

# Detailed Contents

Abbreviations	13
Introduction	25
First Part: The Basis for Harmonizing Turkish and EU Competition Rules	29
First Chapter: The History of Relations between the EU and Turkey	29
A. Turkey's First Application to the European Union	29
I. The Association Agreement and the Additional Protocol	30
II. Customs Union	32
B. Turkey's Second Application to the European Union	32
I. Pre-Candidature Developments	33
II. Turkey's European Union Candidacy	34
1. Copenhagen Criteria and Acquis Communautaire	35
2. Negotiations	35
C. Competition Rules Established Through the Relationship between the European Union and Turkey	37
I. Obligation to Approximate Competition Legislation	37
II. Specific Provisions on Competition Matters	38
III. Legal Status of the Association Agreement and the Customs Union Decision	39
1. Legal Status	39
2. Direct Applicability	41
Second Chapter: National Background	44
A. The Development of Turkish Competition Law	44
I. Competition Matters Prior to the Adoption of the Competition Act	44
1. Legislation Applied to Competition Matters	44
2. Draft Acts on Competition Matters	45
II. Legal Basis of the Competition Act	47
1. Constitutional Requirements	48
2. Customs Union Decision	49
III. The Legal Character of Competition Law	49
B. The Structure of the Competition Act	50
I. The Concept of Competition	51
	15

1. Definition	51
2. The “More Economic Approach” Concept	53
II. The Competition Act’s Purpose and Scope of Application	56
1. The Purpose of the Competition Act	56
2. Scope of Application	57
a) Territorial Application	57
b) Personal Application	61
III. Substantive Provisions	62
1. Prohibition of Cartels	62
2. Abuse of Dominant Position	64
3. Merger Control	65
IV. Institutions, Procedures and Sanctions	66
1. Institutions	66
2. Powers of the Institutions	67
3. Judicial Review by the Courts	67
4. Private Law Consequences of the Competition Rules	68
a) Invalidity	68
b) Liability for Damages	69
Second Part: Prohibition of Cartels	71
First Chapter: Scope of the Prohibition	71
A. The principle of prohibition	71
B. Addressees of the Prohibition	72
I. Undertakings	72
1. Definition	72
2. Economic Activity	74
3. Economic Independence	75
4. State Owned Entities	76
II. Association of Undertakings	78
C. Types of Prohibited Conduct	80
I. Agreements	80
1. Concept of Agreement	80
2. Types of Agreements	82
a) Horizontal Agreements	83
b) Vertical Agreements	84
3. Agreements in Specific Conditions	85
a) Unilateral Conduct	85
b) Single Overall Agreement	87
II. Decisions by Association of Undertakings	88
1. Concept of Decision	88
2. Anti-Competitive Practices of Associations of Undertakings	89

III. Concerted Practices	91
1. Concept of Concerted Practice	91
2. Elements of Concerted Practice	92
a) Existence of at Least Two Undertakings	93
b) Parallel Behaviour	93
c) Contact between Undertakings	94
d) Restriction of Competition	95
3. Circumstantial Evidence	96
4. The Relation between Agreements and Concerted Practices	97
Second Chapter: Restriction of Competition	99
A. The Object or Effect of Prevention, Restriction or Distortion of Competition	99
I. Restriction by Object	99
II. Restriction by Effect	100
III. Restriction of Potential Competition	101
IV. De Minimis Doctrine: Appreciable Effect on Competition	102
B. Horizontal Agreements: Cartel Agreements	104
I. Introduction	104
II. Fixing Prices and Other Trade Conditions	104
III. Market Sharing Agreements	106
1. Territorial Allocation of Markets	107
2. Allocation of Customers and Products	107
IV. Limitation and Control of Production	108
V. Prevention of New Entrants and Collective Boycotts	108
VI. Discrimination	109
C. Vertical Agreements	110
I. Introduction	110
II. Distribution Agreements	111
1. Exclusive Distribution	111
2. Selective Distribution	113
3. Resale Price Fixing	114
III. Exclusive Supply Agreements	115
IV. Agency Agreements	116
Third Chapter: Exemption from the Prohibition	118
A. Individual Exemption	118
I. Notification	119
II. The Conditions of Exemption	120
1. Beneficial Effects	120
2. Welfare of the Consumer	121
3. Indispensability of the Restriction	121

