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THE LEGAL NATURE OF TECHNOLOGY TRANSFER AGREEMENTS AND THEIR INTERACTION WITH COMPETITION LAW

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ABSTRACT

In the global economic order, the production, protection and dissemination of technology have become essential determinants of economic growth and competitive advantage. In this context, technology transfer refers to the transformation of developed technology into a commercial product or process and the transfer of knowledge and experience from one party to another. The legal framework of technology transfer is predominantly established through technology transfer agreements, which generally take the form of license agreements. This article examines the legal nature of technology transfer agreements within the framework of contract law and analyzes their relationship with intellectual and industrial property rights. In this regard, the study addresses the characterization of technology transfer agreements as innominate contracts, their nature as continuing obligations, and the reciprocal rights and obligations imposed on the parties. Furthermore, the monopolistic effects inherent in intellectual property rights and their potential implications under competition law are evaluated. The second part of the article focuses on the competitive effects of technology transfer agreements within the scope of Turkish Competition Law and European Union practices. In particular, the conditions under which such agreements may benefit from block or individual exemptions are examined in light of the Act on the Protection of Competition No. 4054 and the Block Exemption Communiqué on Technology Transfer Agreements No. 2008/2. The aim of this study is to provide a comprehensive analysis of the balance between the legal structure of technology transfer agreements and competition law principles.

Keywords: Technology Transfer Agreements, License Agreements, Intellectual and Industrial Property Rights, Competition Law, Block Exemption.

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INTRODUCTION

Technological progress constitutes one of the most significant determinants of economic development and societal welfare in the contemporary global economy. The creation, dissemination, and effective utilization of technological knowledge are indispensable for sustaining innovation-driven growth. Within this context, technology transfer agreements emerge as fundamental legal instruments enabling the commercialization and diffusion of technology across firms, sectors, and national borders.

Technology transfer agreements typically involve the licensing of intellectual and industrial property rights—such as patents, software, and know-how—from one party to another for a specified period and in return for remuneration. While these agreements facilitate access to advanced technologies and promote productive efficiencies, they may also create market power and restrictive effects due to the exclusive nature of intellectual property rights. Consequently, the interaction between technology transfer agreements and competition law has become a focal point of legal and economic analysis.

Under both Turkish and European Union competition law, agreements that restrict competition are generally prohibited. However, competition law regimes also recognize that certain restrictive agreements may generate efficiencies that outweigh their anticompetitive effects. Technology transfer agreements exemplify this tension, as they may simultaneously restrict and enhance competition. This article seeks to analyze how Turkish competition law addresses this tension, particularly through the Block Exemption Communiqué on Technology Transfer Agreements No. 2008/2, and how this regulatory approach aligns with EU competition law principles.

Definition And Subject Matter Of A Technology Transfer Agreement

Technology transfer agreements are defined as license agreements through which technological innovations are made available for use by third parties (Gözlükaya, 2007, p. 7; Circular No. 2008/2, p. 3).

A license agreement, on the other hand, is defined as a contract whereby the licensor undertakes to transfer the right to use or exploit an intangible right—such as an intellectual or industrial property right or know-how—to the licensee for a specified or unspecified period in exchange for a fee (Eren, 2015, p. 95; Şimşek, 1988, p. 66; Ongan, 2006, p. 830; Baş, 2009, p. 80; Erbek, 2009, p. 37).

The subject matter of a license agreement consists of intellectual and industrial property rights that are legally entitled to absolute protection, as well as intangible assets that are protected in practice. Industrial property rights protected absolutely, such as patents and designs, and intellectual property rights, including rights over literary and artistic works and computer software programs, may constitute the subject matter of a license agreement. Intangible assets that are protected in practice, such as unregistered inventions (know-how), production, business, and trade secrets, may also be the subject of a license agreement (Eren, 2015, p. 97; Arkan, 1998, p. 191; Arkan, 2013, p. 5).

Under a license agreement, only the right to use and benefit from the intellectual property right in question is transferred; the right itself remains with the licensor (Baş, 2009, p. 81).

In Commission Regulation No. 316/2014 on Technology Transfer Agreements issued by the European Commission, intellectual property rights include: patents, utility models, designs, topographies of semiconductor products, software copyright, plant breeders' rights, supplementary protection certificates for medicinal products and other products eligible for such certificates, their components, applications related to these rights, and know-how.

Under European Union competition law, technology transfer agreements are defined as licensing agreements in which one party (the licensor) grants the other party or parties (the licensee) the right to use its technology (such as patents, know-how, or software licenses) to produce goods and services. While the Technology Transfer Agreements Exemption Regulation covers only bilateral agreements, the Guidelines on the application of the Regulation also include provisions regarding multilateral agreements such as patent pools (Bellis, 2014, p. 114).

Technology transfer agreements can be entered into not only between competitors (horizontal agreements) but also between non-competing undertakings (vertical agreements) (Topçu, 2018, p. 186; Aslan, 2017, p. 85; Efem & Badur, 2002, pp. 85–86).

Under the new framework introduced by Commission Regulation No. 316/2014, license agreements that involve only the creation and distribution of copies of a software-protected product for resale purposes can no longer benefit from the exemption under Regulation No. 316/2014 (European Commission, 2014, para. 62; Eccles, 2014, p. 1).

