amazon's ecosystem ' (*McKinsey&Company*), https://www.mckinsey.com/business-functions/marketing-andsales/our-insights/prime-day-and-the-broad-reach-of-amazons-ecosystem#

		Amazon/ iRobot [21]and Microsoft/ Activision and the Commission's decision [22]on Booking / eTraveli [23]. As a matter of fact, one of the reasons why the Commission did not allow the Booking / eTraveli transaction in particular was directly stated as follows: “*The transaction would have allowed Booking to expand its travel services ecosystem* ”. In the light of these explanations, within the scope of the paper to be presented, the concept of ecosystem and the competitive characteristics of ecosystems will be discussed comprehensively. Subsequently, recent competition authority decisions, shaped within the framework of the ecosystem concept and especially mentioned above, will be examined in detail. As a matter of fact, although this concept has not yet found a place in the evaluations carried out by the Competition Board, it is seen that explanations about the concept of ecosystem have started to be included in the reports prepared within the scope of sector research. In this context, the evaluations included in the decisions of competition authorities and recent regulations in Germany, Italy, Greece and some other countries will answer the question of whether ecosystems can be evaluated with a differentiated evaluation methodology and the presentation will be completed with a model proposal.
8.	Killer Regulations	Subsequent to *Facebook/Instagram* and *Facebook/WhatsApp* transactions the opportunity cost of an another future Type-II error (i.e., cases of underenforcement) has increased dramatically for competition authorities. Concurrently -and to some extent consequently-, ever-increasing number of scholars and regulators started to raise their voices in opposition of the Big Tech and argue, in essence, that the “existing tests [and regulations] have to be adapted to the requirements and particularities of digital markets”. Confident that the “New Gilded Age” is imminent if not intervened (and unless its already present), the regulators intensified their focus on the digital sector. This preference towards over-enforcement, in parallel with an increasing emphasis given on type-II errors relative to type-I errors, has resulted in with implementations and/or proposals of new legislations, internationally.

[21]EU Commission Case No. *M.10920,* https://competition-cases.ec.europa.eu/cases/M.10920
[22]EU Commission Case No. *M.10646,* https://competition-cases.ec.europa.eu/cases/M.10646
[23]EU Commission Case No. *M.10615,* https://competition-cases.ec.europa.eu/cases/M.10615

		It is in my view that, some of these recent legislative and regulatory proposals are in odds with the fundamental principle of protecting competition not the competitors. Instead of focusing on competition itself, these proposals seem to impose requirements on certain companies in order to benefit their competitors, including those competitors who may have fallen behind because they did not behave prudently (i.e. not investing in their technology, innovation, or products/services). I argue that the regulatory behavior as such are symmetrically opposite with the very essence of competition law. As a result of the growing wave of enthusiasm for over-enforcement observed globally, and the enactment of the Amended E-Commerce Law along with ongoing discussions on implementing changes to the Law No. 4054 in Turkey, a need for drawing a limit for regulations has become necessary. Within this framework, I suggest the usage of the term "killer regulations'' for addressing highly targeted and value-destructive legislations not based on soundly shown [competition related] concerns which foresee asymmetric requirements/fines for the subjected undertakings. Accordingly, the Amended E-Commerce Law and the draft amendment to the the Law No. 4054 will be put on a three-step-test ((**i**) *Being "Highly Targeted";* (**ii**) *Being "Highly Value-Destructive";* (**iii**) *Not Being "Based on Soundly Shown [Competition Related] Concerns"*) to understand whether they posit the characteristics of a killer regulation. It is my preliminary assessment that while the draft amendment to the the Law No. 4054 shares some of these characteristics to a certain extent; it pales in comparison to the Amended E-Commerce Law which could be regarded as the epitome of killer regulations.
9.	Supplier-Retailer Communications' Growing Importance and Impact on the Competition Compliance Programs in the Light of the Competition Board's Recent Decisions on Retail Industry	In 2020, along with the pandemic and economic crisis, and the intense reaction of the consumer to these increases. Many industry players were party to more than ten investigations examining violation types such as collect-distribute cartel, resale price fixing, direct/indirect information exchange. WhatsApp or e-mail communications between supplier and retailer employees. Considering that supplier-retailer communications are extremely natural and frequent in a commercial order where one delivers the product it produces

		to the consumer on the shelves of the other, two basic questions have become important: (i) which statements are risky in terms of competition and (ii) can the average company employee know that these statements are risky? It is obvious that the Competition Authority's sanctions or the threat of sanctions have a significant impact on the competition awareness targeted by the compliance programs implemented in companies. For this reason, could this series of investigations initiated by the Authority in the retail sector have led to an increase in awareness throughout the sector? On the other hand, can this awareness enable the interpretation of the words and meanings in dozens of daily correspondences in terms of competition law? I would like to examine these questions in detail through examples from 5-6 important decisions made by the Competition Board in the retail sector in the last 3 years and present the subject from the perspective of the company lawyer in connection with the design of compliance programs from this perspective.
10.	Competition Law Rules Shaped by Supply Security and Competition Concerns between Warehouses: Distribution Agreements in the Pharmaceutical Industry	Although there is no competition law legislation specific to distribution agreements in the pharmaceutical sector in Turkey, the decisions taken by the Competition Board in this field have led to the formation of a practice that differs significantly from other sectors. From a historical perspective, it can be seen that the source of this different practice lies in the unique dynamics brought about by legal regulations specific to the relevant sector. In the pharmaceutical industry, the entire process, starting from the research and development phase until the product reaches the end user, is tightly regulated and competition conditions are inevitably shaped accordingly. For example, patent protection for drugs and rules regarding safety approval of drugs directly affect market entry barriers and concentration at the production level, and the effects of these regulations are felt globally throughout the industry. However, our study will focus on the effects of regulations regarding the pricing and distribution of pharmaceuticals on competition law practices in Turkey. It can be said that the mentioned regulations have two main effects on the pharmaceutical industry in Turkey. First of all, drug prices in our country remain at much lower levels than many countries, especially European Union member countries. Secondly, license obligations at the distribution level increase market entry costs, while price regulations limit the profit opportunities of warehouses. This situation also affects the motivations of the players at the distribution level and offers especially small-scale warehouses the opportunity to earn large profits by taking relatively low risks due to

their scale. However, parallel exports pose a significant threat to manufacturers, as low prices resulting from regulations in Turkey will reduce the profitability of pharmaceutical manufacturers in other countries. The most critical threat arising from parallel exports relates to supply security. As a matter of fact, if it becomes meaningless for pharmaceutical manufacturers to sell drugs in Turkey that have a high price difference with other countries, the supply of these drugs to our country may be stopped. Considering that the price difference may be high, especially for drugs that are under patent protection and do not have a generic, the supply shortage in these drugs may put public health at risk. Price regulations in our country make parallel exports more profitable as the Turkish Lira loses value against foreign currencies and increases the risk appetite of warehouses. As a matter of fact, as has been seen recently, pharmaceutical manufacturers complain much more about parallel exports in these times and may completely give up supplying some drugs to Turkey.

Various measures are taken to prevent parallel exports in our country. In addition, pharmaceutical companies try to prevent parallel exports through contractual obligations and control mechanisms for warehouses. However, these measures cannot provide sufficient deterrence, especially for small-scale warehouses. At this stage, the most reasonable solution for manufacturers is to cut off commercial relations with warehouses that are deemed to have a high risk of parallel exports and work with a limited number of warehouses. This is exactly where competition law rules enter into the equation.

The Competition Board is of the opinion that limiting the number of warehouses in which pharmaceutical manufacturers will operate may significantly limit competition, for reasons that were first [24]explained in detail in the 2007 Pfizer Decision and which can also be associated with regulations specific to the pharmaceutical industry. Within the framework of this opinion, the Board has consistently rejected the individual exemption requests of producers who cannot benefit from group exemption based on Communiqué No. 2002/2, for the establishment of a quantitative selective distribution system. Although it can be said that these decisions differentiate the practice in the pharmaceutical sector from other sectors, it is difficult to say that they create rules that are completely specific to the pharmaceutical sector. Two decisions that will support the argument that distribution agreements in the pharmaceutical industry are subject to completely unique rules are the 2009 Sanofi Aventis [25]and 2020 Janssen [26]decisions. In the first of these

[24]Competition Board's decision dated 02.08.2007 and numbered 07-63/774-281.
[25]Competition Board's decision dated 20.04.2009 and numbered 09-16/374-88.
[26]Competition Board's decision dated 03.09.2020 and numbered 20-40/553-249.

		decisions, the Board evaluated Sanofi Aventis' unilateral decision not to supply medicine to warehouses below a certain size as a violation of competition. The 2009 Sanofi Aventis decision went down in history as the only decision in which the Board penalized second level discrimination (even though the word discrimination is not included in the decision, it is not possible to base the determination of violation on a different theory of harm). In the second decision, the Board rejected the exemption request for the establishment of a quantitative selective distribution system for products that meet all the conditions stipulated for group exemption in Communiqué No. 2002/2, on the grounds that the relevant products are not suitable for selective distribution due to their nature. The 2020 Janssen decision went down in history as the only decision in which no exemption was granted to an agreement that met the group exemption conditions. Moreover, in the relevant decision, the fact that the statement " *With the Communiqué, exemption is granted to the selective distribution network regardless of the nature of the product* " in paragraph 172 of the Guide on Vertical Agreements is completely ignored, supports that it is a unique competition law practice in the pharmaceutical industry. In addition, the original rules created by the Board to protect small-scale warehouses have suffered a significant injury with the 2021 Allergan decision. [27]As a matter of fact, this decision states that the unilateral decision of pharmaceutical manufacturers to limit the number of warehouses in which they will operate will not constitute a violation of competition, thus showing that the attitude adopted by the 2009 Sanofi Aventis decision has changed. Although the decision does not contain any explanation about this change and its reasons, considering the timing of the decision, it may be possible to argue that the Board tends to prioritize concerns about preventing parallel exports. In our study, the history of distribution agreements in the pharmaceutical industry will be discussed from the perspective of regulation-market structure-competition relationship and by analyzing the sectoral regulations mentioned above and the Board decisions made in the past 15 years.
11.	Sustainability, Inequality, and Antitrust	Elegance does not sit well with competition law. It is not in the DNA of a discipline that is a political construct, intrinsically prone to ideological shifts, and shaped by a compound of societal variants. The tensions between the messy nature of antitrust on the one hand and the need for consistency and objectivity on the other foster an intrinsic existential 'permacrisis'. The discussion around whether competition policy should take non-economic goals into account is rich

[27]Competition Board's decision dated 25.02.2021 and numbered 21-10/129-54.

		and prolific. It is a dispute between those who are willing to sacrifice validity for the sake of reliability, and it leads to oscillations between workability and predictability. The acceptance that competition law can never be fully purified triggers an intense battle of policy goals. Not only can non-economic purposes run counter to efficiency; they may also clash with one another, thus potentially affecting antitrust in opposed fashions. Two concerns of global dimensions increasingly prominent in the goal discussion illustrate this tension: rising wealth inequality and the plight for sustainability. On the one hand, the alarming upward trend in wealth concentration has been linked to issues competition law may have the power to tackle, such as the intensification of unchallengeable market power. On the other hand, as pressure mounts on the business community to take action to mitigate climate change, it seems politically unacceptable to compel companies to invest in green initiatives if there is a risk that these might be punishable under competition law. From this perspective, *more* competition law enforcement is usually invoked as a means to help narrow the wealth gap, while *less* antitrust intervention is often portrayed as the best way to enable environmentally friendly collaborations. Despite the predominance of the more antitrust / less antitrust, it paints an incomplete picture. Wealth equality and sustainability need not, and most often do not, exert opposite forces on competition policy. In this seminar, we aim to construct a consistent path for competition policy to embrace non-economic goals without losing sight of its pivotal role in safeguarding the proper functioning of markets. Through a careful comparison of the US and EU regimes, and drawing on legal theory, we consider how environmental and equality considerations have shaped and influenced antitrust enforcement. On this basis, we will question the merits of the calls for laxer antitrust enforcement, and expound how robust enforcement may provide adjuvant protection to non-economic goals. We will explore strategies to maximize antitrust's social "ripple effect" within the boundaries of current antitrust policy. To assess these fundamental questions, the seminar will first consider whether there is any room for social pursuits in the (efficiency-focused) ideological framework that underpins contemporary antitrust policy. Thereafter, the two main routes for balancing competition and non-competition goals—less antitrust and robust enforcement—will be scrutinized. Finally, we will foster a critical reflection among the participants and build normative and policy proposals.
12.	New Development at the Front of the Compensation Cases	In Turkey, the practice of private law compensation arising from competition violations is still in its development stage, unlike the EU and especially the USA. Some compensation decisions ruled in this process in the cases filed after the

	Stemming from Competition Law Infringements: Efe Decision of the Court of Cassation and Inferences	Competition Board's decision dated 08.03.2013 and numbered 13-13/198-100, also known as the 12 Bank Decision to the public, and whose number can be expressed in thousands throughout the country, have constituted important milestones. However, ultimately, the Council of State overturned the decision of the İDDGK, Ankara 2nd Administrative Court's decision to reject the case in the annulment case filed against the Board decision containing the finding of violation, and the first instance court subsequently annulled the Board Decision in accordance with this decision, resulting in private law compensation application. Naturally, expectations regarding a decision that completes the judicial phase and allows inferences to be made regarding the course of the next process have naturally remained at a very low level. On the other hand, following the Competition Board's decision dated 12.06.2014 and numbered 14-21/410 regarding the abuse of dominant position in the raki market and finding a violation, the judicial steps were completed in the compensation case filed by a market player alleging that he suffered damage due to competition violation. With the very recent decision of the 11th Civil Chamber of the Supreme Court of Appeals (24.05.2023) and numbered E. 2022/495 K. 2023/3224, it was decided to partially accept the case. This new decision of the Supreme Court is suitable for making important inferences regarding the consequences of competition law violations in the context of private law practice and will undoubtedly bring about new legal discussions. In this study, first of all, a general evaluation of the situation in certain jurisdictions and in Turkey regarding private law compensation practices arising from competition violations will be included, and then, in the context of the above-mentioned high court decision, also taking into account the stages of the trial, the stage at which the case can be filed according to the Supreme Court decisions. , the parties to the case, jurisdiction, statute of limitations, the legal formulation of the claim for compensation, the approach thought to be adopted in calculating the damage, the scope of the damage, the relationship between the claim for non-pecuniary damage and the violation of competition will be discussed and inferences for the future will be included. Key Words: Competition Law, Private Law, Compensation, Calculation of Damages, Non-Pecuniary Damages
13.	Computational Antitrust: The Beginning of a New Era in Competition Law Enforcement	Computational antitrust (computational *antitrust*) refers to the process of making the practice more effective in the field of competition law by applying innovative methods and tools brought by technology. Concerning the practice of competition law, but not limited to these, i) detection and analysis of market conditions and enterprise actions and

		behaviors and implementation of necessary measures in this field, ii) effective implementation of concentration control, iii) making the provision of legal services in this field more effective, iv) Elements such as making the examination processes in the field of competition law faster and more efficient for undertakings and authorities can be improved computationally. They do not constitute the primary objectives of antitrust. computational the rise of the antitrust field and increasing technological integration in this field are triggering significant transformations in the operating methodologies of competition authorities and law firms. In this context, computational the importance of antitrust is increasing in parallel with the increasing complexity in understanding economics and market dynamics. This study is a computational It analyzes how antitrust is integrated into the practice of competition law and how this integration transforms legal practice. New challenges faced in today's competition law practice and computational solutions to these challenges While examining the solutions *that* antitrust can offer, we also examine artificial intelligence, automatic decision-making systems, computational merger investigations (*merger review*), document automation, cartel scanning (*cartel New opportunities and challenges created by tools such as screening* and electronic discovery are discussed. These new technologies expand the core functions of competition law, namely their ability to detect, analyze and intervene in anti-competitive practices. The scope of the study examines in depth how these technological tools are integrated into competition law practices and the effects of this integration on the operations of both competition authorities and law firms. In this context, in addition to the adaptation of these technological innovations to competition law practices, the transformation of traditional legal practices and the effects of this transformation on the future of competition law are analyzed. In addition, the study examines, with examples, the technological tools that can be used to enable the provision of consultancy services in the field of competition law. computational To shed light on pioneering work in the field of antitrust, Stanford University Codex Center's Computational Pioneering initiatives such as the Antitrust Project and the data provided by this project will also be mentioned within the scope of the study. Working, computational It reveals the role of antitrust in the future of competition law and the effects of technological developments in this field in different dimensions. It also evaluates how these technological developments have transformed the application of competition law and what this transformation means for legal professionals, competition authorities and market players. Working, computational It analyzes the opportunities and challenges presented by

		antitrust from a multi-disciplinary perspective at the intersection of law and technology, and touches upon the possible effects of progress in this field on the future of competition law.
14.	Payment Services Market in the Light of Regulation and Competition Law Practice	*Fintech markets are* among the markets where the digital age is felt most effectively. With digital transformation, the financial behavior of both consumers and commercial users has changed significantly with innovative products. The most important of these products are undoubtedly payment services that contribute to increasing economic activities and stabilizing the financial system. With the introduction of the Law No. 6493 on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions ("***Law No. 6493***"), payment and electronic money institutions entering the market have significantly changed the competitive structure in the payment services market, contributing significantly to the growth of the financial system. contributed. Payment and electronic money institutions, which are payment service providers, offer various services to their customers by using the infrastructure of banks. The most well-known of these is the "integrated POS" service. Payment and electronic money institutions can create their own integrated physical or virtual POS by combining the POS access permission they receive from banks. creates and offers it to member businesses. In their first periods of operation, these organizations preferred member businesses with relatively small volumes that banks were reluctant to make agreements with. Later, it started to conclude contracts with banks' customers, with the advantage of being more effective and flexible compared to banks. In the following period, banks' motivation to work with payment and electronic money institutions, which are both their customers and competitors in the "merchant acquisition market" (submarket), has decreased significantly. In this context, banks have refrained from making contracts with these institutions or have begun to make the contract conditions so harsh that a contract cannot be made. The fact that banks and payment and electronic money institutions are competitors in the member business acquisition market has made it inevitable that problems will arise between these enterprises. Today, this issue has started to come to the agenda of the Competition Board. The Bonus decision dated 07.09.2017 and numbered 17-28/462-201, which specifically evaluates the limitations on the relationship between banks within credit card brand partnerships (card families) and payment and electronic money institutions, is one of the most important decisions made by the Competition Board on this issue. Following this decision, with the decision dated 13.06.2019 and numbered 19-21/313-137, the limits of the restrictions that the brand owner bank can impose on other member banks of the program have been drawn very clearly. Most recently, the Competition Board shared clues about its perspective on the relationship

		between banks and payment and electronic money institutions in its decisions dated 07.04.2022 and numbered 22-16/265-119 and dated 08.12.2022 and numbered 22-54/833-343. ***CBRT*** the regulatory body of the sector, created the Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers ("***Payment Services Regulation***"). In this regulation, banks are obliged to provide these services to the requesting payment service provider in case the payment account services and infrastructure services related to payment services are requested to be used by another payment service provider. The Payment Services Regulation also stipulates that this infrastructure should be provided in a non-discriminatory manner that will enable the payment service provider to deliver its activity without any problems. In fact, the legislation stipulates an obligation to conclude a contract, and this obligation is imposed on all payment service providers without any restrictions. Within the scope of this communiqué, after explaining the general functioning and competitive dynamics of the payment services market, the 40 different individual exemption decisions made by the Competition Board regarding credit card brand partnerships to date will be evaluated in general terms. Subsequently, the decisions taken by the Competition Board regarding the problems between payment and e-money institutions and banks and the applicability of the Block Exemption Communiqué No. 2002/2 on the relationship between banks and other payment service providers will be discussed. In this context, predictions on how the Payment Services Regulation, whose adoption period has expired as of the end of September 2023, will be reflected in competition law practice will also be included.
15.	Compensation Cases Arising from Competition Violations	The developing trade network in the globalizing world creates an increasingly competitive environment. In this context, practices and disputes regarding competition law are increasing day by day. Based on the development and change in question, compensation cases arising from competition violations will be discussed in general terms in our notification. By taking Turkish Law as our main axis, EU and US practice will be presented in comparison with Turkish Law. In Turkish competition law, the provisions regarding the determination and compensation of damages arising from competition violations are regulated in Articles 57 and 58 of the Competition Law, under the title of right to compensation and compensation for damage, and in Article 59, under the title of burden of proof, it is regulated who has the burden of proof. Our subject will be discussed in the light of the mentioned articles and the conditions regulated in our Law. In our presentation, the capacity to sue, calculation of damages, legal conditions, statute of limitations,