4. Preserving the Effective Competition on the Substantial Part of the Market	122
III. Duration of the Exemption	122
B. Block Exemption	123
I. Legal Structure of the Block Exemption Legislation	124
II. The Block Exemption Legislation on Vertical Agreements	125
III. Withdrawal of the Block Exemption	126
Third Part: Abuse of Dominant Position	129
First Chapter: The Principle of Prohibition	129
Second Chapter: Dominance	131
A. Definition of Dominant Position	131
I. Monopoly	131
II. Leading Position	132
B. Determining Dominance	132
I. Relevant Market	132
1. Introduction	132
2. Product Market	134
a) Definition	134
b) Demand Substitution	135
c) Supply Elasticity/Substitution	136
3. Geographic Market	137
II. Market Power	139
1. Market Shares	139
a) Own Market Shares	139
b) Relative Market Shares	140
2. Entry Barriers and Potential Competition	141
C. Collective Dominance	142
Third Chapter: Abuse	145
A. Definition of Abuse	145
B. Special Responsibility of a Dominant Undertaking	147
C. Abusive Practices	147
I. Introduction	147
II. Unfair Prices	148
1. Predatory Pricing	148
2. Excessive Prices	151
3. Price Discrimination	153
a) Definition	153
b) Selective Price Cutting	153

c) Discounts and Rebates	154
aa) Volume Rebates/Discounts	154
bb) Loyalty (Fidelity) Rebates	155
cc) Target Rebate Schemes	156
III. Refusal to Supply	157
1. Refusal to Supply an Existing Customer	158
2. Essential Facilities Doctrine	159
IV. Tying	161
1. Introduction	161
2. Elements of Abuse	162
a) Two Separate Products	162
b) Tying Products	163
c) Sufficient Economic Power	164
d) Restriction of Competition	164
e) Absence of Objective Justifications	165
Fourth Chapter: The Relationship between the Rules on the Prohibition of Cartels and the Abuse of Dominant Position	166
A. Introduction	166
B. Differences between the Prohibitions	167
I. Collusion – Unilateral Behaviour	167
II. Exemption - Objective Justifications	167
Fourth Part: Merger Control	169
First Chapter: Concept of Merger Control	169
A. Introduction	169
I. Aim of Merger Control	170
II. “Merger” or “Economic Concentration” – Broad Definition of Merger	172
B. Characteristics of Mergers	173
I. Change of Control	174
1. Decisive Influence	174
2. Lasting Basis	175
II. Types of Control	176
1. Sole Control	176
2. Joint Control	177
III. Independent Undertakings	179
C. Types of Mergers	180
I. Horizontal Mergers	180
II. Vertical Mergers	181

III. Conglomerate Mergers	182
Second Chapter: Prohibition of Anti-Competitive Mergers	184
A. Mergers Subject to Permission from Competition Authorities	184
I. Turnover thresholds	184
1. General principle	184
2. One-Stop-Shop Principle	188
II. Restriction of Competition	189
1. Dominance	189
2. Substantive Test: SIEC	190
3. Failing Company Defence	192
B. Notification of Concentrations	193
I. Notification	193
1. Implementation of Concentration	194
2. Failure to Notify	195
II. Permission of Competition Authorities	196
1. Suspension Principle	197
2. Conditions and Obligations Attached to Permission	198
3. Ancillary Restraints	199
III. Prohibition of Concentrations	202
IV. Negative Clearance	203
Third Chapter: Powers of Investigation and Enforcement	206
A. Introduction	206
B. Phases of Investigation	206
I. Pre-Notification Contacts	206
II. Preliminary Examination	207
III. Final Examination	209
1. Preliminary Inquiry	209
2. Investigation	209
C. Powers of Investigation	210
I. Information Request	210
II. On-the-spot Inspections	212
III. Administrative Fines and Periodic Penalty Payments	213
1. Administrative Fines	214
2. Periodic Penalty Payments	215
D. Private Law Consequences of Anti-Competitive Mergers	216
I. Validity of Concentrations	216
II. Liability for Damages	217

Fifth Part: Enforcement of Competition Rules	219
First Chapter: Institutions	219
A. Public Enforcement vs. Private Enforcement	219
B. Competition Authorities in the European Union	220
I. Cartel Regulation 1/2003 and Decentralization of the Enforcement of EU Competition Rules	220
II. Commission	222
III. National Competition Authorities	223
C. Turkish Competition Institutions	224
I. Competition Authority	225
II. Competition Board	227
D. National Courts and their Relation with Competition Authorities	228
I. Competition Board – National Courts	229
II. Commission – National Courts	233
Second Chapter: Public Enforcement of Competition Rules	238
A. Enforcement Procedures	238
I. Investigation Process	238
1. Phases of Investigation	239
2. Collection of Evidence: Powers of Investigation	242
a) Request for Information	242
b) On-the-Spot Inspections	243
II. Decisional Process	246
1. Written Statements and Oral Hearings	246
2. Final Decision	247
a) Introduction	247
b) Termination of Infringement	248
c) Administrative Fines and Penalty Payments	250
B. Leniency Programmes	252
I. Introduction	252
II. Types of Leniency	254
1. Immunity from Fines	255
2. Reduction of Fines	256
C. Judicial Review	257
I. Jurisdiction	258
II. Parties in Judicial Review	261
III. Annulment Grounds	261
IV. Effects of Judicial Review on Decisions of Competition Authorities	262

Third Chapter: Private Enforcement of Competition Rules	264
A. Invalidity and Unjust Enrichment	264
B. Liability for Damages	268
Sixth Part: Concluding Remarks	275
Annex	279
Act on the protection of competition (Excerpts)	279
Bibliography	293