Commission Regulation No. 772/2004 also explicitly states that, for a technology transfer agreement to exist, the licensed technology must be used for the production of goods and services; this principle has been reinforced in Regulation No. 316/2014 by requiring this condition in contracts for the transfer of software rights. The same paragraph of the Regulation states that in such cases, the Block Exemption Regulation on Vertical Agreements No. 330/2010 shall apply by analogy. However, agreements under which the licensee obtains the right to reproduce software by combining it with hardware with which the subject software interacts are accepted within the scope of Regulation No. 316/2014 (European Commission, 2014, para. 63; Eccles, 2014, p. 1; Bekcan, 2016, p. 193; Batchelor & Sheraton, 2014, p. 1).

Article 4/1-a of the Block Exemption Notice on Technology Transfer Agreements No. 2008/2 defines a technology transfer agreement as an agreement under which the relevant intellectual and industrial property rights and know-how are licensed individually or in combination. Technology transfer agreements are defined as contracts in which the licensor grants the licensee permission to use the licensed technology for the production of goods or services. In Article 4/1-c of the same Notice and in the relevant legislation, intellectual property rights are defined as patents, utility models, industrial designs, integrated circuit topographies, plant breeders' rights, and related applications, as well as software and know-how (Bellis, 2014, p. 114).

Both Commission Regulation No. 772/2004 and Commission Regulation No. 316/2014 specify that assignment agreements involving the transfer of patents, know-how, software—either individually or in combination—are classified as technology transfer agreements, such provisions are not included in Circular No. 2008/2.

In other words, the exception provided in Regulation No. 772/2004—stating that assignment agreements where a portion of the risk remains with the assignor are subject to the relevant Regulation—is not included in Circular No. 2008/2. Under Turkish law, all intellectual and industrial property rights assignment agreements are excluded from the scope of the block exemption assessment (Baş, 2009, p. 86).

Therefore, taking our national legislation into account, our study, which covers technology transfer agreements and related competition practices, is limited to license agreements. License agreements, on the other hand, encompass the patent license agreement—which covers the entirety of intellectual property rights listed under the “intellectual property rights” heading in the 2008/2 Communiqué, including patents, utility models, industrial designs, integrated circuit topographies, and breeder’s rights, and which is the most commonly encountered in practice and forms the basis of industrial property right license agreements— as well as software license agreements and know-how license agreements.

Agreements concerning the licensing of intellectual property rights other than those listed in the 2008/2 Communiqué fall outside the scope of the said Communiqué and, consequently, of this study.

Technology transfer agreements inherently possess characteristics such as encouraging research and development activities, preventing the waste of resources by conducting multiple research and development activities aimed at the same objective, ensuring the dissemination of knowledge and technology obtained as a result of such activities, and enhancing competition through the introduction of new and/or higher-quality products to the market (Özoğuz, 2004, p. 178; Competition Authority, 2009, para. 310).

Through technology transfer, the technology holder generates economic revenue from the technology, while the recipient achieves development by utilizing it. The dissemination of technical knowledge and the protection of the intellectual and industrial property rights holder’s rights are legally ensured through license agreements, also referred to as technology transfer agreements (technology licenses) (Şehirli, 1998, p. 44).

Through technology licensing, cooperation is established between domestic and foreign companies; the domestic company transferring the technology will have an advantage by providing cheap labor and raw materials due to its familiarity with local conditions, while the rights subject to transfer will become widespread in markets unknown to the transferee, and international technology transfer will generate profit for both parties to the agreement as well as for the countries involved (Topçu, 2018, p. 52).

Certain elements necessary for ensuring successful technology transfer are outlined in the World Intellectual Property Organization (WIPO) Guide titled “Successful Technology Licensing.” The fundamental element among these is that one of the parties to the technology transfer agreement must own a valuable intangible asset known as intellectual property and possess the legal protection arising from this ownership that prevents third parties from using the said right. In the Guide to Successful Technology Licensing, a license is defined as the permission granted by the rights holder for others to use intellectual property in exchange for money or something of value (WIPO, n.d., p. 5).

Through a transfer agreement, the licensor waives its right to actual monopoly and prohibits conduct that would constitute a violation of such a monopoly against the licensee (Baş, 2009, p. 59).

Licensing related to technology transfer occurs within the context of a commercial relationship, and these commercial relationships typically involve other agreements that interact with one another. It is important to establish rules regarding how the terms of these agreements affect one another in terms of timing, pricing, and total value. To prevent future commercial disputes, it is important in licensing agreements involving product development to clarify issues related to intellectual property rights—such as who owns the production license for the product and the existing and future intellectual property rights—or to specify the terms regarding the sale of the product produced by one party to the other under a sales agreement (WIPO, n.d., p. 6).

It is important to include a provision in a license agreement that explicitly states the licensed intellectual property belongs to the licensor. Such a commitment will prevent the licensor from attempting to deny liability in a situation where a third party claims ownership. In cases where the licensor and licensee must collaborate on technology development or product creation, clearly specifying in the agreement who will own the resulting intellectual property and technology is a necessary practice to prevent future disputes. In a license agreement entered into within the framework of a joint venture, the agreement must also specify to whom any technology and intellectual property resulting from the project will belong. In such cases, joint ownership between the licensor and the licensee may apply (WIPO, n.d., p. 17).

