Rows	Title	Abstract
1.	Patent Settlement Agreements under Article 101 of the Treaty on the Functioning of the European Union (TFEU)	**Memorandum** The aim of a patent settlement is to resolve the actual or potential dispute, opinion procedure or litigation concerning the manufacturing and/or marketing of a generic version of a drug which is claimed to be protected by a patent. [1]The intersection of patent law and competition law presents a complex and evolving challenge, particularly in the context of pharmaceutical patent settlements. These agreements, wherein an originator company compensates a generic manufacturer to delay the entry of a generic drug into the market, have come under scrutiny as potentially violating competition law principles. This memorandum addresses the question of whether patent settlements between originator and generic pharmaceutical companies constitute anticompetitive practices under Article 101(1) of the Treaty on the Functioning of the European Union (TFEU). The European Commission has investigated such agreements extensively, resulting in substantial fines and legal challenges. The Court of Justice of the European Union (CJEU) has ruled that certain pay-for-delay agreements can inherently restrict competition, emphasizing the critical role of value transfers in these assessments. Although the Commission's preference for a case-by-case analysis necessitates a comprehensive evaluation of each agreement's economic and legal context, its assessment of these criteria has been rather superficial. Article 101 of the Treaty on the Functioning of the European Union (TFEU) is a fundamental pillar of EU competition law. It prohibits agreements, decisions by associations of undertakings, and concerted practices that may affect trade between Member States [2]and whose object or effect is the prevention, restriction, or distortion of competition within the internal market. The distinction between these types of behavior —agreements, decisions, and concerted practices—does not necessitate rigid categorization, as the European Commission's focus lies on identifying and addressing independent conduct or collision, rather than on the specific form of the behavior in question. [3]This

[1]On 8 July 2009 the European Commission adopted the Final Report on competition inquiry into the pharmaceutical sector , pursuit to Article 17 of Regulation 1/2003 EC . Since then , the Commission has been monitoring patent settlements between originator and generic companies and publishes Annually Reports , see European Commission , *Pharmaceutical Sector Inquiry , Final Report* , 8 July 2009, para. 706. Available at: http://ec.europa.eu/competition/sectors/pharmaceuticals/inqui ry /staff_working_paper_part1.pdf.
[2] See *Expedia* , C-226/11, EU:C:2012:795, 13 December 2012, paragraphs 16 and 17
[3]ECJ (8 July 1999), Case C-49/92 P – Commission v Anic Participation SpA [1999] ECR I-4125, para. 108.

		provision targets coordination among undertakings that are in competition with each other, whether in actual fact or at least potentially.[4] This memorandum will examine the criteria for determining anticompetitive behavior under Article 101 TFEU, with a focus on comparing and contrasting these criteria with the practices and decisions of the Commission and the CJEU, including potential competition, restriction by object, the role of patents as market entry barriers, and the amount of transfer value. It argues for a nuanced approach that balances legal and economic considerations to promote genuine competition and innovation in the pharmaceutical sector.
2.	Prioritization, Competitiveness, and Article 102 TFEU A Market Failure Perspective	Competitiveness is back on the agenda of many jurisdictions, including the European Union and the United States. In the EU, expert reports by Enrico Letta and Mario Draghi have once again put the issue of competitiveness front and center . While boosting competitiveness is a demanding task that requires many policies to contribute, competition policy is likely to play a key role. Competition law and policy not only helps maintain a unified internal market, but it also enables European firms to scale and innovate, thereby performing a crucial duty in increasing competitiveness. Although many faces of competition law need to be studied to address competitiveness issues, a preliminary problem is likely to be prioritization. Prioritizing cases is important as enforcement resources are limited, and not all industries matter equally to bolstering competitiveness. Starting from the premise that competition law fixes market failures, and specifically market power under unilateral conduct rules, this paper explores a new method to prioritize cases by detecting when markets underperform in their allocative functions. It argues that when markets systematically fail to steer resources toward productive firms and away from unproductive ones, greater enforcement attention is warranted. Developing a simple methodology to operationalize this intuition, the paper briefly investigates five important industries to help illustrate how prioritization can be reimagined for competitiveness-oriented competition law.
3.	The Effects of Market Concentration on Local Competition and Micro Markets in the Context of the	In 2024, a significant development took place in the Turkish fuel market, and one of the largest players in the sector, Petrol Ofisi Anonim Şirketi, took over another important player in the sector, BP Petrolleri Anonim Şirketi. What made this development historically important in terms of competition law was the geographical market definition made by the Competition Board ("Board") in its decision to conditionally allow the parties to apply for a takeover, in terms of

[4] Generics , para 32

	Petrol Ofisi/BP Merger Decision	the retail sales market. Because, when determining the geographical market, the Board, instead of determining the geographical market as "Turkey", adopted a method similar to the " **isochronous method ", which it referred to as the " capture area** " and which can be encountered with various applications, especially in Europe . Accordingly, a large number of capture areas were created in terms of the retail operations of the transaction parties, and the focus was on competitive concerns by taking into account the market shares in these areas. This decision of the Board carries more than a simple policy change regarding the geographical market definition. The comprehensive statement published on the institution's website [5]also supports this. The statement in question states that the Board has deepened the dynamics of the retail sales market within the framework of a new accessibility-based analysis in determining the geographical area for the first time; and has conducted analyses specifically for micro markets, referred to as catchment areas, in order to reveal the effect of concentration on a local scale. Therefore, " ***revealing the effect of concentration on a local scale*** " appears as an important policy preference of the Board for the first time in this decision. Measuring the effects of concentration on local elements of competition has been such an important policy priority for the Board that the Board has focused on the effects of concentration from the consumer perspective, regardless of the operating model of fuel dealers. This decision of the Board brings two important issues on the merits in terms of competition law application in Turkey to the agenda: In which cases the effects of concentrations on local competition will be accepted as an evaluation parameter on the merits of the transaction; whether this will be limited to a sectoral preference due to the findings in the current fuel sector research report or whether it will be a general application that may spread to other sectors; if it will be a general application, what its elements may be are the first dimension of the issue on the merits. The principles of determining the "micro-geographic markets" determined to analyze the effects of concentration on local competition are the second important dimension of the subject. Since it is not a method frequently applied by the Board, this issue means potential uncertainty for the enterprises and it is important to provide clarity. The second goal that our notification will pursue is to make analyses on this axis. While making this analysis, the isochrone method applied in the decision regarding the transaction will be at the center of the examination. Isochrons can be expressed as "lines connecting the points that can be reached within a certain travel time " . Since seeing which competitors are

[5] https://www.rekabet.gov.tr/tr/Guncel/-bp-petrolleri-ve-bp-turkey-in-tum-hisse-683cdfba6376ef1193cf0050568585c9

		located at different driving distances can lead to differences in customer preferences in particular, it has been a [6]method used by competition authorities . When we look at the world practice, it is stated that isochrones alone cannot provide a definitive solution; for a correct and effective competition analysis, additional analyses such as customer density and average travel time should be made and whether there are geographical markets determined by natural/administrative boundaries should be taken into consideration. Within the framework of these principles in the literature and world practices, the discussions on whether the geographical areas adopted by the Board in its decision regarding the transaction are accurate within the scope of the micro-geographic market concept and the possible effects of the decision will be examined in detail in our Communiqué.
4.	The Acquisition of Local Technology Startups by International Companies: Economic Impacts and the Examination of Mergers and Acquisitions under Competition Law	Our country's dynamic and innovative technology ecosystem has attracted increasing interest from international companies in recent years. The takeover of local technology initiatives by global players has significant economic and legal consequences, and it is believed that the role and effectiveness of competition legislation has reached a critical point in this process. Technology startups in Turkey are growing rapidly thanks to the digitalization process and the young population's aptitude for technology. These startups are important not only for economic development but also for the development of strategic technological competencies. However, the takeover of these startups by international companies has a two-way effect on the country's economy, *(i) Positive Effects:* Foreign capital flows can facilitate domestic enterprises' opening up to global markets and encourage innovation. *(ii) Negative Effects:* The transfer of original technologies and strategic data abroad can undermine Turkey's long-term economic independence. Therefore, considering that competition legislation has an important role in this area, especially in terms of negative effects, it is evaluated that the Authority will play an effective role in terms of the future of the country thanks to its regulatory function. Merger and acquisition transactions are examined within the framework of Law No. 4054 on the Protection of Competition and related regulations. The Competition Authority is authorized to prevent the effects of such transactions that disrupt effective competition in the market. However, dynamics specific to the technology sector require new approaches in these examinations: • **Dominant Position:** The takeover of technology startups may involve companies that are currently small in

[6]For example, the UK Competition Authority (OFT) has used isochronous analysis in the merger processes of businesses such as cinemas, betting shops and supermarkets.

		terms of market share but have the potential to become market leaders in the future. This situation necessitates the consideration of the concept of "potential competition". • **Data-Driven Reviews:** Many local initiatives operate in strategic areas such as big data analytics or artificial intelligence . The Competition Authority must evaluate these transactions not only from an economic perspective but also from a data sovereignty perspective. On the other hand, when we look at the international dimension of the issue, In jurisdictions such as the European Union and the United States, tech giants' takeovers of small but strategically important companies are increasingly being questioned. In Turkey, such takeovers are often considered low-value transactions and may be exempt from antitrust scrutiny. However, this poses risks to protecting the domestic ecosystem and ensuring long-term competition. In the report study to be conducted in line with the general explanation of this issue, issues such as the legislative changes that can be made to update the examination criteria for these mergers and acquisitions in a way that will ensure that strategic effects are taken into account in the acquisitions of technology enterprises (the necessity of which will also be discussed), the issue of re-determining the transaction value thresholds on a sectoral basis to prevent small-scale acquisitions from being overlooked, and the making of regulations to ensure that strategic data obtained by international companies from domestic enterprises contributes to the Turkish economy (data sharing obligation) will be examined and the Competition Authority's examinations in this field will be mentioned and new trends in both our country and other countries' practices will be discussed. As a result, the aim of the study is to emphasize the importance of handling the takeover of domestic technology initiatives by international companies in a balanced manner in terms of Turkey's technological independence and economic sustainability, and to reveal how competition law should be shaped in this process by considering not only market efficiency but also the strategic interests of the country.
5.	Anti-Competitive Behavior of Public Institutions: Non-Recognition as Enterprises and Legal Steps That Can Be Taken	The anti-competitive behaviors of public institutions and organizations constitute an important topic of discussion in the application of competition law in Turkey. According to Turkish Competition Law, although regulations for the protection of competition apply only to private sector enterprises, public institutions can also create distorting effects on the market from time to time. However, since these institutions are generally not considered as "undertakings",

		they remain outside the scope of Law No. 4054 on the Protection of Competition. However, the need to take certain steps regarding the anti-competitive behaviors of public institutions is increasingly on the agenda. The primary problem is the interventions of public institutions in the market and the restrictive effects of these interventions on competition. Public institutions may engage in various activities in the market to provide public services, but these activities may hinder competition in the private sector. For example, subsidies, government tenders, public purchases or preferential conditions granted to private sector players by public institutions may have anti-competitive effects. However, the Competition Authority's intervention in such practices is generally limited because these institutions are not considered as "undertakings". However, in recent years, the European Union and other developed legal systems have been making various legal regulations to control the anti-competitive effects of public institutions. For example, EU Competition Law includes certain control mechanisms to ensure that public enterprises operate under equal conditions with the private sector. It is of great importance for Turkey to take this approach into consideration in order to ensure that both domestic and foreign competition can function healthily. The Competition Authority can develop different methods to monitor the anti-competitive effects of public institutions. The first of these is that public enterprises should report their anti-competitive practices transparently. Public institutions should provide information to the Competition Authority about the effects of their activities on the market and regulations should be made to ensure that they compete on equal terms with private sector firms. The second step is to carefully monitor state aids and subsidies. The advantageous conditions that public enterprises gain compared to private sector firms can disrupt the balance of the market, therefore the effects of these aids on competition should be meticulously monitored. Third, legal regulations and policies should be harmonized to ensure that public institutions operate in a manner compatible with competition. Although the market behaviors of public enterprises are not considered as a specific "undertaking", the necessary legal regulations should be made to limit practices that have the potential to distort competition. In addition, more appropriate competitive frameworks should be established for enterprises to fulfill their public duties. As a result, the anti-competitive behaviors of public institutions are important not only in terms of domestic market competition but also in terms of economic efficiency and consumer welfare. Therefore, within the scope of the study,

		firstly the situation in our country will be discussed within the framework of the Competition Authority decisions and practices and the Council of State decisions, then a comparison and examination will be made within the scope of other country practices and legislation and the necessary steps to be taken will be evaluated.
6.	Competition Between Fintech Companies and Traditional Banking: A Competition Law Perspective	Fintech companies are creating a significant transformation in the traditional banking sector with their innovative business models and digital solutions. Banks have to compete against the low-cost, fast and user-friendly services of fintech companies. fintechs range from payment systems to lending, insurance to investment management. This increases direct and indirect competition between fintech companies and banks. While fintechs generally gain customers by offering services at lower costs, banks have to keep up with this competition by investing in digital transformation. In terms of technology use , fintechs develop efficient solutions by adopting innovative tools such as artificial intelligence , big data and blockchain , which necessitates banks to transform their existing infrastructures. However, it is easier for fintechs to enter the sector than banks, because banks' heavy regulatory obligations and large infrastructure investments reduce the barriers to fintechs . These dynamics make competition in the sector more complex. From a competition law perspective, various problems may arise in the competition of fintech companies with banks. In particular, banks abusing their dominant position in the market and obstructing the growth of fintechs can lead to distortion of competition. In addition, banks' restriction of access to payment infrastructures and customer data can make it difficult for fintech companies to operate in the market under fair competition conditions. In this context, competition authorities should conduct stricter controls in case of acquisition of fintech companies by large technology companies in order to maintain the competitive balance in the market. In Turkey, competition in the financial sector is regulated by the Law No. 4054 on the Protection of Competition and the Banking Law. While the Competition Authority monitors possible anti-competitive behaviors in the relationships between banks and fintech companies, the Banking Regulation and Supervision Agency (BDDK) has established a regulatory framework for fintechs . These regulations are important to ensure the sustainability of competition in the sector. In order for competition to function healthily, customer data held by banks must be shared transparently with fintech companies and the entry of fintech companies into the sector must be facilitated. In addition, in the event that large companies acquire fintechs , it is important to monitor such mergers more strictly so that competition is not

		harmed. Such regulations will encourage innovation in the sector while also increasing consumer welfare. It is planned to address these issues within the scope of the study by also touching on the Competition Authority's approach and practices.
7.	Competition in Digital Markets: A Comparative Analysis of Regulation in the United Kingdom and Turkey and Its Legal Implications	Protecting competition in digital markets has become particularly important today, especially in the era of rapid technological developments. The United Kingdom and Turkey are developing different strategies to control digital competition at a time when digital sectors interact on a global scale. These regulations play a critical role not only in promoting economic growth, but also in protecting users' rights and ensuring the healthy functioning of the market. The Digital Markets, Competition and Consumers Bill (DMCC) in the United Kingdom provides a mechanism for large firms in the digital sector to be subject to stricter controls by being defined as Strategic Market Presence (SMS). This legal framework guides digital competition with tools such as conduct regulation and open market rules in order to prevent large digital platforms from abusing their market power. In particular, certain conduct restrictions have been introduced to ensure that large digital players provide their services and content to their users in a fair and transparent manner. Such regulations aim to prevent behaviors such as data dominance, prioritization of their own products or collaboration by digital platforms. In this way, the digital sector is ensured to operate in a fair and accessible manner (Dechert , 2024). In Turkey, the control of digital competition is shaped particularly within the framework of data protection, merger control and market regulations. Rapid changes in the digital sector, increasing foreign investments and the potential of local enterprises to compete in global markets are leading Turkey to take a more careful approach to digital regulations. Competition legislation in Turkey focuses on critical elements such as continuous control and data protection, especially considering the effects of large technology companies on the local market. In addition, the legal infrastructure is being strengthened and new regulations are being made considering digital market dynamics in order for Turkey to fully control competition in the digital sector. Both approaches are a reflection of the growing and increasingly integrated nature of digital economies. The effectiveness of digital sectors not only ensures economic growth, but is also a key tool for achieving important social goals such as protecting consumer rights, creating market diversity and encouraging innovation. The DMCC in the United Kingdom is developing a more flexible and dynamic approach by offering regulations tailored to the strategic

		importance of firms. Turkey, on the other hand, is strengthening regulations for its digital sector, while continuously reviewing its policies towards digital enterprises and large technology firms to ensure the protection of competition and innovation. These efforts are critical to maintaining fair competition in digital markets and securing users' digital rights. Within the scope of the study, these issues will be addressed by analyzing the legislation and practices of both countries, also addressing the approaches and practices of the Competition Authority.
8.	Sustainability Agreements and Exemption Regime in Comparative Competition Law	Recently, the increasing awareness of sustainability and climate change issues and the studies conducted in this area have brought the relationship of competition law to these issues. The focal point of the issue in terms of competition law is the collaborations and agreements made between enterprises to achieve sustainability goals . However, such agreements may raise concerns in terms of competition law when they have negative effects on competition parameters such as price, quantity, quality, choice or innovation. The evaluation of sustainability agreements requires a delicate balance between sustainable development goals and the protection of competition. Some competition authorities develop additional criteria and implement policies specific to certain sectors when evaluating these agreements under the exemption regime. Therefore, it is important to examine comparatively the competition law developments in countries that developed early awareness on this issue, as outlined below. European Union: The EU Horizontal Agreements Guide provides specific regulations for sustainability agreements. These regulations state that agreements will only raise concerns if they directly restrict competition or have significant negative effects and must meet the requirements for exemption under Article 101(3) TFEU. In addition, a "safe harbour" is provided for sustainability standardisation agreements. Regulation 1308/2013 for the agricultural sector has created a specific exemption regime for this sector. Germany and France: These countries do not have specific regulations for sustainability agreements, but they are considered to be covered under the existing exemption regime. While Germany's Monopoly Commission reports and France's long-standing competition authority opinions have raised awareness of sustainability, both countries are cautious about such agreements. The competition authorities of the United Kingdom and the Netherlands approach sustainability agreements with

		guidelines, explaining their definition, scope and exemption conditions, thus providing guidance to market actors. Switzerland and Hungary: The competition laws of these countries contain indirect references to sustainability agreements. It is envisaged that agreements that contribute to the efficient use of resources and the protection of the environment may be considered within the scope of the exemption regime. Austria: Regulations from 2021 made direct reference to sustainability and clarified the relationship between sustainability and consumer interests. In terms of Turkish competition law, the approach to sustainability agreements shows that the current legal regime is suitable for granting exemptions for such agreements; however, this is subject to the undertakings proving that they meet the conditions specified in Article 5 of Law No. 4054. Past and recent decisions of the Competition Board also support this perspective. For example, the Iron and Steel Producers Decision drew attention to the fact that [7]collaborations established in accordance with environmental regulations and bringing together competing producers should be tolerated, while the Güzel Enerji Decision [8]emphasized the impact of environmental benefits on the exemption period, revealing the importance of such agreements. In addition, the Soap and Detergent Manufacturers Association Decision [9]stated that environmental pollution should be evaluated as a social cost and that the economic benefits of less pollution of the environment may not always be directly measured. In comparative law, exemption conditions addressed in sustainability agreements are generally based on common criteria such as improvement in production and distribution, providing consumer benefits, avoiding unnecessary restrictions and not eliminating competition. However, it is seen that criticisms are made especially regarding the determination and analysis of consumer benefits, and it is evaluated that the approaches of competition authorities may change in line with sustainability sensitivities. As a result, comparative law studies reveal that legal certainty should be increased in the processes of granting exemptions to sustainability agreements and that more comprehensive studies should be conducted on the subject.

[7]The Board's decision numbered 09-39/946-233 and dated 26.08.2009.
[8]The Board's decision dated 01.12.2022 and numbered 22-53/801-329.
[9]The Board's decision numbered 09-33/727-167 and dated 15.07.2009.

