

## Draft Regulation on Settlement Procedure is Published

March 2021

### Overview

New amendments to the Law No. 4054 on the Protection of Competition (the **Competition Law**) have introduced several new concepts to the Turkish competition law practice, including the settlement procedure. As covered in our [newsletter](#) regarding the changes in the Law, the settlement procedure allows investigated parties to settle with the Turkish Competition Authority (the **TCA**) and to enjoy a deduction in the administrative monetary fine by up to 25%. Accordingly, the TCA published a draft regulation on settlement procedure to be applied in the investigations against anti-competitive agreements, concerted practices, decisions and abuse of dominant position on 18 March 2021 (the **Draft Regulation**).

### What does Draft Regulation entail?

#### General principles of the settlement procedure

- Settlement procedure will be applicable to the investigations initiated before the regulation enters into force but only if the relevant investigation report is not notified to the parties yet.
- When deciding on the settlement procedure, the Turkish Competition Board (the **TCB**) takes into account the procedural benefits arising from the swift conclusion of the investigation and the different views concerning the existence of a violation and its scope including:
  - number of the investigated parties;
  - whether a significant part of the parties applied for the settlement procedure;
  - scope of the violation and the evidences; and
  - whether it is possible to reach a conclusion as to the existence of violation and its scope.
- TCB may decide to terminate the settlement procedure (partially or as a whole) if:
  - the expected procedural benefits cannot be achieved, or it is not possible to reach a common understanding with the investigated parties as to the existence and scope of the violation;
  - there is a risk of obscuring evidence; and
  - parties fail to comply with the confidentiality obligation specified in the regulation.

#### Initiation of the settlement procedure

The TCB, *ex officio* or upon parties' request, can initiate the settlement procedure after an investigation is launched.

**Upon application:** The investigated parties submit their settlement requests to the TCA in writing. The TCB may accept or reject this request, as well as decide to invite other parties to settlement meetings, if any.

**Ex officio:** The TCB invites the investigated parties to settlement meetings. Investigated parties should respond to the TCA in writing stating whether or not they wish to participate in the settlement meetings within a reasonable period of time to be included in the TCB's invitation.

### **Settlement meetings**

- Settlement meetings start as soon as practically possible upon the acceptance of the TCB or the parties, as the case may be. Investigated parties can withdraw from the settlement procedure until the submission of the settlement letter.
- In case the settlement procedure includes more than one party, meetings shall be conducted separately and recorded with meeting minutes.
- During the settlement meetings the investigated parties shall be informed regarding:
  - allegations against the investigated parties;
  - scope and the duration of the alleged violation;
  - evidences that constitute the basis of the allegation (provided that the confidential information are redacted);
  - envisaged deduction in the administrative fine; and
  - an envisaged range of the administrative fine to be applied

### **Interim decision of the TCB**

Following the completion of the settlement meetings, the TCB renders its interim decision that includes:

- type, scope and duration of the violation;
- rates for minimum and maximum administrative fine;
- deduction rate to be applied as a result of the settlement proceeding;

*If the maximum administrative fine exceeds 10% of the annual gross revenue of the undertakings and associations of undertakings, the exceeding amount will be decreased to 10% of the annual gross revenue of the undertakings and associations of undertakings and the deductions shall be applied based on this amount.*

- minimum and maximum deduction rates to be applied as a result of active cooperation of the investigated party, if applicable;

*If the relevant undertaking has also submitted a leniency application, the deduction rate to be determined as per the Active Cooperation Regulation is added to the discount rate to be determined for the settlement and applied together.*

*Application of the Active Cooperation Regulation: Undertakings can y submit applications to benefit from the Active Cooperation Regulation until the settlement letter is submitted. In case the settlement procedure is terminated, the time limits envisaged under the Active Cooperation Regulation shall apply.*

- rate and amount of the minimum and maximum administrative fine to be applied;
- deadline for the submission of the settlement letter (maximum 15 days); and
- statement that the TCB will not be bound with the letter if it is not submitted within the specified deadline.

The issues included in the interim decision cannot be negotiated by the investigated parties.

### **Settlement letter**

If the undertaking participating in the settlement procedure accepts the content of the interim decision, they submit a settlement letter in writing indicating:

- the existence of, scope, duration and consequences of the violation and its liability arising thereof;

*This part of the letter may be submitted orally. In that case, such statement will be reflected in a letter drafted by a TCA personnel and confirmed by the representatives of the relevant undertaking.*

- that the undertaking accepts the rate and amount of the maximum administrative fine the TCB may impose;
- that the undertaking was informed about the allegations against itself and had the sufficient opportunity to explain its position; and
- that the undertaking will not challenge the administrative fine or any other issue covered under the settlement letter before the courts.

### **Final decision on the settlement**

Within 15 days starting from the date the settlement letter is submitted to the TCA, the investigation is terminated by the TCB with a final decision that includes a finding on the violation and the determined administrative fine.

In addition to those stipulated under article 52 of the Competition Law, the final decision on the settlement includes the following:

- allegations against the undertaking participating in the settlement procedure;
- type, scope and duration of the violation;
- evidences that constitute the basis of the allegation;
- applied deduction rate and the administrative fine; and
- the fact that the undertaking participating in the settlement procedure accepts the administrative fine

In cases where the investigation continues for at least one undertaking or association of undertakings, the final decision on the settlement is not notified to the undertaking participated in the settlement procedure, before the final decision on the investigation is rendered.

### **Confidentiality requirements**

The Draft Regulation requires parties participating in the settlement procedure to keep the content of the settlement meetings as well as the information and documents which may be available to them during the settlement meetings confidential until the final decision on the settlement is rendered. If the TCA finds out that the confidentiality obligation is breached after the final decision is rendered, it may initiate a new investigation

against the relevant undertakings and association of undertakings. The violation of the confidentiality obligation shall also be considered as an aggravating circumstance when determining the administrative fine.

### What happens if the settlement procedure fails?

The ordinary course of an investigation shall be followed in case (i) the relevant undertaking does not submit the settlement letter on time; (ii) the TCB decides to terminate the settlement procedure; or (iii) the relevant undertaking withdraws from the settlement procedure.

In such a scenario, the statements submitted by the relevant undertaking within the scope of the settlement meeting are excluded from the investigation file and cannot be used as a basis in the final decision to be rendered in the investigation.

### Conclusion

Although the Draft Regulation is definitely another important step for the development of the Turkish competition law enforcement, it is still not certain as to what extent the settlement procedure, which have its origins in the US and then the EU competition law, will be internalized by the players in the Turkish market. We will closely follow the developments on this area and update our readers accordingly.

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