Technology licensing requires reaching an agreement on complex conditions, each of which may have various potential solutions. For this reason, it may be necessary to work on tasks such as defining commercial objectives, evaluating benefits, conducting research on the other party, making decisions on key issues, preparing the necessary documents, and ensuring the protection of intellectual property rights before negotiations begin. The parties reaching an agreement on the license agreement does not necessarily mean that the transfer has taken place. This is because the information subject to technology transfer is not limited to written form but also includes know-how and trade secrets that involve practical application. A genuine technology transfer occurs when the licensor transfers the technology and knowledge to the licensee, and the licensee effectively utilizes, adapts, and develops this knowledge and technology (WIPO, n.d., p. 6).

The technology to be transferred—whether it is a product, formula, specification, protocol, software program, set of diagrams, document, or anything else—must be fully defined. If the technology to be licensed consists of a specific patent or group of patents, it is also appropriate to define it. When making these definitions regarding the rights subject to the license in the agreement, the licensor generally tends to narrow the definition of the licensed technology, while the licensee tends to broaden it. In some cases, however, both parties to the agreement may prefer ambiguity regarding the technology for various reasons. In some instances, the parties are unable to properly define the licensed technology because they lack a clear understanding of the technology's current state or how it will be used, resulting in the scope of what is being licensed remaining unclear in the agreement. Yet, precisely identifying what the technology is and which part of it will serve your purpose constitutes the most critical aspect of technology transfer (WIPO, n.d., p. 15).

When drafting the agreement, it is essential to ensure that the necessary rights are licensed to enable the successful use of the technology. Therefore, when determining these needs, it must be clearly established whether only a patent license is required or if rights necessary for the use of a specific patented technology or product are needed; furthermore, it must be determined whether detailed documentation and schematics are required, and if the licensed technology is software, whether source code, the software version, and test data are needed; whether samples and product prototypes are required under the general licensing scope; and whether know-how and training are necessary to use the technology (Şimşek, 1988, p. 94; WIPO, n.d., p. 16).

A fundamental element of successful technology licensing is the licensing of technology that has a clear and understandable description or documentation, and ambiguous references regarding this right must not be accepted. It is recommended that references providing detailed information about the structure and definition of the relevant technology be organized as an annex to the agreement text in a clear, understandable, and sufficient manner. If these annexes contain references to any other documents, the referenced documents must be carefully reviewed to verify whether the licensed technology is correctly defined. The document defining the technology subject to the license must be sufficiently clear and detailed to allow a third party with no prior knowledge of the technology to determine, in the event of a dispute, what the license covers. If technically feasible, it would also be beneficial for the licensed subject matter itself to be included in the agreement's annex (WIPO, n.d., p. 16).

In negotiations regarding a license agreement, understanding why the parties wish to grant and obtain a license is the most critical factor in anticipating potential risks in the resulting agreement. This helps in understanding the other party's motivation, ensuring that risks are minimized as the terms of the license agreement are drafted, and thereby creating a contract model where both parties benefit in the end (European Commission, 2013, p. 5).

Competition Law Practices Related To Technology Transfer Agreements

Examination of technology transfer agreements as restrictive agreements

For licensing agreements to be assessed as restrictive of competition, there must be a likelihood that they will affect existing or potential competition by having a negative impact on price, quantity, innovation, or the variety or quality of goods and services in the relevant market (Guide to Law No. 4054, p. 3; Eroğlu, p. 179).

The anti-competitive effects of technology transfer agreements are observed in the form of reducing competition among technologies by fostering collusion among companies operating in the relevant market, creating barriers to entry into the relevant market in various ways, and a decline in intra-technology competition (European Commission, 2014, para. 169, p. 33; Guide to Law No. 4054, p. 33; Baş, 2009, p. 85).

Licensing agreements can reduce competition by facilitating collusion among competitors, particularly in concentrated markets. For collusion to take effect, market entry barriers must be sufficiently high to prevent or limit third parties from entering the market, and the agreement must include provisions that allow undertakings to monitor each other's market behavior and encourage the parties not to deviate from the common policies of the collusion.

Such competition-restricting agreements can facilitate coordinated action among competitors through provisions aimed at increasing barriers to entry, controlling a competitor's behavior, and ensuring transparency among competitors. It is generally accepted that requiring competitors to share rival technologies with one another or to mutually provide developments in their own technologies through a contract, and that agreements containing such provisions typically limit innovation and restrict competition by preventing one competitor from gaining a technological lead over another (Guidance on Law No. 4054, p. 34; European Commission, 2014, paras. 170–171, p. 33).

Licensing agreements that restrict competition may hinder competition between technologies by containing entry barriers that prevent competitors from entering the market and growing within it. Such provisions may be designed to prevent or deter licensees from obtaining licenses from third parties.

For example, when a licensor with market power licenses a technology package containing all components—rather than a package consisting of only the components necessary for the production of a specified product—the market is effectively closed off to owners of substitute technologies (Guidance on Law No. 4054, p. 34; European Commission, 2014, para. 172, p. 33).