9.	Legal Analysis of the Consequences of the Appeal Ban in Settlements: Insights from the Practices of the Turkish Competition Authority and Administrative Judiciary	The right of access to court for undertakings is of critical importance in many ways. In addition to meeting legitimate demands within the scope of a simple dispute, the resolution of legal uncertainties created by the difficulty of legislative activities to keep up with rapidly changing world conditions is often carried out through the courts. On the other hand, the parties' right to access court can be restricted for various reasons and in various ways. The cases where such an important and constitutionally based fundamental right is restricted should be meticulously evaluated and the parties' right to access court should remain in place in cases where similar benefits can be obtained through different methods. An example of the restriction of access to court by the prohibition of filing a lawsuit is encountered within the scope of competition law. The conciliation institution, which was put into practice with the amendments made to the Law No. 4054 on the Protection of Competition in 2020, allows the undertaking under investigation to accept all the violation allegations attributed to it and conclude the investigation in a short time. On the other hand, it has been regulated that the parties who have reconciled cannot file a lawsuit against the conciliation decision, citing the reasons of providing the procedural benefits expected from the conciliation institution and reducing the workload of the courts. In practice, it is observed that both the Competition Board and the administrative courts interpret this restriction quite strictly. The absence of such a prohibition in the regulations of the European Union, which is accepted as a basis especially in terms of Turkish competition law rules and Competition Board case law, raises questions as to why the legislator preferred a different policy in the context of the institution of conciliation. At the same time, it is important to consider this prohibition in the context of its compliance with the European Convention on Human Rights and the case law of the European Court of Human Rights. In this context, our presentation will discuss the extent to which the current lawsuit ban is effective in encouraging procedural economy, based on the Competition Authority and administrative court practice. Based on the studies conducted in the European Union, where the lawsuit ban is not implemented, the extent to which the procedural economy rationale can be implemented in practice and the imbalance/imbalance between ensuring procedural economy and restricting fundamental rights and freedoms will be examined under the jurisprudence of the European Court of Human Rights. Because the examples encountered in practice indicate that the lawsuit ban (to the extent that it also prevents the right to administrative application) can violate fundamental rights and freedoms such as freedom to seek justice, the right to access the court within the scope of the right to a fair trial, the right to a reasoned decision,

		and the right to property. Again, the practice can be shaped in a way that is contrary to fundamental principles such as legal administration, equality, administrative stability, administrative law being a statute law, and can lead to arbitrary administration by eliminating legal certainty for undertakings. Our presentation aims to open up for discussion the issues of whether the prohibition of lawsuits is an appropriate institution in terms of establishing the balance between procedural economy and the protection of fundamental rights and freedoms in the context of reconciliation, and whether it is possible to implement practices in favor of fundamental rights and freedoms of enterprises through administrative court decisions and the administration's attitude while the prohibition of lawsuits is in place.
10.	Analysis of Current Turkish Competition Law Policies in the Light of Annual Reports of the Turkish Competition Authority and Other Publicly Available Documents	The Competition Authority ("Authority") publishes activity reports every year, and the 25th annual report of the Authority has been published together with the report published for 2023. On the other hand, audit reports prepared by the Court of Accounts regarding the activities of the Authority are regularly shared with the public, and the personnel recruitment announcements of the Authority are published on the relevant platforms of the Presidency of Strategy and Budget in a way that provides statistical data. Similarly, some data regarding the activities of the Authority are published in the studies of international organizations such as the Organization for Economic Co-operation and Development (OECD), the International Competition Network and other relevant stakeholders. Within the scope of the presentation, the data and statistics presented in the above-mentioned studies will be analyzed in light of the impact of legislative changes, some Competition Board and administrative court decisions, macroeconomic developments, and other important developments such as pandemics and earthquakes. The policy priorities of the Institution, issues that have gained and lost importance over the years, sectors that stand out in terms of investigations, the Institution's investments in its IT infrastructure and human resources, and the Institution's institutional capability and capacity assessments will be discussed, and various graphs and tables on the aforementioned topics will be shared. Within this framework; the list of regulations that have entered into force over the years will be included; statistics such as the number of on-site inspection assignments, the number of files where competition violation claims have been examined, and the number of files concluded will be addressed annually, on a sub-breakdown basis, and by examining the causal links between the data. For example, whether there is a correlation between the increases in the

		number of on-site inspection assignments and the number of files examined or concluded will be assessed. The reasons behind the steady decrease in the number of exemption/negative clearance applications over the last decade will be questioned. The impact of the change in the turnover thresholds for merger and acquisition notifications and the legislative amendment to examine transactions related to the acquisition of technology enterprises independently of the turnover threshold on the statistics will be assessed. The percentage distribution of the reconciliation and commitment mechanisms recently added to our legislation within competition violation decisions will be examined. On the other hand, the sectoral data shared by the Agency on an annual basis in its various reports will be aggregated to cover longer periods, and the effects of developments such as pandemics and earthquakes on the relevant sectors will be attempted to be revealed. One of the topics to be emphasized within the scope of the presentation will be the Institution's investments in human resources and their effects on practice. In this context, the frequency of the Institution's personnel recruitment announcements published in various years and the numerical distribution of the sub-cadre breakdowns such as law, general, and informatics included in these announcements will be examined. Again, the personnel statistics shared on the Institution's website will be addressed from different perspectives. In addition, numerical and monetary data such as the number of Institution's personnel, personnel expenses, and goods and service procurement expenses included in the Court of Accounts' audit reports of various years will be examined. On the other hand, in order to carry out more accurate analyses; while examining monetary data such as administrative fines applied by the Institution, turnover thresholds, personnel expenses of the Institution, inflation adjustment will also be made according to the years. Finally, in line with the data examined in the presentation; current legislative studies, sector reports recently published by the Institution and in the preparation phase, and national and international studies on digitalization, algorithm audits and the use of artificial intelligence will be discussed. In this context, opinions on the priorities that may guide Turkish competition law policies and practices in the future and the issues that the Institution may put on its agenda will be shared.
11.	Deletion Of Digital Data During Dawn Raids: A Paradigm Shift in the Turkish Competition	Obstructing on-site examinations by obscuring digital data during on-site examinations conducted by the Competition Authority is one of the most important competition law issues of recent years. Until recently, in the decisions of the Competition Board (“Board”), any data deletion performed after the on-site examination has started was generally

	Board's Approach	considered as "obstruction of evidence" and obstruction of on-site examination. However, it has been observed that the Board has recently made decisions that on-site examinations are not obstructed in cases where data deletion has taken place and has presented different approaches in files with similar content. In this context, within the scope of the notification, the Board's most recent decisions on the subject will be examined and some new criteria taken as basis in the evaluations regarding the act of "obstruction of evidence" and the contradictory approaches put forward in files that are similar in content will be discussed. *the Ufuk-DYM-Kösem,* [10]the justification of which was published recently and *Berks*[11] In its decisions, it was decided that the data deletion actions carried out by employees of the enterprise who were not warned that data should not be deleted during the on-site inspection would not mean that the on-site inspection would be prevented. In *the Canon* decision [12], however, there was an implicit statement that if employees of the enterprise who were not informed about the on-site inspection deleted data, this would not mean that the on-site inspection would be prevented. *Balsu decision,* [13]the justification of which was published recently , it was concluded that the on-site investigation carried out in the relevant enterprise was not obstructed, considering two issues. First, it was stated that the deleted e-mails were restored after the on-site investigation began and that no violation was found in this data. Second, *Balsu It was stated that* Balsu had been visited to obtain information as part of an investigation into another enterprise and that therefore *Balsu* could not have had the intention of hiding information. In fact, *Balsu* In the dissenting opinion submitted by a Board member within the scope of the decision, it was noted that the Board's approach contradicted the approaches set forth in previous Board decisions. Again, the justification for which was recently published is *Boylular Beton*[14] In its decision, it was concluded that although an employee of the undertaking who was warned not to delete any digital data from their devices before the on-site inspection was carried out deleted the data, the on-site inspection was not prevented on the grounds that the relevant deletion action was carried out before the on-site inspection started and the relevant data was accessed from

[10] The Board's decision dated 17.08.2023 and numbered 23-39/743-257
[11] The Board's decision dated 23.03.2024 and numbered 23-15/267-90
[12] The Board's decision dated 28.04.2023 and numbered 23-19/365-127
[13] The Board's decision dated 17.08.2023 and numbered 23-39/727-250
[14] The Board's decision dated 21.09.2023 and numbered 23-45/840-296

		other employees. On the other hand, in some decisions where administrative fines were imposed considering that on-site inspection was obstructed and the justifications of which were published recently, it is observed that some Board members submitted dissenting opinions and did not agree with the majority opinion. In these dissenting opinions, the following were indicated as reasons for not agreeing with the majority opinion: the data deleted were few in number and could be retrieved, the deleted data were not of a nature to constitute evidence within the scope of the file, certain reactions shown during on-site inspection were natural and the bargaining power of the relevant undertakings was low. In addition, another Board member, due to the appeal filed with the Constitutional Court for the annulment of Article 15 of Law No. 4054, stated that the acts of obstruction/obstacle that are directly related to the use of on-site inspection authority and the administrative fines to be imposed accordingly should not be discussed until the jurisprudence in the administrative courts is formed, and agreed with the majority opinion with different justifications in various decisions. Within the scope of the presentation, the decisions given above will be discussed in comparison with the evaluation framework drawn by the Board in the past and the approaches put forward in administrative court decisions. In this context, our views on the fact that the contradictory approaches put forward by the Board violate the principle of legal certainty and the right to a fair trial will be presented.
12.	Analysis of Exploitative Abusive Conducts through AI Based Algorithms	artificial intelligence technology and algorithms has created radical changes in the business models of social media platforms. A limited number of platforms, to which a large number of users turn, can offer users special content and personalized experiences thanks to artificial intelligence -based algorithms, thus influencing individual decisions and indirectly social events. However, this ability to influence, which has serious consequences at the individual and social level, does not fully coincide with the traditional concept of market power in competition law, and the damages arising from the abuse of this ability to influence through algorithm preferences are also outside the scope of current damage theories. However, competition law has the potential to be an important instrument complementary to other regulations that directly serve this purpose in order to combat the structural and behavioral problems underlying these problems. The aim of our study is to present the legal infrastructure that will reveal this potential. In our study, evaluations will be presented on how the concepts of conventional market power and exploitative abuse in competition law can be interpreted in line with this purpose, and on the relationship that can be established between competition law and regulations that serve the same purpose in this case.

		How Algorithms Work and Their Potential Effects Most algorithms on social media platforms aim to maximize user engagement and increase the time spent on the platform by utilizing disciplines such as behavioral economics and psychology, sociology, neuroscience , data analytics, artificial intelligence , and network science. Platforms systematically present content that increases user engagement by analyzing users' interests, likes, and emotions with the personal data they collect thanks to their large user bases and strong network effects. Algorithms that are constantly fed with data and learn from this data, It carries a potential for manipulation that can affect the free will of individuals [15]. While directing the preferences of individuals, it can also lead to unpredictable and uncontrollable social effects with the information and content disseminated to society. In addition, in cases where certain content is prioritized in return for a fee and the algorithms are not impartial, consumers' access to alternative content is limited and they are directed to products and services selected by the algorithms with misleading rankings. The manipulation of consumer preferences by platforms with market power through content manipulation and data use constitutes a theory of harm that threatens individual decision-making processes and social dynamics, beyond the classical understanding of economic harm. **Artificial Intelligence -Based Algorithms in Competition Law** The traditional price-oriented consumer welfare approach may be insufficient in identifying market power problems in zero-price digital markets and developing effective measures. In markets where personal data is a fundamental economic element, such as social media platforms, the decisions of the Bundeskartellamt and the European Court of Justice (CJEU) on Meta (Facebook) show that [16]the processing of personal data by undertakings with market power to the detriment of users may be considered as an abuse of dominant position in competition law.

[15]Competition Authority, "Reflections of Digital Transformation on Competition Law", April 2023, para. 433, https://www.rekabet.gov.tr/Dosya/dijital-piyasalar-calisma-metni.pdf ; CMA, "Online platforms and digital advertising Market Study Final Report 1 July 2020", https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf

[16]of the German Competition Authority Bundeskartellamt on *Facebook* dated 06.02.2019 and numbered B6-22/16 , https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/10_10_2024_Facebook.html ; Decision of the ECJ dated 04.07.2023 on *Meta Platforms Inch and Others v Bundeskartellamt* Decision, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0252 .

		Since determining damages in such conduct is difficult and requires expertise, it carries the risk of expanding the scope of authority of competition authorities and undermining the principle of legal certainty. The ECJ's approach in the Meta decision emphasizes that damages in the context of competition law should be determined within the framework of special regulations. AI - based algorithms in competition law and their potential harm to society and individuals, and should be evaluated from the perspectives of protecting personal data and the free will of individuals, as well as market power analysis. This approach can contribute to a more comprehensive understanding of competition law that considers consumer welfare and social interests.
13.	A New Era in Leniency: Will the New Leniency Regulation of the Turkish Competition Authority Achieve its Goals?	is an institution that allows undertakings to obtain exemption from penalties or reductions in penalties by cooperating with competition authorities in order to uncover cartels to which they are party . The leniency institution, which constitutes one of the most effective methods of combating cartels, was included in Turkish competition law under the name of "active cooperation " with a law amendment made in Law No. 4054 on the Protection of Competition in 2008. The leniency institution, whose legal framework was established with the entry into force of the Leniency Regulation in 2009 , was put into practice in the same year. The low number of leniency applications and the number of cartels uncovered through leniency within the scope of the leniency institution's application in Turkish competition law for nearly 15 years has raised questions about the effectiveness and success of the leniency institution. The performance of the leniency institution in practice has frequently been on the agenda within the scope of the Competition Authority's reports setting forth its future strategies, and making this institution more effective in practice has been included in the strategies in question as a goal. In order to increase the effectiveness of the leniency institution, an in-house study has been initiated to review the Leniency Regulation in light of the experience gained in practice, the entry into force of the reconciliation institution and developments in comparative law. As a result of this study, the 2009 Leniency Regulation was repealed in December 2023 and replaced by the new Leniency Regulation. While the general framework and application conditions of the leniency institution are largely preserved in the new Leniency Regulation, some changes and innovations have been made in some areas. These include the introduction of a value-added document requirement in order to benefit from a reduction in the penalty, the inclusion of the concept of cartel facilitator in the legislation and the opportunity to apply for leniency for undertakings that are cartel facilitators, the application of undertakings that apply for leniency being accepted by the Competition Board but the violation not

		being assessed as a cartel at the end of the investigation, allowing the applicant to benefit from the Leniency Regulation, the transition to a percentage basis in showing the penalty reduction rates and finally the amendment limiting the leniency application period for a reduction in the penalty to 3 months from the notification of the investigation. This study examines the changes made with the new Leniency Regulation within the scope of the activation of the leniency institution. In this study, it is argued that if the aim is to truly activate the leniency institution in practice, it is necessary not to be content with the changes made with the new Leniency Regulation, but to investigate why the leniency institution has not been able to deliver what is expected of it within the scope of its application for nearly 15 years in Turkish competition law and to develop solution proposals targeting the source of the problem or problems pointed out by the research results.
14.	A Quarter-Century Analysis of Competition Board's Infringement Decisions: An AI-Powered Study	For over a quarter of a century, the Competition Board ("Board") has been the shaper of this field with its decisions that have shaped Turkish competition law. Hundreds of decisions made during this period have been the subject of various academic studies, but these studies have generally been limited to certain themes or sectors. Today, the development of generative artificial intelligence technologies enables a comprehensive and systematic analysis of this vast archive of decisions. This study aims to present a holistic analysis of the Board's decisions with the opportunities provided by these technological developments. In our study, all (approximately three thousand) Board decisions given as a result of investigations initiated due to alleged violations of Articles 4 or 6 of the Competition Law are evaluated in three main dimensions, accompanied by a detailed guide (*codebook*): **1)** Economic Analysis: The level of evaluation of the relevant market and competition conditions of the decision with economic theory and empirical data, **2)** Standard of Proof: The extent to which the conclusions reached by the decision are based on evidence and logical inference. **3)** Protection of Competition: The extent to which the decision serves the purpose of protecting and developing competition in the market. While scoring is made between 1 and 10 in each dimension, information on the type of violation claim, sectors, penalty amounts, compliance of the rapporteur's opinion with the decision, dissenting votes and different justifications are

		also compiled. In order to ensure the reliability of the results in the study, a two-stage method is used. In the first stage, considering that artificial intelligence models can produce different results each time, each Board decision is evaluated more than once and the final evaluation scores for each decision are determined by calculating the average and variability rate of the scores obtained from these repeated evaluations. In the second stage, the artificial intelligence model used in the main part of the study (*Google* To test the reliability of the results obtained with *Gemini – 1.5 Pro),* a randomly selected sample was compared with alternative artificial intelligence models (*OpenAI – GPT-4o* and *Anthropic – Claude 3.5*) are analyzed and the consistency of the evaluations is checked by comparing the results. Our initial findings show that there are significant trends and differences in the Board's decisions over time. These trends also differ in terms of sectoral dynamics, types of violations, and amounts of penalties. We also examine the effects of institutional changes, such as the transition to the Presidential Government System, on decision dynamics. Our study aims to contribute to the AI-supported legal analysis methodology and to reveal the evolution of the Board's decision-making processes. This ongoing research is an innovative study at the intersection of traditional legal analysis methods and modern artificial intelligence technologies. The aim of the study is not to present definitive results but to initiate a rich discussion on the artificial intelligence tools used, the methods applied and the data obtained.
15.	The Complex Terminology of Artificial Intelligence Systems: The Problem of Applicability of the Digital Markets Act (DMA) to Foundation Models (FM)	Fundamental Models (FM) are not new to society or technology. The neural networks and autonomous learning methods they are based on have been around for many years. However, the explosion and increase in user adoption of applications based on the Wide Language Model (LLM) that works on natural language processing (NLP) has affected the entire technology sector, especially since 2023. This can be easily seen from the launch of multimodal AI systems such as Open AI's ChatGPT , Google's Gemini , and Microsoft's Copilot . Problems regarding Basic Models within the scope of DMA and Artificial Intelligence Law will be encountered more frequently in the coming years. The reason for this is that Basic Models, which were thought to consist of voice assistants when DMA was being prepared and were added to the Artificial Intelligence Law draft at the last minute, will create a gap in the application of the law. The Digital Markets Act (DMA), which was not designed with Basic

		Models (FM) in mind, including Wide Language Models (LLM), needs to be discussed again within the framework of these technologies due to their significant market impacts. Moreover, although the Artificial Intelligence Act (AI Act) that entered into force in the European Union has defined Basic Models, it points to serious systemic risks. In addition to all these risks, the relationship between Competition Law and Basic Models needs to be determined. The most fundamental problems are whether DMA can be applied to Basic Models without legislative intervention and whether Basic Models should be included in the list of core platform services within the scope of Article 2(2) of DMA. In cases where the Core Models become part of other core platform services within the framework of the DMA, there seems to be no problem in terms of *ex-ante application. For example, the relevant articles* of the DMA will easily find application in the Core Model-supported applications of large search engine providers, known as 'gatekeepers', that fall within the scope of the DMA (such as a ChatGPT -supported search engine) . However, the scope of the DMA is limited to the use of artificial intelligence technologies such as natural language processing and autonomous learning by giving commands to the computer, such as search engines, mobile applications, graphical interfaces (GUI) such as *chatbots* and voice assistants. In other words, Article 2(2) consists of the core platform services identified within the scope of the DMA. However, due to the complex nature of artificial intelligence systems, their real-world projection has far-reaching consequences on people and market dynamics. Basic models are used to introduce new products to the market and transform existing products and services. The first examples of these are GPT, BERT, DALL-E, Flamingo, MusicGen , RT-2 (which go beyond being artificial intelligence assistants that produce audio/written content), robotic control, mathematics, music, coding, and medicine, and these technologies that are newly being used in the fields of medicine will be one of the main subjects of Competition Law in the future. Since Basic Models will force enterprises of all sizes in every sector to rethink their products and services and the way they do business with their customers, they have a very high probability of being disruptive. Therefore, the following questions regarding Basic Models will be answered within the scope of this study: • the Basic Models are transformed into collaboration platforms, will the application of the existing competition rules (RKHK 4-6-7) be sufficient? • Is it necessary to intervene legislatively on DMA and similar regulations for the acceptance of Basic Models as a core platform service?