		execution of decisions, and judicial decisions on the subject will be presented to the attention of the audience in the context of compensation cases arising from competition violations in Turkish Law.
16.	Examination of Online Advertising Activities Through the Concepts of Ecosystem and Data Collection	The online advertising industry has increased its volume in today's market where digital transformation is accelerating and has brought with it certain concerns. Although online advertising is advertising activities carried out using internet-based platforms and channels to promote products and services, it differs from traditional advertising in terms of mass and targeted advertising in line with the data collected from the consumer. On the other hand, the relevant sector has been the subject of market studies carried out by the Competition Authority ("**Authority**") within the scope of the Online Advertising Preliminary Report. Considering the competition law-based concerns regarding the sector, the increase in the user data owned by the enterprises may indirectly result in effects such as market entry barriers and abuse of dominant position. One of the most important factors that distinguish online advertising from offline advertising, both in terms of market and quality, is the ability to carry out targeted advertising activities. The ability of an advertisement to be targeted depends on whether the advertisement type and content are personalized for the consumer. Within this scope, advertising activities must be carried out based on consumer data. On the other hand, the business model based on data usage is effective in terms of the big data collection and ecosystem establishment we have mentioned in the online advertising sector and/or the enterprises that have already created their ecosystem . Within the scope of the services offered by platforms such as Google and Facebook, consumers' expectations are primarily to collect personal data rather than financial income. In online advertising activities, which can be classified as search-based and non-search-based, the classification and processing of personal data is carried out in a short time and in detail within the artificial intelligence software used by Google and Meta, while the enterprises in question can provide analytical data to their business partners for targeted personalized advertisements. While online advertising activities in today's market are mainly carried out through Google and Meta, it has been observed that there is no other enterprise that has entered the market in recent years, and it is estimated that there will be no such enterprise in the near future. The main reason for this is that the two enterprises in question have increased their data collection activities by expanding their ecosystems and, accordingly, they have quickly reached a dominant position. When the sectors in which Google and Meta operate are examined within the scope of basic competition law concepts, it is obvious that the goods and services offered in the markets where these enterprises operate do not have substitutable qualities and, accordingly, there is no cross-demand elasticity between products. In order for the goods and services provided by these platforms to be offered in a complementary manner,

		they must be provided within a certain ecosystem and the consumer's data must not be directed to a different platform of a different enterprise. Therefore, as explained, there is an interactive correlation between the ecosystem of the platforms and the volume of data they collect, and the main concerns arising from this correlation directly concern competition law and the protection of personal data. Within the scope of this study, the data-based business model in the online advertising industry will be examined through data collection models and the concrete advantages provided by the ecosystem; The sanctions that can be applied by the Authority for abuse of dominant position, closing the market to other undertakings and resulting competition violations and the time period during which these sanctions can be applied will be emphasized.
17.	Unraveling the Legal Nexus: Personalized Pricing and EU Competition Law	The rapid expansion of algorithm-driven business practices and the utilization of big data are fuelling the emergence of the digital economy, causing significant transformations. One such practice is personalized pricing, which involves variable pricing for identical goods or services based on consumer and market information. This has prompted legal authorities to establish regulations governing this practice. However, its implications under European Union (EU) competition law remain unclear. Within the EU, the abusive actions of dominant market players are governed by Article 102 of the Treaty on the Functioning of the European Union (TFEU). Assessing the impact of abusive behaviours on EU competition law is crucial because studies on the effects of personalised pricing on the market and consumer welfare yield ambiguous results. While personalized pricing can benefit certain consumer segments and foster competition, it also has the potential to harm rivals and exploit consumers. Thus, *ex-ante* regulation of personalized pricing as a violation of EU competition law might hinder its positive effects on the market and consumer welfare. However, due to its potential for abuse, analysing the legal context of personalized pricing within EU competition law is significant. It can be employed abusively in various ways. This paper specifically explores and conceptualises the relationship of personalised pricing with excessive pricing and predatory pricing as breaches of Article 102 TFEU. Despite its importance to the functioning of competitive markets, these connections have received insufficient attention in EU competition law discussions. The paper first debates whether personalized pricing facilitates predatory pricing by reducing the risk of predatory strategies and increasing the recoupment ability of undertakings during the predatory phase. Then, it discusses the relationship between excessive pricing and personalized pricing conducted through

		scenarios in which excessive pricing, combined with personalized pricing, benefits abusive undertakings while detrimentally affecting the market, consumers, and competitors, and examines the potential effects that excessive pricing through personalized pricing might lead to in the market. Therefore, this paper addresses the ambiguity surrounding personalized pricing within EU competition law. When personalized pricing leads to anticompetitive behaviour, it argues for considering it a breach of Article 102 TFEU under predatory pricing or excessive pricing terms. Conversely, in cases where it does not result in such practices, the paper advocates allowing personalized pricing as a legitimate competitive strategy. By examining the potential alignment of personalized pricing with predatory pricing and excessive pricing, the paper sheds light on an overlooked aspect of EU competition law and provides a framework for understanding when personalized pricing might cross into anticompetitive territory or remain a valid market practice.
18.	Other Side of the Competition in Labour Markets – Can Employee Transfers Also be Anti-Competitive?	In recent years, competition law practices in labor markets have become a subject that is carefully examined by competition authorities both in Turkey and around the world. In this context, especially the non-seduction and wage determination agreements between competitors have been scrutinized, a number of processes have been initiated on these issues, and some of them have resulted in the detection of violations. However, these investigations generally rely on agreements between competitors not to transfer employees to another enterprise (*no-poaching agreements)* is focused on. In other words, the main focus of investigations and investigations carried out by competition authorities to date has generally been on the category of agreements and concerted practices restricting competition between competitors. However, various and multifaceted investigations carried out by competition authorities in this field have signaled that potential competitive concerns in labor markets will not be limited to this category of violations. The Competition Authority's announcement that it is preparing a Guide for labor markets indicates that an intense examination of competition law practices in this field will continue in Turkey. In this context, it is important to evaluate whether the transfer of employees to another enterprise will create a concern from a competition law perspective. Because it means the transfer of key personnel of another undertaking that is in a relatively weaker position in the relevant market by an undertaking in a dominant position and is defined as *" predation " in the doctrine. Employee transfers, also known as "hiring"* , may cause undertakings in a relatively weak position to exit the relevant market. In this case, another category of competition violations, abuse of dominant position, may come to the fore.

		“Predatory Practices regarding "hiring " have been evaluated to a limited extent worldwide to date, and have not yet been subject to any evaluation in Turkey. *" Predator "hiring" was discussed within the scope of the Universal Analytics Inc case* in the USA and subsequent evaluations were shaped around this case. However, despite a series of decisions in which the limits were tried to be determined, a clear framework could not be put forward. Because this issue is where to draw a line on preventing employee transfers, it raises questions such as how to determine criteria that may harm the competitive order, and how to determine whether an employee transfer is intended to exclude a competitor. It is thought that this issue will gain importance especially with the development of technology companies in recent years. Because *know -how* is of great importance for technology companies, and the transfer of key staff working within *start- ups by large technology companies* may both hinder innovation and cause start- ups to exit the relevant market. For the reasons mentioned above, within the scope of this study, it will be discussed whether the transfer of employees from a rival enterprise in the labor markets can be considered as an abuse of dominant position, then within what criteria, whether employee transfers can be restricted for the purpose of protecting competition, and finally whether this practice can find application in Turkey.
19.	Debates Regarding Illegal Evidence Practices in Competition Law	In the sixth paragraph of Article 38 of the Constitution, " *Findings obtained illegally cannot be accepted as evidence."* In accordance with the provision, any illegality during the acquisition of evidence definitely prevents the evidence in question from being used as a basis for the verdict. Although the Constitutional provision in question seems to relate only to criminal justice , it is a regulation that is valid for all types of jurisdiction. Although competition violations are evaluated within the scope of Misdemeanor Law, the severity of the sanctions imposed against these violations, especially cartels, necessitates the evaluation of the issue in the context of criminal law, as reflected in the jurisprudence of higher judicial bodies. Therefore, the " *inadmissibility of illegal evidence* " , which is guaranteed by the Constitution in both criminal and civil law, also constitutes a fundamental principle in terms of competition law. this study , first of all, the concept of unlawful evidence will be included and how this concept is handled in the decisions of the ECHR, the Constitution and the Council of State will be examined. Then, the boundaries of this principle, which has a wide application area, will be limited to the discussions regarding the Board's authority to obtain evidence in competition law practice. In this direction; In evaluations regarding controversial areas such as the scope of

		authorization documents, incidental evidence, the status of the Institution's professional staff, examination of personal mobile phones (personal devices), the status of lawyer-client correspondence, possible conflicts of on-site inspection with the right to residence immunity, audio and video recordings obtained without consent. will be found.
20.	Current Problems in The Light of Latest Changes and Developments of Administrative Procedure in Turkish Competition Law	Administrative procedure is a set of rules that regulate what, how and when the administration should act in accordance with the law. In the US practice, the regulatory and individual processes of all administrative units are carried out under the legal framework with the general administrative procedure law. Unfortunately, there is no general administrative procedure law in our country, although it has been on the agenda before. With the RKHK No. 4054, administrative procedure application in special law entered our legal system with the Competition Authority. Although other PfPs wanted to turn the RKHK regulation into an administrative procedure with their secondary legislation, they do not have a legal regulation. In the administrative procedure practice, which provides legal certainty for the undertakings subject to competition law, the on-site inspection powers, which were later added to the law, the processes of commitment, reconciliation, regret, application of administrative fines and the implementation practices of the administrative procedure have differed. In addition to the change of this administrative procedure with judicial decisions such as the "non-impartial investigative member" decision of the Council of State in the early periods , certainties and problematic areas in the legal status of the procedure and implementation practices come to the fore with the decisions of the Constitutional Court. Finally, with the Ford Automotive decision, the Constitutional Court evaluated the use of on-site inspection authority as a violation of rights and sent its decision to the Turkish Grand National Assembly to make a regulation on this issue. While it was determined that the legal administrative procedure had constitutional problems, the same decision determined that many other powers were not unconstitutional. In the administrative procedure, which continues to operate with the decisions of the Council of State and the practices of the Competition Board, there are still legal controversial points such as the determination of the year that forms the basis for the administrative fine. It will be useful to determine the current situation and discuss the legal situation by examining the development and transformation of the subject within the scope of administrative procedure, legal and implementation processes, in accordance with historical development, judicial precedents and RK practices. In our statement, The administrative procedure used in the detection and prevention of competition violations within the scope of RKHK No. 4054 - provided that independent negative determination and exemption application reviews and the administrative procedure for permitting mergers or acquisitions are excluded - will be examined within the scope of its legal historical development, secondary legislation, RK implementation practice and judicial precedents.

		Investigation of the allegation of competition violation, preliminary investigation stage, on-site investigations, prevention of on-site investigations, procedure for regret applications, notification of the decision to open an investigation, place of allegations of incomplete information within the scope of administrative procedure, right of access to the file, provisional injunction decisions, operation of the commitment mechanism, operation of the conciliation mechanism, exemption The evaluation will be evaluated with the defenses stage, the nature of the administrative procedure periods here and the obligation to comply with them, the final decision time, the determination of the penalty year according to the final decision date, the procedure for determining the administrative fine, the final decision measures, the step-by-step legal and secondary legislation regulations, administrative and judicial precedents. . After determining the existing legal situation in the conclusion part of the notification, evaluations will be made regarding the changes in the practices and legislation that need to be improved in the administrative procedure within the scope of the RKHK and secondary legislation.
21.	The Rise of Neglected Monopsony Power Within the Framework of Digital Ecosystems	Monopsony, coined in 1932 and the other side of the monopoly power coin , occurs when an enterprise is the sole buyer of a particular product or service, including employee labor. Oligopsony refers to the situation where a few buyers/suppliers of a good or service dominate the market. Monopsony and oligopsony are an area of competition law practice that has not received sufficient attention compared to monopoly power situations. It must be said that abuse of monopsony power is at least as damaging as other anti-competitive behaviors. Concerns about wage suppression in labor markets, where it is not possible for workers to bargain for higher wages when there is only one employer, which is the most common situation in practice, have been discussed for a long time. Similarly, there are growing concerns about buyer power in the retail sector for small producers and/or suppliers facing exploitative and abusive transaction conditions. In the field of digital economy, where discussions have been held until now around 'data' and 'gatekeeper'-oriented power, the concepts of monopsony and oligopsony have begun to gain weight. 'Digital ecosystems', which are discussed more and more each day, have opened a new door towards oligopsony rather than monopoly. Digital ecosystem is defined as the strong connection and interaction between different products and services of a technology giant and often confines users to this ecosystem. Although the monopoly power of enterprises such as Amazon, Uber, Airbnb, Apple and Google in certain markets has always been highlighted to date, these markets are actually faced with oligopsony . For example, Apple and Google have oligopsonist power against mobile application developers because there are no buyers

		other than themselves. So much so that, due to this oligopsonist market structure, not only application owners but also consumers are confined to only two options for payment methods - ApplePay / GooglePay . A similar situation applies to Google and Meta, which use their buyer power without even producing content in the online advertising market. It is possible to multiply examples of oligopsonist market structure in the field of electronic commerce with Amazon and Alibaba. Competition law has abandoned its traditional weapons in its intervention in the digital economy, defined new types of violations even at the expense of expanding the boundaries of competition law, and even tries to keep enterprises under control by introducing *ex-ante measures for abuse of dominant position, as seen in the example of the European Union's Digital Markets Law.* However, this approach is already having difficulties in implementation. In digital markets where price has lost its meaning - which also causes buyer power to be overlooked - trying to apply traditional consumer harm theories puts a heavy burden on competition authorities. Oligopsony, simultaneously with digital ecosystem discussions, can guide competition authorities to put forward more acceptable theories of harm in intervening in market disruptions in digital markets. Moreover, the fact that most digital markets are dominated by a few enterprises provides a more suitable basis for determining market power. In the long term, the dominant position will face the danger of relying more on monopsonist power as *ex-ante measures come into force.* The network effect, which also exists in the oligopsonist market structure, will contribute to the reshaping of the theory of harm by bringing a new definition of co-dominant position to the agenda. As a result, addressing the concepts of monopsony and oligopsony within the framework of digital ecosystems will make a significant contribution to competition law discussions.
22.	An Essay on the Relativity of Time: Determining the Duration of Infringement under EU and Turkish Law	In competition law, fines are one of the most important tools available to competition authorities to achieve the aim of deterring undertakings from engaging in anti-competitive behavior [28]. On the other hand, various problems are encountered in determining the amount of the penalty. One of these problems is to ensure legal certainty for undertakings in determining the violation period to be taken into account when calculating fines. In order to ensure this certainty, the basic principles that must be followed in determining the period of violation that affects the application of

[28]Gündüz, Harun. "Administrative Fines Applied in Competition Law." Competition Authority, 2013, p.3. https://www.rekabet.gov.tr/Dosya/akademik-calismalar/23-pdf. (Access Date: 06.12.2023)

		fines must be determined. However, the issue of determining the duration of the violation in competition law has not been addressed as a study in itself before, despite its importance. The issue that is intended to be addressed with this proposal is exactly about this deficiency. On the other hand, two of the issues that need to be taken into account in order to accurately determine the duration of the violation come to the fore from time to time both in the European Union (" **EU ") and in our country.** These are issues of basing the impact of the breach and a single ongoing breach approach. Firstly, when determining the duration of the violation, the issue of assessing the ongoing effects is subject to various decisions.[29] has been the subject. Accordingly, it is reiterated that even if the agreement subject to the violation is officially terminated, when determining the duration of the violation, it should be evaluated by referring to the "economic effects", that is, the period during which competition between the relevant undertakings continues to be restricted [30]. Secondly, although distinguishing whether there is a single ongoing violation or multiple violations is decisive in determining the duration of the violation, it may not always be easy to make this distinction in practice. Legal uncertainty that will arise in the absence of basic principles that will provide an objective approach may also constitute a violation of the principle of legal administration and the principle of equality, which is the basis of this principle [31]. Essentially, in the decisions of the Competition Board (" **Board** ") [32], in parallel with the practice of the European Union (" **EU** "), it is seen that in cases where various agreements and/or concerted actions are aimed at the same economic purpose and are complementary to each other, the existence of a single ongoing violation is concluded. Because the recent 12 Bank Decision of the 13th Chamber of the Council of State has made a strong impact on this issue. In this context; If it is determined that there are behaviors that are interconnected and complementary in terms of market, quality and

[29] ECJ's decision on Kilpailu-ja kuluttajavirasto dated 14.01.2021 and numbered C-450/19, EU:C:2021:10.
[30] Gilliam , Sophie . determining the Duration of an Infringement of Article 101 TFEU in Bid rigging Cases : Case C-450/19 Kilpailu-ja kuluttajavirasto , Journal of European Competition Law & Practice , 2021, p.635, https://doi.org/10.1093/jeclap/lpab036
[31] Gündüz, Harun. "Investigations and Fines Regarding Competition Violations: Balance Sheet of the Competition Board's 20 Years." Oniki Levha Publishing , 201 8, p.1 55.
[32] Competition Board's decision dated 10.2005 and numbered 05-68/958-259, Decision dated 29.01.2007 and numbered 07-10/63-19, decision dated 06.09.2002 and numbered 02-53/685-278, decision dated 25.02.2003 and numbered 03-12/135-63.

		chronological process, a single penalty will be imposed on the undertakings for a single ongoing violation, instead of separate violations [33]. As can be seen, since the specific characteristics of each concrete case must be evaluated when determining the duration of violation in practice, the formation of an objective and stable systematic in both legal systems will be very beneficial in terms of ensuring the principles of legal certainty and equality. In our paper, considering the importance of determining the duration of the violation, the competition problems that will be brought about by the uncertainty that may arise from this issue, which has not been the subject of studies frequently in the past, will be discussed, and important decisions in EU and Turkish competition law will be evaluated. Then, various suggestions will be presented, especially in terms of fines, statute of limitations and special law sanctions.
23.	Recent Developments on the Competition Law Enforcement about the Restriction of Online Sales	The most obvious effects of digitalization emerge in the field of e-commerce. E-commerce is growing in Turkey at a rate that surpasses other countries [34]. E-commerce nominal sales volume increased almost sixfold between 2019 and 2022 [35]. This rapid development of e-commerce has increased the online sales of companies and diversified the online channels through which they can reach consumers. In this context, sales made through platforms, sales made through mobile applications and shopping comparison sites; They emerge as new aspects of online sales. While this diversity has caused companies' online sales bans to diversify, it has also raised questions about how competition law will approach the rapidly transforming issue of online sales. In this context, recent developments in Turkey and the European Union (**"EU"**) have drawn an explanatory framework for this issue. However, it is understood that the frameworks drawn do not fully overlap with each other in Turkey and the EU. The development of e-commerce in the countries does not overlap. This difference in practice, explained by , makes the issue of online sales bans even more interesting.