Competition among firms operating in the same technological field can also be restricted through licensing agreements. Competition among licensees can be prevented by imposing regional sales restrictions on them. Intra-technology competition is also prevented when collusion among licensees is facilitated through licensing agreements.

Such licensing agreements that reduce intra-technology competition may also reduce inter-technology competition by facilitating collusive behavior among rival technology owners or by creating entry barriers (Guidance on Law No. 4054, p. 34; European Commission, 2014, para. 173, p. 34).

However, licensing agreements may in some cases produce positive effects, and their pro-competitive effects may outweigh their anti-competitive effects. Technology transfer agreements can enhance economic efficiency by facilitating the market penetration of new products alongside the technology and by protecting the interests of the contracting parties, thereby contributing positively to the expansion of competition.

The assessment of positive effects is conducted by examining whether the conditions set forth in Article 5 of Law No. 4054 are met (Guide to Law No. 4054, p. 35; European Commission, 2014, para. 174, p. 34).

License agreements that include the right to grant sublicenses may benefit from the block exemption assessment under the Regulation if the primary purpose of the agreement is the production of the products subject to the transfer. However, agreements whose primary purpose is not production but solely the granting of sublicenses are not assessed under the Regulation (Guide to Law No. 4054, p. 9; European Commission, 2004, para. 39, p. 8).

Sub-license agreements entered into by the licensee with third parties are also evaluated under the 2008/2 Communiqué, as they constitute technology transfer agreements (Guide to Law No. 4054, p. 9; European Commission, 2014, para. 57, p. 14; European Commission, 2004, para. 40, p. 8).

For an agreement to qualify for an exemption, the primary subject matter of the license agreement must not be the granting of a sublicense. Otherwise, the Circular will not apply to such agreements.

The remainder of the text distinguishes between situations that fall within and outside the scope of technology transfer agreements. In this context, determining the primary purpose of the license agreement is critical, and whether technology transfer constitutes an essential element of the contract is decisive in the assessment (Baş, 2009, p. 78; Aslan, 2017, p. 44).

Technology Pools and Multilateral Structures

Agreements regarding technology pools do not qualify for the block exemption under the Regulation, even if they are bilateral (European Commission, 2004, para. 40, p. 8).

Structures established by the parties to provide a joint venture with the purpose of licensing their technologies to third parties are characterized as technology pools (Baş, 2009, p. 92).

The Concept of an Undertaking and Its Importance in Competition Law

Under competition law, the concept of an undertaking refers to units that produce, market, or sell goods or services in the market and are capable of making economically independent decisions (Aslan, 2017, p. 41; Badur, 2001, p. 49; Şanlı, 2000, p. 29; Güven, 2008, p. 82).

In this context, legal independence alone is not sufficient; economic independence is the primary criterion. Individuals, companies, public enterprises, and other economic entities engaged in economic activities are considered undertakings under competition law.

Related Undertakings

The concept of an undertaking also includes affiliated undertakings. For example, since companies operating within the same holding are evaluated as a single economic entity, license agreements entered into between them may not be considered as having been concluded between two separate undertakings (Baş, 2009, p. 78; Aslan, 2017, p. 44).

Production and Licensing Relationship

For a licensing agreement to be evaluated under the Regulation, the agreement must be production-oriented. The licensee must use the licensed technology in the production of goods or the provision of services (Guide to Law No. 4054, p. 9; Kjolbye & Peepkorn, p. 165).

The production requirement is deemed to be met if the technology is used in the production process or is a direct component of the product.

Agreements Not Aimed at Production

Not every agreement involving technology transfer falls under the scope of the Regulation. If technology transfer is not the primary element of the contract but rather a secondary element, such contracts may not be evaluated under the block exemption (Competition Authority, 2016; Baş, 2009, p. 80).

General Assessment from the Perspective of Competition Law

Holders of intellectual and industrial property rights, by virtue of the absolute nature of these rights, have the authority to directly benefit from such rights, prevent infringements by third parties, and transfer the use of these rights to third parties through licensing. Since intellectual and industrial property rights grant the owner an absolute right of a monopolistic nature and can only be used by persons authorized by the rights holder under a license agreement, they may be characterized as rights that restrict competition. However, the protection afforded by an intellectual property right is not, by itself, sufficient to establish the existence of a monopoly or a dominant position. However, under certain conditions, these rights may lead to monopolistic practices, or the license agreements involving such rights may have an anti-competitive effect.

While intellectual property law regulates exclusive rights, competition law contains provisions aimed at preventing competition violations and restrictions and provides protection against the formation of monopolies in the market. The oversight and restrictions implemented to protect and sustain competition in the market also encompass intellectual property rights. Competition violations that may arise from contracts involving technological innovations are prohibited under competition law regulations, while interventions are not made regarding the aspects of technological developments that support competition. The fundamental objective of competition law is to ensure effective competition. Intellectual property law also serves a function that supports effective competition by encouraging innovation. In line with the view we share, Competition Law and Intellectual Property Law are directed toward a common goal, such as fostering technological advancements, and there is no conflict between these two branches of law; only the methods used to achieve this goal differ.