		• Could the scenario where Core Models, which are still in their infancy, replace core platform services and completely change value chains, render regulations such as DMA obsolete?
16.	An Analysis of the Penalties for Refusing/Hindering the On-Site Inspections in the Light of Board Decisions	One of the most important tools for detecting competition violations is on-site inspections conducted in undertakings. Since competition violations are inherently associated with evidence that is easy to conceal, the legislator has granted the Competition Authority very broad powers in order to uncover this evidence . This situation is not unique to Turkey, and [17]it is seen that competition authorities around the world have comprehensive inspection powers that are not even available to law enforcement agencies . The Competition Authority aims to actively use these powers, which it derives from the Law No. 4054 on the Protection of Competition ("Law") and [18]uses within the scope of the Guide on the Examination of Digital Data in On-Site Inspections ("Guide"), in on-site inspections it conducts in undertakings, and thus aims to uncover evidence indicating possible violations. During on-site inspections, behaviors that prevent or hinder the effective use of this authority by the Authority are subject to serious sanctions. Such behaviors may result in administrative fines corresponding to 0.5% of the annual turnover of the relevant undertaking. Such high penal sanctions require undertakings to manage not only the risks related to the substance of competition law but also the procedural risks. In this context, in order to meet the foreseeability and legal certainty needs of undertakings, the criteria taken into consideration by the Competition Authority in applying the obstruction or obstruction penalties, the types of behaviors that are subject to these administrative sanctions and the extent to which these criteria are consistently reflected in the decisions of the Competition Board ("Board") are of importance. This study aims to clarify the critical points in question by examining past Board Decisions regarding the prevention/obstacle of on-site inspection with the methods explained below. Within the scope of the study, the "timing dimension" of the undertaking behaviors that can be considered as prevention or obstruction of on-site inspection will be addressed first. The issue of when the on-site inspection should be accepted as starting (for example; the moment the experts reach the undertaking, the moment the authorization documents are presented to the undertaking

[17]Competition experts can examine employees' computers, as well as their private mobile phones, tablets, desks, notebooks and diaries, notes, cabinets and drawers, and data kept in digital media, data on servers, data of former employees or data kept in environments such as the cloud, if used for work and business purposes.
[18]It was accepted by the Competition Board with the decision numbered 20-45/617 dated 08.10.2020.

		authority, the moment the undertaking authorities inform the employees to be examined, etc.) will be discussed in the light of sample Board decisions and our opinions will be shared. In the second section, we will share the conclusions we have reached as a result of the analysis of the decisions to prevent/obstruct the on-site inspection, the number of which has increased considerably as a result of the changes in the inspection techniques that have developed and developed, together with the amendment made in Article 15 of the Law regulating the on-site inspection authority in 2020 and the Guide published immediately thereafter. In this context, the relevant Board decisions will be examined within the scope of parameters such as which behaviors are considered as preventing/obstructing the on-site inspection , how the deletion action, if any, is determined, the effect of whether the deleted data is brought back or not on the decision, whether the deleted data is relevant to the on-site inspection subject, the rapporteur's opinion on the decision, whether there is a dissenting vote in the Board decisions and what the reason for the dissenting vote is. Our findings and evaluations regarding the Board decisions, which we have examined from a broad perspective, will be presented with statistical data and Decision examples. Thus, we will try to reveal the possible behaviors that may prevent/obstruct the on-site inspection that may be penalized by the Board. In the last section, where we will comparatively examine the Competition Board decision dynamics in terms of preventing/making it difficult to conduct on-site inspections and the decisions of sample EU Commission and member state competition authorities, our evaluations aiming to increase legal predictability in terms of future Board decisions for undertakings will be shared.
17.	European Union Case Law: The Possibility of Ex-Post Review of Concentrations under Article 6 of the Turkish Competition Law	" *killer acquisition* " refers to the acquisition of innovative competitors by undertakings in order to neutralize future competition (or potential competition). These practices, which are frequently encountered especially with the development of innovation-based markets, have led to important regulatory developments both in Turkey and other jurisdictions. Indeed, in Turkey, with the amendments made in 2022 to the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board (" **Communiqué No. 2010/4** "), the Competition Authority (" **TC** ") has also been granted the authority to examine acquisitions in technology markets through lower notification thresholds. In addition, the recent Towercast Decision of the Court of Justice of the European Union (" **CJEU ") has made it**

		possible to examine transactions that lead to the strengthening of dominant position *ex -post within the framework of Article 102 of the Treaty on the Functioning of the European Union (*" **TFEU ") ,** and this decision has raised some questions about the applicability of Article 6 of the Law No. 4054 on the Protection of Competition (" **Competition Law** ") to the retrospective examination of concentrations in Turkey. In this context, the presentation will discuss two possible applications of Article 6 of the Competition Law: 1. Whether an acquisition that does not meet the notification thresholds can be examined on the grounds of strengthening a dominant position within the context of Article 6 of the Competition Law. 2. Whether the post-takeover termination of the target company's activities, which is a characteristic of killer takeover strategies, would constitute abuse within the meaning of Article 6 of the Competition Law. These analyses will be conducted by evaluating the chronological development and interrelationships of the European Union jurisprudence (especially the Towercast , Zoetis and Servier decisions). In addition, the similarities and differences between the Turkish Competition Law and the EU competition law will be examined using the comparative law method. With this approach, the possibilities of post-takeover interventions by regulatory authorities will be addressed from both a legal and political perspective. **Scenario 1: Review of Transactions Not Exceeding Notification Thresholds Under Article 6** Within the scope of the Communiqué, first of all, the possibility of a retrospective review of a takeover transaction that does not exceed the notification thresholds but potentially strengthens the dominant position within the framework of Article 6 of the Competition Law will be discussed. Such an approach may raise important issues in terms of regulatory predictability and legal certainty. In particular, the absence of transparent criteria regarding the conditions under which the CA may re-evaluate such takeovers carries the risk of creating uncertainty for undertakings, while granting the regulatory authority a wide discretion. It is anticipated that the discussions will focus on the scope of the harm theories to be applied when conducting a retrospective review and whether these theories can be based on claims such as strengthening the dominant position, preventing innovation or preventing entry into the market.

		Scenario 2: Subsequent Actions in Permitted Transactions As another scenario, it will be discussed whether behaviors that occur after a transaction previously permitted by the CA and that may have anti-competitive effects will be considered as abuse within the scope of Article 6 of the Competition Law. In this context, the question of what kind of supervisory capacity the CA should have in post-authorization processes and how this capacity will be shaped, especially in technology and innovation-oriented sectors, will come to the fore. In cases where undertakings prevent future competition by terminating the innovations that the target company will offer to the market or the R& D activities it is carrying out after obtaining permission from the CA , it will be discussed whether these actions will constitute abuse within the scope of Article 6 of the Competition Law. These discussions will also include questions on how to evaluate the effects of reducing the options offered to consumers, limiting innovation and market foreclosures . The discussions will also discuss current decisions from the European Union as the source . The Towercast Decision sets a regulatory precedent for retrospective assessments, while the European Commission's investigation into Zoetis shows that " *exclusionary termination* " strategies can be considered abusive. Furthermore, the Servier Decision of the European General Court points to criminal sanctions for actions taken with the aim of controlling future competition. As a result, the Communiqué will address how to strike a balance between legal certainty and regulatory effectiveness in order to prevent killer takeovers. It will discuss to what extent Turkish competition law can converge with EU competition law practices by taking into account the effects on innovative sectors. It is assessed that the discussions to be held within this framework will provide a broad perspective not only on the legal but also on the effects of competition policies on innovative sectors.
18.	Commitment Mechanism: 3 Years of Experience and the Search for Balance Between EU and Türkiye Practice	The commitment mechanism, which entered our lives with the Turkish Airlines investigation in 2020, has quickly become an important part of Turkish competition law practice. According to the last 3.5 years of data from the Competition Board (" ***Board*** "), 51 commitment decisions have been established in Turkey. When this number is compared to the 41 decisions taken by the European Commission (" ***Commission*** ") between 2004 and 2020, it shows that the practice in Turkey has a warmer approach. However, due to the long procedures brought about by the market research process in the European Union (" *EU* ") **,** commitment *decisions are taken in an average of 20 months, which has recently led to an increase in violation decisions in EU practice. In* this respect, although the commitment procedure

		in the EU directive is different from that in Turkish competition law in terms of legislation, it is not correct to make a one-to-one comparison between the two practices. On the other hand, it is possible to make a comparison by considering the purpose of the commitment institution and the regulations and practice drafted in this context in a holistic manner. are shaped by Article 43 of Law No. 4054 and in detail by the Commitment Communiqué (" ***Communiqué "). However, some of the limitations brought by the Communiqué are open to discussion in terms of fundamental rights such as the principle of legality and the right to defense, since they are not regulated in Law No. 4054 on the Protection of Competition (" Law*** "). In particular, the 3-month period limitation stipulated in the Communiqué has serious consequences in practice and in some cases leads to the mechanism losing its effectiveness for undertakings . In cases where the Board can expand the investigation without a Board decision or notification, the fact that undertakings learn of new violation allegations only through an investigation report practically disables the right to submit a commitment. This situation emerges as an issue that needs to be questioned within the scope of the principle of the rule of law. Another controversial issue is the limitation of the commitment mechanism in terms of subject matter. While the law regulates that commitments can be provided except for clear and serious violations, the expression "other matters deemed necessary" in the Communiqué gives the Board a wide discretionary power. This situation causes inconsistencies in practice and leads the Board to make different decisions even for the same types of violations. For example, while resale price and customer/region restriction violations are evaluated separately in some decisions and commitment requests are accepted, in some cases they can be rejected on the grounds of procedural economy. Based on the above, it is clear that the commitment mechanism, although a relatively new mechanism, provides a data set worth examining in terms of Turkish competition law. In this context, first of all, the purpose of the commitment mechanism and its connection with fundamental rights and freedoms will be addressed within the scope of this notification, and different law-making methods of EU and Turkish legislators will be compared in this context, and then an evaluation will be made regarding the commitment mechanism within the framework of the jurisprudence in EU practice and especially the Board's 3-year decisions. This presentation aims not only to discuss the current problems of the mechanism, but also to create a sustainable and consistent framework for Turkish competition law in light of EU practices. The opportunities offered by the commitment mechanism, its practical limitations and future potential will

		be presented to the attention of the audience.
19.	Prominent Competition Law Rulings of the European Court of Justice in 2023 and 2024	The decisions of the European Court of Justice, the supreme court of the European Union, in the field of competition law have an important place in the intellectual development of competition lawyers all over the world. In this context, in this study, 14 decisions of the European Court of Justice in 2023 (*HSBC, Super Bock , EDP, Royal Antwerp Football Club, ISU* (Article 101), *Lithuanian Railways , Unilever, Meta, Super League* (article 102), *O2/ Hutchinson , Altice* (B&D) *Towercast , French supermarkets* (Application), *Repsol* (Compensation)) and 9 decisions taken in 2024 (*Em Akaunt BG, General Court's decision on the Servier decision, Portuguese Banks , Booking.com, FIFA, KIA* (article 101), *Google Shopping , Intel (article 102)* and *GRAIL/ Illumina (B&D, application))* will be examined. In addition to the interpretations of the decisions on competition law, it is aimed to give the study a dynamic structure by stretching the background of the decisions that have a greater impact and the events or possible events that have occurred afterwards . The study covered a period of two years due to the important decisions taken in 2023, but it is planned to repeat the study annually in the following years to include decisions regarding DMA and critical decisions in other countries.
20.	Evolution in Competition Law: A Deep Dive into the Exclusionary Abuse Guidelines and Criticisms	It is inevitable and necessary for the competition law guidelines to be updated in order to reflect the realities of changing markets and newly emerging legal and economic views over time and to strengthen their functionality in this sense. As is known, the Commission has recently decided to update the Guide on Exclusionary Abuses and has opened the draft text to public consultation. The draft text has received many criticisms from many different perspectives. In particular, it has been criticized that the Commission has abandoned the more economically based approach it set as its goal at the beginning of this century, has trivialized the "Equally Effective Competitor Test" , has turned to a more formalistic application path by categorizing violations more, and has interpreted the decisions of the Supreme Court incorrectly or biasedly in some points while doing so. The aim of this study is to summarize the main criticisms made to the Guide, both to reveal the point reached by the European Courts on exclusionary behaviors in a sense and to discuss the consequences of keeping the points criticized in the main text in practice.
21.	Competition Law and Artificial Intelligence: The New Generation Market Auditor	**Topic Overview:** Artificial Intelligence (AI) is an important tool today and can maintain market balances thanks to its integration with competition authorities. It can play a critical role, especially in pricing control and detection of cartels. **Problem:** In the market growing uncontrolled sellers, in pricing imbalances And failure to effectively detect

		cartelization. **<u>The suggestion Purpose and Target:</u>** To prevent elements that threaten competition and ensure balance between markets by integrating artificial intelligence into competition law systems. **<u>General Approach and Logic of the Research:</u>** Competition law aims to ensure fair competition in the markets. This in the frame to this service who systems high in the amount data review, analysis and extract the appropriate assays . The use of AI in this field greatly accelerates and enables data analysis processes. AI will enable us to understand market dynamics by examining large data sets quickly and effectively. It will play an important role in detecting anti-competitive behaviors, especially price fixing. AI algorithms can identify cartel activities by detecting patterns that may be overlooked. In addition, it will contribute to legal processes by analyzing abnormal fluctuations and competition violations in the markets. Historical data possible violations thanks to its ability to process anticipation to be done possibility The advantages provided by AI in competition law can play a critical role in protecting fair competition in markets , securing the rights of both consumers and businesses and creating a healthier competitive environment. **<u>Universe and Sample:</u>** Sample Let's determine the case study, the boundaries of the market, and the product. In this example, the case is the COVID-19 pandemic, the market is the Turkish market, and the product is a mask with the barcode code M-120319 (not its real number). As it is known, a product is always sold with the same barcode code within the market borders. Therefore, this barcode code will be added to the data set of artificial intelligence. With this together the product production costs, seller's the product current buying prices, the product Let's add the sales prices before and after the pandemic's start date, 12.03.2019, and the normal increase rate we expect (let's assume it's 25% in the example). (These data sets are limited in number because they are sufficient for the purpose of the example. In order to be used in practice, the market must be examined in detail and all other parameters that are considered important must be included. Within the framework of this data, the AI scans the sellers who increase their prices in a way that violates competition, and those who use the same pricing policy. And cartelization risk the one which... sellers, Prices cost increase despite still holding sellers, It will present the data in comparison with previous data sets and identify risks and competition violations. additional aspect sellers their behavior analysis whether patterns detection by saying from this next possible It will also inform the user about competition violations. Here an important point It should be emphasized that this example is of a very simple and basic nature and is

		essentially which should be added to the relevant data set A lot lacks data. Of the sample purpose of the data to demonstrate the potential to achieve effective results, although at a basic level. If the proposal is accepted, this prototype will be presented during the presentation. pricing and cartelization as risks will be shown for two different scenarios. **Expected Results or Effects of the Proposal:** As a result of this research, the modernization of the tools possessed by competition authorities will facilitate market control and stability. At the same time, as a preventive tool, it will significantly reduce market anomalies and market manipulations. Conclusion aspect, rivalry law of purpose more effective And easy One in this way in its place will be brought to you .
22.	Transition to Illiberal democracy through media mergers: Can Competition law rectify it?	Central to the democratic ethos lies an independent media which provides information to the population while upholding accountability and transparency in governance. The essence of such media is manifested in the diversity of opinions it presents, enabling consumers to form well-informed opinions. However, cross-media ownerships can lead to consolidation of power by a single entity, disadvantaging the market participants and attracting scrutiny under competition law. The independence of media is further jeopardized when these mergers are financed by political parties or conglomerates, who may exploit these platforms to propagate their own ideologies and consequently diminish the diversity of opinions showcased. In countries like Turkey and India where such media ownership patterns are prevalent, competition law alone may fall short in addressing broader policy concerns like media plurality. For instance, the acquisitions of major media outlets like Reliance/Network 18 in India and Demirören Holding/ Doğan Holding in Turkey, which ostensibly consolidated multiple news channels under single ownership were approved by the respective competition authorities without adequately considering their implications on media plurality. Thus, there exists a stark divergence between the democratic ideals of these countries and their regulatory practices. Even the sectoral regulators who often work in isolation have struggled to safeguard media plurality and ensure that the regulatory frameworks adapt to the evolving media landscape. In India, the Telecom Regulatory Authority of India lacks the enforcement powers required to implement its own recommendations for preserving media plurality. Similarly in Turkey, the absence of legislation mandating public disclosure of media ownership and the arbitrary amendments to broadcasting rules illustrate the significant gaps in sectoral support for achieving media plurality. Hence, the said lack in competition authorities' siled assessment can be mitigated by adopting a holistic approach that necessitates intervention of sectoral regulators during the merger review process. Here, they can jointly address the multifaceted implications of media mergers on both competition and plurality, if any. In light of the same,

		this research paper aims to explore how regulatory collaboration in India and Turkey can be effectively structured to improve the assessment of media mergers by competition authorities. The authors will identify key cases of cross-media ownership in both countries that raise significant media pluralism issues and propose a framework to enhance cooperation among relevant regulatory bodies. As a result, this research will equip competition authorities with practical guidance on how to strengthen their collaboration with sector regulators while conducting merger reviews. In this manner, the author will position antitrust as a vital instrument for safeguarding media plurality and reinforcing democratic principles.
23.	The Effects of Transition from the Dominance Test to the SIEC Test on Merger Control	the Law Amending the Law on the Protection of Competition (" **Amendment Law** "), which entered into force on 24 June 2020, the dominant position test in concentration control was abandoned and the "significant restriction of effective competition" test, which has been applied since 2004 within the scope of European Union legislation, was introduced (*Significant restriction of effective competition) Impediment of Effective Competition Test -)* has been adopted. According to the dominant position test, the prerequisite for prohibiting a concentration transaction is that the transaction creates a dominant position, strengthens an existing dominant position and thus restricts competition. The SIEC test, on the other hand, foresees the prohibition of concentration transactions that lead to a significant reduction in competition in the market, even if they do not create a dominant position or strengthen an existing dominant position. Therefore, the transition to the SIEC test may have a significant impact on the practice of the Competition Board (" **Board** ") regarding concentration control. Since the application of the SIEC test renders the determination of dominant position in practice dysfunctional, it can be said that the SIEC test enables stricter concentration control depending on the Board's transaction-specific assessment. However, there is also the view that the guidelines published by the Competition Board regarding concentration control were parallel to the European Union legislation before the Amendment Law and therefore the transition to the SIEC test may not create a significant change in the Board's practice.[19] This report aims to evaluate the effects of the SIEC test, which has been implemented for approximately four years, on concentration control in Turkey. Approximately one month after the Amendment Law entered into force, the Board

[19] Gurkaynak , Turkish Competition Law, p.9

		applied the SIEC test and did not permit a transaction for the first time due to the significant reduction of effective competition. [20]In addition, since the Amendment Law entered into force, there have been many merger and acquisition transactions that have been conditionally permitted within the framework of commitments. There are a total of 12 concentration transactions that the Board has conditionally permitted since 2020, when the SIEC test was introduced, until the first six months of 2024. The [21]evaluations and findings in the Board decisions regarding the transactions in question will be useful in understanding how the SIEC test is effective in practice and what kinds of competitive concerns, other than dominant position, are taken into consideration in the evaluation of concentration transactions. For example, it is observed that the Board frequently takes into account factors such as the ability of transaction parties to access the competition-sensitive data of their competitors as a result of non-horizontal (vertical-conglomerate) concentration transactions within the scope of the test for significant restriction of effective competition. [22]In addition, the technology enterprise exception, which was put into practice with the amendment dated March 4, 2022 in the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Authorization from the Competition Board , has also made transactions with a relatively low probability of creating or strengthening a dominant position subject to the Board's approval. The SIEC test will be expected to have an impact in terms of the evaluation of such transactions. In this context, the report will analyze the Board's merger/acquisition decisions in the four-year period since the adoption of the SIEC test, and evaluate whether the SIEC test has caused a change in the evaluation of mergers and acquisitions and in what types of transactions the Board sees a risk of significantly reducing competition.
24.	Competition Law Issues and Regulatory Approaches in the Generative Artificial Intelligence (GenAI) Ecosystem	In recent years, the rapid development of artificial intelligence (“AI”) technologies has led to the emergence of Generative Artificial Intelligence (“ GenAI ”) applications at the center of commercial activities. These models, which can produce original content based on text, image or audio-based data sets, provide innovation and productivity gains on the one hand, while on the other hand, they raise new questions in terms of competition law. Access to data sources, centralization of cloud computing infrastructures, competition between open-source and closed-source models, and the “lock - *in* ” effects created by artificial intelligence ecosystems are the main agenda items of this new period. This communiqué aims to address the priority areas that GenAI technologies should examine within the framework of

[20]*Marport* decision of the Board dated 13 August 2020 and numbered 20-37/523-231
[21]Competition Authority's Annual Decision Statistics
[22]*Compugroup / Bupa Acıbadem decision* dated 29 February 2024 and numbered 24-11/174-69 and (ii) *DFDS AS/Ekol Logistics* decision dated 26 July 2023 and numbered 23-34/643-216

		competition law and to examine them with examples. This study will address the potential impacts of the GenAI ecosystem on the dynamics of competition within a framework. First, it will discuss how AI-based tools are transforming the market structure, and evaluate the extent to which power imbalances in data access shape competition. For example, a dominant platform offering its own developers or business partners large data pools and superior cloud computing capabilities, while restricting competitors' access to these resources, may prevent new players from entering the market. Similarly, a cloud provider's "self-preferring" by prioritizing its own *GenAI models* may have a weakening effect on competition. In addition, it will be examined whether GenAI models can facilitate coordination between operators, and therefore whether structures that can be called "algorithmic cartelization" will emerge. For example, if two rival companies secretly increase prices in the same market using similar GenAI- based pricing models, this will require a reinterpretation of the conventional concept of cartel in competition law. In addition, it will be investigated how the competition between open-source and closed-source models will take shape, what legal restrictions these models will be subject to, and whether this competition will reduce market concentration in the future and encourage innovation, or on the contrary, create an unfair advantage in favor of closed models. Finally, it will be discussed whether GenAI applications will create a "lock-in" effect by large technology companies offering services in an ecosystem logic. For example, a dominant operating system or office software provider granting exclusivity to its own GenAI applications could impede the growth of competitors by trapping/locking users within this ecosystem. The study will also examine regulations such as the European Union's Digital Markets Act ("DMA"), Data Law and Artificial Intelligence Act ("AI Act ") to assess the extent to which protection can be provided against the above-mentioned issues. In this context, issues such as the DMA's potential to produce competitive outcomes by prohibiting favoritism or restricting data access, the Data Law's ability to reduce entry barriers by increasing data portability, and the AI Act's ability to introduce basic security and transparency standards in artificial intelligence applications will be discussed. The principles of supervision, intervention and cooperation that competition authorities can act in line with within this framework, how they can specialize, and the need for international cooperation will also be evaluated.