[33] Ersoy, Bahar. "A Single Continuing Violation Approach in Competition Law." Competition Authority, 2015, p.47. https://www.rekabet.gov.tr/Dosya/uzmanlik-tezleri/139-pdf . (Access Date: 06.12.2023)
[34]See https://www.dunya.com/sektorler/akmibin-agustos-ayi-ihracati-4941-milyon-dolar-oldu-haberi-705543 Access date 06.12.2023,
[35]TR Ministry of Commerce Electronic Commerce Information System (Etbis) 2022 Data, https://www.eticaret.gov.tr/dnnqthgzvawtdxraybsaacxtymawm/content/FileManager/Dosyalar/2022%20y%C4%B1l%C4%B1%20E-Ticaret%20B%C3%BClteni%20v2.pdf Access date 06.12.2023,

		Vertical Group Exemption regulation that recently came into force in the EU (*Vertical block exception Regulation* – "**VBER**") and its associated guide ("**VBER Guide**") and online sales; It has been updated to include sales via e-marketplaces, and online sales have been placed within a comprehensive framework. In addition to sales made through the platforms, VBER has also introduced detailed regulations regarding shopping comparison sites and online advertisements. It is possible to state that VBER has introduced a new regulation covering diversified online channels and the promotion and sales activities carried out through these channels. Restrictions on online sales are also high on the Competition Authority's agenda. The practice, shaped by *the BSH decision* [36]of the Competition Board ("**Board"**), which clearly reveals its stance in this field, has become even clearer with ongoing decisions. In its exemption decision on white goods manufacturer BSH, the Board did not allow the sales ban through e-marketplaces that BSH wanted to impose on its authorized dealers. In this context, the Board did not find BSH's reasons such as protecting the brand, preventing the problem of free-riding, and the existence of counterfeit products sufficient and showed its strict stance on online sales bans. With this decision, the Board recently announced the preliminary report of the e-marketplace sector review. In this context, the outlook of sales through e-marketplaces, which has become an important channel especially after the COVID 19 pandemic, in Turkey and the competition law concerns encountered have been revealed. *the BSH-2* [37]and *Arçelik decisions* [38]that followed the BSH decision, the Board maintained its strict stance and approved the introduction of certain criteria in accordance with the selective distribution system in terms of sales to be made through platforms. In this context, the permitted limitations and criteria and the prohibited prohibitions in these decisions are instructive in terms of competition law practice in online sales. The investigations launched into the cosmetics and personal care products industry, which show the Board's lively interest in this issue, aroused great interest in the press and were the subject of the speeches of the President of the Institution. Most of the investigations in question were concluded with compromise/commitment mechanisms [39].

[36]BSH-1 decision of the Competition Board numbered 21-61/859-423 and dated 16.12.2021.
[37]BSH-2 decision of the Competition Board dated 08.09.2022 and numbered 22-41/579-239.
[38]Competition Board's decision dated 08.09.2022 and numbered 22-41/580-240.
[39]See https://www.rekabet.gov.tr/tr/Guncel/ayaz-ve-ortaklari-limited-sirketi-sb-gru-dbb7dafc3382ee118ec700505685da39 Access date 06.12.2023.

		in the current vertical communiqué and guide in Turkey that fully cover online sales, which are diversified in today's conditions, the decisions in question are very useful in revealing Turkey's approach to online sales. In this paper, in which the differences in approach between the EU and Turkey will be explained, as well as discussing the allowed/impermissible limitations in terms of online sales bans in the Turkish market, the reasons for this difference in practice will also be investigated.
24.	Applicability of the Supplier's Prohibition of Interfering with the Buyer's Sales Price in the Specific Distribution Relationship	Considering the statistics, resale price determination is one of the vertical restrictions most frequently violated in the Competition Board (Board) exercise. Although the determination of the scope of application of this unlawful behavior, which means that the supplier restricts the sales price of the buyer (= reseller) by determining a minimum or fixed sales price, is a very important issue in law, it is difficult to say that there is an intense effort on this issue in Turkish law, especially in scientific doctrine. Enterprises can distribute or sell the goods or services they produce or sell directly themselves, or they can benefit from various people in this regard, taking into account the cost. These people needed may be people dependent on the enterprise, or they may be independent people. This prohibition, which can also be expressed as the prohibition of intervention in the sales price of the reseller, is important in case the resellers are independent persons. However, identifying dependent people may be meaningful in terms of showing who independent people might be. What is decisive in terms of the Block Exemption Communiqué on Vertical Agreements No. 2002/2 (Communiqué No. 2002/2) is the existence of a purchase, sale or resale relationship in which there are undertakings that have the capacity of supplier and buyer. This qualification, to be made specifically for the parties, provides a certain degree of legal certainty in terms of evaluating whether resale price determination is available. However, it is legally unclear which parameter(s) will be taken into account in terms of the scope of application of the supplier's prohibition on intervening in the reseller's sales price. The concept that comes to the fore here is the assumption and/or distribution of economic risk, as in the independence element that is sought within the concept of enterprise. However, the meaning and scope of economic risk needs interpretation. Considering that every economic unit engaged in commercial activity takes an economic risk by incurring some kind of cost, there are significant doubts about how much this risk is, which will have to be accepted as existing on the reseller. Moreover, in case of intervention in the sales price of a distributor who has not legally acquired the ownership rights of the goods, it may be a matter of debate whether the resale price can be

		determined or not. Again, the invoice, which is a document related to the execution phase of the contract, and the effect of its type on the qualification to be made should also be considered. In our study, inspired by the principles and concepts of commercial law on the basis of the representation relationship within the framework outlined above, we examine the nature of the legal relationship between the merchant and his assistants and the rights and obligations of the parties in which cases (and according to what criteria) the intervention of the supplier and the reseller in the sales price is unlawful. An answer will be sought to the question of what constitutes resale price determination as a type of behavior. In this context, *especially* agency, brokerage, marketing and brokerage agreements, various types of dealership agreements, franchise agreements where service performance may be involved, release for sale (consignment sales) agreements, brokerage agreements that come to the fore in online sales, price intervention scenarios in sales made through marketplaces, subcontracting. By focusing on the service relationships performed in the form of services and certain business models manifested in practice, a legal evaluation will be made as to whether the intervention of the provider in the freedom of the reseller to determine the sales price will result in the determination of the resale price.
25.	The 'Binding' Effect of Board Decisions in Terms of the Illegality Element on the Axis of Tort Liability Arising from Violation of Competition Law	In Turkish law and comparative law, the impact of decisions made by competition authorities on compensation cases arising from violations of competition law is an ancient debate that continues from past to present. The issue is of great importance in terms of the complementary function and effectiveness of private law sanctions to public sanctions. Although the Board decision does not have a binding effect in terms of damage and causality elements, although Turkish law follows a different course on legal grounds than European Union law, the jurisprudential development is that the final Board decision containing the determination of violation will constitute *de facto* conclusive evidence in terms of the unlawfulness element. For this reason, the follow-on actions model *has developed in* our law. A Board decision containing a finding of violation, in particular; (i) the identity of the undertaking (s) committing the violation, (ii) the scope (= material content) of the violation, (iii) the geographical scope of the violation and (iv) its temporal development, in other words, has a decisive importance regarding the period of violation. In terms of this content, the Board decision is a text that can be interpreted by judicial courts. However, the issue is very worth examining in terms of *de minimis, conciliation and commitment institutions* that have been included in our legal system as of June 2020. At first glance, it can be said that a Board decision containing a

		violation determination at the end of the investigation process and a settlement decision, which means the acceptance of the violation by the undertakings/enterprises that are parties to the investigation and resulting in the Board's violation determination, will largely remove the element of unlawfulness in compensation cases from the subject of discussion. However, the issue remains largely unclear in terms of the commitment decision. Because, unlike a compromise, the submission of a commitment by an undertaking does not mean acceptance of the violation, and the Board does not make a clear determination about the existence or non-existence of the violation. What is at issue at this stage is the existence of competitive concern. In this case, we are faced with the necessity of finding solutions to the proof problems that lie on the shoulders of the plaintiff, especially the evidentiary value of the commitment decision in compensation cases, its impact on the burden of proof and the Supreme Court's fixed approach to the element of illegality. On the other hand, the impact of the investigation process ending with a compromise or commitment for certain parties on the evaluation of compensation cases filed against undertakings where the investigation process was completed in its ordinary course is also one of the problems that need to be discussed. Again, the effect of the Board's decision given as a result of the leniency application on compensation cases also needs to be questioned. In our study, we will firstly share the general view of compensation cases arising from violations of competition law in Turkey and our solution suggestions regarding the problems caused by legal regulatory gaps. Subsequently, taking into account comparative law practice and judicial practice, we will evaluate the impact of all Board decisions, with or without a clear finding of unlawfulness, on the analysis of unlawfulness in compensation cases. While doing this, we will complete our study by discussing the concrete chances of success of potential compensation disputes with examples selected from Board decisions that include a sample industry-specific violation determination for each Board decision and result in regret, compromise and commitment decisions.
26.	The Impact of Competition Law on Co-Operation Agreements to be Concluded Within the Scope of Combating the Climate Crisis and Sustainability	The climate crisis is the biggest problem facing the world and all humanity. The need for companies and states to fight and cooperate together against this major problem has been frequently expressed recently and even included in policy texts. The obstructive perspective of competition authorities towards concerted actions, agreements and enterprise association decisions that limit competition can create a climate of fear in companies against the process of jointly producing solutions to the climate crisis. Many measures such as joint R&D activities for sustainability, joint projects for sectoral recycling, technological standardization to reduce environmental impact, coordination of transportation, warehouse and stock tracking to reduce carbon emissions are some of the important issues on the agenda of companies. However, in this process, the reflection of both technology and information sharing and the sharing of costs on prices

		reveals the risk of concerted action and agreement. Again, since the role of the decisions of sectoral associations will be important and transformative in the transition to a low-carbon economy, the possibility that these decisions will be interpreted as a decision of an association of enterprises that distorts competition are only a few of the elements of this climate of fear. In this context, it is obvious that due to a purely financial perspective on consumer welfare, competition law is interpreted broadly and sustainability is interpreted narrowly, and this increases the tendency for companies to see competition law as the "Sword of Damocles" against sustainability. Therefore, it would be appropriate to evaluate consumer welfare from the perspective of human rights, environmental protection and future generations. As a solution here, first of all, the exemption regimes of cooperation agreements aimed at combating the climate crisis must be determined. The contribution of the fight against the climate crisis to economic progress, the fact that sustainability agreements that impose proportionate restrictions cannot otherwise contribute to a solution, consumers receiving a fair share of the resulting benefit and a broad interpretation of consumer welfare, and finally a human rights-based perspective on competition law with the recognition that a purely economic perspective can distract from the solution. Approaching with will be decisive in determining these exemption regimes. Interpreting the difficulties in accessing finance and insurance for carbon-based energy or resource-intensive sectors as obstruction of competition, and the impact of regulations involving transparency such as border carbon regulation, corporate sustainability reporting, and supply chain law on vertical concentration will be evaluated in detail within the scope of this communiqué, and both the scope and purpose of the exemption and its justification will be evaluated. It should be framed theoretically. In this context, it is clear that there is a need to publish indicative notifications or guidelines that competition law is not obstructive in the fight against climate change and that fears on these issues are unfounded. In addition, the ways of making ecological concerns a part of competition law analysis will be discussed, and the draft guidelines by which businesses evaluate opportunities to cooperate to achieve climate goals will be discussed, emphasizing the differences in perspective of the competition authorities of England, the Netherlands and Greece, and suggestions will be presented in this context.
27.		

	The Effectiveness and Challenges in Regulating Big Data, Privacy with the Tool of Competition Law: An Analysis of Indian Competition Law	The conception that in India many people do not care about their informational privacy needs to be corrected to the conception that people in India care, just that they lack the effective choice and information to exercise their care. This has become apparent from the WhatsApp changed privacy policy that was implemented only in India at the exclusion of all other countries. The changed policy mandated that consumers allow WhatsApp to share their data across all Meta companies if they wished to continue using the services of WhatsApp. The Competition Commission of India (CCI) took a Suo Motu cognisance of the case, contending that the imposition of such conditions on the consumers had a direct nexus to its dominant position in the communication services market.[40] The CCI gauged the ability of WhatsApp to ask for more data and impinge on the consumers' privacy due to its dominant position and brought privacy as a parameter of competition directly within the ambit of competition law. The concern raised in India is not new. The FTC in the Facebook WhatsApp case later noted, "it was precisely WhatsApp's privacy-focused offerings and design and an ad-free subscription model that provided it 'an important form of product differentiation' and helped make it 'an independent competitive threat in personal social networking."[41] The monopolies whose business model is based on exploiting and collecting data have different incentives. They shall collect data above the required levels and offer privacy at lower competitive levels. Therefore, companies do compete on privacy offerings to the consumers. The ability of the companies to infringe on the consumers' privacy owing to their market power can materialise under various theories of harm. In this backdrop, the present study aims at two things: First, the study aims to decipher various parameters of privacy through existing theories of harm under section 4 of the Indian Competition Act to define what privacy means for the purposes of competition law and how those theories of harm can be addressed ex-ante.[42] The parameters of privacy so deciphered have been reinforced through the *K.S Puttaswamy* judgement, which made privacy a fundamental right under the Indian Constitution. These parameters of Privacy denote an outer boundary within which all companies with market power must function from the competition law perspective. Second, it proposes an institutional framework that establishes how the privacy of an individual impinged on as a result of commercial exploitation of data or capitalising over data by companies can be brought under the ambit of competition law. The institutional framework is in the form of an ex-ante regime. It has been proposed in the study with a view that the regulator can protect the privacy of the consumers/ data principal. This contention is based on the view that the current ex-post regime might not be able to rectify the situation since privacy, once infringed, will have little to no meaning if

[40] *WhatsApp LLC, In re* (n 353).
[41] Maurice E. Stucke, 'The Relationship Between Privacy and Antitrust' (2022) 97(5) Notre Dame LR Reflection 400.
[42] Section 4, The Competition Act, 2002 (India).

		remedied after. After deriving the parameters of privacy from theories of harm, the researcher has suggested how such data-driven anticompetitive theories of harm can be contained ex-ante by imposing obligations on the companies in two ways: Software and Contract. These obligations would also help companies keep compliance in place to check that they are not committing the various theories of harm related to data privacy. The researcher has proposed an ex-ante framework called privacy by design to help develop a framework for the regulator to impose such obligation on companies designated as a company of paramount significance.
28.	Economic Analysis, Private Law Consequences of Competition Violations in Labor Markets and Quantitative Methods for Calculating Damages	Recently, it has been observed that the Competition Authority has conducted investigations into many enterprises operating in different sectors regarding competition violations in the labor markets. It is understood that in the investigations in question, the undertakings focused on "non-employee enticement" agreements or the determination of wages and other working conditions, which aim to prevent each other's employees from being employed and restrict employee mobility. It is known that many investigations and lawsuits are carried out on similar issues in the competition law practices of other countries. Within the framework of these agreements, employers mutually give up competing on labor, which is one of the most important inputs, and the competitive structure of labor markets may deteriorate. Accordingly, the mobility of the labor factor between enterprises is reduced and the wages in return for labor are artificially suppressed. As a result, economic inefficiency arises in labor markets. In parallel with these developments, the consequences of competition violations in labor markets in the field of private law have also gained importance in recent years. Especially in international practices, it is seen that employees who are harmed by competition violations in the labor market are entitled to compensation through private law. Law No. 4054 on the Protection of Competition in Turkey sets out the basic principles on determining and compensating damages in the field of private law arising from competition violations. Law No. 4054 introduced the provision of "three times compensation" in compensation for damages arising from competition violations, in order to increase the deterrence of competition law and to help prevent violations. In calculating compensation, it is necessary to find the difference between the actual situation of the injured party and the hypothetical situation he would have been in if the

		violation had not occurred. In this process, the amount of damage is determined by taking into account the type of violation, the characteristics of the relevant market and the nature of the violation. Within the scope of the proposed notification, first of all, an analysis of competition law practices and jurisprudence in labor markets in Turkey will be included. Then, in the economic analysis section of the paper, the effects of competition violations in labor markets on economic welfare will be discussed in the light of theoretical models in the literature. The agreement not to seduce employees leads to “employee sharing”, similar in effect to the concept of “market sharing” used in product markets. This situation gives the relevant employers a "buyer power". In the paper, how "buyer power" is analyzed in the economic literature and how it harms economic welfare will be explained through the "single buyer" (monopson) model , which is the strictest form of buyer power . Later, “the formation of a single buyer by agreement” (*collusive Within the framework of models about monopsony* , the differences in economic results between the "partial agreement" model and the "full agreement" model will be examined. In the paper, following the theoretical welfare analysis, various economic analysis methods and models used in calculating the damages resulting from competition violations in labor markets will be examined. These methods have an important role in determining the damage and calculating the amount of compensation. In this part of the paper, we will first focus on the numerical analyzes and econometric models in an "expert report" filed in the damage case regarding employee non-seduction agreements involving technology companies in the USA . Next, another econometric study estimating the effects of non-seduction agreements on wages in the United States will be examined. It is interesting that this study was conducted with publicly available data, using a larger sample of employees than the previous one, and taking into account the differences between those who participated in the violation and those who did not. The paper will also focus on loss estimation methods that can be obtained by adapting partial simulation techniques (UPP, etc.) used to estimate the price effects of mergers in product markets to labor markets, as a complement to the above models. Finally, the basic features of alternative methods and models that can be used to overcome the difficulties in estimating damages arising from violations in labor markets in general, and suggestions for collecting data will be examined.
29.	Emerging Trends and Challenges in Competition Law: Examining the Impact	In the dynamic world of international trade and business, competition law serves as the cornerstone of fair and efficient markets. This is particularly true in the rapidly evolving economies of the GCC countries. Our proposed presentation titled "*Emerging Trends and Challenges in Competition Law in the GCC Countries*" aims to delve into the intricacies of this

	and Adaptation within the Gulf Cooperation Council (GCC) Countries	critical legal area. By concentrating on the distinct developments and challenges in competition law within the GCC, this presentation will aim to offer insightful perspectives to the audience, as the region's initially nascent competition law framework is currently experiencing significant momentum and evolution. **Significance of Competition Law in the GCC** The GCC, encompassing Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, is experiencing significant legal transformations, particularly in competition law. These changes are driven by the region's economic diversification and integration into the global economy. The evolving landscape of competition law in the GCC, marked by the introduction of innovative regulations and robust enforcement mechanisms, offers a distinctive opportunity for the audience to deepen their understanding of how competition law is applied within the region. **Turkey's Interest in GCC's Competition Law Developments** For Turkey, an emerging economic powerhouse straddling Europe and Asia, understanding the complexities of competition law in the GCC is not just an academic pursuit but a practical necessity. As Turkish businesses seek to expand in the GCC, knowledge of the local legal landscape, including competition law, becomes essential. **Adapting to Digital Economies and E-Commerce** A significant aspect of our presentation will be the adaptation of competition law in the GCC to the challenges posed by digital economies and e-commerce. These sectors are growing rapidly, bringing new issues like digital monopolies and online consumer protection into focus. Turkey, with its own digital market aspirations, stands to gain valuable insights from the GCC's regulatory strategies and responses. **Comparative Analysis with Turkey's Competition Law** The GCC countries are reforming their competition laws to tackle modern economic challenges, from market monopolization to consumer rights. This presentation will also delve into these legislative changes. This presentation will provide an in-depth comparative analysis with Turkey's competition law. **Balancing Market Competitiveness and Consumer Interests**

		Central to competition law is the delicate balance between fostering a competitive market and protecting consumer interests. The presentation will also explore how the GCC's evolving approach impacts market fairness and consumer welfare and how this differs from established competition law legislations. **Conclusion** In summary, this presentation on "*Emerging Trends and Challenges in Competition Law in the GCC*" is designed to offer a comprehensive and insightful exploration of a legal field of growing importance to Turkey. It will empower Turkish legal practitioners, academics, and business leaders with a deeper understanding of GCC's competition law, enriching their ability to make well-informed decisions and develop strategic approaches within Turkey's evolving legal and economic landscapes. We believe that this exchange of knowledge would not only be beneficial for grasping current trends but also vital for anticipating future developments in the realm of international competition law.
30.	Sharing Platforms: Challenges for Competition Law	Although "sharing" is a very old concept in human history, in the face of developments in the digitalization process and the change in people's work, life and consumption habits, it has gone beyond the boundaries of people's social circles and turned into an economic activity, and supply and demand have become easily met through "sharing platforms". The exchange of human labor and other resources between equals ("*peer-to-peer*"), usually without transfer of ownership, based on the trust provided by the comments and feedback of previous users, has emerged as the main features of these platforms. Sharing/collaboration economy model based on " use" instead of "ownership" (" *collaborative / sharing economy* ") has come to the fore especially in the fields of transportation (e.g. Uber, BlaBlaCar) and accommodation (e.g. Airbnb) and has become widespread at a rapid pace [43]. significantly reducing transaction costs and bringing idle resources into the economy without significant entry barriers. Benefits such as offering low prices and wide choice opportunities to consumers, creating the opportunity for some consumers to earn additional income under flexible conditions, reducing damage to the environment (such as in the case of car sharing), and providing access to goods and services to those with low purchasing power are particularly

[43]For some statistics, see https://single-market-economy.ec.europa.eu/single-market/services/collaborative-economy_en ; https://www.statista.com/statistics/831104/revenue-growth-of-the-global-sharing-economy-platform/ . All predictions reveal that this model will grow at an even greater pace in the coming years.

		noteworthy. Due to their rapid growth and operating in a legal "gray area" for a while, the first reactions to platform service providers around the world came from traditional service providers (such as taxis, hotels, banks), and in many countries, lawsuits were filed against the platforms on the grounds that their behavior constituted unfair competition. In addition, various problems have arisen regarding labor and tax law specifically for sharing platforms, data have emerged indicating that their environmental benefits are not as expected (especially in light of the data that it causes the use of public transportation to be reduced) and that some discriminatory practices are being carried out. The issue came into the scope of competition law due to the fact that it created a rapid and significant change in market structures, platforms started to take over traditional service providers, some practices regarding the conditions of operating on platforms and platform service providers operating on the platform with their own goods or services. Since 2015, the first decisions on the subject have begun to be issued and the first legal texts have begun to be put forward. While emphasizing that each platform should be evaluated on its own terms, "A European Platform" identifies some basic evaluation criteria. agenda for the collaborative Economy" [44]is particularly noteworthy. Although the field of activity of most sharing platforms in the EU has been included within the scope of DMA and DSA in the recent past, no sharing platform has been considered as gatekeeper status yet. platforms" may cause in competition law, although they are not emphasized as much as other digital platforms, but they have the potential to cause significant problems. Although the business model and structure of each platform are different from each other, it prevents reaching conclusions that can be valid for all sharing platforms, considering that it is possible and necessary to develop some basic principles on the subject, solutions to the basic problems will be suggested in this study. In this context, first of all, it will be discussed whether the relationship between sharing platforms and goods/service providers is within the scope of competition law, then the relevant market(s) will be defined and the main features of these market(s) will be examined. Then, the relationship between platforms and goods and service providers will be characterized in terms of competition law and competition law problems that may arise will be evaluated. In addition, the violations that may be caused by the unilateral behavior of sharing platforms will be emphasized. Despite the potential efficiency gains and the existence of a serious demand, it is known that the development of sharing platforms in our country is hindered for various reasons. In this respect, another aim of the study is to open the issue to discussion specifically in Turkish competition law.
31.		