Intellectual property rights typically do not have negative effects on competition at the stage of their creation, but rather during their use. For this reason, the review of such rights under competition law is generally conducted during the usage phase. In license agreements involving technology transfer, provisions such as market or customer sharing, price fixing, production and sales restrictions, exclusivity, limitations on the scope and quantity of use, determination of sales prices, and non-competition clauses may be deemed contrary to competition. While license agreements serve as the primary tool for facilitating technology transfer, they must not contain provisions that violate competition rules. For this reason, license agreements related to technology transfer are subject to review under Competition Law within the framework of the 2008/2 Group Exemption Notice on Technology Transfer Agreements and the relevant Guidelines. When preparing license agreements involving the transfer of intellectual and industrial property rights, the parties are required to take Competition Law regulations into account. This is because license agreements concerning technology transfer cannot be evaluated independently of competition rules. In this context, it must first be determined whether license agreements between two undertakings benefit from the block exemption provided under the 2008/2 Notice. If the agreement qualifies for the exemption, this

exemption remains in effect until the expiration of the intellectual and industrial property right subject to the license; in the case of know-how licenses, it continues until the relevant information becomes public. However, under the conditions set forth in the Circular, the exemption may be revoked before its term expires.

When evaluating the legal nature of license agreements, which form the basis of technology transfer agreements, it has been concluded that these agreements are contracts that impose reciprocal obligations and give rise to a continuing obligation relationship. A license agreement is a legal relationship that grants the licensee the authority to use an intellectual or industrial property right and, as a rule, creates rights and obligations solely between the parties. Unless otherwise agreed in the license agreement, the fact that the exclusive licensee has the right to file a lawsuit or that the license right can be asserted against third parties after registration in the registry does not imply that the right granted by the license agreement is of an absolute nature. This is because absolute rights can only be established by law, and the assertion of such rights against third parties cannot be limited by the parties' intentions. Therefore, the right granted by the license agreement is relative in nature.

When considering the patent license agreement—which forms the basis of technology transfer agreements—it is evident that the fundamental elements of such agreements (patent rights, the subject matter of the license, the obligation to tolerate use, and the obligation to use) are explicitly regulated by law. Provisions regarding the consideration, however, are addressed within the framework of elements found in named contracts such as lease agreements, royalty agreements, and general partnerships. In this context, the patent license agreement is recognized as a hybrid contract. This is because a hybrid contract is defined as a new type of contract created by combining the elements of contract types regulated by law in a manner not expressly provided for by law. Any gaps arising from the license agreement must be filled by considering the provisions of contracts such as revenue lease, sale, agency, and general partnership.

Technology transfer agreements may consist solely of patent, know-how, or software licenses, or they may be established in a hybrid form through the joint licensing of these elements. These agreements give rise to mutual obligations for the parties. The licensor's primary obligations include granting the right to use the licensed subject matter, providing technical information, ensuring the continuity of the right, notifying the licensee of technical developments and improvements, and guaranteeing the existence of the licensed right.

The licensee's primary obligations, on the other hand, include paying the license fee, using the licensed right, reporting to the licensor, notifying the licensor of technical developments, reporting infringements, and maintaining confidentiality. Contractual provisions regarding the licensee's obligation not to challenge the validity of the intellectual and industrial property right have also been evaluated under Competition Law. According to Article 7 of the 2008/2 Communiqué, such provisions fall outside the scope of the block exemption. However, this applies only to the relevant provision, and the remaining provisions of the contract may benefit from the exemption. In such cases, individual exemption provisions may apply if the necessary conditions are met. Additionally, the Circular stipulates that provisions granting the licensor the right to terminate the contract if the licensee objects to the validity of the intellectual property rights are deemed to fall within the scope of the exemption.

The circumstances under which license agreements terminate have also been examined, and in cases where multiple intellectual property rights or know-how are licensed together, the effect of the invalidity of one such right on the contract has been assessed. In this context, it must be determined whether the contract can be formed or continue in the absence of the relevant right. If the purpose of the agreement cannot be achieved without that right, it must be accepted that the invalidity affects the entire agreement. Similarly, if the disclosure of know-how eliminates the purpose of the agreement, it has consequences for the agreement as a whole. For such situations, the parties may include provisions in the agreement regarding invalidity, the right to terminate, or the continued obligation to pay compensation.

Technology transfer agreements, which may have anti-competitive features, can lead to collusion among undertakings operating in the relevant market, thereby reducing competition between technologies and creating market entry barriers in various forms. Thus, agreements that directly or indirectly prevent, distort, or restrict competition in a specific goods or services market are deemed unlawful and prohibited. However, under certain conditions, even if such agreements contain provisions that restrict competition, they may qualify for an individual exemption if they meet the conditions set forth in the 2008/2 Communiqué or Article 5 of the RKHK, provided that the positive effects they create in the market are taken into account.

Pursuant to Circular No. 2008/2, technology transfer agreements entered into among more than two undertakings are excluded from the scope of the Circular. In contrast, technology transfer contracts between two undertakings are evaluated under the Circular, even if they involve multiple commercial elements such as production and distribution. Since licensing agreements between more than two undertakings share similar characteristics with bilateral agreements, the principles set forth in the Circular regarding the assessment of individual exemptions under Article 5 of the RKHK should be applied analogously to such agreements.