		This paper aims to provide a guiding framework for both legal experts, policy makers and market actors by revealing the risks and opportunities of GenAI that have not yet been clarified in terms of competition law. As a result of the study, policy recommendations will be developed such as deepening sectoral investigations of competition authorities, strengthening cross-border cooperation, encouraging open-source models or increasing coordination between regulatory institutions on certain issues. Thus, a pioneering roadmap will be presented regarding the legal and institutional infrastructure required for GenAI to operate in a competitive, innovative and consumer-friendly market environment.
25.	Different Perspectives in Virtual Worlds and GenAI Sectors and a Roadmap for Turkish Competition Policy	At a time when digital transformation processes are accelerating and artificial intelligence and virtual worlds are playing an increasingly important role, the European Commission has launched the call "Competition in Virtual Worlds and Generative Artificial Intelligence (GenAI)" in order to anticipate the competition that may arise later and to design the necessary policy instruments at an early stage. This call was launched in 2023 and is designed as one of the key registers of the European Union's Web 4.0 and virtual worlds strategies. In this way, we aimed to establish a transparent, pluralistic and multidimensional policy basis by receiving contributions from the Commission, industry members, participants and academics. The responses to the European Commission's call for proposals include a rich set of perspectives from different sectors, institutions and geographies, including competition authorities, leading academics, technology companies, AI developers, chipmakers, telecom operators, gaming companies, chambers of commerce, media organisations and lawyers. The broad range of views presented includes conflicting and intersecting points on competition issues, opportunities, data access, standardisation, vertical integration, open-source models, network effects and ecosystem lock-in in the areas of virtual worlds and generative artificial intelligence ("GenAI"). In this study, the opinions presented by approximately 130 individuals/institutions/undertakings published publicly by the European Commission will be examined and a framework that can be used in competition policy design specific to Turkey will be created. The main purpose of the study is to analyze the perspectives of different actor groups, which stakeholders agree or oppose which issues, and to evaluate what implications the resulting knowledge can offer for Turkish digital strategies. In this process, the opinions presented will be coded within the framework of certain themes and key concepts, and common intersections and disagreements will be revealed by determining similar or different perspectives of different stakeholder types.

		the GenAI ecosystem by providing a comparative analysis . The results of the study will be enlightening on the regulation, incentive and control mechanisms for virtual worlds and artificial intelligence technologies within the digital market structure of Turkey that is not yet fully mature. In particular, it will be ensured that the political decisions to be taken on issues such as the use of data as a strategic resource, infrastructure provision methods, transparency and standardization in platform services, licensing and property rights are fed by the arguments and experiences of international stakeholders. In this way, the study will reinterpret the concerns, suggestions and good practice examples expressed on a global scale in the context of Turkey; it aims to contribute to the design of a preventive, flexible and innovative policy set for the Turkish competition authority, regulatory institutions, legislators and market players in the sector, while drawing attention to the dynamism and complexity of the sector and the overlapping/conflicting perspectives of different players.
26.	New Framework of Competition in Digital Markets: The EU's DMA Experience and Türkiye's Gatekeeper Regulation	In recent years, digitalization has rapidly penetrated into all areas of social and economic life. While digital services have become indispensable in both commercial life and consumer habits, the fact that users prefer a limited number of digital platforms has brought with it some concerns in terms of competitive market dynamics in these markets. Digital markets allow a limited number of players to reach extraordinary sizes quickly due to their structural features such as first-mover advantage, high entry costs, economies of scale and scope, network effects and data ownership. This size and concentration in markets have been drawing the attention of competition authorities for some time. Recently, many countries have accepted the need to make special regulations for digital markets and have taken action. The European Union's Digital Markets Act (" **DMA** ") has been an important step in this direction. Turkey has also been closely following this global trend and has prepared a draft that envisages comprehensive changes to Law No. 4054 and has recently opened it to public opinion. Competition authorities have been claiming for some time that the unique characteristics of digital markets make it difficult to intervene in digital markets with traditional competition law tools. Both the length of investigations and the inoperability of price-based tests and theories make investigations in this area difficult. As a solution to these problems, the need for an ex ante regulation has been discussed all over the world for some time. In this respect, it is understood that the DMA was developed largely based on competition law theories, past investigations conducted by

		the European Commission and Article 102 of the Treaty on the Functioning of the European Union (“ **TFEU** ”). The DMA imposes ex ante obligations on undertakings, which it defines as gatekeepers, such as non-favouritism, non-tying, non-combination of user data, data portability and allowing interoperability. However, the first implementation results observed with the entry into force of the DMA and the investigations that followed immediately brought criticisms regarding the regulation. In this study, the possible developments and results for Turkey will be evaluated based on the DMA experience. The fundamental differences between these two regulations, which have similar purposes and scope, and the possible implementation results for Turkey will be analyzed. In addition, based on the EU experience, solution proposals will be presented to minimize the difficulties that may be encountered in practice. With the draft law that is planned to enter into force in Turkey, similar to the DMA , preliminary obligations are imposed on the behavior of basic platform service providers, who are characterized as gatekeepers, and it is accepted that the existing rules in digital markets are inadequate. In order to evaluate the differences between the EU and Turkish regulations in terms of the methodology to be used in the study, the substantive rules and obligations will be primarily addressed. However, procedural provisions will also be an important part of the analysis, since it is observed that the fundamental differences between the two regulations are largely in procedural areas. For example, while the DMA applies a detailed investigation procedure to appoint gatekeepers, the discretionary power granted to the authority in Turkey provides a broader framework. In this context, the creative methods developed by the enterprises in order to comply with the DMA within the scope of the one-year implementation of the DMA and some of the questions and problems that arose as a result will be guiding for the draft Law that has not yet entered into force. of the DMA in practice are still in their early stages and further implementation and monitoring will be required to deliver tangible results. However, the investigations launched by the European Commission as of March 2024 regarding the compliance of gatekeepers with their obligations indicate that the regulatory process for Turkey should also be supported by a strong enforcement mechanism. The difficulties that arose during the implementation of the DMA provide important lessons about similar situations that Turkey may face. It has been observed that companies within the scope of the DMA have tried to overcome some of their obligations with “creative compliance” strategies. This situation indicates that it will be important to strengthen the audit processes with continuous monitoring, reporting and active participation of stakeholders in terms of its implementation in Turkey. At this point, the guidance of behavioral economics can be useful in terms of creative compliance processes and ensuring compliance.

		In this context, Turkey is taking an ambitious step in terms of digital market regulations with the amendments envisaged in Law No. 4054. This communiqué will first comprehensively address the draft amendment to Law No. 4054 and emphasize the unique approaches of Turkey's regulation that go beyond DMA . Then, it will be discussed how the methods of compliance of undertakings with DMA can still have negative effects on competition , as shown by the investigations opened within the scope of DMA application . Finally, it will be discussed what inferences can be drawn from the results of the application in question in terms of the draft amendment and possible secondary regulation preparations in Turkey.
27.	Turkish Competition Board's Commitment Proceedings: Legal and Practice Problems and Recommended Approaches	Four years have passed since the institution of commitment was introduced to Turkish competition law practice. During this period, the relevant mechanism was operated by the Competition Board **(" Board ")** in more than 40 cases. To provide perspective, in the first 10 years since the same tool was provided to the European Commission **(" Commission ")**, the number of commitment cases concluded was 29. Therefore, it is likely that we are looking at a picture where the Board concludes twice as many cases with this method in almost half the time as the Commission. This data opens up the opportunity for us to make a jurisprudential assessment in terms of Turkish practice . In this presentation, we will examine the important legal and practical problems that arise in the implementation of the Communiqué on Commitments No. 2021/2 (" **Communiqué** "). If the systematics of the Communiqué are followed, first of all, the issue of qualifying the relevant agreement or practice as a "clear and serious violation" while evaluating the requests to submit commitments will be addressed. In particular, the status of the qualification made in terms of agreements and practices for which the commitment path has been closed will be examined in relation to Article 5(1) of the Penalty Regulation [Letgo and Arabam.com Decisions, 20.07.2023, 23-32/629-211 – 23-32/630-212]. Secondly, the discretionary power granted to the Board by the Communiqué in terms of evaluating the requests to submit commitments will be discussed. In fact, it is observed that the Board has recently undergone a paradigm shift and given signals of abandoning its position of operating the commitment mechanism steadily in order to popularize the use of the commitment institution and has started to adopt a selective attitude, especially based on its discretionary power, regarding the files to which the Communiqué can be applied [Nestle, 25.05.2023, 23-24/447-154]. This policy preference will be examined in terms of the limits of administrative discretionary power at the legal level and the need to apply equal treatment to undertakings. In this context, the Board's refraining from using the opportunity to postpone its decision on the request to submit a commitment instead of rejecting the request to submit a commitment

		will also be discussed. Again, in this context, a categorical assessment will be made regarding whether the procedural benefits expected from the commitment method can be provided in cases where multilateral or multiple types of violation suspicions are investigated. Thirdly, the benefit that can be found in clarifying the possible limits of additional requests that may come from the Competition Authority during the monitoring of the commitment will be pointed out. And finally, examples where the Board rejected the commitments offered by the undertakings will be examined [Nesine, 29.02.2024, 24-11/194-78]. In this context, on the one hand, guiding determinations will be made regarding the Board's commitment implementation over four years, and on the other hand, recommendations will be made to maximize the benefits expected from this mechanism through a critical analysis.
28.	A Historical Overview of The Competition Board's Investigations Regarding Out-Extrateritorial Restrictions And Sales Prohibitions	Since the first years of its operation, the Competition Board has attracted attention with its investigations covering vertical violations as well as horizontal violations. When the recent Board decisions are examined, it is possible to say that the number of files regarding vertical violations is higher than the files regarding horizontal violations. Similarly, the increase in penalty rates in this regard is also very striking. In terms of vertical violations, resale price determination, non-competition obligations, exclusive territory restrictions and active-passive sales barriers are the main issues. In this study, the investigations regarding the out-of-region sales barriers and active-passive sales bans (excluding internet restrictions) since the first years of the Competition Board's establishment will be discussed chronologically, starting with the milestone decision of IGTOD dated 1999. Following the decisions in different sectors in the early years, the regional restrictions are seen as a frequently encountered violation in the cement sector, together with the structure of the product and the prevalence of horizontal violations. In fact, the Board determined violations due to out-of-region sales restrictions in the 2002 Central Anatolia-Akdeniz-Marmara Cement, 2004 Aegean Cement-2 and 2006 Marmara Cement files. In 2006, three files in the cement and ready-mixed concrete sector were completed without penalty. In 2007, all three decisions of Alarko, 3M-1 and Cerrahi İpliği resulted in penalty. The decisions listed so far can be considered as the first-term decisions of the Institution. With the exception of the 3M-2 file, which was penalized by a court decision after 2007, the fact that no penalties were imposed on this issue until 2021 can be described as a change of approach. After this calm period, a third period began in 2021 with the DYO decision and penalties were imposed with repeated violations. In this context, the 2022 Digiturk and dealers, 2023 Iveco , 2023

		Mavili Elektronik, 2024 tractor files and the recently announced 2024 Nestle decision are among the important decisions. When the decisions are examined, it is seen that active or passive sales restrictions through the imposition of out-of-region sales barriers are sometimes investigated on their own and sometimes they are discussed together with the claim of resale price determination. In this respect, the issue of whether the Board imposes a single penalty or a penalty for two separate violations in cases where these two violations occur together will also be discussed in our study. Because this issue has gained importance with the amendment to the Law in 2020. In other words, in cases that are not considered as open and serious violations, undertakings have the opportunity to close investigations without penalty by giving an undertaking. Indeed, Iveco, which was investigated due to regional and customer restrictions, including internet sales in 2023 , gave an undertaking and the file was closed without penalty by accepting these undertakings. Similarly, the 2023 Mavili Elektronik and 2024 tractor files were terminated in this way. However, it is understood from the 2024 Nestle decision that the actions of YSFT and the prevention of active and passive sales by restricting regions and customers are considered as a single behavior and that the commitments for violations other than YSFT are not accepted and a single penalty is given for both violations. As a result, it has been evaluated that addressing the issue of regional and customer restrictions, which the Board imposed penalties on in its early years and then came back to the agenda after a long period without any sanctions, from different aspects will contribute to the competition law agenda.
29.	The Specific and General Benefits of Competition Compliance Programs and the Potential for Considering Them as a Mitigating Factor in Administrative Fines	Preventing the risks of competition law violations that have increased in recent years before they arise and complying with ethical rules and legislation. to be treated for some Attempts in their structure rivalry rapport programs is carrying out. Different departments in enterprises touch different dimensions of competition in the market. Not only the purchasing and price monitoring areas, whereas purchases, new investments, Collaborations like in the fields in rivalry law with related risks is available. These risks can only be eliminated with competition compliance programs that cover all departments of the enterprises and that can create competition awareness and culture. On the other hand, such comprehensive and continuous competition compliance programs require serious costs and labor for the enterprises. In this context, enterprises conduct regular training and auditing processes, design enterprise-specific guides and awareness studies, and work with consultants in the field of competition law or establish a competition compliance unit.

		In our circular, we firstly discuss the issues that need to be taken into consideration in order to implement an effective competition compliance program. 2011 in the year Rivalry Institution of published Rivalry In his letter place area rivalry rapport Evaluations will be made from the perspective of an enterprise competition compliance professional regarding five topics that affect the success of the program [23], and experience will be shared on how to design a living competition compliance program. Behind, This to questions Answers will be searched: - Continuity supply who This to cost folding of attempts only earnings, more little risky operation to execute Is it? - Rapport programs Rivalry Institution of in from your priorities someone the one which... "rivalry "advocacy" can't it be considered as a contribution of the private sector? - Wouldn't undertakings that become more aware of their compliance programs and avoid violations prevent consumer harms that competition violations would cause in the first place? - Even like this Rivalry Institution of work your burden also natural aspect reduced Impossible Is that so? - Therefore, wouldn't compliance programs actually contribute positively to national wealth and help the Competition Authority use its workforce more effectively? Finally, the above-mentioned benefits of conducting a competition compliance program should be evaluated in the event of a possible investigation. adaptation program Executing in the penalty for attempt mitigating factor aspect acceptance regarding the An evaluation will be made. Because there is no relevant legislative regulation or established Competition Authority precedent in our country. In this context, the Competition Authority's approach to competition compliance programs in our Communiqué, from the past to the present day Rivalry Board of Directors decisions[24] And

[23]2011 Rivalry Competition in the letter rapport program fundamental factors that may affect the success of elements (i) top management determination And support (ii) suitable policy And procedures existence, (iii) continually education, (iv) organised One evaluation process and (v) a consistent discipline And encouragement application It has been stated that.

[24]Board's Linde Gas Decision (29.08.2013 13-49/710-297), Board's Unilever Decision (17.03.2011 dated 2010-3-258) Board's Frito Lay decision (dated 29.08.2013 and 13-49/711-300)

		poet rivalry law bulletins/letters[25] How competition compliance programs are evaluated by different competition authorities around the world applications to be examined And rivalry rapport programs In Turkey also administrative money in his sentence palliative It will be examined whether it can be evaluated as an element or not.
30.	Review of Sub-threshold Mergers and Acquisitions	of the Law on the Protection of Competition No. 4054 (" **Competition Law** ") regulates that mergers and acquisitions that will result in a significant reduction of effective competition, primarily by creating a dominant position or strengthening an existing dominant position, are unlawful. In the second paragraph of the same article, the legislator requires that certain mergers and acquisitions be notified to the Competition Board (" **Board** ") in order to gain legal validity in order to ensure the supervision of mergers and acquisitions. This paragraph and the Communiqué on Mergers and Acquisitions Requiring Permission from the Competition Board (" **Communiqué No. 2010/4** ") are interpreted together, indicating that the Board is only authorized to supervise mergers and acquisitions that exceed the thresholds specified in the Communiqué No. 2010/4. In fact, a similar interpretation is made in the source European Union legislation. In the Illumina / Grail decision of the Court of Justice of the European Union (" **CJEU** ") , the court stated that reportability thresholds are an important guarantee for the principle of legal certainty and annulled the decision taken by the European Commission after examining the Illumina / Grail transaction, which was below the threshold. However, Article 7 of the Competition Law prohibits all mergers and acquisitions that result in restricting competition and does not include a restriction that only transactions that exceed the reportability thresholds can be examined. In this context, it is possible to see the reportability thresholds not as the limits of the Board's authority to examine mergers and acquisitions, but as safeguards that ensure that risky transactions are subject to the Board's control by subjecting the legal validity of mergers and acquisitions that are more likely to result in restricting competition to the Board's permission. Therefore, it can be argued that it is possible for the Board to examine transactions that are below the reportability thresholds , and moreover, that the Board has the opportunity to examine transactions ex -post. Within the framework of this Communiqué, the following issues will be addressed: – The Board's review authority is not limited to mergers and acquisitions subject to ex-ante notification, as:

[25]Competition Authority's 2011 Competition Letter

		o By introducing a technology initiative exception by the Board, transactions that were not subject to notification prior to this exception were also taken into consideration. Considering that the Board cannot add a matter that is not normally within its authority to its area of authority by amending the Communiqué, it will be seen that the limits set by the Communiqué numbered 2010/4 are not actually related to the Board's area of authority. o The 6th paragraph of Article 8 of the Communiqué No. 2010/4 regulates that the turnovers in transactions carried out between the same persons or parties or by the same undertaking in the same relevant product market within a three-year period will be evaluated as a single transaction in terms of calculation, in other words, if a transaction that has already been closed is subsequently combined with other transactions of a similar nature and exceeds the turnover, it can be evaluated ex -post. As can be seen here, the ex -post evaluation of mergers and acquisitions is within the authority of the Board. – **Is there a need for ex -post examination?** Considering the increasing efforts of many competition authorities to examine below-threshold transactions in order to prevent killer takeovers, it can be argued that the lack of ex -post examination of mergers and acquisitions and the perception of thresholds as too strict have created this need. – **ex -post review under Article 6 and not Article 7? In** the CJEU's Towercast Decision No. C-449/21 , the court ruled that a transaction that was not notified because it was below the threshold could be examined under the rules on abuse of dominant position, even if not under the rules on mergers and acquisitions. However, the situation of significant restriction of competition in the wording of Article 7 is a broader concept than the creation of a dominant position. – **a transaction is deemed inappropriate ex -post?** It is not possible for an enterprise to be penalized for failure to notify the Board, since there is no transaction subject to notification. However, it is possible for the Board to impose obligations on the enterprise in order to re-establish competition and to foresee proportional fines if these obligations are not complied with.

31.	Evaluation of Competitor Price Lists Obtained by Manufacturers/Suppliers through Dealers/Distributors in the Perspective of Competition Law	The sharing of price lists by manufacturers/suppliers with their dealers/distributors has become an established practice in many markets, especially in the retail sector. The relevant price lists can be shared through traditional methods (e.g. signed and stamped by the manufacturer/supplier), as well as via e-mail or through a software integration (in the form of soft /data). These lists include product/goods-related conditions such as product information, box quantity content, etc., as well as commercial conditions such as the dealer/distributor's purchase price (i.e. cost information) and recommended/maximum resale prices. In practice, price lists are shared with dealers/distributors by Manufacturers/Suppliers at certain times before the price transition date, and these sharings made by granting a grace period may be important in terms of determining the purchasing and sales strategies of the dealer/distributor within the normal course of business life. Because during the relevant period, the dealer/distributor may determine commercial practices such as checking their stocks, melting them, applying discounts as necessary or requesting additional support from the Manufacturer/ Supplier and determining the order quantity to be placed, etc. by considering the new price list. Moreover, multi-brand dealers/distributors can compare these price lists and decide which Manufacturer/Supplier to order from. The aspect of the issue that concerns competition law begins with the acquisition of the relevant price lists by the rival Manufacturers/Suppliers through dealers/distributors during this interim period (i.e. between the sharing and the date of the price transition). From the Manufacturer/Supplier's perspective, since the future pricing information of their competitors is obtained through this sharing, a strategic input will be reached in terms of making their own commercial decisions. Horizontal Cooperation Agreements (" **Horizontal Guidelines** "), it is stated that information exchange between undertakings can be carried out directly between competitors or indirectly through undertaking associations such as professional organisations, market research organisations and similar third parties or **through the undertakings' suppliers or distribution networks** . Furthermore , **forward-looking price information** is in a category that is considered to be restrictive in nature and therefore has a relatively high probability of restricting competition **in terms of the purpose of sharing. In fact,** the set of information exchanges included in the Horizontal Guidelines, which are stated to be considered **as cartels**

		under normal conditions , consists of "competitive sensitive *information such as the price, production or sales volume that competitors plan to apply in the future "* . In addition, the Horizontal Guidelines emphasize that such information exchanges **are very unlikely to meet the individual exemption conditions** . Considering all these issues, the issues of whether the competitor price lists obtained by Manufacturers/Suppliers through dealers/distributors; (i) constitute indirect competitive sensitive information exchange between competitors, (ii) have the possibility of restricting competition in terms of purpose, (iii) may even lead to a collection and distribution cartel investigation, (iv) on the other hand, whether this information is publicly available, (iv) whether it may bring up a competition restriction without considering the elements related to the structure of the market, frequency of sharing or degree of market coverage; therefore, without evaluating its effect, (v) whether a contractual obligation can be imposed on dealers/distributors to share price lists, (vi) whether the intention to bargain and the intention to collect information can be a criterion in the assessment of violation are issues that are of close interest to competition law practice. The hesitations/questions mentioned in this Communiqué will be addressed within the scope of precedent case law and an attempt will be made to assess whether it is a safe harbour.
32.	All That Is Solid Melts Into Air: Disappearing Lines in Merger Control	Until recently, there was a certain clarity in the competition law regime around the world about which transactions would be subject to notification, which potential competitive concerns might arise, and how they would be assessed. However, today, there are many uncertainties about which transactions will go before the competition authorities in the control of concentrations and how these transactions will be assessed. It is certain that killer takeovers are at the forefront of these uncertainties. As the Institution has stated, the new technology enterprise exception included in our competition law regime in our country is critical for killer takeovers not to escape the radar and to sustain competition, especially in digital markets. However, there is no legal certainty yet regarding companies that fall within the definition of technology enterprises and there is uncertainty about how a killer takeover transaction will be handled. Similar uncertainties are not only valid in our country but also all over the world. The European Commission's Illumina / Grail decision, the subsequent ECJ decision on the subject and the issue of how "sub-threshold" transactions can be

		evaluated, which caused great repercussions, are also of great importance. In this context, there is also a likely major change in the EU concentration regulation (EUMR). Again, moves such as Amazon's investment in Anthropic and Microsoft's investments in artificial intelligence companies such as Mistral and OpenAI have attracted particular attention from competition law authorities such as the European Commission and the US Department of Justice (DOJ) and the Federal Trade Commission (FTC). Although the Commission determined that the investment in OpenAI was not subject to evaluation, it emphasized that it will continue to focus on this issue.[26] Another issue that is being addressed today within the scope of merger and acquisition control is of course how to evaluate concentration in the labor market and its impact on the welfare of employees. For example, the DOJ and the FTC have brought this issue to the agenda and made it a subject of litigation within the scope of many transactions that have taken place or not. The regulation in paragraph 49 of the Labor Guide published by the Agency recently, which states that the impact of concentrations on labor markets will also be evaluated , can be given as an example of these blurred boundaries. The doctrine also states that when evaluating transactions, a comprehensive analysis of labor market competition should be made, taking into account factors such as salary levels, social rights, working conditions and buyer power potential.[27] Another ambiguity is that in certain cases the transfer of critical workforce may also need to be considered within the scope of concentration control. In the UK, Competition and Markets Authority mentions that such a transfer can be considered as a kind of business line transfer.[28] , considering the decisions and discussions in the doctrine in the USA and EU, the uncertainties in competition policy around the world regarding when transactions will be reported and how they will be evaluated in the control of concentrations will be discussed with examples for practice and what awaits us in the future.