[44]EU Commission, COM (2016) 356.

	Cloud Portability and Interoperability under the EU Data Act: Dynamism versus Equivalence	**Abstract** We examine the provisions of the EU Data Act relating to cloud portability and interoperability through a joint legal and economic lens. The cloud industry is characterised by dynamic competition for the market underpinned by high levels of service innovation and customisation. We find that insufficient thought appears to have been given to the potential implications of these provisions, which envisage relatively static competition between 'equivalent' services, pursue standardisation and unbundling and introduce mandatory contract law. We suggest that the minutiae of the definition of 'equivalence' are quite different from portability and interoperability rules for simple products due to feature complexity and ongoing innovation. While a certain level of portability and interoperability are natural and essential for customers, the breadth of net cast by 'equivalence' could yield unintended consequences that not only lead to operational challenges but even product simplification to a lowest common denominator, reducing availability of the cloud computing service variety that customers seek. Overall, we are concerned that the EU Data Act may disincentivise innovation, harm smaller providers and strengthen the position of incumbents. We propose a way forward that seeks to protect and stimulate dynamic competition and innovation in the EU market for cloud computing services. **Presentation focus** Despite the risk of a potentially negative 'Brussels effect', we find that there may be an opportunity for emerging markets such as Turkey to develop a more tailored and flexible approach. Regulation of the cloud sector represents an essential foundational layer for the flourishing and effective governance of artificial intelligence. By evaluating the merits and demerits of the prevailing EU regulatory model, we consider how to optimally calibrate the relationship between law and technology for an industry that is characterised by short-run innovation cycles. Ultimately, we remain optimistic about the emergence of market-driven solutions and underscore the capacity for emerging markets to acquire a leading position in the digital economy by fostering a well-functioning cloud infrastructure. Finally, we highlight areas that require further legal and economic research.
32.	Intersection of Commercial Law and Competition Law: Exclusivity under Distribution Agreements	Distribution agreements, in other words vertical agreements, which regulate the commercial relationship between the provider and the distributor, are within the scope of both the Law on the Protection of Competition No. 4054 (Competition Law) and the Turkish Commercial Code (TTK) No. 6102. In particular, distribution agreements containing monopoly may fall within the scope of application of Article 4 of the Competition Law, and a distribution agreement that meets the conditions listed in Article 5 can benefit from the exemption, even if it has a restrictive effect on competition. The Block Exemption Communiqué on Vertical Agreements (Vertical Communiqué) provides legal clarity on what types

		of restrictions in distribution agreements can benefit from block exemption. In accordance with the Vertical Communiqué; The supplier cannot benefit from the block exemption if it imposes restrictions on the region or customers to whom the buyer will sell the goods or services subject to the contract, except for certain exceptional cases. Among the exceptional cases listed in the Vertical Communiqué are " *restriction of active sales to be made by the supplier to an exclusive region or exclusive customer group allocated to itself or to a buyer* ". In accordance with Article 122 of the Turkish Commercial Code, after the agency relationship ends, the agency is given the right to request equalization if certain conditions are met, and according to paragraph 5 of the same article, the equalization request can also be applied to " *exclusive distributorship and other similar permanent contracts granting monopoly rights"* relationships. Since the customer circle created by the exclusive dealer can be transferred to the provider (or the new exclusive dealer) upon the termination of the exclusive distributorship contract, portfolio compensation may be requested with the idea of equalizing the gain the provider will obtain from this customer circle. Exclusive distributorship agreement; "An anonymous contract in the form of a permanent debt relationship, which regulates the relations between the producer (supplier) and the single seller, in which the producer undertakes to send his goods to the single seller to sell them as a monopoly in a certain region, and the single seller engages in sales activities on his own behalf and account in order to increase the version of the goods sent to him. " can be defined as [45]. Therefore, "monopoly right" is an important element for an exclusive distributorship agreement. It has not been determined what kind of contractual relations the expression " *other similar contracts granting monopoly rights "* in Article 112/5 of the TCC covers. On the other hand, it can be said that the fact that the distributor has been allocated an exclusive region or exclusive customer group within the meaning of the Vertical Communiqué does not give the distributor the unlimited right to "sell as a monopoly". Because the Vertical Communiqué does not absolutely protect the distributor from the competition of other distributors by allocating an exclusive region or exclusive customer group. For example, other distributors cannot be prohibited from making passive sales to the same region or to the same customer group. Additionally, the territory or customer group to which a distributor's customer will resell cannot be limited. Under these conditions, it can be said that there is uncertainty as to whether the regional and customer group restrictions listed as exemptions in the Vertical Communiqué provide "monopoly rights". This situation makes it worth examining to what extent the providers who create a distribution system in compliance with the Vertical Communiqué are likely to face an equalization request in the future in accordance with Article 122/5 of the Turkish Commercial Code.

[45]The precedent decision of the 19th Civil Chamber of the Supreme Court of Appeals dated 28.09.2016 and numbered 2016/5707 E., 2016/12723 K.

		Within the scope of this declaration, whether a distribution agreement that authorizes a distributor to make active sales to an exclusive region or customer group in accordance with the Vertical Communiqué is within the scope of " *exclusive dealership or other similar monopoly right agreements* " in accordance with Article 122/5 of the TCC and whether the supplier has exclusive territory or / In case the customer group is determined, it will be discussed whether it takes the risk of equalization request and related portfolio compensation. In this regard, the concepts of exclusive dealing and monopoly rights in the TCC will be examined in judicial decisions and doctrine, and their relationship with the Competition Law, Vertical Communiqué and Competition Board decisions.
33.	Inspection of Public Offerings by the Competition Board within the Scope of Mergers and Acquisitions	The number of companies operating in product and service markets all over the world, especially in our country, is increasing day by day. Companies first try to gain a place in the markets in which they operate, and then they seek financing sources for various purposes such as making more profits, providing better service to consumers, growing and operating on a global scale. The importance of mergers and acquisitions between companies begins to show itself at this stage. Because companies gain the opportunity to grow faster and become stronger in the markets in which they operate by increasing both their financial resources and workforce capacity through mergers and acquisitions. In this way, the quality of the products and services received increases and the opportunity to offer products and services to the consumer at more affordable prices can be obtained. In addition, companies have the opportunity to allocate more financial resources for areas such as R&D and innovation. Offering company shares to the public in the capital markets is one of the important methods preferred to provide financing for the company. Since meeting the capital needs of companies without external borrowing, utilizing under-the-custom savings, deepening the capital markets and spreading the capital to the base are achieved through public offerings, the supervision of the Competition Board and the Capital Markets Board regarding public offerings is extremely important. Although the Capital Markets Board Activity Report for 2023 has not yet been published, it is seen that public offering bell ceremonies are held very frequently and the number of investors in Borsa Istanbul has reached record levels. The essence of the supervision of public offerings by the Competition Board is that the turnover thresholds determined by Article 7 of the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board are exceeded and a permanent change in control occurs. For this reason, public offering transactions that are

		subject to the permission of the Competition Board but carried out without permission may negatively affect competition in the relevant market and cause direct and indirect losses to investors in Borsa Istanbul. Inspection of public offerings by the Competition Board and the Capital Markets Board is essential for the supervision of the free market economy, effective competition in the markets and the protection of investors in Borsa Istanbul. Within the scope of this communiqué, various concepts and definitions of capital market law such as public offering, sale on the stock exchange and intermediary institutions will be discussed and the audit carried out by the Competition Board regarding public offerings will be examined.
34.	Turkish Beer Market's Trial with The Competition Law	**ABSTRACT** The Competition Board's decisions on players in the beer sector have had a significant impact on the structure and dynamics of the market, and these interventions have shaped the future of the market. Pursuant to this observation, in this article, the Turkish beer market will be analyzed comprehensively in light of the relevant decisions of the Competition Board. In particular, the article will analyze the decisions focusing on Anadolu Efes and Türk Tuborg, the two major players in the duopoly market for the last 20 years. In this context, firstly, a detailed review of the exemptions granted to Anadolu Efes and the process of revocation of these exemptions will be presented. Then, the Board's decision on the "cooler cabinet rule" and the related exemptions for Anadolu Efes will be analyzed. Subsequently, a detailed analysis will be presented focusing on the exemption granted to Türk Tuborg, the changes in the market during the period of this exemption and the proportional changes in the shares of Türk Tuborg and Anadolu Efes, and the decision to revoke Türk Tuborg's exemption will be analyzed. In addition, the article will examine the role of competition law in the Turkish beer market and the Board's interventions in the market by discussing the various preliminary investigations and investigations conducted by the Board on Anadolu Efes; the exemption decisions and exemption decisions made within the scope of Anadolu Efes' Ekomini project; the complex process regarding the takeover of Tekel Birası including the aspects related to intellectual property; and the beer-related commitments submitted to the Board within the scope of the acquisition of Migros by the Anadolu Group and the subsequent acquisition of Tesco Kipa by Migros. The article will conclude with a section on the impact of Competition Board decisions on the beer market and the role they have played in shaping the market. **Key Words:** Individual Exemption, Beer Market, Changing Market Conditions, Revocation of Exemption

35.	Evaluation of Vertical Price Monitoring Mechanism in Terms of Competition Law	**SUMMARY** In accordance with Article 4 of the Law on the Protection of Competition No. 4054, it is unlawful and prohibited to determine the purchase or sale price of goods or services, the factors that constitute the price, such as cost, profit, and all kinds of purchase or sale conditions. This type of violation is called "resale price determination ("Resale Price"). YSFT practices, which have recently been frequently reflected in the decisions of competition authorities, can occur directly or indirectly. The price tracking mechanism, which has a reinforcing effect on the path to YSFT application, is an application frequently used by enterprises. The conditions under which price tracking constitutes a YSFT violation must be determined according to the characteristics of the concrete case. Because, in every case where the price tracking mechanism is used, it will not be possible to conclude that there is a YSFT violation. The aforementioned mechanism can also find application within the scope of legitimate commercial activities of enterprises. The decisions of the Competition Board and foreign competition authorities are guiding in determining in which cases price monitoring mechanisms constitute a violation. The position of the undertakings in the market, their market power, their purpose in price monitoring and the unique characteristics of the relevant market are among the important factors that should be taken into account in the assessment of violation. In cases where the price tracking mechanism is implemented, the mentioned applications should be carefully evaluated and carried out in accordance with legal limitations in order to avoid YSFT violations.
36.	Last Regret Means Nothing: What is the fault of facilitators in Hub & Spoke Cartels?	*Retail I* [46], the first decision of the Turkish Competition Board regarding the collect-distribute cartel, and *Retail II,* [47]which was given subsequently *One of the discussions regarding the theory applied in the decisions is undoubtedly the determination of violation and the administrative fine imposed on the enterprises that are described as " hub* " or " *intermediary "* in the collect-distribute cartel and that are determined to mediate or facilitate the establishment and/or maintenance of the cartel in the downstream or upper market. has been punished.

[46] *Retail I* , 28.10.2021, 21-53/747-360
[47] *Retail II* , 15.12.2022, 22-55/863-357

		First of all, it is considered that the differences in the approaches adopted in terms of mediating the indirect exchange of information in the decisions of *Sunny I* [48]and *Sunny II, which were taken by the Board in approximately the same period but did not detect a violation* [49], should be revealed. Subsequently, it is a matter of debate that two separate administrative fines were imposed on some of the enterprises that were described as intermediaries and punished in *the Retail I & II* decisions, both due to the collect-distribute cartel and the resale price determination ("**YSFB**"). As stated in the OECD's note dated 12 December 2019 containing the contributions of countries regarding the collect-distribute arrangements, in terms of the competition law regime of many countries, the line between collect-distribute and YSFB practices is quite unclear. [50]At this point, although it is seen in the relevant decisions of the Competition Board that YSFB practices are directed at retailers other than those that are party to the collect-distribute cartel, in both violations the ultimate aim of the suppliers is to determine the resale prices and therefore, they *should be sentenced* to two separate fines *.* It can be argued that it violates the principle of *idem.* Another issue is that the actions of intermediaries, which are considered within the scope of the collect-distribute cartel, are in compliance with both the Regulation on Agreements Limiting Competition, Concerted Actions and Decisions and Fines to be Imposed in Case of Abuse of Dominant Position (" **Penalty Regulation** ") and the Regulation on Active Cooperation for the Purpose of Detecting Cartels. It is excluded from the definition of " *cartel* " in the (" **Repentance Regulation** ") and this may constitute a violation of the principle of legal security. Here, the loss of rights arising from the uncertainty as to whether the undertakings that are considered to have the title of intermediary as of the date when the relevant decisions were made have the right to apply to the Regret Regulation may be discussed. As a matter of fact, the definition of "*cartel facilitator*", which is planned to be included in the Draft Regret Regulation, which was submitted to public opinion on the Competition Authority's website on September 28, 2023, and granting them immunity from penalties and discounts can be considered as an indicator of this loss of rights in accordance with the principle of non-retroactivity. Again, in *the Retail I* and *II* decisions, it is considered that the intermediaries who were punished for intermediating the coordination between retailers should be kept together and equally with the retailers, which is controversial within the

[48] *Sunny I* , 18.05.2022, 22-23/371-156
[49] *Sunny II* , 05.01.2023, 23-01/12-7.
[50] https://one.oecd.org/document/DAF/COMP/WD(2019)79/en/pdf

		framework of the principles of individuality and fairness of the penalties. As a matter of fact, firstly in the *AC- Treuhand* files [51]of the European Commission, which are also cited in the relevant decisions. While the administrative fines imposed on the cartels are in symbolic amounts, the administrative fines imposed on the intermediaries in the Board's collect-distribute cartels are at the same rate as the cartelists. In addition, in the *Audit Firms* decision, which the Board took as a basis in its evaluation of intermediary activities, the violation detection and penalty imposed in respect of Duru Bilişim, which facilitates [52]the cooperation between building inspection firms, was based on the participation regime in the Misdemeanor Law, and the fact that no such evaluation was made in the relevant files is also controversial. is value. As a result, the criminal regime that should be applied in terms of the actions of intermediaries in the collect-distribute cartels will be discussed within the framework of whether these actions can be an action that serves the same purpose as the YSFB, not complying with the definition of a cartel, and the necessity of punishing them according to the elements of the rule of law guaranteed by the constitution.
37.	A Comparative Study on Fundamental Right to the Inviolability of the Home and Competition Authorities' Powers of Inspection	Human rights affect almost every area of law; All actors of the law are obliged to take into account the developments in human rights law in some way. At this point, it is important for practitioners to follow the developments in national and international positive human rights law. The reflection of human rights law on competition law can be discussed from a broad perspective, or it can be handled based on rights or decisions made by the human rights judiciary. Within the scope of our notification, the recent decision of the Constitutional Court of the Republic of Turkey on ***Ford Otomotiv Sanayi A.Ş. Application*** decision[53] It is planned to address the issue of residential immunity and competition authorities' on-site inspection authority, taking into account the **PART I. Competition Law and Human Rights in General** In this section, the reflection of positive human rights law on competition law; It will be discussed specifically in the context of the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and the Constitution of the Republic of Turkey. Therefore, within the scope of this section, it is planned to explain the

[51] European Commission, Case COMP/E-2/37.857– Organic Peroxides , December 10, 2003; COMP/38589 – HEAT STABILISERS, 11 November 2009.
[52] *Audit Firms* , 02.12.2013, 13-67/929-391
[53] Republic of Turkey Constitution Court, *Ford Otomotiv Sanayi A.Ş. Application*

intersection of fundamental rights and freedoms such as privacy of private life, the right to a fair trial, the right to good administration, and competition law. Following the general framework that will be created by examining the relevant national and international regulations, the reflection of the right of home immunity to competition law will be discussed in the context of on-site examination.

CHAPTER II. On-Site Inspection Authority of Competition Authorities in Housing Immunity and Competition Law

In this section, the relationship between the competition authorities' on-site inspection authority and the right to home immunity will be examined in the light of current court decisions. Although the issue came to the agenda for Turkish jurists with the decision of the Constitutional Court dated 23.3.2023 with Application number 2019/40991, before this decision, this issue was discussed within the scope of the residence immunity of legal entities in the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union; The basic principles on the subject have been established through jurisprudence.

Ford Automotive Industry Inc. Although in its decision on the ***application the European Court of Human Rights ruled that the Société Colas Est and others v. France***[54] Although it is stated that the concept of housing can be considered to include [55]management offices, branches and other workplaces by referring to the decision, the issue of whether legal entities and especially commercial companies are subject to human rights in general , and specifically the issue of rights subjectivity of legal entities within the framework of the right to housing immunity, should be emphasized. It is a necessary point. At this point, within the scope of Part II, the on-site inspection authority of the competition authorities will be briefly discussed, and then whether legal entities and commercial companies can be the subject of home immunity in the light of the jurisprudence of the European Court of Human Rights will be discussed in the light of the evolution of the jurisprudence. **(A)** Afterwards, the jurisprudence of the Court of Justice of the European Union will be discussed, especially ***the Deutsche bahn*** decision[56] It will be examined from the perspective of the Commission's on-site inspection authority and the right to residence immunity. **(B)** After discussing the basic principles established by the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, ***Ford Otomotiv***

[54] Europe Person Rights Court , *Société Colas Est and others v. France, Application No. 37971/97,* 16 April 2002.
[55] Marius Emberland, The Human Rights of Corporations , 1st Edition, New York: Oxford University Press , 2006. Also see for a detailed review on the subject. Salih İnan, " *Companies and Human Rights: Fundamental Rights and Freedoms of Companies in the Light of the Individual Application Decisions of the European Court of Human Rights and the Constitutional Court of the Republic of Turkey* ", Galatasaray University Unpublished Doctoral Thesis, 2023.
[56]Court of Justice of the European Union, C-583/13 P, Case Deutsche Bahn , 18 June 2015.