For the application of the 2008/2 Communiqué, the licensee must use the licensed technology in the process of manufacturing goods or providing services. License agreements involving the granting of sublicenses may benefit from the block exemption under the Communiqué if the primary purpose of the agreement is the production of the licensed products. Conversely, agreements whose primary purpose is not production but solely the granting of sublicenses are not evaluated under the Communiqué.

For a license agreement to qualify for the block exemption under the Notice, if the parties are not competitors, each party's market share in the relevant technology and product market must not exceed 40%; if the parties are competitors, their combined market share must not exceed 30%. In the European Commission's Regulation No. 316/2014, however, these thresholds are set differently: if the parties are not competitors, each party's market share must not exceed 30%, and if they are competitors, their combined market share must not exceed 20%. Additionally, the Regulation expands the definition of the market to include not only the relevant product and technology markets but also the relevant geographic market.

Article 6 of the Notice sets forth the circumstances under which the entire agreement falls outside the scope of the block exemption, while Article 7 addresses cases where only certain provisions of the agreement are excluded from the exemption. However, if the limitations specified in Article 7 cannot be separated from the remainder of

the agreement, the entire agreement also falls outside the scope of the block exemption. For contracts that do not qualify for the block exemption, an individual exemption assessment must be conducted under Article 5 of the RKHK. Under Article 4 of the RKHK, agreements that do not restrict competition or that meet the conditions set forth in Article 5 are deemed valid and enforceable. In particular, it should not be automatically concluded that agreements ineligible for the block exemption solely due to exceeding market share thresholds are restrictive of competition.

Under Article 6 of the 2008/2 Communiqué, the explicit restrictions applicable to agreements between competing undertakings—the presence of which would render the entire contract deemed contrary to competition—include: include provisions such as the setting of sales prices, the limitation of production and sales volumes, market and customer sharing, and restrictions on the licensee’s use of its own technology or on the parties’ research and development activities. In European Union practice as well, when assessing the effects of such explicit restrictions on competition, the contract’s purpose, content, and the parties’ conduct in the market—along with the likely consequences of such conduct—are taken into account.

Article 6/3 of the Regulation addresses restrictions contained in agreements between non-competing undertakings, specifically focusing on price-fixing and the restriction of the licensee’s passive sales. Pursuant to Article 6/3-a of the Regulation, provisions establishing fixed or minimum prices for sales to third parties by the parties are excluded from the scope of the exemption. Agreements that directly or indirectly determine the sales price are therefore ineligible for the block exemption.

The exceptions to the rule that restrictions on passive sales fall outside the scope of the exemption are set forth in six subparagraphs under Article 6/3-b of the Notice. These exceptions were established by taking into account the nature of intellectual property rights and the purpose of the license agreements. One of these exceptions—the provision limiting the licensee’s passive sales to an exclusive territory or customer group assigned to another licensee for a period of two years—is not protected under the European Commission’s Regulation No. 316/2014. However, such restrictions may be assessed under the scope of individual exemption if they are objectively necessary for the licensee to establish a foothold in the relevant market.

The European Commission’s Guidance Document 2014/C 89/03 states that in specific cases, such as where the licensee needs to cover the costs of entering a new market, protection for a period longer than two years may be necessary, and therefore each specific case must be assessed individually.

Article 7 of the Notice sets out the provisions of agreements that do not qualify for the block exemption; these include the obligation to grant a non-exclusive license, the obligation not to challenge the validity of the licensed technology, and restrictions on the licensee’s use of its own technology or its research and development activities. Exclusive obligations to return improvements that are non-separable are not considered anti-competitive. The reason for this is that the licensee cannot benefit from these improvements without the licensor’s consent.

In contrast, under the European Commission’s Regulation No. 316/2014, exclusive royalty obligations—regardless of whether the improvement is separable—have been excluded from the scope of the block exemption. This regulation is particularly significant in cases where the licensee is required to transfer the innovations it has

developed solely to the licensor and cannot even use these innovations in its own operations. This change aims to encourage technological development. In contrast, non-exclusive royalty obligations remain within the scope of the exemption.

Provisions regarding the obligation not to challenge the validity of the licensed intellectual property right do not benefit from the exemption protection under either the Notice or Regulation No. 316/2014. However, if the licensee challenges the validity, the licensor is granted the right to terminate the contract. However, under Guidance 2014/C 89/03, this right has been removed for non-exclusive license agreements. In exclusive license agreements, this right of termination remains protected.

In license agreements between competing undertakings, restrictions on the licensee's use of its own technology or on the parties' research and development activities are considered explicit restrictions on competition. In agreements between non-competing undertakings, such restrictions are not deemed explicit restrictions on competition; however, they must be assessed on a case-by-case basis within the framework of the conditions for individual exemptions.

The Competition Authority has the authority to revoke the block exemption granted to a technology transfer agreement that benefits from such an exemption under the Regulation if it is determined that the agreement does not meet the conditions set forth in Article 5 of the Law and that the market entry of technologies belonging to third parties is restricted. For agreements that do not qualify for the group exemption and are determined not to be explicitly restrictive of competition under Article 4 of the Competition Law, an individual exemption assessment may be conducted under Article 5. However, if an agreement contains obligations that explicitly aim to restrict competition, such obligations are deemed prohibited under Article 4 of the RKHK without further examination of their effects, and the likelihood of such arrangements meeting the conditions for exemption under Article 5 is quite low.