[26] https://ec.europa.eu/commission/presscorner/detail/en/speech_24_3550
[27] Eric A. Posner & Ioana E. Marinescu , " Why Has Antitrust Law Failed Workers ?, " 105 Cornell Law Review 1343 (2020)
[28] " In some cases , the transfer of assets or employees Alone may be sufficient to constitute an enterprise : for example , where the facilities or site transferred , or a group of employees and their know -how enables a particular bussines activity to be continued ." – Competition & Markets Authority , Mergers : Guidance on the CMA's jurisdiction and Procedure

33.	Dark Side of the Moon: Competition Law and Collective Labor Agreement	the Competition Board's current decisions on labor markets [29], it can be said that there is no longer any debate on whether agreements between enterprises regarding the labor market are within the scope of competition law in our country. However, there is no guiding decision by the Competition Board on the place of collective labor agreements and more specifically collective bargaining issues within the scope of the law. The justification of Law No. 4054, while explaining the concept of enterprise, states that " *undoubtedly, the labor market where the principle of collective bargaining is accepted is outside this definition* ." In this sense, it can be interpreted that it is not an enterprise and therefore it is not within the scope of Law No. 4054 in terms of these activities. It can be said that it is clear that employer and employee unions cannot be considered as enterprises in terms of the function of concluding collective labor agreements and that collective labor agreements within the scope of the Trade Unions and Collective Labor Agreement Law are outside the scope of the law. However, in practice, there are many channels that are not within the scope of collective labor legislation and where employers or employees come together separately under the roof of professional associations and associations to bargain on working conditions. Such *abuses There is no clarity in our country's competition law regarding the status of generis* collective bargaining. The Institution's Guide to Competition Violations in Labour Markets does not express an opinion on this issue either. In the European Union practice, it is seen that the Court of Justice of the European Union ("CJEU") stated in the [30]Albany decision that, in the context of collective agreements between organizations representing employers and employees, some restrictions on competition are inherent in collective agreements and are necessary for the improvement of working conditions. The European Commission ("Commission") also states in its guide on collective labor agreements that " *solo-self-employed persons* " [31]and " *false self-employed persons* " may be exempt [32]from the

[29] For example , the Competition Board's decision on Hospitals (24.02.2022, 22-10/152-62),

[30]Guidelines on the application of union competition law to Collective agreements regarding the working conditions of solo self-employed persons (2022/C 374/02), para. 5.

[31]It is defined as a person who does not have an employment contract and is not in an employment relationship and who relies mainly on his/her own personal labor in the provision of the relevant services.

[32]If this person (a) acts in accordance with the employer's instructions, especially regarding the freedom to choose the time, place and content of work, (b) does not share in the employer's commercial risks and (c) forms an integral part of the employer's enterprise throughout the duration of the relationship, he is defined as a seemingly independent worker and is considered to constitute a single economic entity with the enterprise.

		application of Article 101(1) of the Treaty on the Functioning of the European Union . Of course, in this sense, it is stated that only the articles aiming to improve the conditions of workers will be exempt from the application of the law and other provisions will be subject to review. In our communiqué, how the issue of collective bargaining, which is outside the scope of collective labor agreements, will be evaluated in terms of Turkish competition law [33]will be discussed together with the decisions of the Competition Board regarding associations of undertakings and the approach in the EU and US decisions, and its implementation will be evaluated within the framework of Law No. 4054.
34.	Possible Implications of the European Commission's Draft Guidelines on Exclusionary Conduct on EU and Turkish Competition Law	On 1 August 2024, the European Commission (" **Commission** ") launched a consultation process on [34]draft guidelines setting out general principles on exclusionary behaviour by dominant undertakings within the scope of Article 102 of the Treaty on the Functioning of the European Union (" **TFEU ") (" Draft Guidelines "). It is understood that** the aim of the Draft Guidelines is to ensure the effective implementation of Article 102 of the TFEU , as well as its predictable and transparent implementation, and to assist undertakings in assessing for themselves whether their behaviour constitutes an element of exclusion.[35] According to the principles set out in the Draft Guidelines, the following conditions are foreseen for an undertaking to abuse its dominant position through exclusionary behaviour: • a dominant position in the relevant market ,[36] • The nature of the conduct in question is that (i) it is a conduct that deviates from legitimate competition (competition on merits) and (ii) it has the capacity to create an exclusionary effect,[37] • The relevant conduct cannot be justified by objective reasons.[38] In this context, the first of the innovations introduced with the Draft Guidelines is the provision of a two-stage test to

[33]For example, the Competition Board's SesBir decision (08.07.2005, 05-44/636-168) and Müyorbir decision (26.05.2005, 05-36/451-104).
[34] See , https://competition-policy.ec.europa.eu/public-consultations/2024-article-102-guidelines_en
[35]Draft Guide, para. 8.
[36] *Ibid* . , para. 26.
[37] *Ibid* . , money. 45th; Judgment of 21 December 2023, *European Superleague Company* , C -333/21, EU:C:2023:1011, para. 129-131.
[38] *Ibid* . , para. 167.

assess whether the [39]dominant undertaking's behaviour is within the framework of legitimate competition and whether it has the capacity to create an exclusionary effect .

Another innovation introduced by the Draft Guidelines is the classification of exclusionary behaviors as (i) clear restrictions, (ii) behaviors subject to specific legal criteria, and (iii) other behaviors that do not fall into the first two categories and are called "behaviors not subject to specific legal criteria." The general framework of the Draft Guidelines' classification of exclusionary behaviors by type is presented below:[40]

	1. Category	**2. Category**	**3. Category**
	Clear Restrictions	**Subject to specific legal criteria**	**Those not subject to any specific legal criteria**
Definition	Restrictions that do not provide any economic benefit to the relevant undertaking, other than restricting competition.	Specific legal criteria have been developed for five types of behavior	Behaviour not falling within categories 1 and 2: It is assessed whether the behaviour deviates from legitimate competition and whether it has the capacity to create exclusionary effects.
Behaviour	(i) Payment to customers contingent on postponement/cancellation of product launch Forcing distributors to replace competitors'	(i) Exclusivity (ii) Binding Agreements	(i) Conditional Discounts (ii) Multi-Product Discounts (iii) Self-Nepotism (iv) Access Restriction

[39] *Ibid* . , money. 46.; Judgment of 12 May 2022, *Servizio Elettrico Nazionale and Others* , C-377/20, EU:C:2022:379, para. 103.
[40] *Ibid* . , para. 60.

			products with their own. (iii) Actively dismantling infrastructure used by a competitor	(iii) Refusal to Supply (iv) Predatory Pricing (v) Margin Compression	and other behavior

In the Draft Guidelines, it is stated that when the classification of exclusionary conduct is combined with the two-stage test explained above, it will be presumed that the conduct in question is exclusionary in terms of explicit restrictions (category 1), the same applies to the conduct specified in category 2, but the opposite can be proven in terms of the assessment of the exclusionary effect. It is stated that the burden of proof is on the Commission in terms of violations in category 3.[41]

Therefore, the Draft Guideline eases the Commission's standard of proof in terms of proving exclusionary conduct. Because, as explained above, the Draft Guideline assumes that conduct in Category 1 is exclusionary; similarly, conduct in Category 2 is assumed to be exclusionary provided that the contrary can be proven. Thus, while the Draft Guideline brings a more liberal approach to the exclusionary conduct of dominant undertakings, it is known that the EU courts have a stricter stance. Therefore, the approach of the EU courts regarding the standard of proof will be clear in the coming days.

In this context, with this communiqué, first of all, the provisions of the Draft Guide and its positive/negative effects on EU competition law will be discussed in detail within the framework of our explanations above. Then, considering that the Guide on Exclusionary Behavior of Dominant Undertakings is a reflection of the Commission's previous guide, it will be evaluated what consequences these innovations may have in Turkish competition law in the future.

35.	An Industry Perspective within Co-Competition Activities – The Example of the E-Money	With the "Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions" numbered 6493 published in 2013, an important step was taken in the Turkish financial sector and a different service delivery model was envisaged for activities in the payment services and electronic money field and a new sector was

[41] *Ibid .*

	and Payment Services Industry	opened by determining different capital adequacy and technical requirements for small and medium-sized institutions that will operate only in this field without having a banking license. While the licensing activities within the framework of "Law No. 6493" were primarily carried out by the BRSA, the Central Bank of the Republic of Turkey took over the regulatory activities in 2020 on the grounds that payment systems and electronic money activities are covered by its main mission of price stability and monetary policy management, and raised the minimum qualification requirements in the field of governance and information technologies to very high levels. " Law" in 2013 and the "Regulation" regulating the field of governance and the "Communiqué" regulating the field of information technologies, which came into force in 2021, the sector continued its existence with low-cost operations and maintained its small contribution to the Turkish GDP . With the "Regulation" and "Communiqué" in 2021, the sector was put into a different category, operational costs increased, licensing processes became longer and more uncertain, and some of the existing licensed companies put their operating rights up for "sale" because they could not provide capital adequacy. Another effect of increasing costs is that companies in the same category share certain functions and engage in " competition " activities by commonizing their costs. Although initially supported by banks and companies managing international card operations from other actors in the financial sector, payment services and electronic money companies have reached a significant size since 2022 due to their advantages such as anonymity and easy access to credit, and have started to take a significant share from banks, especially in payment activities. Payment services and electronic money companies, which try to support their payment activities with benefits such as prepaid cards, micro-credits, and management of fringe benefits, have first faced the high operational costs imposed by banks obtaining payment service and electronic money licenses without being subject to any licensing process, and then by companies managing global-scale card payment systems. Exclusionary actions of payment system companies operating on a global scale have also been added to the increasing operational costs, and the regulatory authority Competition Authority has initiated investigation activities to assess whether such actions lead to possible competition violations in the scheme and digital wallet services markets in

		which they operate. This abstract aims to detail possible response actions on how to serve the goals of increasing financial inclusion and ensuring balance in the financial architecture, which are important goals of Turkish financial markets, how to compete together within the framework of the establishment and maintenance activities of payment services and electronic money companies, and how to manage the macro consequences of exclusionary activities carried out by powerful actors, and to present a roadmap within the framework of competition law for the next five-year period.
36.	Advertising and Sponsorship Activities as a Tool of Abuse: Things to Consider After the Nesine Decision	Advertising and sponsorship activities play an important role in reaching consumers. While advertising channels have diversified with the digitalization of the economy, the incentive for enterprises to maximize the returns from these activities has also increased. The most obvious method for maximizing advertising returns is exclusivity. While examining the competitive impact of these activities, both the dynamic structure of the channels and the position of advertisers in the market are addressed. The first question that comes to mind here is whether a dominant enterprise can push its competitors out of the market with exclusive advertising activities. The answer to this question requires a multi-dimensional impact analysis. While examining this damage theory, where the interaction between markets gains importance, multi-party structures and the transformative effect of digital marketing should not be ignored. The Competition Board (" **Board** ") has addressed this issue in detail in its recent Nesine.com decision . The Board, which examined the advertisements given by [42]Nesine.com, which operates in the online betting market, to sports clubs and the Maçkolik platform, which tracks live scores , has decided that the exclusivity applied in these media constitutes exclusionary abuse. Nesine.com operates in a digital market. Maçkolik, one of the media stated to have an exclusionary effect , has a unique service structure with its mobile application and website. On the other hand, the agreements made with sports clubs have a mixed structure that includes different media. Therefore, when evaluating the theory of damages, the interaction between multi-party markets with their own dynamics and the effect of exclusivity practices that include both digital and physical advertising media on access to the consumer should be addressed. The Nesine.com decision contains important discussions regarding the advertising and sponsorship activities of

[42] Competition Board's decision dated 29.02.2024 and numbered 24-11/194-78, https://www.rekabet.gov.tr/Karar?kararId=e43e074e-106b-4bc3-a32a-0a03fd2e793a , Access date 09.12.2024 .

		dominant undertakings. In this study, we will examine the theory of damages that is the subject of the decision and address the situations and extent to which activities in the advertising market may constitute exclusionary abuse. In the first part of the study, we will examine the market definitions in the Nesine.com decision. Here, we will focus specifically on the interaction between the market where the actions in question take place and the market where the exclusionary effect occurs. Within the scope of this review, we will compare the market definition adopted in the decision with the market definitions in other decisions addressing advertising activities. Within the scope of our study, we will also examine the impact analysis included in the decision. In this context, we will first discuss the place of advertising and sponsorship activities in the online betting market. Then, we will examine how critical these activities are in terms of reaching consumers and evaluate in which cases the possibility of an exclusionary effect may arise. During our evaluation, we will also touch on the dynamic and evolving structure of the advertising market and the effects of digitalization on the competitive structure. In the third part of our study, we will subject the theory of damage in the decision to a comparative assessment. In this context, we will discuss the exclusivity of exclusivity in distribution and resale activities, which are examples of the situation of creating an exclusivity effect with exclusivity and are generally accepted in competition law literature, and the exclusivity of exclusivity in the advertising and sponsorship market through examples of decisions. In the last section of our study, we will summarize the application principles put forward by the Board with the Nesine.com decision and determine the issues that dominant companies should pay attention to in terms of advertising and sponsorship activities within the scope of this approach. As a result of this evaluation, which includes comparing the theory of harm adopted by the Board with the economic realities of the market, we will also touch on the source of the competition law concerns under review.
37.	Discussion on the Concept of Fairness in Competition Law: A Comparative Analysis on the	In terms of the purpose of competition law, traditionally, the goal is to preserve or increase consumer welfare through the protection of the competitive economic order in the context of a free market economy. However, it is observed that

	Rise of the Concept, Impact on Foreign Regulations and Practices, and Potential Implications for Turkish Law	broader goals such as ensuring fair competition conditions for all market stakeholders, protecting SMEs and observing social justice have also become the subject of competition law , [43]especially with the effects of the digital transformation in economic activities on the approach to law and economics. This transformation has brought the concept of " *fairness* " to the agenda as an evaluation criterion in competition law, [44]going beyond the existing normative foundations . In this context, our paper will address the conceptual infrastructure of the legal approach based on "fairness" in competition law, present comparative analyses of practices in foreign countries and evaluate the applicability of this concept in the context of Turkish competition and administrative law. In the first part of the paper, the origins of the concept of "fairness" in terms of the history of ideas, its legal and economic meanings and its introduction into competition law practice will be analyzed [45]. In this context, the theoretical framework of the effect of the concept of "fairness" will be drawn in areas associated with "social justice" and "fair competition conditions", especially in the transition process to the concept of gatekeeper in the regulation of digital markets, the need to protect SMEs, the protection of employee welfare in labor markets and the consideration of moral elements. In the second part of the paper, the reflections of the concept of "fairness" in different practices in different jurisdictions such as the EU, the US, Australia and South Africa and its effects on competition law practices will be discussed . In this context, [46]the relationship between DMA and competition law in the EU and [47]*the self-preferencing of digital platforms will be discussed.* The ongoing "fairness" debates in limiting their applications and legal predictability issues will be addressed [48]. On the other hand, the fairness-based practices included in the ACCC's digital platform

[43]OECD Journal : Competition Law and Policy , Volume 5, Issue 4", OECD Publication, Access Link: https://www.oecd.org/en/publications/oecd-journal-competition-law-and-policy/volume-5/issue-4_clp-v5 -4-en.html .

[44]Giuseppe Colangelo , " Fairness and Ambiguity in EU Competition Policy ", ICLE White Paper , 2023; Alfonso Lamadrid de Pablo, "Competition Law as Fairness ", Journal of European Competition Law & Practice , Vol . 8, No. 3 (2017), pp . 147-148. ; Dunne , " Fairness and the Challenge of Making Markets Work Better ", Modern Law Review , 2020, pp. 1-35

[45]Stefan Scheuerer , " The Fairness Principle in Competition - Related " Economic Law", Research Paper No. 23-12, Max Planck Institute for Innovation and Competition, 2023.

[46] Davidow , J.E., " Fairness and the Goals of Antitrust : Reconciling Competition and Fairness in the Digital Era ", University of Pennsylvania Faculty Scholarship , 2020; Fox, EM, " Fairness in Competition Law and Policy ", College of Europe, 2019; Beaton-Wells , C., " The Antitrust F Word: Fairness Considerations in Competition Law", Concurrences Antitrust Awards , 2019; andra Marco Colin , " The Antitrust F Word: Fairness Considerations in Competition Law", Research Paper No. 2018-09, Chinese University of Hong Kong, Faculty of Law.

[47] Digital Markets Act (Regulation (EU) 2022/1925); european Commission , " Digital Markets Act : Ensuring Fair and Open Digital Markets ", Access Link: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europefit- digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en .

[48]Giuseppe Colangelo , " In Fairness We (Should Not) Trust : The Duplicity of the EU Competition Policy Mantra in Digital Markets ", ICLE Research Paper , 2023; Eliana Garces & Giuseppe Colangelo , " Markets , Competition, and Fairness in the EU", European Union Law Working Paper No. 74, 2023.

		services sector review in Australia [49]will be examined. [50]In addition, how the social justice approach in South African competition law [51]and fairness-based legal practices can serve to achieve social policy goals and regulate markets will be discussed [52]. In the third part of the paper, the place of the concept of fairness in the context of competition and administrative law in Turkey will be discussed. In this context, • Competition Board's decisions on digital platforms [53]are reflections of the principle of "fairness" • The connection between the Board's competition law practices in labor markets and some concepts and evaluation criteria introduced to our law with the Labor Force Guide and the "fairness" approach • on-site inspection and the Board's 9/3 practices will be discussed. In the last section of the paper, the conflicts between the principles of Turkish administrative law and the concept of equity will be examined. In this context, it will be discussed whether " equity" can be accepted as a principle serving the public interest, especially in the face of the principles of legality of administration and legal predictability.
38.	The Role of Ancillary Restraints in the Control of Concentrations and the Approaches of the Competition Board in the Context of Conditional Clearance Decisions	Ancillary restrictions are defined in the Guide on Related Undertakings, Turnover and Ancillary Restrictions in Mergers and Acquisitions as " *restrictions directly related to the concentration transaction and necessary for the implementation of the transaction and to fully achieve the efficiencies expected from the concentration* ". Merger and acquisition transactions are subject to Competition Board permission as a rule in accordance with the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board, provided that (i) they lead to a permanent change of control and (ii) they exceed the turnover thresholds. When examining a merger and acquisition transaction subject to permission, the Competition Board evaluates whether it will create a dominant position or strengthen an existing dominant position or significantly reduce effective competition in a goods or services market.