		Sanayi A.Ş. In line with the application decision, the individual application jurisprudence of the Constitutional Court of the Republic of Turkey will be examined, and our notification will be concluded with the possible consequences in this field. **(C)**
38.	An Authority Issue in the Merger Control: Borders of the Tech Undertakings Definition	The Communiqué on Amendments to the Communiqué on Mergers and Acquisitions Requiring Permission from the Competition Board (" **Communiqué No. 2010/4** ") (" **Amended Communiqué** ") was published officially on 4 March 2022. It was published in the Gazette and the Amendment Communiqué entered into force on 4 May 2022. One of the most fundamental changes that the Amendment Communiqué brought to our lives is the concept of "technology enterprise" in the concentration control regime, annex 4(1)(e) of Communiqué No. 2010/4. According to the article , this concept is " It refers to *enterprises or assets related to them operating in the fields of digital platforms, software and game software, financial technologies, biotechnology, pharmacology, agricultural chemicals and health technologies* . In parallel, the Amendment Communiqué has determined that the two hundred and fifty million TL thresholds specified in Communiqué No. 2010/4 will not be required in transactions regarding the acquisition of technology enterprises in question that operate in the Turkish geographical market or have R& D activities or provide services to users in Turkey. When we look at the justification of the Amendment Communiqué, it can be seen that the main reason for the said regulations is to prevent the mentioned enterprises from being subject to " *killer acquisitions ".* However, in light of the Competition Board's (" **Board** ") past decisions regarding technology enterprises, it is understood that there has not been a clear consensus between the Board and practitioners regarding which enterprises will be included in the concept of technology enterprises over the past 1.5 years. To exemplify, in the Board's *Berkshire Hathaway* decision dated 15.09.2022 and numbered 22-42/625-261, the Board evaluates whether the relevant target enterprise operates in the field of "financial technologies" and therefore whether it is a technology enterprise, while the target is in any field in Turkey and It has been evaluated that it would be sufficient to operate in an area that can be considered as a technology enterprise in any geographical market in the world. As can be seen, even one of the uncertainties in the implementation of Article 7.2 of Communiqué No. 2010/4 was only clarified through a decision taken months later. This situation reduces the likelihood of detecting transactions that can truly be described as lethal takeovers, both in the eyes of the Competition Authority (" **Authority** ") and practitioners, and at the same time harms procedural economy both in the eyes of the Authority and the parties.

		As a matter of fact, after 1.5 years, there are still uncertainties about whether some enterprise activities will be included in the concept of technology enterprise. Among the main reasons for this, the lack of a guide that can outline the scope of the definition of technology enterprise can be considered. Secondly, the Board considers that the activities of the target defined as a technology enterprise by the parties in some of the acquisition notifications are not sufficient for a technology enterprise and if the relevant turnover thresholds are not exceeded in the light of Communiqué No. 2010/4, the transaction is not subject to notification. In this scenario, since the Authority does not publish any reasoned decision, the Board's evaluation and perspective on the concept of technology enterprise cannot be observed by practitioners and the public. This situation reveals the need to draw the boundaries of the concept of technology enterprise more clearly. only source for now in determining the boundaries of the concept of technology enterprise are the reasoned decisions published by the Board so far. In this context, within the scope of the notification we intend to draft, (i) the limits of the concept will be examined by examining the previous Board decisions regarding the concept of technology enterprise as of May 4, 2022, (ii) it will be evaluated whether the current evaluation structure of the Board actually targets "deadly acquisitions" and (iii)) Actions that can be taken to draw the borders in question will be discussed.
39.	Will Subsidiaries' Violations Always Lead to Parental Liability?	The conditions under which parent companies and their subsidiaries will be liable for competition law violations is one of the important debates from past to present. To this end, although certain criteria have been determined [57]and some presumptions have [58]been stipulated by various authorities for attributing responsibility to parent companies and subsidiaries, there is no common understanding yet. In this context, a discussion will be held within the framework of the difference in approach towards attribution of responsibility.

[57]These criteria are as follows: In cases where the subsidiary and the parent company constitute economic integrity, liability can be attributed to the parent company (Imperial chemical Industries Ltd. v Commission , C-48-/69; Red Meat decision of the Board dated 17.11.2012 and numbered 11-57/1510-538). If the parent company has decisive influence over the subsidiary, liability may be attributed to the parent company (AEG- Telefunken v. Commission , Case 107/82 P 3155). If the parent company does not exercise decisive influence over the subsidiary, liability cannot be attributed to the parent company (Allergan PLC and others v CMA, C. 1407/1/12/21). If the parent company owns the subsidiary, liability may be attributed to the parent company (Hyrocortisone Decision , Vol. 50277). In order to attribute liability to the parent company, it is not sufficient for the parent company and its subsidiary to be in economic integrity (Board's decision on Citroen Dealers dated 23.09.2010 and numbered 10-60/1274).

[58]These presumptions are as follows: The presumption that the parent company has decisive influence over the subsidiary company (Stora Kopparbergs Bergslags B v Commission , C-286/98.); The presumption of 100% ownership is the presumption that a parent company that fully owns the subsidiary will be liable (Akzo Nobel and Others v Commission , T-112/05).

		In EU practice, the liability of the parent company arising from subsidiary violations was discussed for the first time in the CJEU's ICI decision in 1972, and it was decided that liability could be attributed to the parent company when it was concluded that the subsidiary and the parent company constituted economic integrity. In [59]the subsequent AEG-Telefunken decision, it was determined that in order to attribute liability it was necessary to prove that the parent company exercised decisive influence over the subsidiary. [60]In the Stora decision, a type of presumption was introduced in the form of acceptance that the parent company has a decisive influence on the subsidiary company, and it was envisaged that the violation of the subsidiary company could be attributed to the parent company. [61]Finally, the Akzo Nobel decision introduced a presumption of 100% ownership and made it very difficult to prove the contrary. [62]Although this jurisprudence is quite controversial, the presumption and what it brings with it have increased the already existing debates. the CAT's recent Allergan decision [63], the determination that the parent company will not be liable in cases where it does not exercise decisive influence over the subsidiary creates a contradiction with the CMA's perspective on this issue. [64]CMA and CAT have a difference of opinion regarding whether liability should be attributed according to the control criterion over the subsidiary, as a result of an enterprise that acquired the parent company of the violating subsidiary before the violation, and kept the subsidiary separate from the transaction during this acquisition. This difference of opinion shows that the debates in the EU are also on the agenda in the UK. In our country's practice, it is seen that there is no unity of jurisprudence in holding the parent company responsible for the violation committed by the subsidiary. While some decisions attribute responsibility to the parent company, it appears that [65]in some decisions no responsibility is attributed [66]. These differences in approach will be emphasized and comparisons with the practices of other authorities will also be discussed. In this context, various criteria determined in the jurisprudence of different authorities regarding the attribution of responsibility will be discussed and their current status and their reflections on our country will be discussed.

[59] Imperial chemical Industries Ltd. v Commission , C-48-/69.
[60]AEG- Telefunken v. Commission , Case 107/82 P 3155.
[61]Stora Kopparbergs Bergslags B v Commission , C-286/ 98.
[62] Akzo Nobel and Others v Commission , T-112/05.
[63] Allergan PLC and others v CMA, C. 1407/1/12/21.
[64] Hyrocortisone Decision , Vol. 50277.
[65]Red Meat decision of the Board dated 17.11.2012 and numbered 11-57/1510-538.
[66]Citroen Dealers dated 23.09.2010 and numbered 10-60/1274 .

		In addition, the conditions under which subsidiaries can be held responsible for the violations committed by parent companies will be discussed, and examples of the reflection of this situation on the decisions of various authorities will be given. In addition, discussions will be held on the conditions under which parent companies and subsidiaries located in different countries and committing violations will be held responsible. Finally, after determining the liability arising from the violation, how the fine to be imposed on the undertakings due to the violation is calculated will be discussed. The differences and similarities in approaches between authorities will be discussed by giving examples of how this situation is revealed in the decisions of various authorities.
40.	Analysis of Below-Threshold Transactions in the Light of Continental Can and Towercast Decisions	The issue of whether non-reportable mergers and acquisitions can be examined on the grounds that they constitute an abuse of dominant position has gained a new lease of life with the Towercast decision of the Court of Justice of the European Union ("[67]**CJEU**") in recent months. This decision of the CJEU represents an important turning point after the old Continental Can decision [68], which evaluated the extent to which the doctrine of abuse of dominant position is applicable in terms of mergers and acquisitions. In this context, in the light of the Continental Can and Towercast decisions, the status of mergers and acquisitions that are not considered reportable will be evaluated against the European Union and Turkish competition law rules. of the Treaty on the Functioning of the European Union (" **EUDA** ") and, in parallel, Article 6 of the Law on the Protection of Competition No. 4054 (" **RKHK** "), abuse of dominant position is considered unlawful and prohibited. In the relevant articles, behaviors that can be considered as abuse of dominant position are listed in a non-limiting manner. Continental Can decision dated 1973, the CJEU made evaluations on whether a merger and acquisition transaction would constitute an abuse of dominant position. According to this decision, it was determined that an undertaking in a dominant position increasing the degree of dominance it has reached in a way that significantly hinders competition, that is, leaving only undertakings dependent on it in the market, would constitute abuse of dominant position. This decision served as a guide for a long time until the EU Merger and Acquisition Regulation ("**EUMR**"), **which was adopted**

[67]Case C-449/21 Towercast SASU v Autorit de la concurrence .
[68]Case 6/72 Europemballage oath Continental Can v Commission .

		at later dates and took its final form in 2004, and with the EUMR first coming into force in 1990, abuse of dominant position against transactions that were not reportable and took place. It has been accepted that it cannot be detected. With the Towercast decision, the CJEU adopted an attitude exactly opposite to the decision of the French competition authority, which stated that Article 102 of the ECJ had become inapplicable to concentrations with the adoption of the EUMR and the introduction of *the ex-ante* control system. Accordingly, the EUMR has put an end to the understanding that the non-reportability of transactions before national authorities or the Commission does not constitute an abuse of dominant position. It will not be possible for EUMR, which has secondary regulation status , to be implemented as a priority compared to the primary norms in ABİDA . For this reason, he states that it is not possible to say that Article 102 of ABIDA, which regulates the abuse of dominant position, cannot be applied to non-reportable merger and acquisition transactions. This decision follows the Illumina / Grail decision, which paved the way for the examination of mergers and acquisitions that do not have an EU dimension and are below the turnover thresholds in recent years, and the subsequent Qualcomm / Autotalks and EEX / Nasdaq decision. When considered together with subthreshold transactions such as Power, it opens many new topics of discussion. Since recent developments have the possibility of making the concentration control regime more uncertain and unpredictable for enterprises, future risk analyzes will need to be made more carefully. In this context, the effects and future reflections of the Continental Can and Towercast decisions will be evaluated within the scope of Article 102 of the ABİDA and Article 6 of the RKHK.
41.	When will a breach of commitments in Mergers and Acquisition trigger a re-evaluation?	of the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board ("**Communiqué** ") states that a concentration transaction authorized by the Competition Board (" **Board** ") can only be carried out if (i) a decision is made based on false and misleading information or (ii) It is stated that if the agreed conditions and obligations are not fulfilled, it may be subject to re-examination. At this point, the Communiqué does not make a distinction between violations of conditions or obligations, and does not even seem to leave any discretion to the Board by saying " *the Board will re-examine the merger or acquisition ".* However,

in practice, it has also been the case that if false and misleading information does not affect the evaluation made regarding the transaction, the transaction is not re-examined.[69]

The Guide on Solutions Acceptable by the Competition Authority in Merger and Acquisition Transactions (" **Guide** ") states that the provisions and consequences of acting contrary to the terms and obligations are different in terms of law, and narrows the limit set out in the Communiqué. As a matter of fact, while paragraph 92 of the Guide states that the permission decision will automatically be invalid in case of violation of obligations, *it is stated that "On the other hand, in case of violation of obligations, the administrative fine foreseen in Article 17 of the Law may be imposed on the relevant parties.* "suggests that it may come. After all, the Guide also states that " *since the provisions and consequences of acting contrary to conditions and obligations are different in terms of the Law, attention should be drawn to the distinction between conditions and obligations here*."

It can be said that this understanding is effective in defining commitments defined as "conditions" as commitments that directly change the market structure (e.g. for the disposal of a business) and "obligations" as commitments that include steps for their implementation (appointing a divestiture expert, making reports, etc.). However, it is also possible to read the regulation in the Guide in an alternative way. Alternatively, it can be said that the violation of obligations does not prevent the transaction from being invalidated, there is an implicit discretion here and it is considered that imposing a fine may be sufficient without the need to invalidate the transaction.

the European Commission's (" **Commission** ") Guide on Acceptable Solution Proposals (" **Mehaz Guide** ") is examined, it is stated in paragraph 19 of the Mehaz Guide that a distinction should be made between conditions and obligations. Paragraph 20 of the Mehaz Guide states that the permission decision may be withdrawn or a fine may be imposed as a result of violation of the obligation. However, if an obligation is not fulfilled (e.g., failure to dispose of a business line in a timely manner), the transaction will be void. As can be seen, while the Mehaz Guide states that violation of terms and obligations may have different consequences, it does not state that violation of obligation will not lead to the invalidity of the transaction; It merely indicates that there is no automatic invalidity. At this point, it can be seen that the Mehaz Guide states that, unlike divestiture, other commitments require an effective monitoring mechanism and that if there is

[69]Board's decision on Brookfield (30.04.2020, 20-21/278-132), para 20: Graftech's activities could not be evaluated in the affected market assessment due to the Turkish turnover of Graftech, controlled by Brookfield , being written as Swiss turnover by mistake, but the conclusion reached was reported to have no effect.

		no threat of withdrawing the permission as a result of these commitments, it will only turn into a simple statement of intent. Based on this, it is thought that the statement in the Guide that violation of terms and obligations has different consequences and that fines regulated in Article 17 of the law "may" come to the agenda can be interpreted in a similar way. Because violations of obligations should not turn into simple statements of intent. However, the Board's approach currently appears to differ from the Commission's, considering the Essilor decision. [70]Because the sanction for violation of Essilor 's behavioral commitments to avoid tying and exclusivity practices is a daily fine. However, considering that certain concerns were identified before the transaction was allowed, commitments were taken from the undertakings for this reason, and these concerns were manifested in the market rather than being resolved, is it enough for this situation to result in the imposition of an administrative fine, as would be the case in any violation of competition law? How is compliance with commitments checked and are they sufficient to maintain effective competition in the market? In our paper, the differences between European and Turkish practices will be examined and the reasons and consequences of this difference will be discussed, taking into account file examples.
42.	A Dilemma in Competition Law: Dual Distribution Models	Unlike classical distribution models, in dual distribution there is both a vertical and a horizontal relationship between the manufacturer and the distributor. As a matter of fact, it can be said that this is the element that gives color to dual distribution from the perspective of competition law. Exactly this element raises the problem of characterizing agreements between undertakings in the context of bilateral distribution. Regulations such as Communiqué No. 2002/2 and the Vertical Agreements Regulation (VBER) in the European Union legislation regulate the conditions under which bilateral distribution relations will benefit from vertical exemption. However, even in this case, a gray area arises if there are limitations that fall outside the group exemption or if the contract does not benefit from the exemption for other reasons. For example, will a sales price imposition or customer or territorial restriction imposed by the supplier on the distributor be considered a vertical restriction or a cartel agreement when it occurs in dual distribution? Likewise, there are discussions about the legal outcome of information exchanges taking place between enterprises within the framework of this distribution model, and this issue creates a special sensitivity for the compliance efforts within the scope of companies' distribution systems.

[70]Board's decision dated 17.08.2023 and numbered 23-39/749-259 (reasoned decision has not been published yet).

		There is no universal answer to these questions, the answers to which will have important consequences for the relevant enterprises. As a matter of fact, although the Turkish Competition Board has taken a consistent stance on examining dual distribution systems from a vertical perspective in many of its past decisions, there are also contradictory decisions of foreign authorities in similar cases. When a general review of the subject is made, it is observed that the vertical or horizontal approach may come to the fore in the concrete case. While reaching a conclusion on this issue, it is seen that the issue of whether there is a harmony of will to create a collaborative result between the enterprises operating at different levels of the supply chain and subject to review or whether there is pressure applied from the upper level to the lower level is examined in the light of various criteria. In this evaluation, how the relevant market will be defined, as well as how certain competition law tools are used, may also be important. A recent development that has brought the rich discussion at hand back to date is that, in the VBER and EU relevant vertical guide, the information exchanges that occur within the scope of dual distribution are examined in detail and it is clearly confirmed that in some cases, the information exchanges between the supplier and the distributor within the dual distribution systems will go beyond the vertical plane. As a matter of fact, these evaluations in EU law can be expected to be effective for Turkey and other countries that follow the EU school. In this notification, the approach of both the Competition Board and foreign competition authorities to competition problems arising within the framework of dual distribution will be analyzed through the relevant files and the differences in approach in different jurisdictions will be revealed. In addition, a detailed examination will be made regarding the evaluation of information exchanges within the scope of dual distribution systems and the issues that need to be taken into consideration, especially from a compliance perspective, especially through the relevant provisions of the VBER and the discussions that arise during and after the finalization of the VBER. Finally, a criticism will be made, especially regarding the cases in which the horizontal perspective comes to the fore, and our view that the vertical aspect of the dual distribution should come to the fore in terms of analysis will be defended.
43.	Self-Preferencing as a New Form of Infringement in Competition Law	Self-nepotism in competition law generally refers to a situation where an undertaking with significant market power uses its position to put its own products or services ahead of its competitors on a platform on which it operates. Self-nepotism occurs particularly on platforms that act as intermediaries or gatekeepers, such as search engines, e-commerce platforms, app stores, and social media platforms.

Self-deprecation behavior can be seen in various ways:

- **Self-favoritism in rankings: Self-favoritism in rankings, which came to the fore with** the Google Shopping Decision [71], carries the risk of reducing the visibility of search service and/or e-commerce platform providers by prioritizing their own products or services, ahead of third-party results.
- **Device-Application Relationship:** If platforms with significant market power agree with device manufacturers with whom they have the same economic integrity or vertical relationship to ensure that certain services and applications come pre-installed on devices or are designated as dedicated applications, consumers' access to competing applications is restricted and exclusionary consequences may occur. .
- **Data Use:** The data obtained by core platform service providers regarding customers and purchasing behavior [72]gives these providers the opportunity to copy the innovations of competitors offering products on the platform and to identify popular products and offer them more advantageously, without incurring significant commercial risks. [73]This situation has the possibility of limiting competition in the market by both reducing the innovation motivation of competitors and making their activities difficult.

In our paper, we will first discuss the situations in which the concept of self-nepotism may arise and the concerns it will create in terms of competition. We then turn to the EU Commission's Google Shopping Decision, in which Google was found to have abused its dominant position in thirteen national markets for general search services by positioning its own service more favorably than rival comparison shopping services on general search results pages. This decision is important in that the European Commission rejects the defense that abuse can only occur if the criteria determined in the Bronner case [74]are met and brings self-nepotism to the agenda. Next, we will discuss the review processes and the commitment package [75]that Amazon has gone through in the European Union due to suspicions of self-nepotism and

[71] Google Search (Shopping), Case AT.39740, (2017)
https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf
[72] Farrell , J., Katz , ML (2000), " Innovation , rent extraction , and integration in systems markets ", 48(4) Journal of Industrial Economics .
[73] Sarıçiçek C. (2020), "Me, Myself and Amazon", Master's Thesis, Berlin, Digital Transformation to Competition Law
Reflections, April 2023, Competition Authority, p. 113.
[74] CJEU Case C-7/97, Oscar Bronner GmbH & Co . v mediaprint
[75] Commission Decision (Cases AT.40462 – Amazon Marketplace and AT.40703 – Amazon Buy Box) https://eurlex.
europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023AT40462(01)& from=EN

		which includes allegations of data usage and prioritization of logistics services provided.[76] We will also talk about important cases examining self-serving behavior in the USA, Italy and the Netherlands. Finally, [77]the E-Marketplace Platforms Sector Review, the Report on the Reflections of Digital Transformation on Competition Law and the Preliminary Report of the Online Advertising Sector Review, which shed light on the Competition Authority's approaches to digital markets with the [78]decisions in which self [79]-nepotism is on the agenda in our country [80]and to which Google is a party and the Trendyol decision. [81]We will discuss it within the framework of the tips presented in the scope.
44.	Competition Law Analysis on No-Poaching Obligations Imposed Between Non-Competitor Undertakings	Competition law practices in labor markets have become one of the most controversial issues of Turkish competition law in recent times. In the decisions taken by the Competition Board in recent years, *the per se violation nature* of employee non-seduction agreements and salary fixing agreements between competitors has been revealed, and in this context, discussions regarding the theoretical framework have been discussed many times. However, within the scope of a vertical relationship (e.g. service contract, supply contract, work contract, etc.), the evaluation criteria regarding the obligations not to seduce employees imposed between the undertakings that are parties to the relationship have not yet been clarified in the Board's jurisprudence. Although the Board's *Bift* decision (07.02.2019; 19-06/64-27) in some individual exemption decisions regarding bancassurance contracts between banks and insurance companies.[82] Although there are some individual evaluations on the basis of the concrete file, legal predictability has not been achieved for the undertakings.