When conducting an individual exemption assessment under Article 5 of the RKHK, all of the following conditions must be met simultaneously: improvements in production, distribution, and services; the realization of economic or technical progress; consumers benefiting from these developments; the preservation of competition in the market; and competition not being restricted beyond what is necessary to achieve these objectives. The application of Articles 4 and 5 of the RKHK to restrictions in license agreements falling outside the scope of the Group Exemption under the Regulation has also been examined. To ensure legal certainty regarding license agreements falling outside the scope of the Regulation, the assessment must first examine whether at least four independent competing technologies capable of substituting the parties' technologies are present in the market. The Guidelines stipulate that if such independent technologies exist, the assessment shall proceed under Articles 4 and 5 of the Act.

Regulations regarding license fees have also been addressed in evaluations of license agreements falling outside the scope of the Regulation. If the license fee is set to extend beyond the protection period of the intellectual property right, third parties will be able to use the technology in question once that period expires; therefore, there will be no restriction on competition. Such situations typically arise in mixed license agreements where multiple

intellectual property rights are licensed together. If such an arrangement is made in the interests of the parties, the licensee may continue to pay the total license fee initially determined. However, continuing to pay the license fee is deemed anti-competitive if it is used to unjustly extend the intellectual property owner's monopoly rights.

In licensing agreements between non-competing undertakings, situations where the license fee is calculated based on the sales price of products produced using the licensed technology as well as products produced under licenses obtained from third parties are evaluated under the block exemption. However, it must also be examined whether such arrangements create a barrier to market entry. Restrictions on market entry are a common occurrence, particularly in technology-intensive markets and in contracts based on intellectual property rights, and such arrangements are generally considered entry barriers. Except in cases where no alternative method is available for calculating and monitoring the license fee, arrangements that create such barriers generally do not meet the conditions for individual exemption.

While exclusive licensing agreements are not always deemed to restrict competition by their very nature, it is accepted that competition is restricted when a dominant undertaking obtains a competing technology through an exclusive license and thereby prevents third parties from accessing that technology, resulting in the foreclosure of the market. In licensing agreements between competing undertakings, restrictions on passive sales are considered market and customer sharing and constitute a clear violation of competition. Such restrictions fall outside the scope of exemptions because they do not meet the condition that competition must not be restricted beyond what is necessary.

In contrast, restrictions on active sales directed at a region or customer group allocated to one of the parties in agreements between competing undertakings may be assessed as falling within the scope of the exemption, taking into account the nature of intellectual property rights and the relevant legislation. In cases where the parties are not competitors, sales restrictions between the licensor and the licensee may benefit from the block exemption up to a 40% market share threshold.

When examining quantity restrictions in agreements falling outside the scope of the block exemption, it is generally accepted that if production restrictions are applied in conjunction with exclusive territory or customer group restrictions, the agreement will lead to market sharing and thus be anti-competitive. However, in cases where the licensor is also a producer, determining production and sales quantities may be necessary and beneficial for the dissemination of technology. In such exceptional cases, production and sales quantity restrictions imposed on the licensee in licensing agreements between non-competing undertakings may have a pro-competitive effect. However, if such restrictions are applied alongside other obligations that prevent the licensee from selling to the territory or customer group allocated to the licensor, these arrangements cannot be deemed necessary for the dissemination of technology. This is because the combination of quantity, scope of use, and territorial/customer restrictions increases the likelihood of market sharing.

When assessed under the scope of individual exemptions, such restrictions—which encourage the licensor to license its technology in areas where it does not operate—are seen to generate pro-competitive effects. This allows the licensor to grant licenses in a different market without creating a competitor in the market where it operates,

thereby contributing to the dissemination of technology. Additionally, scope-of-use restrictions allow the licensor to grant licenses to licensees who can utilize the technology most effectively. In non-exclusive scope-of-use restrictions, the licensee may use the licensed technology solely for its own production; however, the provision of service and maintenance for the products produced by the licensee must not be prevented by independent service providers.

In tie-in and bundling practices, when conducting an individual exemption assessment, such tie-ins are deemed not to restrict competition if they are necessary to ensure that the tied product can utilize the licensed technology in the most technically appropriate manner or to ensure compliance with production quality standards. Regarding non-compete obligations, Competition Authority decisions note that long-term non-compete obligations may have negative effects on competition; however, it is stated that it is acceptable for the licensee to refrain from engaging in activities related to competing products for a certain period to enable the launch of a new product.

Under settlement and non-assertion agreements, provisions regarding the non-challenge of the validity of an intellectual property right are generally not considered anti-competitive. This is because such agreements are entered into to resolve existing disputes or prevent future disputes from arising. The European Commission defines such agreements in its 2014/C 89/03 Guidelines as legal instruments that enable the parties to reach a mutual agreement on acceptable terms regarding issues such as the validity or infringement of intellectual property rights. However, if these agreements contain provisions that delay or restrict the licensee's market entry, they may be deemed anti-competitive.