[49] Australian Competition & Consumer Commission
[50] Australian Competition & Consumer Commission (ACCC), " Digital Platform Services Inquiry - Final Report", 2022
[51]South Africa , Competition Act , no. 89 of 1998
[52] Gal , MS, " The Competitive Effects of Digital Platforms : An Empirical " Approach ", SSRN, 2021
[53]Competition Board 23-39/754-263, 17.08.2023; 07.04.2022, 22-16/273-122

		While conducting this review, an examination is also made as to whether the contract provisions that are mandatory for the relevant merger and acquisition transaction to take place but restrict competition by nature can be considered within the scope of the "ancillary restriction" exception. However, as a result of the review, the Competition Board may decide that the restriction stipulated in the contract cannot be considered as an "ancillary restriction" despite allowing the transaction and that the relevant provision should be removed from the contract or amended. However, the nature of the decision regarding the assessment of ancillary restrictions made within the permission decision regarding the legality of the merger and acquisition transaction within the scope of Article 7 of Law No. 4054 is legally controversial and has been the subject of different practices in the Competition Board's case law. In its decisions from 2011 and before, the Competition Board was examining ancillary restrictions without taking into account whether the merger and acquisition transaction in question was subject to authorization. Namely, even if the concentration transaction in question was not subject to authorization, the Board was examining whether the restrictions foreseen in a file brought before it were ancillary restrictions due to their restrictive nature on competition. Therefore, the Board additionally examines whether the restrictions and conditions foreseen in mergers and acquisitions that restrict competition have been met, whether or not the merger or acquisition in question is subject to authorization, and states in its decisions whether or not the restriction in question will be considered ancillary restrictions. It is observed that the Competition Board has almost not included ancillary restraint assessments in its decisions between 2011-2022. On the other hand, it is observed that the assessments regarding ancillary restraints have intensified again in 2022 and interventions in contracts have been observed, especially with the increase in sensitivities regarding labor markets. When we look at the decisions made in the period after 2022, it is observed that ancillary restraints that restrict competition are allowed to be amended or removed from the contract. In other words, it is seen that contract provisions that do not benefit from the ancillary restraint exception lead to a "conditional permission decision" . In our report, we will first present the theoretical framework regarding the emergence of the concept of "ancillary restraint" in terms of concentration control within the scope of EU and Turkish competition law and the conditions

		under which it arises, together with case laws. Then, we will discuss the cases in which the Board can issue a "conditional permission decision" and its legal consequences. Finally, we will evaluate whether the Board's assessments regarding ancillary restraints constitute a suitable legal justification for a "conditional permission decision", the legal and practical problems that this procedure will create, and how administrative judicial review of decisions made in this manner can be conducted. The study will be conducted in comparison with the practices in EU law.
39.	Talent Hunting or Restriction of Competition: The Merger Control Aspect of Acqui-hirings	Statements made by leaders of technology giants[54] [55]actually represents a common strategy: " *Acqui-hiring .* " *Acqui-hiring* is a type of acquisition in which the acquirer aims to acquire the talented human capital of the target, aiming to acquire not only the companies but also the talented people within them. [56]These acquisitions differ from traditional acquisitions in that the focus of these acquisitions is not on products or services, but on talent and people.[57] The rapid evolution and growth of digital markets has created a shortage of skilled IT workers and increased competition among companies to recruit workers, especially in the field of artificial intelligence . This is the case of the European Commission and some national competition authorities, Inflection Within the scope of the concentration controls they conducted regarding the acquisition of some of AI's assets by Microsoft, they brought up discussions on whether the transfer of labor would be subject to control and its impact on competition. announced that it will start operating in the field of artificial intelligence in 2022. AI announced that it had hired two of its co-founders to develop and conduct research on its AI products, including Copilot. [58]Additionally, Microsoft offered jobs to many of Inflection's employees, obtained non-exclusive licensing rights to Inflection's intellectual property, and the two companies agreed not to hire each other's employees.

[54]Mark Zuckerberg said in an interview, " *Facebook has never bought a company for its own sake. We buy companies to get great people.* "
[55]said in an interview, " *We do a fair amount of acquisitions... every couple of months. Most of them are for talented people who work on smaller projects. We take those people and put them on our own projects.* "
[56] Selby , Jaclyn Lee and Kyle J. Mayer. " Startup Firm Acquisitions as a Human Resource Strategy for Innovation : The Acqhire Phenomenon ." (2013).
[57]Boyacioglu, B., Ozdemir, MN, & Karim, S. (2024). Acqui-hires : Redeployment and retention of human capital post- acquisition . Strategic Management Journal , 45(2), 205–237. https://doi.org/10.1002/smj.3556
[58] https://blogs.microsoft.com/blog/2024/03/19/mustafa-suleyman-deepmind-and-inflection-co-founder-joinsmicrosoft-to-lead-copilot/ (Accessed: 15.12.2024)

		Germany, Belgium, France, the Netherlands, Spain, Italy and Portugal applied to the European Commission to examine the transaction, but the European Court of Justice ruled on *Illumina / Grail dated 3 September 2024. Within the framework of its decision* , it withdrew its applications [59]stating that Article 22 of the Concentration Regulation could not be applied. The European Commission announced that it would not make a decision as it did not fall within its jurisdiction, but confirmed that the transaction constituted a concentration. The UK Competition Authority assessed Microsoft's employment of the founders and employees in critical roles in the artificial intelligence startup Inflection as a takeover and examined it and permitted the transaction. [60]The German Competition Authority assessed the takeover of all employees and the accompanying financing and use of intellectual property rights as a transaction subject to notification in Germany. However, it decided that the transaction was not subject to authorization because Inflection did not have any significant activities in Germany despite the transaction exceeding the turnover threshold.[61] Of course, the acquisition of control over assets to which turnover can be attributed may require the permission of the competition authorities if it also meets the turnover thresholds generally accepted in concentration control regimes. Indeed, as stated in the Guide on Cases Deemed to Be Mergers and Acquisitions and the Concept of Control, in a decision made approximately 10 years ago, the Board defined the acquisition of customers and employees related to transportation organization activities as concentration.[62] although such takeovers, which involve the takeover of workforce by technology companies and can be described as an advanced form of "killer takeovers" , may be considered a concentration, they may not exceed turnover thresholds in most cases and may not be subject to concentration control unless there is an exceptional regulation targeting "killer [63]takeovers" in the relevant jurisdiction. For example, the Dutch Competition Authority has also stated that competitive concerns are related to the hindrance of innovation in the field of artificial intelligence and the preferences of consumers and undertakings.[64]

[59] https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_4727/IP_24_4727_EN.pdf
[60] https://assets.publishing.service.gov.uk/media/6719ff5f549f63039436b3c8/__Full_text_decision__.pdf (Accessed: 15.12.2024)
[61] https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/29_11_2024_Microsoft.html?nn=49308 (Access: 15.12.2024)
[62]Competition Board Decision dated 27.09.2012 and numbered 12-46/1395-468
[63] Acqui-hire : The Microsoft/ Inflection case and its implications for legal practice and legislation (Access: 20.12.2024)
[64] ACM: European Court of Justice takes away opportunity to assessed Armature by Microsoft, new power is needed |ACM.nl (Access: 20.12.2024)

		In fact, in the recently published Guide to Competition Violations in Labour Markets, it has been foreseen that if the transaction concerns the labour market, variables such as whether the transaction carries the possibility of a lethal takeover will be examined. In this context, the communiqué we plan to write will discuss whether employment is subject to concentration control, as well as possible competition law concerns that may arise, especially in digital markets.
40.	The Right to Compensation and Calculation of Damages in Competition Violations: Economic Tools	The compensation provisions in the Law on the Protection of Competition provide an important basis for compensation for damages that competition violations may cause in private law. Furthermore, the provisions in question are of a nature that will increase the deterrence of competition law enforcement. On the other hand, the compensation mechanism, which will be quite useful in a theoretical framework, has some obstacles in practice. The most important of these is how to calculate the "competitive damage" for which compensation is requested. This study mainly discusses the economic methods to be used in calculating the damage. In addition, other procedural issues necessary for calculating competitive damage are also discussed. In the study, firstly, a short discussion will be made within the framework of Article 57 of Law No. 4054 and which damages can be claimed in the context of compensation will be discussed and the risks and opportunities that this situation creates for the undertakings will be mentioned. Then, the place of compensation in Turkish law will be mentioned (competent court, the concept of a pending issue, statute of limitations and periods, party capacity, transfer of economic analysis to the courts, expertise and expert opinion etc.). In the continuation of the study, how competitive damage can arise within the scope of Articles 4, 6 and 7 of Law No. 4054 and in parallel, how such damages can be calculated will be discussed (in the light of the relevant court decisions, authority practices and guides), and *the pass that can be brought in response to this will be discussed. through* defense will be discussed and the effect of commitment, regret and compromise institutions on compensation will be analyzed. In the next section, the measures that can be taken for the development of the compensation mechanism in Turkish competition law practice will be discussed. At this point, some approaches such as the needs for the use of economic analysis in the legal sense, the structuring of expert witness or expert opinion institutions, and informing the courts will be discussed. In the conclusion section, some sample decisions will be included and a general summary of the study will be given. Our study aims to provide a guide for both economists and lawyers on competition law-related damages and

		compensation calculations, as well as a resource for practitioners and decision-makers.
41.	Competition and Regulations in the Electric Vehicle and Charging Station Markets	The electric vehicle and charging station market in Turkey is a rapidly growing and developing sector. Electric vehicles have become more preferred in recent years, especially with the government's incentive policies, tax reductions and increased environmental awareness due to their environmentally friendly and energy efficient features. With the widespread use of electric vehicles, the demand for charging infrastructure has also increased rapidly, triggering investments in the sector. The adoption of electric vehicles has initiated a significant transformation process between the energy sector and the transportation sector. In this context, the installation and operation of electric vehicle charging stations has become an important investment area in Turkey, and has resulted in the entry into force of important and constantly changing current legislation in terms of regulation. However, the formation of these new markets has brought about the responsibility of existing in commercial life by eliminating the requirements of "compatibility" in terms of regulation and competitive concerns in the context of competition law. Examining the electric vehicle and charging station markets in Turkey from a competition law perspective with regulatory requirements should not only involve analyzing the current situation, but also foreseeing possible problems that may be encountered in the future and developing solutions for these problems. In this context, this report will focus on fundamental competition issues and possible solutions, such as regulatory requirements and competition dynamics among electric vehicle manufacturers, charging station service providers and energy suppliers, market entry barriers, discrimination and exclusivity practices. In addition, exemption decisions regarding the electric vehicle and charging market, which have been increasing in number recently, and the investigation of Otoyol İşletme ve Bakım AŞ and ZES Dijital Ticaret AŞ currently being conducted by the Competition Board will also be discussed. On the other hand, the recent merger and acquisition decisions regarding the relevant markets will be included, and the “intensifying” structure of the market will also be emphasized.
42.	Neoliberalism and New Economic Policies – Is a Rollback in Competition Policy Possible?	One of the most debated and criticized issues in Competition Law in the last 10 years is undoubtedly the impact of the Chicago School, and therefore neoliberalism, on competition policies. The Chicago School, criticized for focusing on narrow economic parameters and ignoring broader social welfare, has also given birth to its own antithesis. In this context, Margrethe in the European Union The critical stance taken against big tech companies during the Vestager era was echoed across the Atlantic by Lina The appointment of names such as Khan and Jonathan Kanter to

		important positions in US competition authorities followed, and perhaps this critical movement had reached its peak. The fact that Vestager would be replaced by Teresa Ribera in the EU , Trump would be re-elected as US president, and both Khan and Kanter would be replaced by more moderate names, created the need to question the successes of this critical antitrust movement and its future. However, without investigating the socio -economic roots of this critical movement , it is quite difficult to understand the future of this movement and competition policies. This paper aims to fill this gap. Although some groups believe that traditional competition policies will return with Trump's return , changing economic conditions make it very difficult for the "let them do it, let them pass" approach to regain momentum. socio -economic conditions is the results created by neoliberal economic policies and the reactions of the society directly affected by these results. For example, economic studies conducted in recent years have shown that; while the competitiveness in product and service markets and the share of workers' incomes in productivity have decreased in the last 50-60 years [65], concentration and the increase in the profit margins of large companies [66]have raised questions about the extent to which competition policies contribute to the benefit of society. More worryingly, [67]similar ex -post economic studies conducted in both the EU and the UK [68]have shown that the gap between the large multinational companies called global superstars and the rest is widening, the number of competitors in the market is decreasing and it is becoming increasingly difficult for small companies to demonstrate a competitive power against these large companies. In addition to all this, the hope that monopolistic behavior will encourage entry into the market and competition will be established is opposed to disruptive innovation (creative destruction) [69]and economic dynamism (business dynamism) has been in decline. Naturally, these economic developments provoke reactions in society, consciously or unconsciously, and affect the

[65] Economic Politics Institute , The Productivity-Pay Gap , < https://www.epi.org/productivity-pay-gap/ > last access date: 20 December 2024

[66]Jan De Loecker , Jan Eeckhout , Gabriel Unger , The Rise of Market Power and the Macroeconomic Implications , *The Quarterly Journal of Economics* , Volume 135, Issue 2, May 2020, Pages 561–644, https://doi.org/10.1093/qje/qjz041

[67] European Commission DG Comp Report on the evolution of competition in the EU during the past 25 years , " *Protecting competition in a changing world* "

[68] The State of UK Competition Report 2024

[69] Decker , Ryan A., et al. " Declining bussines dynamism : What we know and the way forward ." *American Economic Review* 106.5 (2016): 203-207; James Bessen , " *Why Disruptive "Why Disruptive Innovation Has Declined Since 2000"* , ProMarket < https://www.promarket.org/2022/11/15/why-disruptive-innovation-has-declined-since-2000/ > last accessed: 20 December 2024

		economic policies implemented. Undoubtedly, competition policies, like other economic policies, are and will be affected by these developments. Lina Khan becoming a "phenomenon" for future competition lawyers [70]or the increasing interest of civil society in competition law can be shown as prominent examples of the popularization of competition law. For this reason, within the scope of this presentation, it is aimed to discuss the social consequences of these economic data and the reflections of these results on competition policies.
43.	On Mistake of Law in Competition Torts	Compensation lawsuits arising from the violation of competition law have been a subject of debate in practice and doctrine in many aspects such as the limitation period, the beginning of the period, the competent and authorized court, the relationship between the court and the Competition Board, the law to be applied, whether the compensation to be awarded by the judge in cases of intent and gross negligence can be "three times" or "up to three times". In this study, the "prohibited mistake" will be discussed through the "fault" element of the tort liability created by the violation of competition law (which has not yet been the subject of examination on its own). Because, in the practice of competition law, where the types of violations are very diverse, especially in terms of new violations on which there is no case law yet, when the possible effects of considering the undertaking as "fault" in private law compensation lawsuits are considered, it is thought that the "fault" element is worth discussing in terms of its practical consequences. The Turkish legislator, who regulates competition violations as a misdemeanor by linking them to administrative fines, has included the regulation "The provisions *of the Turkish Penal Code regarding cases of error shall only be applied to intentional misdemeanors " (Law on Misdemeanors, article 10) in the principles of criminal liability arising from misdemeanors. Based on this, this study aims to answer the following question: What will be the consequences of the provisions regarding cases of error regulated in Article 30* of the Turkish Penal Code -especially the last paragraph regulating the prohibition error- in attributing competition violations to undertakings? In other words, can an undertaking make a mistake in that it has committed a competition violation? The study asks these questions not only in terms of misdemeanor law, but especially in terms of compensation liability arising from competition violations. Because, the act of competition violation constituting a misdemeanor can also form the basis for a tort compensation claim. In order to answer this question, first of all, the distinction between illegality and fault in competition law will be clearly stated, a discussion will be made on intent and negligence, and of course the limits of the duty of care will be determined objectively in terms of undertakings. This question becomes interesting, in our opinion, when new types of

[70] Politico , " *The Next Generation of Law Students Is Obssessed With Lina Khan* " < https://www.politico.com/news/magazine/2023/11/06/law-students-antitrust-lina-khan-00124240 > last accessed: December 20, 2024

		violations for which the competition authority does not have an established practice are considered. of the "principle of individuality of punishment" (Constitution Art. 38/7) in Turkish law , serves to protect fundamental rights and freedoms in the creation of a criminal norm that exclusively foresees a crime or misdemeanor by the state or in the penal sanctions to be applied in response to a violation. This principle is defined in the doctrine as " *nulla "poena sine culpa " (no punishment without fault); " nulla"* , which points to the determining and limiting function of the fault *Poena extra culpam "* (there is no penalty that exceeds the fault). It is frequently criticized - especially by the German doctrine- that the European Union competition penalties are contrary to the fault principle; in response to these criticisms, it is argued that if the legal policy pursued by the fault principle conflicts with the objectives of competition law, the objectives of competition law take precedence. In Union law, these conflict areas are the undertaking's fault capacity, the absolute attribution of the competition violation to the parent company in the group of companies, the individualization of the competition penalty according to the undertaking and finally the prohibition error (error on the rule). In European Union Competition Law, the most controversial area discussed in terms of the fault principle, "prohibition error (error on the rule)", should definitely be transferred to Turkish law in accordance with Article 10 of the KK, Article 30/4 of the TCK, Article 49/1 of the TCC and by being specific to the current law. Although the fault principle does not have an absolute validity in tort law in Turkish law, it is accepted in the doctrine that the situations related to the fault affect the liability for compensation. This study aims to open a discussion area specific to the current Turkish law, starting from the Union law, rather than transferring all the problematic areas regarding the fault principle in the Union law to Turkish law. In this discussion area, German law will be used in particular in the questions to be asked and the answers to these questions. As a result of the study, it will be shown that undertakings can make mistakes and that under certain conditions, this mistake will prevent them from being held responsible for the anti-competitive act that the legal order does not permit.
44.	Evaluation of Generative Artificial Intelligence-Based Chatbots in Terms of Competition Law	*OpenAI is a San Francisco-based startup founded by* Elon Musk and Sam Altman whose goal is to enable artificial intelligence to benefit all of humanity. In November 2022, OpenAI *announced ChatGPT (Chat Generative), an* AI-powered chatbot . *Pre Trained* After launching *Transformer)* , it reached more than 100 million active users in 2023. This market is expected to grow in the coming years. *ChatGPT* is designed to understand texts and produce new texts with the inputs (data) it receives and gives human-like responses. This new technology can be used in many areas such as customer service, content creation, education, academic research.

		Shortly after the launch of *ChatGPT , in January 2023, Microsoft also* made a serious investment in *OpenAI* and began the process of integrating *ChatGPT* -type technology into its search engine *Bing . Currently, ChatGPT is considered one of* the largest and most powerful language processing AI models and is expected to continue to grow in the future. On the other hand, Google, In order to compete directly with chatbots like *ChatGPT , Google is developing the* AI- powered Search Generative Experience (GGE) in its search engine. Thus, it is expected that the search engine market will be shaped by the influence of *ChatGPT* . It is even claimed that chatbots can replace search engines in the long run. *ChatGPT* Generative AI - based systems, such as , require developers to have access to three main components in the value chain: computing resources, machine learning models, and data. The data that is a prerequisite for the operation of chatbots can be obtained from the data pools of large technology companies, and access to this data is also an important competitive parameter. Such a complex business model is also expected to create competitive problems (such as tying, favoritism, and refusal to contract) arising from vertical integration or market power in terms of competition law. Federal Trade The Commission (FTC) recently expressed concerns that generative AI could become concentrated in the hands of a few large online platforms with access to computing resources, models and data. The French and German Competition Authorities have also begun to monitor generative AI- based business models. Partnerships between large cloud providers and model developers are particularly closely monitored by the competition authorities, as such integrations would create serious barriers to entry in the market. In its Competition Policy Brief published in September 2024, the EU Commission drew attention to the competitive challenges that generative AI would bring, signaling that it would be closely monitoring Microsoft's investments in chatbots in particular. The French Competition Authority also drew attention to the potential competition law issues that generative AI-based systems would create in a press release published in June 2024 . DMA (Digital Markets Act) application, it is expected that AI- based chatbots will be on the agenda. One of the aims of DMA is to ensure fair competition in digital markets where gatekeepers operate. If AI- based chatbots are considered as gatekeepers by accepting that they provide basic platform services, it is possible that problems arising from the DMA application will arise in this sector.
45.	Ecosystem-Based Theories of	Today's digital ecosystems built and enhanced their ecosystems with acquisitions. With its acquisition of DoubleClick,

	Harm: Their Necessity and Applicability in EU Merger Control	Google established its current position in the online advertising market, which constitutes an integral part of its ecosystem. [71]Microsoft enhanced its offering with Yahoo Search Business, Skype and LinkedIn. [72]These are just a few examples of approximately 1,000 acquisitions by Google (Alphabet), Apple, Facebook (now Meta), Amazon, and Microsoft. [73]According to The Report on the Competition Policy for the Digital Era (Cremer Report), the " *typical scenario* " in the acquisition of " *innovative targets* " is incorporating the acquired company's product(s) into the ecosystem.[74] The digital ecosystem structure and digital ecosystem acquisitions brought about novel competition concerns. In recent years the European Commission assessed multiple digital ecosystem acquisitions and has developed a new approach step by step until its decision to prohibit Booking's acquisition of eTraveli in September 2024. We argue that the novel concepts and competitions concerns related to digital ecosystem structure and digital ecosystem acquisitions should be analyzed with a newly developed approach, more specifically, ecosystem-based theories of harm. Against this background, we first define digital ecosystems and list their characteristics. We then proceed to describe " *Ecosystem-Based Theories of Harm* " and examine the necessity of ecosystem-based theories of harm in EU merger control with references to the drawbacks of the only relevant market-based merger control assessment and potential anti-competitive effects of acquisitions by digital ecosystems. Later, we delve into potential practical challenges of applying ecosystem-based theories of harm. Lastly, we examine the existing approach to digital ecosystem acquisitions in the EU, especially after *Booking/ eTraveli* .[75]
46.	Can an Employee Transfer	Merger and acquisition transactions can create different effects on product and employment markets. Accordingly,

[71]Luis Cabral , Justus Haucap , Geoffrey Parker, Georgios Petropoulos , Tommaso Valletti , Marshall Van Alstyne , ' The EU Digital Markets Act ' (2021) Publications Office of the European Union , Luxembourg) < https://op.europa.eu/en/publication-detail/-/publication/329fb9b1-6c1a-11eb-aeb5-01aa75ed71a1/language-en > accessed 31 July 2023, 25.