[76] Investigation notice https://ec.europa.eu/commission/presscorner/detail/pl/ip_19_4291 ;
Notice of objection https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077
[77] Competition Board Decisions 6.11.2016, 16-39/638-284; 13.02.2020, 20-10/119-69
[78] E-Marketplace Platforms Sector Review, April 2022, Competition Authority
https://www.rekabet.gov.tr/Dosya/sektor-raporlari/e-pazaryeri-si-raporu-pdf-20220425105139595-pdf
[79] Competition Board Decision 30.09.2021, 21-46/669-334
[80] Reflections of Digital Transformation on Competition Law, April 2023, Competition Authority,
https://www.rekabet.gov.tr/Dosya/dijital-piyasalar-calisma-metni.pdf
[81] Online Advertising Sector Review Preliminary Report, April 2023, Competition Authority
https://www.rekabet.gov.tr/Dosya/cevrimici-reklamcilik-on-raporu-20231009170548088.pdf
[82] Board's decision *on Bupa Acıbadem/HDI Sigorta* (03.06.2021; 21-29/368-184); Board's *HDI Fiba/Fibabanka* decision (10.08.2023; 23-37/686-237)

		For this reason, in our paper, firstly the theoretical background of competition law practices in labor markets will be revealed. In this context, the legal nature of employee non-seduction and salary fixing agreements between competitors will be briefly examined. Subsequently, the compatibility of the theoretical framework put forward by the Competition Board when evaluating the mentioned types of violations with the obligations not to seduce employees imposed in the context of vertical agreements will be examined. In this context, the applicability of the "side limitation" approach, which is applied in the US practice, especially in terms of franchising agreements, in Turkish law and how the "impact analysis" will be applied in proving the violation will be discussed. The above-mentioned decisions of the Competition Board and the decisions originating from the USA will be examined comparatively and some evaluation standards will be proposed. Subsequently, the problems that the alternative positions to be taken by the Competition Board against the obligations not to seduce employees imposed within the scope of vertical agreements within the framework of the unfair competition provisions of the Turkish Commercial Code will be discussed, and in this context, it will be discussed whether the judicial precedent can shed light on the Competition Board. Finally, it is seen that in practice, the obligations not to seduce employees imposed within the scope of vertical agreements are handled together with the non-competition obligations in the employment contracts of the workers subject to seduction, and the legal initiatives between the parties are carried out within the framework of both labor law and commercial law. In such a case, discussions will also be included as to whether the obligations not to seduce employees in employment contracts can be evaluated by the Competition Board alone or as a complementary element. In the general framework, the relationship between competition policies and freedom of work will also be examined. In this context, the results of alternative positions that the Competition Authority, which is the supervisory and regulatory authority, can take in cases of conflict between public policies will be examined through fictional examples. Our ultimate goal is to offer suggestions to eliminate the uncertainty regarding the contracts concluded by enterprises following the recent decisions of the Competition Board regarding labor markets. While these suggestions are being presented, a concrete implementation trend expectation for the future will be put forward, based on the decisions made by both the Competition Board and foreign competition authorities and judicial authorities. In this respect, the paper is intended to be argumentative.

45.	The Increasing Role of Competition Law in Mergers and Acquisitions: Practical Approaches to Competition Law Enforcement from Pre-Merger Negotiations to Signing Stage	The role of competition law in merger and acquisition processes is generally considered limited to concentration analysis. However, legal risk reports *due diligence.* It is experienced that competition law plays an important role in many areas, from the risks of information sharing in the data rooms established for the preparation of the report to the drafting of liability provisions in transaction agreements. With the increasing effectiveness of the Competition Authority in all markets and the influence of audit motivation, the motivation of the transaction parties to maintain competition law compliance at different stages of the merger and acquisition processes has increased and the importance of competition law in legal analyzes has increased. With the mentioned development, current and new problems come to the fore in terms of competition law practice. In this regard, in our paper, the areas that can be related to competition law at every stage of a merger and acquisition transaction will be discussed chronologically, current and practical questions and solutions to them will be discussed in line with the decisions of the Competition Board and the European Commission. Our goal is to both bring to the agenda the problems that arise at different stages and to provide guidelines on sub-headings in the light of the decisions of the competition authorities. The main topics planned to be discussed in this context are as follows; • ***Pre-Meeting (Pre-merger Competition Law Problems and Solution Suggestions That May Occur During the Negotiations Stage*** **:** After the parties to the transaction declare their initial intentions regarding the transaction, they come together and evaluate whether the transaction has a potential that is compatible with the commercial goals and interests of the parties in terms of economic, financial, commercial and managerial aspects. The problems it may cause will be discussed. In addition to practical experience, FTC's 2018 announcement[83] The Flakeboard decision of the American Department of Justice and the Altice decision of the European Commission will be examined and the principles and practical solution suggestions on how the process should be structured will be discussed. • ***Legal Review Process and Risk Reports (Due Diligence /DD):*** In this section, it will be discussed how the risks of information exchange between competitors should be managed during the preparation of data rooms, which are indispensable for the DD process, and how competition law risks should be analyzed in the content of the

[83] FTC's 2018 " Avoiding antitrust pitfalls during pre-merger negotiations oath due announcement called “diligence ”

		legal risk report. In the DD process, which plays a decisive role in determining the scope of liability of the seller and penal terms, a guide will be provided regarding which elements should be requested from a contractual liability perspective and how the information received should be reflected in the risk report, within the framework of competition law. • ***Contract Writing Process:*** In this process, the impact and results of competition law practices will be discussed under the headings of Prerequisites, Side Limitations, Declarations and Warranties, List of Exceptions, Special Compensation, Management, Deadlock Resolution Mechanisms, Forced Selling and Drag Rights, taking share transfer and shareholders' agreements as a model. Side limitations will be discussed in detail in the subheadings of this section. In this context, the changing approaches of the Competition Board regarding non-competition and non-seduction obligations, especially between 2011 and 2022, will be examined and the legality of the "conditional permission decision", which started to be issued as of 2022, will be discussed. • ***Interim Period Before Closing After Signing Period):*** In this section, especially the decisions of the Competition Board regarding the actual transition of control caused by the provisions regulating the Interim [84]Period are discussed. and the European Commission's *Altice /PT Portugal* The decision will be discussed in the light of the trial processes. • ***at Closing:*** In transactions where the pricing mechanism is determined by the Closing Accounts Method, it will be discussed how the competition law risks of the target company may affect the pricing and what precautions can be taken against this.
46.	The Effects of Technology Transfer Agreements on Competition and the Block Exemption Communiqué Numbered 2008/2	The concept of technology refers to all kinds of machines, tools, instruments, organizational methods, techniques and the systems they create that can be used in production processes. A technological product is a value created as a result of an intellectual effort and intended to be used in industrial production. Technological products have two basic features. The first of these is the innovation feature. Innovation means that the technological product constitutes the subject of technological innovation. The second feature is functionality. The functionality feature has three aspects. First of all, some of these products can be used in the production of industrial goods and services. Inventions and semiconductor topographies are functional in this respect. On the other hand, it

[84] *Elon Musk* of the Board decision (02.03.2023, 23-12/197-66); *ASAV Logistics / Kerry Logistics* decision (04.07.2019, 19-24/371-169); *DSG/ Odea* decision (05.09.2013; 13-50/717-304)

		refers to the technological product's ability to contribute to the user's ability to function. This also applies to computer programs, databases and new plant varieties. The third aspect of functionality is valid for both types of technological products; these products are the source of the development of new technological products. Since every technological product is an intellectual product, they can be protected by intellectual property rights. Technological products that are not protected by intellectual property rights can also be protected by keeping this information confidential. In this case, there is actual protection instead of legal protection. We can call the technological information hidden in this way as know -how. As it turns out, know -how is not an intellectual property right. However, know -how, which is not an intellectual property right, is also a method of technology transfer. With know -how, businesses quickly acquire technology. In this context, technology transfer is facilitated by the existence of intellectual industrial property rights such as patents, trademarks, know how, trade secrets, which protect the interests of the transferor and enable income generation from the technology provided, and technological products can be transferred through technology transfer agreements. The existence of intellectual and industrial property provides a suitable basis for the development of technology production and transfer opportunities outside of goods producing companies, and for the production and systematic transfer of new technologies. Underdeveloped or developing countries can access new technologies through technology transfer. In this context, technology transfer emerges as an important part of the international economic and legal relations network. With the Technology Transfer Agreements Group Exemption Communiqué, regulations have been made regarding the exemption of technology transfer agreements as a group from the implementation of the provisions of Article 4 of RKHK No. 4054. In our study, these regulations and their equivalents in EU law will be discussed.
47.	Competition Law and Artificial Intelligence	While artificial intelligence (AI) develops day by day and becomes a part of our lives, it also brings with it some concerns in the context of competition law. Because the development, evaluation and distribution of these modern machine capabilities in a safe, reliable and ethical manner requires some collaborative strategies among competitors. On the other hand, artificial intelligence modeling developed without such collaborations between enterprises is considered dangerous and unsafe, and the negative effects that this situation may cause for consumers are also brought to the agenda. It is also claimed that artificial intelligence may lead to abuse of dominant position, as well as collaborations restricting competition, and moreover, the algorithms used within the scope of AI modeling may also have different anti-competitive effects.

		In this presentation, where we aim to cover the issues brought up by artificial intelligence in competition law in all its dimensions, we will first talk about the concerns also expressed by Artificial Intelligence Governance, and the importance of cooperation between enterprises in terms of the provision of Responsible AI (Responsible AI) . In this context, collaborative strategies put forward to ensure the safe and beneficial development of artificial intelligence can be implemented in the near term (agreements, exchange of information, standardization) setting and long-term strategies (Assist Clause , Windfall Clause) will be examined on the basis of current competitive concerns in the near term and potential competitive concerns that may arise in the long term. The following part of the presentation will include discussions on how these concerns can be addressed in practice. In this context, it will be discussed whether the relevant collaborations can be restructured so that they are excluded from the scope of the concept of agreements restricting competition, and discussions will be brought to the agenda regarding whether these strategies can benefit from the exemption regime, as they may have competitive effects with some efficiency gains. In the following part of the presentation, data, which are the cornerstones of artificial intelligence, computer-based resources, especially cloud computing services, and employee non-seduction agreements that are likely to emerge in the markets in question will be discussed. Concerns about anti-competitive market foreclosure, self-nepotism and exclusionary behavior expressed by various competition authorities in terms of the elements that constitute the basic inputs of artificial intelligence will also be discussed in this context. Finally, in this section, some discussions regarding concentration processes in the artificial intelligence sector will be briefly included. Finally, the presentation will touch on the AI Law and the AI Liability Directive introduced in the European Union for the regulation of artificial intelligence systems, and the primary obligations of companies that develop such modeling within the scope of the Digital Markets Law will be brought to the agenda. Subsequently, the steps taken by various competition authorities around the world, including the investigations carried out by the UK Competition and Markets Authority, the statements made by the US Federal Trade Commission and the German Competition Authority, will be discussed; In this regard, international practices on the subject will be included.
48.	Discussions Regarding Applicability as a Result of Repetition and Concentrations in Competition Law	Debates continue regarding the concept of recidivism, which is the aggravating factor in the penalty most frequently encountered in competition law practice. The relationship of the institution in question with fundamental rights and freedoms; The consequences of taking actions as a basis for recidivism in the context of criminal law, the principle of no punishment without law, the principle of retroactivity of adverse laws and the principle of ne bis in idem, have been the

		subject of many decisions. Moreover, discussions continue regarding the three cumulative conditions required for the concept of recidivism to be taken into account and the legal framework required for accepting that these conditions have been met. In this presentation, in which we aim to discuss the concept of recidivism in competition law in all its dimensions, we will first discuss the legal nature of the concept in question and briefly touch upon its appearance in the context of types of recidivism, criminal law and misdemeanors. Then, we will explain the legal basis and application conditions of recidivism in general terms with examples from comparative law. While discussing the essential conditions required for the existence of the concept in question, we will include the concept of the same attempt and bring up the current debates about to whom the violation can be attributed and to whom the responsibility will be attributed. In this context, when examining the issue of to whom responsibility will be attributed in terms of group companies, the EU Commission (Commission) primarily *Akzo Nobel and Others , Aristrain , Elevators oath Escelators , Alloy Surcharge* We will include controversial decisions in this regard, including: Finally, this section will include the elements of whether the violation is "the same or similar", the determination of a previous violation and the period between the previous violation and the next violation within the scope of the principle of proportionality, and then various competition authorities, especially the Board and the Commission, will impose a basic fine in case of repetition. We will also comparatively consider the rates of increase. In the following part of our presentation, we will bring to the agenda the debates regarding the appropriateness of the practice of recidivism in case the enterprises against which violations were previously determined change hands through various methods. In this context, first of all, the current *ThyssenKrupp Liften Ascenseurs NV and Others v European Commission* In the light of these findings, we will discuss the appropriateness of the Competition Board's decision on *EssilorLuxottica SA,* which was repeated as a result of the merger . [85]In this context, whether the old will can be taken as basis since a new will emerged as a result of the merger transactions, whether the enterprise can be held responsible since it is in pure economic integrity, who should be addressed in the notification made in the process leading to the previous violation in terms of the determination of responsibility in accordance with the right of defense, etc. We will include discussions. Subsequently, we will discuss the appropriateness of not applying recidivism to the new enterprise on the basis of the will expressed in the process leading to the old violation and the belief that the decisive

[85]EssilorLuxottica SA has not yet been published as of the date of this abstract , we will discuss the issues in question within the scope of the arguments in the oral defense and the short decision of the Board.

		role in the violation belongs to another enterprise, considering that the existing legal entities ended and a new enterprise was born as a result of the merger process. Finally, in our presentation, we will express some arguments as to whether the CJEU's current stance of not applying recidivism to new enterprises as a result of the merger process can also be applied as a result of acquisition transactions, and we will discuss different opinions in this regard by examining different practices around the world, not only being limited to the EU practice.
49.	Rethinking Market Power in the Digital Era: A Comprehensive Analysis Within the Framework of Regulatory Imperatives	Digital economy; It has entered a major transformation process with the effectiveness of online multilateral platforms, the existence of indirect network effects and the acceptance of asymmetric pricing practice as one of the main characteristic features of the digital economy. The definition of market power, which focuses on the power to influence the price and income in traditional markets, is insufficient to define the balances in digital markets due to the dynamics revealed by the digital economy. For this reason, new concepts such as gatekeeper, undertaking with significant market power, undertaking with strategic market status have emerged among many different competition law regulations regarding digital markets. In this way, competition law rules have become adaptable to the new balances brought about by the digital economy and have necessitated a re-analysis of the concept of market power. Although many regulations have been put forward to define market power in digital markets, a general acceptance of the concept of market power has not yet been adopted and the effects of the regulations specific to digital markets have not yet been clearly observed. Therefore, in this process, one of the most changing concepts of competition law has become the concept of market power. The impact of online multilateral platforms in the emergence of this variability is too great to be underestimated. The main purpose of this study is to examine how the concept of market power in digital markets is shaped on the axis of online multilateral platforms due to the mentioned effects, through the recent changes in the European Union and Turkish Competition Law practices. As a result, this study will try to discover what kind of transformation process the concept of market power is in in digital markets. While exploring this transformation process, we will first try to determine the main factors that contribute to market power in digital markets with the influence of the digital economy, in the light of the decisions of competition authorities, current law changes and academic debates. Afterwards, a general conclusion will be reached on the most current acceptance of the concept of market power in digital markets by analyzing how the main factors put forward are considered in the light of current regulatory developments in the European Union and Turkey and how potential competition is affected by limiting the powers of undertakings that have significant influence in the market.

50.	Does the Purpose of the Temporary Measure Differ in Theory and Institutional Practice?	The provisional measures institution is an important and powerful tool designed to deal with an imminent danger to competition, to protect market conditions during competition investigations and to increase the overall effectiveness of competition law enforcement [86]. Since the relevant institution is a powerful tool in the hands of competition authorities, it is subject to very strict conditions in both national and international legislation and its implementation is considered technically exceptional. Due to its exceptional nature, the European Commission ("***Commission***") ***has kept its distance from interim measures for many years, especially after the*** *IMS Health decision, in* [87]which the European Court of Justice examined the conditions required in the legislation in detail and therefore annulled it. On the other hand, as digitalization increases and digital markets raise more and more concerns in terms of competition law, the Commission has changed its approach on this issue. Indeed, Margrethe In his statement in 2017, [88]Vestager gave the green light to the provisional measures and stated that the French Competition Authority (*Autorité de la Concurrence*), which is not a coward, so to speak, can be taken as an example, and two years after the relevant statement, the Commission applied provisional measures *to Broadcom for the first time in twenty years.* published its decision. In this regard, in the same year, Vestager expressed concerns that digital markets are dynamic and that the expected efficiency at the beginning of the investigation may not be achieved in the final decision due to the changes experienced during the investigation process. On the other hand, since there is no legislative change in terms of the required conditions and the Commission sees the relevant procedure as an additional burden in terms of procedural economy, interim measures are still not a procedure frequently used by the Commission.

[86]OECD, Interim Measures in Antitrust Investigations , OECD Competition Policies Roundtable Background Note , 2022, https://www.oecd.org/daf/competition/interim-measures-in-antitrust-investigations-2022.pdf .
[87]Health Commission dated 26 October 2001, Case T-184/01 R, EU:T :2001:259 Inc . v Commission decision.
[88]Broadcom decision of 16 October 2019 .

		When we look at the practice in Turkey, we see that the Competition Authority (" ***Authority*** ") has increasingly resorted to temporary measures in the last three years. (See: *Retailers* [89], *Trendyol* [90], *Krea* [91], *Meta* [92], *Nesine* [93], *Mackolik*[94] decisions. When the decisions on the subject are examined, it is seen that the decisions are quite short, the conditions are not evaluated, let alone whether the conditions for provisional measures are met, the relevant decisions can be made at the earliest stages of the investigation, and Article 9/4 of Law No. 4054. It has been observed that measures beyond "establishing the situation before the violation", which is one of the conditions sought in the article, *have been* ordered. The observations listed above raise questions about whether the temporary measure was implemented outside its intended purpose in the legislation. In this context, it is thought that the Competition Board's provisional measures may serve the benefits expected to be received with the measures or commitment given with the final decision. First of all, it is noteworthy that in past decisions, measures were taken for the result expected to be achieved with the final decision, along with temporary measures. In this case, this institution, which allows the authorities to intervene in the early stages of investigations, may cause a disproportionate burden on the enterprises and the violation of the enterprises' right to defense and fundamental rights and freedoms such as the right to property and freedom of contract. However, considering that the Board does not conduct a comprehensive investigation like the Commission in terms of provisional measure implementation, it may cause the positive effects of the practices subject to investigation in terms of competition to disappear. Secondly, the fact that the Board encourages undertakings to implement commitments and the number of commitment decisions increases every year raises the question of whether undertakings are encouraged to commit through temporary measures. Because the measures ruled in interim measures are closer to being presented within the scope of the commitment mechanism rather than being implemented temporarily. As a matter of fact, the company's commitment after the Krea interim injunction decision also points to this situation.

[89]The Board's decision dated 07.05.2020 and numbered 20-23/298-145.
[90]Board's decision dated 11.01.2021 and numbered 21-02/25-10.
[91]The Board's decision dated 29.09.2022 and numbered 22-44/652-281.
[92]Board's decision dated 11.01.2021 and numbered 21-02/25-10.
[93]The Board's decision dated 5.06.2023 and numbered 23-27/520-176.
[94]The Board's decision dated 07.09.2023 and numbered 23-41/797-281.