Agreements regarding the establishment and operation of technology pools are excluded from the scope of block exemptions under both Turkish law and European Union legislation. In the European Commission's Guidance Document No. 2014/C 89/03, the necessary conditions for such pools not to be deemed anti-competitive are: the inclusion of only essential technologies in the pool, the sharing of sensitive information only to the extent necessary, the provision of technologies included in the pool under non-exclusive licenses, the granting of licenses to all potential users under fair and non-discriminatory terms, the ability to challenge the validity of the technologies, and the ability of the parties to continue developing competitive technologies independently. All these conditions must be met collectively.

Agreements involving the granting of licenses to third parties from the pool may benefit from the block exemption, like other license agreements, provided they meet all the conditions set forth in the Notice. However, non-compete obligations, restrictions on license fees, exclusive buy-back provisions, and obligations not to challenge the validity of the technology contained in such agreements are not considered within the scope of the exemption. In determining the scope of the block exemption, explicit competition restrictions were taken as the basis; in other cases, the contribution to technological progress and increased competition was accepted as the primary criterion in the assessment of individual exemptions.

In evaluations conducted under both the block exemption and the individual exemption, whether the parties' motivation to innovate is hindered or not should be considered a fundamental criterion. Intellectual property rights and competition law are fundamental elements of technological and economic development. While intellectual

property rights serve as a tool to encourage innovation, competition law includes regulations designed to prevent these rights from creating a monopolistic effect in the market. Therefore, the balanced and harmonious application of these two legal fields is of great importance.

When evaluating licensing agreements related to technology transfer, it is essential to ensure that the rights granted by intellectual property rights are not unduly restricted and that the monopolistic effects inherent in these rights are not exploited in a manner that distorts competition in the market. Maintaining this balance is essential for the sustainability of economic development. When European Union and national competition law regulations are considered together, the application of competition provisions to technology transfer agreements is shaped within the framework of the fundamental principles addressed in this thesis. These principles are applied on a case-by-case basis in accordance with changing market conditions and economic dynamics.

In conclusion, whether an intellectual and industrial property right has a restrictive effect on competition must be assessed based on the nature of the relevant right and market conditions. In making this assessment, not only statutory provisions but also decisions of the Competition Authority and the European Commission must be taken into account.

CONCLUSION

Intellectual and industrial property rights are legal instruments that grant the rights holder exclusive authority, thereby enabling the holder to exploit such rights, prevent infringements, and license their use to third parties. Although these rights inherently involve a certain degree of monopolistic structure, this alone does not indicate the existence of a dominant position. However, under certain conditions, particularly through licensing agreements, effects that restrict competition may arise. At this point, a balance must be struck between intellectual property law and competition law.

Competition law aims to protect effective competition in the market and includes regulations designed to prevent monopolistic practices. In contrast, intellectual property law indirectly supports competition by encouraging innovation and technological development. Therefore, rather than a fundamental conflict between these two legal fields, there is an effort to achieve the same objective through different means. Competition violations typically arise not from the creation of intellectual property rights but from their use, and technology transfer agreements are particularly significant in this context.

License agreements, which form the foundation of technology transfer agreements, are contracts that transfer the right to use an intellectual or industrial property right belonging to the licensor to the licensee, thereby creating ongoing contractual relationships involving reciprocal obligations. The legal nature of these agreements is generally classified as a hybrid contract, and any resulting gaps are filled by provisions applicable to other types of contracts. License agreements impose various obligations on the parties: the licensor is obligated to provide technical information, ensure the continuation of the right, and provide guarantees; while the licensee is obligated to pay the fee, use the right, provide information, and maintain confidentiality.

From a competition law perspective, technology transfer agreements may have anti-competitive effects when they contain provisions such as market sharing, price fixing, or restrictions on production and sales. For this reason, such agreements are subject to review under the 2008/2 Communiqué and the relevant Guidelines. Under the Circular, agreements that fall below certain market share thresholds and do not significantly restrict competition may benefit from block exemption; those outside this scope are subject to individual exemption assessment.

In the block exemption system, provisions such as price-fixing, market-sharing, and production restrictions—which are specifically classified as hard-core restrictions—may exclude the entire agreement from the exemption. However, certain restrictions may be excluded from the exemption only with respect to the relevant provision, while the remainder of the agreement may still benefit from the exemption. While there is a significant degree of parallelism between European Union regulations and Turkish competition law, differences exist regarding market share thresholds and the scope of certain restrictions.

In the assessment of individual exemptions, criteria such as the agreement's contribution to economic and technical progress, its provision of benefits to consumers, and its failure to eliminate competition are taken into account. Regulations regarding license fees, exclusive licenses, and limitations on the scope and quantity of use are also examined within this framework. In particular, it is acknowledged that exclusive licenses may have anti-competitive effects if they create a dominant position or act as a barrier to market entry.

Finally, structures such as technology pools and settlement agreements are also evaluated under competition law, and certain conditions must be met to ensure these structures do not result in anti-competitive outcomes. In general, adopting a balanced approach between the protection afforded by intellectual property rights and the protection of competition is of great importance both for fostering technological development and ensuring the sustainability of market competition.

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Method	Latif Tile
Data Collecting	Latif Tile
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