[72] Scanlan R and others , '1590/4/12/23 Microsoft Corporation V. Competition and Markets Authority : The Case Every Merger Control Practitioner Should Follow (and Worry Over)' (*Kluwer Competition Law Blog* , 9 June 2023) <https://competitionlawblog.kluwercompetitionlaw.com/2023/06/09/1590-4-12-23-microsoft-corporation-v-competition-and-markets-authority-the-case-every-merger-control-practitioner-should-follow-and-worry-over/> accessed 9 August 2023.

[73] Cabral and others (n 1) 25; L. Cabral , ' Merger Politics in Digital Industries ' (2020) Information Economics and Policy 1; Geoffrey Parker, Georgios Petropoulos , Marshall Van Alstyne , 'Platform mergers and antitrust ' (2021) mimeo .

[74]Jacques Cremer and others , *Competition Policy for the Digital Era* (European (Commission , 2019) 117-118.

[75]OECD (2023), Theories of Harm for Digital Mergers , OECD Competition Policy Roundtable Background Note , www.oecd.org/daf/competition/theories-of-harm-for-digital-mergers-2023.pdf , 27. Please note That although there could be different terms and Word bundles to explain theories That Focus on strengthening ecosystems , for clarity OECD's term to describe them will be used throughout This paper .

	Constitute a Acquisition Under Competition Law?	there is a remarkable transformation in the competitive strategies of enterprises (especially in technology and innovation-oriented industries). In innovation markets, examples where one of the primary motivations of the buyer is to employ the existing personnel [76]of the target company and to protect the key personnel cadre can be encountered more frequently. Indeed, the effect of the workforce, which is considered to be an input, on the competitive power of the enterprise comes to the forefront in such markets. In this context, one of the recently developed strategies, " *acquiring* " , refers to the shift in focus in acquisition transactions from traditional elements such as the target company's products, technology or customer base to the transfer of employees who are critical to the relevant market. Such transactions, which are expected to create efficiency in the product market, may raise competition law concerns or issues in the labor market (such as limiting employee mobility). acquiring can be realized with a takeover that essentially aims to transfer employees, or it can be realized with the transfer of only certain key personnel. In scenarios that occur in the form of a takeover, it is possible to audit the transaction within the scope of notification obligations . However, since the transfer of only key employees does not technically constitute an acquisition, it can allow companies to avoid auditing by hiding behind standard employment processes. this case , it is necessary to determine legally whether the service contracts concluded with key employees constitute a concentration. In terms of Turkish law, Article 5/1-(b) of the Communiqué on Mergers and Acquisitions No. 2010/4 does not contain a restrictive enumeration, thus allowing such transactions to be interpreted as concentration. In this case, the relationship between the transactions realized with employee transfer and concepts such as "deadly takeover" and "technology enterprise" will also need to be addressed separately. It is important to observe the balance between the strict approach that has recently developed regarding not limiting employee mobility and the fact that it can be limited for legitimate reasons if the conditions exist. In fact, our law also

[76]The fact that such transactions in innovation markets focus particularly on the transfer of key personnel presents a contradictory area in terms of both commercial objectives and competition law . While key personnel can generally be defined as the representation of companies' know -how and strategic knowledge, acquisition transactions targeting these employees play a critical role in companies gaining competitive advantage. The absence of any standard in determining this concept necessitates that each transaction be evaluated in its concrete circumstances. In our study, it is planned to benefit from other relevant legislation (such as the Capital Markets Law No. 6362, as an example) that may provide insight into the concept.

		regulates some mechanisms that companies can implement to limit key employee mobility (non-competition obligations and similar). The effects of these mechanisms, which are used to increase the loyalty of employees to their current employers , on both product and employment markets will be discussed in our study in the light of the evaluations in the Competition Board's labor market guide and in the context of the acquihiring model. Another development on the subject is that new harm theories on which competition authorities rely in recent decisions examine the relationship between labor markets and concentration control. In this context, the FTC *The Kroger / Albertsons* case [77]or [78]*the Microsoft/ Inflection transaction* investigated by the EU , UK [79], Germany [80]and US [81]can be cited as examples. Within the scope of our study, it is aimed to address this new and dynamic concept from different perspectives and in detail, primarily from Turkish competition law and supported by examples from comparative law as appropriate.
47.	The Problem of Standard of Proof in Exclusionary Abuses within the Scope of the Draft Guidelines	The draft guideline on the assessment of exclusionary abuse of dominant undertakings ("Draft Guideline"), which was opened to public consultation [82]by the European Commission on 1 August 2024, foresees comprehensive changes . While the Draft Guideline is based on the principle of ensuring legal certainty, the fact that the Draft Guideline moves away from the effects-based *approach* and focuses on assumptions and presumptions raises various concerns, especially considering that the burden of proof is shifted to the undertakings.

[77]For the notice of the US district court's decision dated 12/10/2024, see https://www.ftc.gov/legal-library/browse/cases-proceedings/kroger-companyalbertsons-companies-inc-matter

[78]For the Commission's decision dated 18.09.2024 on the termination of the file after the Member States withdrew their applications, see https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4727

[79]For the decision dated 04.09.2024 regarding the transaction permitted by the UK competition authority, see https://www.gov.uk/cma-cases/microsoft-slash-inflection-ai-inquiry

[80]For the announcement dated 29.11.2024 regarding the decision of the German competition authority that it has no jurisdiction to investigate the transaction, see https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/29_11_2024_Microsoft.html

[81]Although no official announcement has been made by the FTC, for the news article dated 06.06.2024, see: https://www.wsj.com/tech/ai/ftc-opens-antitrust-probe-of-microsoft-ai-deal-29b5169a

[82] See . " Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings"; https://competition-policy.ec.europa.eu/public-consultations/2024-article-102-guidelines_en; https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/application-article-102-tfeu_en

		Draft Guide It refers to the principle of self-assessment in terms of analysing whether the alleged exclusionary behaviour of dominant undertakings constitutes abuse.[83] The Draft basically explains the general principles in determining dominant position and determining responsibility for whether the actions of the undertaking in dominant position constitute exclusionary abuse, as well as the objective justifications that can be put forward by undertakings and the principles regarding efficiency gains [84]. One of the most important regulations that draws attention in the Draft is the assumption regarding the capacity of certain behaviors of dominant undertakings to create an exclusionary effect. In the Draft, it is assumed that certain behaviors have the capacity to create an exclusionary effect from the very beginning and the burden of proof of the Commission is reduced and the burden of proof is shifted to the undertakings. However, the fact that the burden of proof is disproportionately placed on the undertakings based on the aforementioned assumptions/presumptions brings the undertakings to a point where they cannot prove the contrary and their defense rights may be restricted, considering that the undertakings do not have the authority to collect information/market data as much as the Commission in terms of being able to prove objective justifications and efficiency gains [85]. In the Draft, the Commission In terms of the burden of proof regarding the capacity to create an exclusionary effect, the Commission does not need to demonstrate the actual harm on competition or the harm to consumers, therefore it is not necessary to show the negative effects on price, production, innovation or quality in the market due to the dominant firm's behaviour, it is also not necessary to show that actual or potential competitors are *equally effective competitors* and ultimately it is not necessary to show that there is no legitimate competition (competition on the market) . It is stated that any actual or potential exclusionary effect of conduct that distinguishes merits will be assessed within the scope of Article 102 TFEU.

[83] While the self-assessment principle may at first glance appear to be in favour of undertakings, this approach can pose risks for undertakings in today's complex and dynamic markets, given that violations can result in serious fines and even compensation claims. See BusinessEurope Position Paper , https://www.businesseurope.eu/sites/buseur/files/media/position_papers/legal/2024-10-25_pp_exclusionary_abuses.pdf

[84] The Draft Guide states that becoming dominant is not in itself contrary to competition, however, the behaviors of the dominant firm that restrict effective competition to the detriment of the public interest, competitors or consumers are against the law. The draft also includes detailed explanations regarding joint dominant position. In determining joint dominance, attention is drawn to the economic ties that provide the power to act independently of competitors, customers and consumers and the motivation to act in a coordinated manner between the relevant undertakings. As is known, Article 6 of Law No. 4054 prohibits one or more undertakings from abusing their dominant position either alone or through agreements or joint behaviors with others, while the Guide on Exclusionary Behaviors of Undertakings in Dominant Position published by the Competition Authority only covers explanations regarding abusive behaviors by undertakings that are solely dominant.

[85]See https://www.crowell.com/en/insights/client-alerts/the-european-commissions-draft-guidelines-on-exclusionary-abuses-towards-stricter-enforcement, See https://www.businesseurope.eu/sites/buseur/files/media/position_papers/legal/2024-10-25_pp_exclusionary_abuses.pdf

		In this regard, the policy document recently published by the OECD on the standard of proof draws attention. The OECD document states that competition authorities have difficulty in meeting the required standard of proof in competition investigations within the framework of the impact-based approach and the economic analyses conducted in this direction, and [86]as an example, the evaluations in the *Intel* decision are given. *In its assessment of the Intel* decision of 24 October 2024 , the CJEU had pointed out that the Commission must analyse the actual or potential restrictive effects on competition, taking into account all the facts on the market [87]. The CJEU had stated that the Commission must set out how much of the market was foreclosed by the discounts in question, the conditions and relevant agreements on which the discounts were tied, their duration and amount, and the possible strategy to exclude *equally effective competitors . Again, Qualcomm* In its decision, the FTC's decision to find a violation was annulled by the court on the grounds that the actual or real effects of significant market foreclosure could not be proven [88]. The OECD document draws attention to the fact that competition authorities have difficulty in meeting the required standard of proof, and states that the policy preference is to ease the burden of proof or lower the standard, and to this end, to revise existing standards or legal tests and adopt new assumptions/presumptions. In fact, it is possible to see the reflections of this in the Commission's Draft Guide. In the Draft, regarding the equally effective competitor test within the scope of the presumption regarding the capacity of certain conducts to create an exclusionary effect , it is stated that the Commission does not need to show that the actual or potential competitors affected by the alleged conduct [89]are equally effective competitors. However, the equally effective competitor test is a frequently applied test and it is understood that the Commission's *Google Shopping* decision was based on the equally effective competitor test in this regard [90].

[86] See . The Standard and Burden of Proof in Competition Law Cases, Organization for Economic Co-operation and Development ("OECD") Roundtables on Competition Policy Papers, No. 318, (2024), https://www.oecd.org/en/events/2024/12/the-standard-and-burden-of-proof-in-competition-law-cases.html

[87] Judgment of the General Court (Fourth Chamber , Extended Composition) of 26 January 2022, Case T - 286/09 RENV, Intel Corporation Inc. v European Commission and Judgement of the Court (Fifth Chamber) of 24 October 2024, Case C-240/22 P. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CJ0240

88See Federal Trade Commission V. Qualcomm Inc. , 969 F.3d 974 (9th Cir . 2020)

[89]See https://www.businesseurope.eu/sites/buseur/files/media/position_papers/legal/2024-10-25_pp_exclusionary_abuses.pdf

[90] *Google Shopping* decision (Case T-334/19), para, 106, 112, https://curia.europa.eu/juris/document/document.jsf;jsessionid=6458949D7E5D9A932C01AF8636EAB3A0?text=&docid=290181&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2299740.

In accordance with the Guide on Exclusionary Behaviors of Undertakings in Dominant Position published by the Competition Authority , the Competition Board analyses whether a hypothetical competitor that is as effective as the dominant undertaking (*equally effective competitor*) is likely to be excluded from the market as a result of the examined behavior when assessing market foreclosure. Guide on Exclusionary Behaviors of Undertakings in Dominant Position published by the Competition Authority, para. 27. https://www.rekabet.gov.tr/Dosya/kilavuzlar/hakim-durumdaki-tesebbuslerin-dislayici-davranislarina-iliskin-kilavuz1.pdf

		Within the framework of the above issues, in this study, the risks that will arise from the adoption of a more formalistic and presumption-based approach instead of the effect-based approach in the Commission's Draft Guide will be examined in the light of the Commission's decisions in terms of the standard of proof and its possible reflections on the Competition Board's practices will be evaluated.
48.	Legal Uncertainty in On-Site Inspections: Is an Era Coming to an End?	regarding the prevention of on-site inspections are examined chronologically, from 2005 to 2019, a maximum of 3 or 4 on-site inspection prevention cases were encountered per year, while this number increased in 2019, the increase accelerated in 2021 and onwards, and the highest number in the Board's history was encountered in 2023. [91]On the

[91] **List of Board Decisions Taken to Prevent/Make On-Site Inspection Difficult**
Denizli Cement/Modern Concrete Board dated 2.6.2005 and numbered 05-38/511-121 decision
The Board's decision *on Akçansa,* dated 26.1.2006 and numbered 06-04/53-M .
The Board's decision dated 28.3.2006 and numbered 06-31/376-99 *on Sodexho Restaurant/Accor/Network Services*
The Board's decision dated 26.5.2006 and numbered 06-36/474-128 regarding *Batıçim / Batısöke Söke*
decision on *Konya Motor Vehicles* dated 15.11.2006 and numbered 06-84/1081-313
Board's decision dated 05.08.2009 and numbered 09-34/837-M, *Koçak Petrol* decision.
Board's decision dated 11.11.2009 and numbered 09-54/1320-M *Reysaş* decision.
the Unsped Package dated 18.11.2009 and numbered 09-56/1345-M
The Board's decision dated 10.6.2010 and numbered 10-42/718-231 *on Sodexho Restaurant/Accor/Multinet/Network Services* .
The Board's decision on Self-Confidence dated 11.7.2013 and numbered 13-44/543-M
decision dated 18.07.2013 and numbered 13-46/601-M regarding *TTNet A.Ş.*
The Board's decision dated 7.7.2015 and numbered 15-28/336 of the Turkish Pharmacists Association
Board's decision dated 03.07.2017 and numbered 17-20/318-140 *Çekok Food* decision
The Board's decision on *Nuhoğlu* dated 21.12.2017 and numbered 17-42/669-297 .
The Board's decision dated 18.01.2018 and numbered 18-03/34-21 , *Medyacızade* decision.
The Board's Mosaş decisions dated 21.06.2018 and numbered 18-20/356-176 and dated 05.07.2018 and numbered 18-22/378-185 ;
Ege Gübre dated 07.02.2019 and numbered 19-06/51-18 .
The Board's decision on Ani Tourism dated 13.2.2019 and numbered 19-07/86-36
Board's decision dated 13.03.2019 and numbered 19-12/146-67 *Coşkunlar Ready-Mixed Concrete* decision .
on DVS Natural Gas dated 20.06.2019 and numbered 19-22/354-160 .
The Board's decision on *Umat Customs* dated 07.11.2019 and numbered 19-38/570-238 .
The Board's decision dated 07.11.2019 and numbered 19-38/569-237 regarding *Sedat Demirok- Demsa Turizm* .
The Board *Siemens Healthcare* decision dated 07.11.2019 and numbered 19-38/581-247 .
Unilever decision of the Board dated 07.11.2019 and numbered 584-250 .
The Board Decisions *of the Turkish Pharmacists Association* dated 07.11.2019 and numbered 19-38/583-249; and dated 07.11.2019 and numbered 19-38/582-248 .
on Askaynak dated 26.12.2019 and numbered 19-46/793-346 .
The Board *Groupe SEB Istanbul Home Appliances* decision dated 09.01.2020 and numbered 20-03/31-14 .

The Board's decision on *Eti Gıda* dated 29.04.2021 and numbered 21-24/278-123 .
Board's *decision* dated 29.04.2021 and numbered 21-24/279-124 decision .
Board's decision dated 20.05.2021 and *numbered* 21-26/327-152 decision .
Board's *decision No.* 21-27/354-172 dated 27.05.2021 decision.
The Board's decision dated 27.05.2021 and *numbered* 21-27/354-174
The Board's decision on *Çiçek Sepeti* dated 27.05.2021 and numbered 21-27/354-173 .
Medicana Samsun decision of the Board dated 17.06.2021 and numbered 21-31/400-202 .
The Board's decision on *Savola Gıda* dated 08.07.2021 and numbered 21-34/451-226 .
P&G of the Board dated 08.07.2021 and numbered 21-34/452-227 decision.
The Board's decision on *Fatih Tugboats* dated 29.07.2021 and numbered 21-36/486-254 .
The Board's decision dated 12.08.2021 and numbered 21-38/544-265, *İGSAŞ* decision.
Electronics / SVS decision dated 9.9.2021 and numbered 21-42/618-395
The Board's decision dated 23.9.2021 and numbered 21-44/645-322, Europen Industry
The Board's decision on Hepsiburada dated 7.11.2021 and numbered 21-48/678-338
The Board's decision on Hepsiburada dated 13.1.2022 and numbered 22-03/35-16
The Board's decision on Kınık dated 3.3.2022 and numbered 22 -11/161-65
The Board's EU Food decision dated 9.6.2022 and numbered 22-26/426-175
The Board's decision on LDR Tourism dated 30.6.2022 and numbered 22-29/476-191
The Board's decision on Akcom dated 8.9.2022 and numbered 22-41/560-224
The Board's decision on Natura Food dated 8.9.2022 and numbered 22-41/599-250
The Board's decision on Disamed dated 8.9.2022 and numbered 22-41/573-234
The Board's decision on Softtech dated 15.9.2022 and numbered 22-42/614-258
The Board's decision on Vitelco dated 15.9.2022 and numbered 22-42/615-259
Board's decision dated 29.9.2022 and numbered 22-44/646-278 Loreal
The Board's Naos decision dated 6.10.2022 and numbered 22-45/659-283
The Board's decision on Açı Education dated 27.10.2022 and numbered 22-49/723-303
The Board's decision dated 22.11.2022 and numbered 22-48/698-296, TMMOB Chamber of Electrical Engineers Alanya District Representative
of the Board dated 1.12.2022 and numbered 22-53/797-327
The Board's decision on Güven Beton dated 8.12.2022 and numbered 22-54/831-341
The Board's decision dated 8.12.2022 and numbered 22 -54 /835-345 Deutz decision
The Board's decision on İpek Gıda dated 13.4.2023 and numbered 23-18/325-110
The Board Dated 16.3.2023 and numbered 23-14/244-80 and the Board Empa Real Estate decisions dated 23.3.2023 and numbered 23-15/256-86
The Board Şanal Emlak decision dated 23.3.2023 and numbered 23-15/255-85
The Board Dated 16.3.2023 and numbered 23-14/245-81 and the Board GBK Real Estate decisions dated 23.3.2023 and numbered 23-15/254-84.
The Board Date 16.3.2023 and 23-14/246-82 No. Şanal Emlak decision.
The Board Date 16.3.2023 and 23-14/243-79 No. Çilek Real Estate Decision
The Board Altıparmak decision dated 2.2.2023 and numbered 23-12/180-56
The Board Oyak Cement decision dated 26.1.2023 and numbered 23-06/75-24
The Board Çimsa Cement decision dated 26.1.2023 and numbered 23-06/74-23
The Board Ceyhan Ready-Mixed Concrete decision dated 26.1.2023 and numbered 23-06/75-22
The Board's decision on Namet Gıda dated 18.5.2023 and numbered 23-23/436-149

		other hand, this momentum showed a serious decrease in 2024, and from the Board decisions published as of the date of this article, it is understood that only one on-site inspection prevention decision was taken in 2024 [92]. In the face of this striking graph, it would be appropriate to examine how the Board's approach, which was clarified to some extent with the Guide on the Examination of Digital Data in On-Site Investigations between 2005 and 2023, and which has been the subject of objections before judicial bodies in the context of fundamental rights and freedoms and the privacy of private life, has been shaped over the years. In the decisions published until 2023, it is understood that the Board's decisions taken within the scope of actions taken to suppress evidence during on-site investigations , and the issues regarding whether the deleted data is restored or whether its content indicates a competition violation in