		Board's decisions 9/4. It will be evaluated in terms of the conditions in the article and the practice in Europe, the similarities and differences of the measures taken with the provisional measure, commitment and final decision will be discussed, and whether the temporary measure is used for other purposes and the possible consequences of this application will be sought. These discussions will be discussed from a comprehensive and comparative law perspective.
51.	A Discussion on the Evolving Paradigm of Tacit Collusion through Artificial Intelligence and Algorithms and the Standard of Proof	artificial intelligence and sophisticated algorithms has transformed traditional market dynamics and posed new challenges for competition authorities. Implied anti-competitive agreements, which appear as explicit and non-written/non-verbal agreements to avoid competition, have become increasingly complex in the age of artificial intelligence and algorithms. The advancement of artificial intelligence and algorithms has enabled the emergence of advanced methods of market coordination that facilitate tacit agreements. Chief among these are pricing algorithms that are difficult to detect and control. intelligence and algorithms in reaching and implementing horizontal monopolistic agreements between competitors is becoming increasingly important, the approach of competition authorities to the issue continues to be shaped in the light of current investigations and decisions. Decisions made in recent years include important evaluations regarding the use of algorithms as facilitators and monitoring tools after anti-competitive agreements are reached by undertakings. The UK Competition Authority's (CMA) infringement decision against online poster sellers [95]Trod and GB eye for carteling by using automatic repricing software on Amazon Marketplace, and the Spanish Competition Authority's (CNMC) order against real estate brokers and their association for real estate listings and sales. The most important of these is the violation decision given on the grounds that they used a multiple listing system to share databases [96]. It is also important what the competition authorities' approach will be and should be to whether price adjustments with self-learning algorithms without communication between competitors will constitute a cartel. Within the scope of the investigation launched by the Competition Board against Amazon, Trendyol and Hepsiburada in the last months of 2023, e-commerce Automated pricing mechanisms used by platforms are under review. Likewise, the Italian Competition

[95]Decision of the UK Competition Authority dated 12.08.2016 and numbered Case 50223.
[96]Decision of the Spanish Competition Commission dated 25.11.2021 and numbered Case S/0003/20.

		Authority (AGCM) announced in November 2023 that it has launched a comprehensive investigation into the use of pricing algorithms in airline transportation. In the United States, which is accelerating competition practices in the digital age, the Federal Trade Commission (FTC) and the Department of Justice (DOJ) have focused on workshops and public discussions on the role of artificial intelligence and algorithms in price determination, emphasizing the trend towards the issue. It is [97]also discussed in doctrine and practice that the class action lawsuit filed against RealPage and multi-family residential property managers for keeping rental prices artificially high by using the software and algorithms of the US-based technology company RealPage will shape the jurisprudence on algorithmic pricing [98]. In this regard, it is stated that various factors will play a key role in determining the legitimacy of algorithmic pricing for competition authorities and courts, such as whether the artificial intelligence itself makes the pricing decisions, whether the artificial intelligence recommendations are implemented without exception, whether these recommendations are based on competitor data, and whether the same technology is used by other players in the sector. It wouldn't be wrong to do so. In any case, it seems essential to discuss how the standard of proof adopted by competition authorities and courts will be shaped in the universe of artificial intelligence and algorithms. Thibault, who has produced important studies in this field Schrepel highlights the transformative impact of artificial intelligence and algorithms on traditional notions of tacit agreement. Schrepel argues that the use of artificial intelligence in market applications, particularly in pricing, increases the potential for tacit agreement; However, he notes that the legal and economic impacts are complex and multifaceted.[99] This phenomenon brings with it certain difficulties before the existing competition rules and the adopted standard of proof, as it blurs the boundaries between legitimate competitive strategies and anti-competitive coordination. In other words, the autonomous nature of algorithms and their capacity to evolve their strategies over time make it difficult for competition authorities to identify patterns of compromise.

[97] See . https://www.justice.gov/opa/speech/principal-deputy-assistant-attorney-general-doha-mekki-antitrust-division-delivers-0 .
[98] See . https://www.hausfeld.com/media/550bhzyp/realpage-complaint-filed.pdf .
[99] Schrepel's research details how algorithms can learn each other's reactions and adjust strategies accordingly, leading to a form of compromise that emerges without explicit coordination. SCHREPEL, T. and M. GAL (2020), " Algorithms & Competition Law: Interview of Michal Gal by Thibault Schrepel ", e- Competitions Algorithms , Art. No. 93929

		In this study, the intersection of artificial intelligence, algorithms and tacit agreements in the context of cartel behavior and the doctrine and competition authorities' approaches to these practices will be analyzed. The challenges and possible impacts on the implementation of competition laws and the standard of proof in an increasingly digital economy will be examined, and what the optimum approaches needed will be discussed.
52.	Standard of Proof and Current Approaches in RPM Violations	Recent decisions taken by both the Council of State, the Court of Justice of the European Union ("CJEU") and foreign competition authorities on resale price determination ("YSFB") point to the need to review the elements of the violation and the standard of proof. *Henkel* decision [100]of the Council of State , the element of " *pressure or encouragement by any of the parties* " must be included in the determination of YSFB , the " *pressure and encouragement* " must be of a value that will affect the buyers' freedom to determine their own sales price as an independent economic behavior, and in the Institution's analysis, competition It was decided that the party must prove the causal link between the contrary practices and the price increase with sufficient and concrete evidence [101]. On the other hand, the CJEU *Super Bock Bebidas* In its decision, it was pointed out that in order for [102]the competition authority to establish a violation in terms of purpose, it must demonstrate a sufficient amount of " harm " on competition, and that this requires a detailed analysis of the legal and economic context of the alleged actions. CJEU stated that it is possible for YSFB violations to be evaluated by the competition authority under the concept of *competition violation in terms of purpose ,* However, he stated that in order to establish the concept of restriction of competition in terms of purpose, the relevant authority must first examine the relevant agreement provisions and its legal and economic context

[100]*Henkel decision* of Ankara Regional Administrative Court 8th Administrative Case Chamber E. 2021/1300, K. 2021/1241 T. 09.09.2021. *Henkel decision* of the Council of State E. 2021/969 K. 2021/2654 T. 06.07.2021; Council of State 13th Administrative Case Chamber decision E.2021/4683, K.2022/1815 T. 21.04.2022. *See Board's* decision *on Henkel* dated 19.09.2018 and numbered 18-33/556-274

[101] In a similar direction, the Commission's decisions *on Philips, Asus, Denon & Marantz and Pioneer* in their decisions also , Applying significant pressure to detect YSFB and the introduction of *the sanction mechanism* are underlined. Commission's decision on *Asus* dated 24 July 2018 and Case AT.40465 ; Commission's decision on *Denon & Marantz* dated 24 July 2018 and Case AT.40469 ; The Commission's decision on *Philips,* Case AT.40181, dated 24 July 2018, and the Commission's decision, *Pioneer* , Case AT.40182, dated 24 July 2018 .

[102] Case C-211/22 (2023), judgment of the Court (Third Chamber) of 29 June 2023 , Super Bock Bebidas SA and Others v Autoridade da Concorrência .
, regarding the need for a *narrow interpretation* of the restriction in terms of purpose , see. CJEU *Visma Enterprise* decision (C-306/20) (2021) and the CJEU *Groupement des cartes bancaires* decision (C-67/13 P)

		(affected products/services, dynamics of the relevant market, compliance with recommended prices, etc.). As a matter of fact, only through this examination can the element of significant compliance of resellers with the recommended prices be revealed, in other words, the existence of an essentially anti-competitive will. In a similar vein, in a recent decision regarding [103] *Apple,* the Paris Court of Appeals evaluated that the French Competition Authority could not demonstrate the YSFB violation and partially annulled the authority's decision and stated that resellers must *comply with the recommended prices at a significant level* and that the supplier must comply with the recommended prices. He underlined the elements of the implementation of the sanction mechanism by. Although there are decisions in which the Competition Board adopts the concept of infringement in terms of purpose and conducts detailed analysis in this direction,[104] there are also decisions in which the "[105]damage" element on competition is not examined sufficiently on the grounds of the concept of infringement in terms of purpose, especially in recent decisions made as a result of compromise . Especially in the reconciliation process, it is possible that the criteria specified in the context of the standard of proof may not be met, as detailed analysis such as the investigation report prepared as a result of the ordinary investigation process may not be made. Although the conciliation mechanism provides procedural economy by shortening the normal investigation process, considering that a competition violation has been determined in the conciliation, the allegations must be analyzed in detail to ensure a sufficient standard of

[103]*Apple* decision 20/08582, 6 October 2022 . Paris Court of Appeal's decision dated 6 October 2022 . The Court found that the Authority had failed to prove its decision by "reliable, consistent and conclusive evidence" and cited differences between recommended prices and actual prices charged by resellers, significant compliance by resellers with recommended prices, etc. He pointed out the need for a comprehensive market analysis.

[104] Board's decision numbered 20-14/192-98 dated 12.03.2020 *Liquid fuel* decision ; Board's decision dated 21.04.2022 and *Adidas* decision no. 22-18/300-133 ; Board's decision dated 07.03.2019 and numbered 19-11/129-56 *minikoli* The decision of the Board dated 04.03.2021 and 21-11/ 154-63 *Groupe SEB* decision , Board dated 22.11.2018 and numbered 18-44/703-345 *Sony* decision .

the Board's *BSH* Decision (22-55/864-358, 15.12.2022), it was stated that *"The mentioned document is not suitable to demonstrate beyond any doubt that BSH intervened in the resale prices and does not meet the necessary standard of proof in this regard "; . In* the Board's *Sezen Gıda* Decision (23-13/209-67, 09.03.2023) *"Internal correspondence; " Although it raises the suspicion of interfering with the retail sales price, the relevant correspondence is an intra-enterprise correspondence and is far from proving any agreement reached on the shelf price ."* The standard of proof sought in YSFB violations is stated by including evaluations.

on Adidas , dated 21.04.2022 and numbered 22-18/300-133. Although the decision referred to the restriction in terms of purpose in the context of Article 4 of Law No. 4054 , the effects of the alleged actions on the market were analyzed in detail . ·

[105] Board colastin Health Products decision , Decision Number : 23-10/166-52; Decision Date : 23.02.2023
Farmasi International decision, Decision Number: 23-09/143-42, Decision Date: 16.02.2023
Engingrup Project decision, Decision Number: 23-10/154-48; Decision Date: 23.02.2023 Yatırım AŞ
Avon Cosmetics decision , Decision Number : 23-13/223-72, Decision Date : 09.03.2023

		proof and the decisions must be written in this detail [106]. Since the adoption of the conciliation institution in our law, the Board has concluded many of the investigations regarding violations aimed at detecting [107]YSFB with conciliation. However, in cases where the standard of proof is not sufficiently raised, alleging YSFB without adequately examining the legal and economic context of the alleged actions may lead to the tendency of undertakings to accept the violation within

[106]As a matter of fact, Articles 56-59 of Law No. 4054. The Competition Board's decision - which includes the party's confession - as a result of a compromise, may constitute an important evidence in terms of the way for those who have been harmed by the competition violation regulated in the articles to file a compensation lawsuit in civil courts.

[107]YSFB violation in terms of compromise to their decisions Subject list :

- January 5, 2023; 23-01/12-7 Sunny Elektronik Sanayi ve Ticaret AŞ (Machine industry)
- January 24 , 2023; 23 -03/29-12 NAOS Istanbul Kozmetik San. and Tic. Ltd. Ltd. (Chemistry and Mining (Cosmetics))
- February 16, 2023; 23-09/143-42 Farmasi Enternasyonal Ticaret AŞ (Chemistry and Mining (Cosmetics))
- February 23, 2023; 23-10/166-52 Colastin Health Products Inc. (Food Industry)
- March 2, 2023; 23-12/185-61 Kozmoklinik Cosmetics and Medical Products Market. and Tic. AŞ (Chemistry and Mining (Cosmetics))
- March 9, 2023; 23-13/212-68 Eczacıbaşı Tüketim Ürünleri San. and Tic. AŞ (Fast Moving Consumer Goods)
- 9 March 2023, 23-13/223-72 Avon Kozmetik Ürünleri Sanayi ve Ticaret AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M (12) System Kozmetik San. and Trade Limited Company (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(11) Rebul JCR Kozmetik Pazarlama AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(9) L'Oreal Turkey Kozmetik San. ve Ticaret AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(7) Glohe Herbal Products San. and Tic. AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(6) Farmatek İç ve Dış Tic. AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(5) ELCA Kozmetik Limited Şirketi (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(4) Easyvit Sağlık Ürünleri Sanayi AŞ (Chemistry and Mining (Cosmetics))
- Pierre Fabre (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Real Cosmetics (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Kosan (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Biota (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Erbak Uludağ (HTM) https://www.rekabet.gov.tr/tr/Guncel/erbak-uludag-pazarlama-satis-ve-dagitim--4936ddfb0f6fee118ec700505685da39
- Namet Gıda (HTM) https://www.rekabet.gov.tr/tr/Guncel/namet-gida-sanayi-ve-ticaret-as-hakkinda-9ffa8d289369ee118ec600505685da39
- İpek Gıda Durable consumption (machinery industry) https://www.rekabet.gov.tr/tr/Guncel/ipek-gida-dayanikli-tuketim-mallari-elek-2a94ba58f16bee118ec600505685da39
- RRH small electrical appliances (Machine industry) https://www.rekabet.gov.tr/Dosya/rrh-kucuk-elektrikli-aletler-ltd.pdf
- 03.08.2023; 23-36-676- 231 - Ashley Joy Cosmetics https://www.rekabet.gov.tr/Karar?kararId=c5bf1c9e-160c-459a-8860-ff528302202b
- February 23, 2023; 23-10/154-48 Engingrup Proje Yatırım https://www.rekabet.gov.tr/Karar?kararId=5cf2e433-3792-4434-96d4-dab78bc47f8e
- 30.11.2023 ; 23-55/1078-382 Seher Gıda (İçim Süt) compromise decision https://www.rekabet.gov.tr/Dosya/seher-gida-nihai-karar-duyurusu.pdf
- dated 30.11.2023 and numbered 23-55/1077-381 fruit compromise decision . https://www.rekabet.gov.tr/Dosya/meysu-nihai-karar-duyurusu.pdf

		the scope of compromise under the threat of investigation and punishment. On the other hand, investigations that are not supported by primary evidence but focus solely on parallel behavior within the scope of market analysis may also be annulled by the courts. As a matter of fact, in the *Opet decision* [108]of Ankara 7th Administrative Court, where allegations of YSFB violation were examined; He emphasized that the administrative authority's findings must be proven with clear and definitive evidence that will not cause any hesitation . Objections to the standard of proof in terms of YSFB violations also found their place in the dissenting votes in the Board's decision dated 15.12.2022 and numbered 22-55/863-357 regarding 15 enterprises operating as manufacturers/suppliers in the FMCG sector. In Vote Against For some undertakings, *The communication evidence obtained during* the investigation does not prove that the buyer's freedom to determine his own sales price was prevented as a result of pressure or encouragement, Therefore, it was stated *that the standard of proof beyond reasonable doubt* was not met. Again, in another Vote Against It was stated that the material findings included in the decision did not show that the relevant enterprise directly or indirectly intervened in the sales prices of retail enterprises, and that this opinion was supported by [109]*the price differences that actually occurred in the retail market.* Accordingly, in this study, the standard of proof problem will be evaluated by examining the different analyzes and evaluations arising in the Board's decisions in the light of current approaches to YSFB violation and court decisions.
53.	Effectiveness and Risks Expected from the Settlement Mechanism	The Competition Authority's Regulation on Conciliation Procedure [110]came into force on 15 July 2021 and has been implemented in many decisions of the Competition Board to date. So much so that, following the year 2021 when the Regulation came into force, 34 compromise decisions were taken in 2022, while this number exceeded 60 in 2023. Although the increase in the number of investigation decisions [111]of the Board over the years is significant, the increase

[108]Ankara Regional Administrative Court 8th Administrative Case Office E. 2021/1427 K. 2022/535 T. 20.4.2022, *Opet Petrol* decision of the Board dated 12.03.2020 and numbered 20-14/192-98.
[109]Investigation decision to determine whether 15 enterprises operating as manufacturers/suppliers in the fast-moving consumer goods sector and five enterprises operating as retailers violated Article 4 of Law No. 4054.
[110]Regulation on the Conciliation Procedure Applicable in Investigations into Agreements Restricting Competition, Concerted Actions and Decisions and Abuse of Dominant Position, 15 July 2021, Official Gazette Number: 31542.
[111]Year 2023 Compromise decisions
Cosmetics Industry

- April 13, 2023; 23-18/343- M (3) Ayaz and Partners, SB Group Cosmetics (Chemistry and Mining (Cosmetics))

- January 24 , 2023; 23 -03/29-12 NAOS Istanbul Kozmetik San. and Tic. Ltd. Ltd. (Chemistry and Mining (Cosmetics))
- February 16, 2023; 23-09/143-42 Farmasi Enternasyonal Ticaret AŞ (Chemistry and Mining (Cosmetics))
- March 2, 2023; 23-12/185-61 Kozmoklinik Cosmetics and Medical Products Market. and Tic. AŞ (Chemistry and Mining (Cosmetics))
- 9 March 2023, 23-13/223-72 Avon Kozmetik Ürünleri Sanayi ve Ticaret AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M (12) System Kozmetik San. and Trade Limited Company (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(11) Rebul JCR Kozmetik Pazarlama AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(9) L'Oreal Turkey Kozmetik San. ve Ticaret AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(7) Glohe Herbal Products San. and Tic. AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(6) Farmatek İç ve Dış Tic. AŞ (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(5) ELCA Kozmetik Limited Şirketi (Chemistry and Mining (Cosmetics))
- April 13, 2023; 23-18/343- M(4) Easyvit Sağlık Ürünleri Sanayi AŞ (Chemistry and Mining (Cosmetics))
- Pierre Fabre (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Real Cosmetics (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Kosan (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- Biota (Chemistry and Mining (Cosmetics)) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- 03.08.2023; 23-36-676- 231 - Ashley Joy Cosmetics verdict.
- February 23, 2023; 23-10/154-48 Engingrup Cosmetics decision

labor market

- (11 compromising undertakings within the scope of the labor markets investigation) 26 July 2023; 23-34/649-218 https://www.rekabet.gov.tr/tr/Guncel/isgucu-piyasasina-yonelik-centilmenlik-a-eabd47edff30ee118ec500505685da39

HTM

- Erbak Uludağ (HTM) https://www.rekabet.gov.tr/tr/Guncel/erbak-uludag-pazarlama-satis-ve-dagitim--4936ddfb0f6fee118ec700505685da39
- Namet Gıda (HTM) https://www.rekabet.gov.tr/tr/Guncel/namet-gida-sanayi-ve-ticaret-as-hakkinda-9ffa8d289369ee118ec600505685da39
- March 9, 2023; 23-13/212-68 *Eczacıbaşı Tüketim Ürünleri* decision
- dated 30.11.2023 and numbered 23-55/1077-381 *Meysu* decision https://www.rekabet.gov.tr/Dosya/meysu-nihai-karar-duyurusu.pdf.