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The Board's decision on Erbak Uludağ dated 28.04.2023 and numbered 23-19/369-128
The Board's decision on Güres Tavukçuluk dated 11.05.2023 and numbered 23 -21/405-137
Board's decision dated 28.04.2023 and numbered 23-19/363-125
The Board's decision No. 23 -21/412-141 dated 11.05.2023
Board's decision dated 07.09.2023 and numbered 23-41/788-277
The Board's decision on Rahmi Seymen, dated 17.08.2023 and numbered 23-39/717-246
The Board's decision on Vesuvius dated 17.08.2023 and numbered 23-39/740-254
The Board's Mis-Dağ decision dated 22.06.2023 and numbered 23-28/530-179
The Board's decision on Altun Gıda dated 11.05.2023 and numbered 23-21/407-138
The Board's decision dated 17.08.2023 and numbered 23-39/742-256 for Aydın Seramik
The Board's decision on Teknosa dated 28.04.2023 and numbered 23-19/364-126
The Board Canatanlar Construction decision dated 17.08.2023 and numbered 23-39/744-258
The Board Wahl Electrical Appliances decision dated 11.05.2023 and numbered 23-21/410-140
The Board's decision on Asbeton dated 17.08.2023 and numbered 23-39/741-255
The Board's Canon decision dated 28.04.2023 and numbered 23-19/365-127
Board's decision dated 23.03.2023 and numbered 23-15/267-90 Berkler Consultancy
The Board's decision dated 17.08.2023 and numbered 23-39/743-257 on Ufuk Ready-Mixed Concrete/DYM Change/Kösem Yapı
The Board's decision on Boylular Food dated 21.09.2023 and numbered 23-45/840-296
The Board's decision on Susa Gıda dated 28.09.2023 and numbered 23-46/872-309
The Board's decision on Sirma dated 19.10.2023 and numbered 23-49/945-337
The Board's decision on Sabri Bakışgan dated 19.10.2023 and numbered 23-49/943-335
The Board's decision dated 21.09.2023 and numbered 23-45/839-295 Koyuncu Elektronik
The Board's decision on AbbVie dated 05.10.2023 and numbered 23 -47/898-318
The Board's decision dated 19.10.2023 and numbered 23 -49/942-334 Bekir Alçiçek
Epson Board dated 12.10.2023 and numbered 23-48/910-324 Italy decision
The Board's decision on Balsu dated 17.08.2023 and numbered 23-39/727-250
Board's decision dated 18.04.2024 and numbered 24-19/416-169 Kalekim Lyxor decision
[92] Board's decision dated 18.04.2024 and numbered 24-19/416-169 Kalekim Lyxor decision

		sanctions regarding the prevention/obstacle of on-site investigations are not taken into account as factors affecting the outcome [93]. On the other hand, the Official Declaration dated June 20, 2023 In the Constitutional Court ("AYM") decision published in the Gazette , it was decided that the right to inviolability of residence, guaranteed by Article 21 of the Constitution, was violated due to the Institution conducting on-site inspections at workplaces of enterprises without a judge's decision, and it was ruled that the violation arose from the failure to regulate the on-site inspection authority in Law No. 4054 in accordance with the guarantees in Article 21 of the Constitution [94]. In various Board decisions taken on 17.08.2023 following the decision of the Constitutional Court, in the Different Justifications submitted by the Board members , it was stated that it was unclear in which direction the administrative court would direct the implementation after the Constitutional Court's individual application decision, and that the acts of obstructing on-site inspections and the fines to be imposed should not be discussed until the administrative court has established a case-law.[95]

[93]The Board considers that the fact that the deleted data could be accessed with the help of forensic computer devices does not have any effect on the nature of the act of preventing/making difficult the on-site investigation, and that accepting a contrary situation may mean "rewarding" the undertakings in a case where the undertakings delete the data in question but the deletion process cannot be detected. See the Board's *Unmaş* Decision, (Decision Number: 21-26/327-152, Decision Date: 20.05.2021). para .16 . Also see the Board's *Pacific* decision (Decision Number: 21-24/279-124, Decision Date: 29.04.2021) and Ankara 18th Administrative Court, T. 07/12/2022, E.2022/548, K.2022/2882 *Pacific* Decision.
Board's *N11* decision (Decision Number: 21-27/354-172, Decision Date: 27.05.2021).
The Board's decision on Savola Food (Decision Number: 21-34/451-226, Decision Date: 08.07.2021)
Board's P&G Decision, (Decision Number: 21-34/452-227, Decision Date: 08.07.2021)
Board's İGSAŞ Decision, Decision Number: 21-38/544-265, Decision Date: 12.08.2021
The Board's decision on Çiçek Sepeti (Decision Number: 21-27/354-173, Decision Date: 27.05.2021)
Board's Medicana Samsun Decision, (Decision Number: 21-31/400-202 Decision Date: 17.06.2021) .
[94]Official Law No. 32227 dated 20 June 2023 Constitutional Court decision published in the Gazette . https://www.resmigazete.gov.tr/eskiler/2023/06/20230620-5.pdf
[95]See the Board's decision dated 17.08.2023 and numbered 23-39/743-257 *Ufuk Ready-Mixed Concrete/DYM/Kösem Yapı* decision, Board's decision dated 17.08.2023 and numbered 23-39/744-258 on *Canatanlar Construction* , Board's decision dated 17.08.2023 and numbered 23 -39/741-255 on *Asbeton Construction* decision, the Board's decision dated 17.08.2023 and numbered 23-39/740-254 *on Vesuvius* , the Board's decision dated 17.08.2023 and numbered 23-39/717-246 on *Rahmi Seymen* . On the other hand, in the Board's decision dated 17.08.2023 and numbered 23-39/727-250 *on Balsu* ; in the on-site inspection conducted in Balsu ; it was understood that approximately 1,500 e-mails were deleted after the on-site inspection began, however, all deleted e-mails were recovered and examined, and since the data returned did not constitute a violation, no documents were taken from the returned e-mails. In this context , considering the fact that all deleted data was returned and no violation was found in this data, and that Balsu was not a party to the investigation in question and therefore could not have a purpose such as withholding information , it was decided that the on-site examination was not prevented/obstructed by Balsu , and therefore no administrative fine was imposed on the enterprise. In the Different Justification Regarding the Decision , it was stated that an approach such as returning deleted data and whether the content of deleted correspondence contained information regarding the violation was not correct, and that the fact that the deleted data was returned and examined, and that no violation was found in these deleted and returned correspondences, was used as a justification for preventing/obstructing the on-site examination.

		On the other hand, in the following period, the Board's decision dated 21.09.2023 *Koyuncu Electronics* In the Justification for the Dissenting Vote against the decision , it was emphasized that in the application of the criminal institution, in the examinations after 2020, in non-cartel cases, factors such as the scale of the enterprise and its competition law history, the magnitude of the violation, the status and content of the deleted data being recovered, and the cost of recovery should be assessed, otherwise there may be a risk of excessive punishment [96]. The Board's *Epson Italy* In the Justification for the Dissenting Vote against the decision , the following criteria were listed in order to avoid the risk of excessive punishment [97]in the issue of preventing on-site examinations in files other than cartels : (i) the context of the concrete event, (ii) the position of the undertaking that deleted the data in the vertical relationship, (iii) the number of deleted data and whether it can be restored (iv) whether there is any issue in the content of the deleted correspondence that is sensitive in terms of competition law and can constitute evidence within the scope of the file, etc., and it was stated that the mechanical application of the penalty tool for on-site examination is unfair. Indeed, the Board's decision taken in 2024 *My Castle* In its decision , in an on-site investigation examining the cartel allegations, [98]WhatsApp was used by company employees Since it was understood that the messages were deleted and the deleted data could not be restored, an administrative fine was imposed on the enterprise. It can be said that the aforementioned decision reflects a consistent approach with the criteria listed above. In addition, similar criteria can be seen in the previous decision [99]of the Ankara 2nd Administrative Court, T.15/04/2022, E.2022/254, *Sahibinden* .

[96] The Board's decision dated 21.09.2023 and numbered 23-45/839-295 Koyuncu Elektronik

[97] *Epson* dated 12.10.2023 and numbered 23-48/910-324 *Italy* His decision.

[98] Board's decision dated 18.04.2024 and numbered 24-19/416-169 *Kalekim Lyxor* decision

[99]See Ankara 2nd Administrative Court, T.15/04/2022, E.2022/254 *Sahibinden* Decision ; *"In the dispute, although the Board decision in question stated that data was deleted from the mobile device used by (..) as of the time the investigation started and that this situation resulted in the prevention or hindrance of the on-site investigation, it was decided that the plaintiff company should be penalized with an administrative fine;*

- The plaintiff company sent an e - *mail to its employees on the day of the investigation,* informing them that their records would not be deleted and that all requested documents would be provided to the officers ,
- The correspondence that was said to have been deleted was found during the examination of other employees' phones ,
- data was detected to be deleted is (...) has a personal phone and
- The correspondence that was said to have been deleted did not include matters related to company business.
- This action is not of a nature that would constitute grounds for an administrative fine,
- Apart from this, there is no concrete information or document indicating that the plaintiff committed the said act.

understood that the decision of the board in question was not found to be in compliance with the law."

		In 2024, the European Commission imposed an administrative fine of [100]15.9 million Euros on the company for the first time during an on-site inspection because an employee of an enterprise deleted WhatsApp messages on his mobile phone . The Commission found that a senior company employee had deleted WhatsApp correspondence after the on-site investigation had begun. The company accepted its responsibility and actively cooperated with the Commission both during and after the investigation . In return, the Commission, when imposing the penalty, took into account the severity and duration of the violation and reduced the penalty by 50% for its active [101]cooperation . Within the framework of the above issues, in this study , It will be examined how the Board's approach to its decisions regarding the prevention of on-site inspections has been shaped over the years , and during this period when the issue is still under review before the Constitutional Court, the differences of opinion regarding the application of the penalty mechanism, which is included in the dissenting votes of the Board members, and the applicability of the institution regarding the use of discretionary power in our law and its possible risks will be analyzed in the light of the decisions of foreign competition authorities.
49.	Searching for a Solution in Determination of Administrative Fines Through Comparison with EU Practices	In order to determine the application principles regarding administrative fines imposed by the Competition Board, the Regulation on Fines to be Imposed in Case of Agreements, Concerted Actions and Decisions Restricting Competition and Abuse of Dominant Position (**Penalty Regulation**) entered into force in our country on 15.02.2009. The main purpose of the Penalty Regulation is to ensure transparency, objectivity, consistency and deterrence in the penalty process. The current system in determining administrative fines in Turkey differs from the European Union (**EU) competition law system as the source.**

[100]" Commission fines International Flavors & Fragrances €15.9 million for deleting WhatsApp messages during an antitrust inspection ", see https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_24_3435/IP_24_3435_EN.pdf

[101]Meanwhile, in another investigation, the European Commission fined two companies for not allowing access to their email accounts. See European Commission , Press Release of 28 March 2012, https://ec.europa.eu/commission/presscorner/detail/en/IP_12_319 . General Court of the European Union , Case T -272/12, Energetický a průmyslový holding as . and EP Investment Advisors s.r.o. v European Commission , 26 November 2014, EU:T :2014:995. OECD DAF/COMP/LACF(2020)2 , Digital Evidence Gathering in Cartel Investigations . imposed a fine of 1.84 million Euros on the company due to the deletion of WhatsApp correspondence and the removal of certain WhatsApp groups by the company officials during the on-site inspection . See OECD DAF/COMP/ LACF(2020)2 , 5 August 2020 " Latin American And Caribbean Competition Forum - Session I: Digital Evidence Gathering in Cartel Investigations " . https://one.oecd.org/document/DAF/COMP/LACF(2020)2/en/pdf

		The basic principles regarding the determination of administrative fines in the EU [102]are regulated by Council Regulation No. 1/2003. In order to ensure the principles of transparency, impartiality and legal certainty in the determination of administrative fines in accordance with Article 23/2(a) of Regulation No. 1/2003, a Guide was published on 01.09.2006. As a result of the principles and methods [103]set forth in the Guide and expected to be followed by the European Commission (**Commission**) in the determination of administrative fines, the Commission's discretionary power has been limited. On the other hand, the Commission has a wide discretionary power in determining administrative fines, provided that it remains within the limits indicated by the Guide. In this context, the Commission's practice generally proceeds from the understanding that penalties should have sufficient deterrence within the framework of competition policy. In determining administrative fines with the Guide, the basic fine is determined by taking into account the severity and duration of the violation, and then the basic fine is adapted to the case within the framework of the aggravating-mitigating factors determined according to the characteristics of the case. In particular, the principle of individuality of penalties is prioritized, and fines are increased or decreased based on these elements for each undertaking that participated in the violation. In this context, aggravating circumstances are applied, for example, for refusal to cooperate during the investigation or for undertakings that played an instigating role in the violation. However, undertakings that provide evidence that the Commission ended the violation as soon as it intervened, that the violation occurred as a result of negligence, that its participation in the violation was largely limited, and that it actually avoided this practice by adopting competitive behavior in the market during the period it was a party to the agreement that included the violation, can benefit from mitigating circumstances. Despite the regulations in the EU, the absence of a Guide or Guide for determining administrative fines in our country has brought about various problems in the implementation of the provisions in the Fine Regulation over time. These include the ambiguity in the concept of “decisive influence” in terms of individual fines to be imposed on managers of undertakings and associations of undertakings, the turnover taken as a basis in calculating the basic fine, the lack of any time limit for recurrence of the violation, and increasing the fine at the same rate without making a distinction between a violation lasting slightly longer than one year and a violation lasting five years. At the same time, the fact that the administrative fine applied for obstructing on-site inspections contains a fixed rate but the content of each of the obstruction cases is also a serious debate. Because, applying a fixed rate administrative fine regardless of the

[102] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the **Treaty**
[103] Guidelines on the method of setting finesse imposed Pursuant to Article 23(2)(a) of Regulation No 1/20032006 (**Guide**)

		aggravating and mitigating factors in administrative fines related to on-site inspections that contain very different elements may lead to unjust results. In light of the above, this declaration aims to address various problems arising from the Penalty Regulation in comparison with the regulations in the EU and to develop solution proposals for controversial issues.
50.	Are we Witnessing an Extension in the Concept of Concentration: The Case of Reverse Acquihires and New Investment – Partnership Models in the Tech Industry	The acquisition of newly established competitors by large technology companies has been on the radar of competition authorities for some time. Since acquisitions of companies in the start- up phase in particular can fall below turnover thresholds, we have seen various legal regulations such as the concept of "technology enterprise" added to the Communiqué No. 2010/4 on Mergers and Acquisitions Requiring Permission from the Competition Board in Turkey and transaction value thresholds in some countries in order to examine these acquisitions . More recently, Microsoft's Inflection With AI transferring its founding team and most of its employees, " reverse The concept of " acquihire "[104]has entered the competition law jargon, and this time, the conditions under which such transactions will be subject to the scrutiny of merger and acquisition control regimes, in other words, the conditions under which the concept of concentration can be applied to employee transfers, has become an important question to be answered. Indeed, such transactions were not limited to Microsoft/ Inflection AI , and we saw Amazon make similar transfers from [105]Covariant, a robotics AI start- up , and again from Adept AI shortly after . On the other hand, Microsoft's Its investment in OpenAI and its commercial collaboration, and similar investments by Google and Amazon in another AI company, Anthropic , have again raised concerns that big tech companies are gaining decisive influence over [106]AI startups without being caught up in concentration control regimes . In the current case, the European Commission, the Bundeskartellamt and the Competition and Markets The Authority (" **CMA** ") has assessed that the Microsoft/ Inflection AI transaction constitutes a concentration. On the other hand, while the European Commission and the Bundeskartellamt have decided that Microsoft's OpenAI investment does not constitute a concentration, the CMA has still not reached a decision on this issue. As can be seen from the explanations above, a serious gray area has emerged regarding the boundaries of the concept of concentration.

[104]See Mathews , Anishka , "How ' Reverse Acquihires ' Are Shaping the Future of AI Amid Hiring Frenzies and Layoffs " September 2, 2024, https://aimresearch.co/market-industry/how-reverse-acquihires-are-shaping-the-future-of-ai-amid-hiring-frenzies-and-layoffs

[105] Ibid .

[106]See Margrethe Vestager's speech on 28 June https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_24_3550

		In this context, the first part of this communiqué will examine in detail the CMA's Microsoft/ Inflection AI decision and the explanations of the European Union and the Bundeskartellamt regarding this transaction, and inferences will be made regarding which additional factors, beyond employee transfers, are effective for the qualification of concentration. Following this, comparisons will be made with the previous decisions of the Competition Board regarding the acquisition of intangible assets attributable to turnover, and inferences will be made regarding the validity of these elements in terms of the Turkish concentration control regime. Finally, the possible negative consequences of defining mass employee transfers as concentration altogether (i.e. without such additional factors), primarily the restriction of employee mobility, will be examined, and alternative mechanisms will be proposed under the abuse of dominant position doctrine to address certain competitive concerns such as "deadly" mass employee transfers. In the second part of the communiqué, the actions taken by various competition authorities regarding the Microsoft/ OpenAI investment will be examined and it will be argued that the most appropriate approach is to address this issue not under the concentration regime, as the European Commission did, but under Article 101 of the Treaty on the Functioning of the European Union (EUDA). In this context, [107]comparisons will be made with various decisions where the Competition Board examined investments that did not lead to a change of control under Article 4 of the Law No. 4054 on the Protection of Competition.
51.	Possible Reflections of Revision Studies of EU Council Regulation 1/2003 to Procedural Rules of Turkish Competition Law	The European Union (EU) competition policy framework regulation Regulation No. 1/2003 and Regulation No. 773/2004, which is complementary to this Regulation and regulates the application areas of competition policy, have been in force for nearly twenty years. The European Commission (Commission); has launched a public consultation process in 2022 with the aim of reviewing EU competition policy applications, taking into account the EU's new development areas such as digitalization and green transformation. In the process, contributions were received from other stakeholders such as national competition authorities, civil society organizations, academia and the private sector. The contributions provided by the stakeholders pointed out the problematic and improvement areas identified in EU competition practices. In this context; the most fundamental area of change in the Commission's competition policy stands out as increasing transparency and communication, and in

[107]For example, see Turkey – Italy Ro-Ro decision (Decision dated 13.7.2005 and numbered 05-46/668-170); Nitro-Mak decision (Decision dated 29.3.2007 and numbered 07-29/268-98)

		addition, "strict and fundamental rights-respecting procedural rules" are envisaged in practice, focusing on green and digital transformation targets. The final report of the public consultation was made public in September 2024. As a result of the study, it was concluded that the procedural rules, especially regarding requests for information/documents and on-site inspections, the use of statements from the relevant parties, structural and provisional measures and penalties, which are increasingly affected by digitalization, are not sufficiently effective and have dimensions that do not allow for timely and effective intervention. Likewise, [108]in light of the decisions established by the Court of Justice of the European Union in recent years, the need to update various rules that have become inconsistent with the jurisprudence has emerged. It is assessed that the changes targeted under these headings in EU competition policy will also affect Turkish competition policy and legislation, considering their largely compatible structure with the EU acquis. Indeed, similar procedural rules and implementation methods are the subject of significant discussions in Turkish competition law, Competition Board decisions are discussed in the administrative courts and occupy the agenda of the Constitutional Court. In the communiqué; the possible reflections of the changes experienced in the EU on Turkey, taking into account the disputes in our country, will be addressed primarily within the framework of the above-mentioned procedural mechanisms and will be discussed based on the previous decisions of the competition authorities. Within the scope of the discussion, a three-way classification will be made as follows: (i) procedural rules that exist in the EU but are not in our country, (ii) procedural rules that exist in both the EU and our country but are considered inadequate, and (iii) procedural rules that are more effective in our country than in the EU. Within the scope of the aforementioned classification, regulatory proposals for Turkish competition law procedural rules will be presented in the light of the views and opinions in EU competition law.
52.	Competition Law Practices in the Light of Behavioral	Is the maximization of individual interest accepted by the neo-classicals the desired result or is it a means to achieve the desired result? Considering that individual interests are not infinite, in other words, limited, can it be said that it is

[108] Judgment of the Court (Grand Chamber) of 6 September 2017 , Intel Corp. v European Commission , Case C-413/14 P; Judgment of the General Court (Sixth Chamber , Extended Composition) of 15 June 2022, Qualcomm , Inc . v European Commission , Case T-235/18; Judgment of the Court (Second Chamber) of 9 December 2020, Groupe Canal + v European Commission , Case C-132/19 P.

	Economics Behavioral Economics as a Means or Ends	inevitable for behavioral economics to intervene in the market? Although some academics state that behavioral economics is not yet ready to form the basis of competition law, behavioral economics finds its place in more and more decisions every day. It would be appropriate to say that behavioral economics does not aim to be a mainstream approach, but on the contrary, it aims to provide a more reliable basis for decision-making processes. will cover the extent to which [109]this complementary economics doctrine is utilized in Turkey and abroad under the titles of horizontal agreements , vertical restrictions, and abuse of dominant position [110]. When the decisions are examined, it can be said that while consumer preferences are revealed, behavioral economics is mostly utilized in dominant position files, and therefore our paper will focus mostly on dominant position files. In this context, many decisions where behavioral [111]economics finds application, from predatory pricing to aftermarkets [112], from unfair commercial conditions [113]to tie-up files, will be examined in the light of academic studies.[114] When we look at the decisions of the Turkish Competition Board, we see that [115]this economic doctrine, which was first referred to in 2018, was included in a very comprehensive manner in the decision published in December 2024 , which revealed whether Google abused its dominant position in the general search services market through certain features on its search engine results page [116]. Accordingly, in the last section of our notification, the Board decisions, which first came up in electricity investigations and later applied behavioral economics in revealing consumer preferences in other sectors , will be discussed in detail.

[109]economics in competition law legislation reflections will be included.
[110] Eturas , CJEU, 21.1. C-74/14 (2016).
[111] *Brooke Group Ltd. V. Brown & Williamson Tobacco Corp* decision, 509 US 209 (1993).
[112]Kodak decision, 504 US, 451 (1992).
[113]Tetra Pak II, 92/163/EEC IV/31043 (1991).
[114]Google Android, CASE AT.40099 (2018).
[115]Competition Board's Electricity investigation dated 20.02.2018 and numbered 18-06/101-52.
[116]Competition Board's Google decision dated 04.07.2024 and numbered 24-28/682-283.