Machinery Industry

- January 5, 2023; 23-01/12-7 Sunny Elektronik decision (Machine Industry)
- İpek Gıda Durable consumption (machinery industry) https://www.rekabet.gov.tr/tr/Guncel/ipek-gida-dayanikli-tuketim-mallari-elek-2a94ba58f16bee118ec600505685da39
- RRH small electrical appliances (Machine industry) https://www.rekabet.gov.tr/Dosya/rrh-kucuk-elektrikli-aletler-ltd.pdf

food

- February 23, 2023; 23-10/166-52 Colastin Health Products decision (Food Industry)
- Altıparmak (Food Industry) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf
- (Egg sector, 14 compromising enterprises)- https://www.rekabet.gov.tr/tr/Guncel/yumurta-sektorune-yonelik-sorusturmalar--ad98fb05ba77ee118ec700505685da39
- 30.11.2023; 23-55/1078-382 Seher Gıda (İçim Süt) decision https://www.rekabet.gov.tr/Dosya/seher-gida-nihai-karar-duyurusu.pdf

		in reconciliation decisions is especially striking. In this regard, in this study, the development of the conciliation mechanism in our law will be examined in the light of the Board decisions and foreign competition authority practices. When we look at the nature of the violations subject to the Board's conciliation decisions and their relevant sectors, we see that the majority of these decisions are related to resale price determination ("YSFB") actions within the scope of violations of Article 4 of Law No. 4054. Again, within the scope of Article 4 of Law No. 4054, settlement decisions have increased for actions considered as agreements restricting competition (price fixing, collect-distribution cartel, agreements not to seduce employees). When the relevant sectors where the violations subject to conciliation decisions took place are examined, it is seen that these decisions are concentrated in the retail sector, cosmetics and food sectors, while gaining momentum in terms of employee non-seduction agreements in the market, which we can call the labor market. As a result of the compromise, in addition to the maximum discount rate of 25% being applied to the parties in general - *although there are exceptions* [112]- it is seen that significant discounts can be applied to the basic fine when evaluated together with mitigating factors in the investigation. So much so that, a 60% discount was applied to some enterprises operating in the cosmetics and consumer electronics sector within the scope of mitigating factors in the basic fine to be applied to the enterprise before the 25% compromise discount, and an enterprise operating in the FMCG sector was given a discount for each violation before the compromise discount on the basic fine. A 45% discount has been applied separately [113]. Although the reconciliation mechanism seems attractive for enterprises in terms of the reduction it

professional activity

- Alanya engineers decision Decision Number: 23-01/25-11, Decision Date: 05.01.2023 (professional scientific technical activities) https://www.rekabet.gov.tr/Karar?kararId=6efdcd93-2920-4f01-92a7- 47e3ddb8a689
- **(4 compromises)** Investigations Conducted About Private Piraziz Kuzey Higher Education Girls' Dormitory, Private Onur Higher Education Girls' Dormitory, Private Piraziz Beyza Higher Education Girls' Dormitory and Private Sıla Higher Education Girls' Dormitory have been concluded. (15.12.2023) https://www.rekabet.gov.tr/tr/Guncel/ozel-piraziz-kuzey-yuksekogrenim-kiz-ogr-110e6fa4149bee118eca00505685da39
- **(2 settlements)** The Investigation Conducted About Some Private Schools Operating Based in Ankara Has Been Concluded. (15.12.2023) https://www.rekabet.gov.tr/tr/Guncel/ankara-merkezli-olarak-faaliyet-gosteren-ff8d78d6149bee118eca00505685da39

Sector Unidentified:

- Yıldırımoğlu (unidentified sector) https://www.rekabet.gov.tr/Dosya/2023-ilk-6-ay-20230710161001069.pdf.

[112] *DyDo Drinco decision,* Decision Number: 22-32/508-205, Decision Date: 07.07.2022;
numil food decision, Decision Number: 22-29/483-192, Decision Date: 30.06.2022
[113] See . of the Board Sunny Electronics decision , Decision Number : 23-01/12-7; Decision Date : 05.01.2023,

		provides in administrative fines, it would be an appropriate approach to analyze its possible legal effects in the long term. The conciliation mechanism shortens the normal investigation process and in terms of the Competition Authority; Although it provides procedural economy for the undertakings by saving on administrative fines, considering that a competition violation has been determined in the settlement, the decisions must be written and prepared in detail to ensure the sufficient standard of proof. As a matter of fact, Articles 56-59 of Law No. 4054. The Competition Board's decision - which includes the party's confession - as a result of a compromise, may constitute an important evidence in terms of the way for those who have been harmed by the competition violation regulated in the articles to file a compensation lawsuit in civil courts. In accordance with the Regulation on Conciliation Procedure, as a result of conciliation, administrative fines and issues included in the conciliation text cannot be subject to litigation by the conciliation party. However, this provision, which differs from the EU legislation, may raise some questions about the functioning of the mechanism in Turkish Competition Law. For example, in the Dissenting Votes [114]given in the Board's decisions on *Numil Gıda* and *Sunny Elektronik* , the issue of excluding the export turnover of the relevant undertakings in the calculation of administrative fines was criticized, and it was stated that it was not correct to exclude export figures from the calculation of penalties in the administrative fines to be applied in accordance with Law No. 4054. . Again, in the Board's decision on *Olka & Marlin,* while the issues determined by the compromise decision should not have been negotiated, the final decision of the compromise and the penalty was reduced, considering that the re-appraisal and reduction of the administrative fine by the Board upon the request of Olka and Marlin in the reconciliation text would mean "negotiation". It is against the law to reduce It is stated that [115].

of the Board *Kozmoklinik Kozmetik* decision, Decision Number: 23-12/185-61, Decision Date: 02.03.2023,
Board's decision on *Eczacıbaşı Tüketim Ürünleri* Decision Number: 23-13/212-68, Decision Date: 09.03.2023
of the Board Avon Cosmetics decision, Decision Number: 23-13/223-72, Decision Date: 09.03.2023
[114] of the Board Sunny Electronics decision , Decision Number : 23-01/12-7; Decision Date : 05.01.2023,
numil food decision , Decision Number : 22-29/483-192, Decision Date : 30.06.2022
[115] Board's Olka Sporting Goods & Marlin Sporting Goods decision , Decision Number : 22-29/488-197, Decision Date : 30.06.2022

		Since the adoption of the conciliation institution in our law, especially in 2023, the Board has taken many conciliation decisions and concluded many of the investigations involving violations aimed at detecting YSFB with conciliation. Although it can be claimed that this remarkable increase in conciliation decisions is due to the fact that only cartels are subject to conciliation in the EU Commission regulation and there is no limitation in this regard in Turkish law, especially in cases where the standard of proof is not raised sufficiently in terms of YSFB, the accusation of YSFB is made without adequately examining the economic context of the alleged actions, It may lead to a tendency to accept a violation claim as part of a compromise under the threat of investigation and punishment. On the other hand, failure to include sufficient evidence showing the existence and scope of the violation in the investigation notification may lead to undertakings not being able to properly exercise their right to apply for conciliation. Within the framework of the issues explained above, in this study, the implementation of the conciliation mechanism introduced into our law in 2021 will be examined in the light of the Board decisions and the possible risks it may create in the coming period will be discussed by comparing it with the practices of foreign competition authorities, especially the EU practice.
54.	To settle, or not to settle, that is the question	Conciliation is an institution that allows undertakings that are parties to agreements restricting competition to obtain a certain reduction in the administrative fines to be imposed on them by the Competition Board ("Board") in return for accepting the allegations of competition violations made against them within the scope of the investigation. Reconciliation indicates a "win-win" situation for both parties, with various benefits for both the undertakings and the Board. On the contrary, not agreeing to an agreement resembles a "lose-lose" situation, as it creates the risk of the investigation resulting in an administrative fine for the undertakings, and the necessity for the Board to use its scarce resources, especially in preparing the investigation report. A number of motivations are decisive in whether both the undertakings and the Board decide to compromise or not. The main motivation that drives enterprises to resort to conciliation is the opportunity to obtain a certain reduction in administrative fines. According to a simple cost-benefit analysis to be made by the enterprises, if the penalty to be received due to competition violation is more than the benefit obtained from the competition violation, it may be preferred to terminate the ongoing investigation against them through reconciliation. The fact that the upper limit of the penalty reduction rate to be benefited from in case of compromise is determined as 25 percent in Turkish competition law, compared to the 10 percent rate in EU competition law, makes conciliation, which is a new institution in Turkish

law, attractive. In addition, according to the Misdemeanor Law, an additional 25 percent discount can be benefited from in case of early payment, allowing enterprises to obtain a discount on the penalty of up to 43.75 percent in total.

Another motivation for enterprises is to benefit from regret by other enterprises that are parties to the agreement. After the undertaking applying for leniency discloses to the Board many information and documents regarding the anti-competitive agreement and its parties, the possibility of other undertakings being penalized will increase. At this point, if other undertakings do not apply for repentance or cannot benefit from repentance, they may resort to conciliation as a last resort and end the file with less cost. Finally, whether compensation cases arising from competition violations are common in practice may also affect the settlement decision of the undertakings. The lack of development of private law practice will reduce the possibility of undertakings that accept violations being dealt with compensation claims of the injured, thus increasing the motivation of undertakings to compromise.

On the other hand, the main motivation for the Board to end the file through conciliation is that it does not follow the normal investigation procedure and wastes personnel, time, budget, etc. It uses its scarce resources to investigate more serious antitrust violations. In the legislation, this issue is expressed as " procedural benefits". It is stated in Law No. 4054 that the Board may initiate a conciliation procedure, taking into account " the *procedural benefits arising from the rapid completion of the investigation process* " (Art. 43/5). Procedural benefits, a concept reminiscent of procedural economy, are not regulated in the law. In the Conciliation Regulation, the Board considers " the *number of investigation parties* ", " *whether a significant part of the investigation parties have resorted to conciliation* ", " *the scope of the violation and the quality of the evidence* " and " *whether it is possible to reach a common opinion with the investigation parties regarding the existence and scope of the violation* ". It is stated that it can be taken into consideration (Art.4/2).

Considering that conciliation is a new institution, it is clear that the content of the concept of procedural benefits expected from conciliation will be filled in the Board decisions over time. However, it can be said that the following issues will be effective in creating the Board's motivation for conciliation: whether the undertakings make their conciliation applications within the time period stipulated in the legislation; Whether there is a basis for agreement with the undertakings regarding the nature and scope of the violation; Whether the number of undertakings that have resorted to conciliation or not has reached a rate that would make them prefer to terminate the file through conciliation; Finally, whether the evidence showing the existence of a competition violation within the scope of the file is clear enough to leave no room for doubt and to make it preferable to terminate the file through an investigation procedure.

		In this notification, it is examined what the motivations of both the undertakings and the Board may be for ending the file through conciliation within the scope of the conciliation mechanism, which has recently become very popular in Turkish competition law practice. By discussing the conciliation decisions made by the Board so far, and by revealing how the concept of procedural benefits expected from conciliation referred to in the primary and secondary legislation has been shaped, especially in the Board's practice, an attempt is made to provide legal certainty and predictability in terms of attempts regarding the Board's approach to initiating or terminating the conciliation procedure.
55.	Assessment of Unfair Price Applications from Competition Policy and Administrative Law Perspectives	Pricing behavior is a fundamental element of competitive processes. Price, which is the most important indicator of a competitive market structure, is critical for both the consumer, the producer and the provider. Price, which plays a decisive role in terms of consumers' access to products, also forms the basis of the financial resources required for enterprises to maintain their commercial existence. Pricing behavior also has an impact on the basis of participation in competitive processes and production of value-added services. The shaping of prices according to market conditions depends on the free market economy and the existence of an effective competitive environment that will form the basis of this. On the other hand, with the "exorbitant price" interventions implemented in our country in recent years, it is seen that the freedom of the enterprises in pricing has been restricted and a regulatory intervention has been introduced, especially in upward price movements. The exorbitant price practice, regulated within the scope of the Law on the Regulation of Retail Trade No. 6585 and the Unfair Price Evaluation Board Regulation, aims to quickly intervene in market disruptions that occur as a result of supply and demand fluctuations, especially during the pandemic period, and has an exceptional application area due to its structure. On the other hand, the concepts of unfair or exorbitant prices are not clearly defined neither in legislation nor in practice. While this uncertainty reduces legal predictability on the one hand, it also brings with it the risk of using price gouging practices as a general intervention tool. Similarly, there are also arguments that these practices that interfere with price freedom impose restrictions on the Constitutional freedom of contract, freedom of enterprise and the right to property. Another matter of debate is which institution should implement such an intervention tool. In this context, our study will firstly discuss the place and development process of exorbitant price practices in our law. Then, both the competition law, Constitutional law and administrative law aspects of these practices will be examined.

		From the perspective of competition law, the conflict between the effects of price gouging practices and the objectives of competition law will be specifically addressed. Competition law is based on the principles that enterprises can make commercial decisions autonomously and competitive parameters are determined according to market conditions. Exorbitant price practices restrict this freedom and differ from competition law in this respect. In addition, the relevant legislation envisages a wide field of application for price gouging intervention. This situation may cause exorbitant price interventions to be implemented in a way that goes beyond the purpose for which they were introduced. Using such interventions to eliminate the impact of situations such as inflation or exchange rate fluctuation on consumers may harm the competitive fabric of the market in the long run. In addition, an intervention from outside the market in pricing behavior may cause the cost structures of enterprises to deteriorate and negatively affect consumer welfare. Our study, which deals with exorbitant price practices from these aspects, will also provide a comparative evaluation with excessive price practices defined in the competition law legislation. In terms of administrative law, the place of price gouging practices in the legislation and the basic conditions that must be met as an economic law enforcement activity will be discussed. Our study, which also evaluates exorbitant price practices in terms of the basic principles of the Constitution, will examine whether the necessary conditions for restricting freedom of enterprise and freedom of contract are met. How price gouging interventions will be carried out is a matter of debate, as well as who will carry them out. Our study, which addresses which institution should implement these practices, will evaluate similar practices in European law and provide evaluations on which method is the most effective for Turkey.
56.	The Position of the Communiqué No. 2002/2 in the Face of the Regulatory Wave: E-Commerce and Fintech Markets	As it is known, with the simultaneous increase in digitalization and discussions on competition law, many regulations regarding digital markets have been made in the European Union and its member countries, especially the Digital Markets Act (*DMA*) and the Digital Services Act (*DSA*). In our country, many developments have been experienced on the subject following the application of the device. E-Commerce Law, E-Commerce Regulation, Draft Competition Law, Law No. 6493, Regulation on Payment Services and Electronic Money Issuance and Payment Service Providers, and Regulation on Banks' Information Systems and Electronic Banking Services are examples of the legislative developments regarding the subject in our country. can be shown.

		These developments in legislation are accompanied by sector reports prepared by the Competition Authority ***(" Authority") and investigations carried out by the Competition Board (" Board ").*** In the relevant investigations, it is seen that the Board discusses the allegations of violation within the framework of abuse of dominant position. On the other hand, considering that digital platforms have a vertical relationship in terms of B2B (*Business to Business) services, evaluating the issue in terms of Group Exemption Communiqué No. 2002/2* ("***Communiqué No. 2002/2*** ") will also shed light on the discussions regarding digital markets. In this context, the intersections and conflicts between the regulations regarding e-commerce, the Draft Competition Law, and fintech markets and the Communiqué No. 2002/2 will be discussed during the presentation. • First, the issue of whether vertical agreements in e-commerce platforms and the fintech market are considered vertical relationships within the scope of Communiqué No. 2002/2 will be discussed. In this regard, whether e-commerce platforms will be accepted as agencies or not, the discussions created by hybrid platforms will be included, and the functioning of the fintech market and what types of agreements are included in this scope will be explained. • Secondly, the intersections and conflicts between E-Commerce legislation and Communiqué No. 2002/2 will be discussed. In this context, issues such as the ban on the sale of promotional goods, discrimination and EKM conditions regulated in the E-Commerce Law will be examined in the light of case law. • Thirdly, the relationship between the provisions regarding discrimination, EKM conditions and binding in the Draft Competition Law and the Communiqué No. 2002/2 and the E-Commerce Law will be examined. • Subsequently, the fintech market and the competition law concerns addressed within the framework of the Payment Services Sector Report will be explained, and then the regulations and evaluations regarding discrimination and exclusivity in the fintech market will be discussed in line with the Communiqué No. 2002/2 and the Board's jurisprudence. • Finally, a general evaluation will be made, with the valuable contributions of the audience, on how the confusion caused by the intersections and overlaps between the mentioned sectors and the Communiqué No. 2002/2 can be resolved. In line with the issues mentioned above, it is planned to keep the scope of the examination wide by supporting the presentation with examples of Board and comparative legal decisions on the subject.

57.	Competition Law from a Behavioral Economics Perspective	The classical economic behavior model accepts that individuals make their choices in a way that maximizes their benefits, in other words, individuals who are assumed to be "homo economicus " will allocate their scarce resources to the one that will provide the most benefit among various alternatives in the market. However, rational choice theory (rational choice) is based on this basic assumption. choice theory) was first criticized by Herbert Simon with the introduction of the concept of "Bounded Rationality" and was criticized by Daniel Kahneman and Amos in the 1970s. Based on some experimental data, it has been demonstrated by Tversky that people do not always act rationally when making their choices. behavioral economics economics) is a discipline that examines the effects and consequences of psychological, social and cognitive factors on economic behavior, decisions and choices. With the behavioral economics approach, the effects of theories such as bounded rationality, decision making under uncertainty, loss aversion, and expectation theory on individuals' choices have been investigated and it has been determined that they lead to important results, especially in areas such as consumer law and competition law. There are certain market situations and outcomes that are driven by consumer biases and bounded rationality and that can be better understood or explained through behavioral economics rather than traditional economic models. Therefore, competition law rules are expected to take into account the real behavior of market actors, as opposed to the fictional behavior underlying abstract models. Behavioral biases on the consumer side highlight the importance of the demand side in the good functioning of markets and important synergies between consumer law policy and competition law policy. Behavioral biases may also have implications for anticompetitive behavior. For example, the consumer status quo may facilitate the implementation of anticompetitive agreements between competitors, or information asymmetry, complex and tedious calculation methods of transaction costs, deceptive forms of presentation may make it easier for the dominant undertaking to bind, etc. It can provide an environment for people to abuse their dominant position through various means. In the context of vertical restrictions, the assumption that intra-brand competitive restrictions are harmless if there is sufficient inter-brand competition remains in need of proof, as cognitive biases may outweigh the pressure resulting

		from inter-brand competition. Therefore, behavioral law and economics can provide additional arguments for flexible rules on vertical restraints that exclude black and white thinking inspired by the homo economicus assumption. In general, behavioral solutions need careful analysis to “get it right.” Solutions that restrict the range of strategies that enterprises can use (especially structural solutions) can cause more harm than good. In terms of sanctions, behavioral economics makes significant contributions in cases related to competition concerns arising from consumer prejudices, in directing the legislator to take into account the deficiencies in question and to regulate legal rules and sanctions accordingly. These policies: for example, framing may include solutions to overcome information overload and the consumer status quo, such as reducing distortion of information or encouraging consumers to make a “forced choice” rather than allowing them to remain inactive or simply choose the default. In our notification, the behavioral economics approach will be touched upon, the issues that may constitute a competition violation in a market environment where the rational individual assumption is not accepted will be examined through the cases and violations examined by the Competition Board from the behavioral economics perspective, and finally, the impact of behavioral economics on today's competition policies will be evaluated.
58.	Execution and Monitoring Regime of Commitment Decisions in Turkish and EU Law	As part of the amendment package made to the RKHK on 24.6.2020, a commitment mechanism similar to the application in the EU was introduced. The procedures and principles regarding the process and conditions of taking commitment decisions are regulated by the Commitment Communiqué No. 2021/2 published by the Competition Board. Article 15 of the Communiqué, titled 'Monitoring and fulfilling the commitment', stipulates that monitoring the compliance of the parties with the commitment can be achieved through regular reporting by the parties, appointment of third parties for auditing purposes, or cooperation with professional associations or relevant public institutions and organizations. In accordance with the said article, in cases where it is envisaged to appoint third parties for audit purposes, the suitability of the third party proposed by the parties must be approved by the Board. The authority to fulfill and monitor the commitment by third parties, with the decision of the Public Oversight Board dated 12.10.2023, to provide auditing services regarding whether the commitments and conditions specified in the Competition Board Decisions are fulfilled by the undertakings. - Having at least 10 or more auditors on its staff, and - at least 5 of which are companies listed on BIST

		independent auditing organizations and a list of 32 organizations that meet these conditions was published. [116]. The actual result of this decision is that the companies that can monitor commitment decisions and inform the Competition Authority about their implementation are predominantly large financial auditing companies. A similar system of implementing and monitoring commitment decisions has long been implemented in the EU [117]. In EU practice, independent third parties report the implementation of commitment decisions to the authority in a certain order, and while performing these duties, they are subject to certain rules and obligations such as independence and confidentiality obligations. Monitoring and reporting the fulfillment of the commitment has never been the subject of examination in Turkish law until today. The increasing number and diversification of commitment decisions will lead to many discussions regarding the fulfillment of these decisions in the future. For this reason, clarifying issues such as who will monitor and how, the monitoring process, the duties and obligations of the parties, and the legal responsibilities of independent audit companies regarding these duties are important for the healthy execution of the application. Within the scope of this notification, it is aimed to find answers to these questions by making comparisons with different legal systems, especially EU law.

[116] https://kgk.gov.tr/ContentAssignmentDetail/4917/Rekabet-Kurulu-Kararlar%C4%B1nda-Yer-Verilen-Taahhu%CC%88t-ve-S%CC%A7artlar%C4%B1n-Denetimini-Yapmaya- Authorized-Bag%CC%86%C4%B1ms%C4%B1z-Audit-Institution%CC%A7lar%C4%B1n%C4%B1n-I%CC%87%C4%B1n-About-Announcement

[117] https://ec.europa.eu/commission/presscorner/detail/en/MEMO_13_189