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NEW REGULATION ON ACTIVE COOPERATION TO UNCOVER CARTELS ENTERS INTO FORCE

The Regulation on Active Cooperation for the Purpose of Uncovering Cartels, governing the procedures and principles for cooperation with the Turkish Competition Authority ("**TCA**") to uncover cartels and getting immunity from or leniency in fines was in force since 2009. The said regulation was replaced by the new Regulation on Active Cooperation for the Purpose of Uncovering Cartels ("**Active Cooperation Regulation**") which was published in the Official Gazette dated 16 December 2023 and entered into force on the same date.

The important changes introduced by the Active Cooperation Regulation are summarized below.

1. Significant Substantial Changes

The Active Cooperation Regulation defines the concept of "applicant" and provides that undertakings and associations of undertakings, as well as their executives and employees, may independently apply for active cooperation. In this context, it emphasizes the important role executives and employees play in the ranking for the reduction of fines.

The Active Cooperation Regulation defines "cartel facilitators" as undertakings and associations of undertakings that facilitate the establishment of a cartel agreement between competitors through their activities without being party to the cartel agreement. Accordingly, the new regulation provides cartel facilitators with the opportunity to apply for active cooperation with the TCA and receive immunity from or reduction in fines. Cartel facilitators may also benefit from the Active Cooperation Regulation concerning infringements committed by competitors through indirect communications via a common third party, referred to as "hub and spoke" cartels. Considering

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that such undertakings are held liable for the infringement in the same way as cartel parties, the new regulation is expected to be beneficial in terms of encouraging active cooperation.

Unlike the previous regulation, the Active Cooperation Regulation requires applicants who want to benefit from a reduction in fines to submit value-added documents to the TCA. Value-added documents are information and documents that strengthen the Authority's ability to prove the existence of a cartel, considering the available evidence in the file. In addition, if an active cooperation application is rejected due to the failure to meet the value-added document criteria, information and documents submitted by the rejected applicant will be excluded from the scope of the case and will not be used as a basis for the final decision.

The Active Cooperation Regulation has also amended the upper and lower limits for reductions in fines. The lower limits of the reductions to be applied to fines have been reduced for all applicants, while the upper limits of the reductions to be applied to the second and other applicants have been increased. The lower limit of the discount for the first applicant has been reduced from one-third to 25%; the lower limit of the discount for the second applicant has been reduced from 25% to 20%; and the lower limit of the discount for other applicants has been reduced from one-sixth to 15%. The discount rates for applicants who are executives and employees have been similarly reduced.

Finally, the Active Cooperation Regulation addresses the circumstance where an applicant applies concerning a cartel agreement, but the Competition Board determines that the infringement in question does not constitute a cartel but falls under the category of "other infringements". In such cases, the Active Cooperation Regulation will still be applicable, and the applicants will be subject to the discount rates set forth in the Active Cooperation Regulation, even if the Competition Board has not found the existence of a cartel agreement.

2. Significant Procedural Changes

The Active Cooperation Regulation also introduces important procedural changes. First of all, it has limited the time period for filing an active cooperation application. Accordingly, applicants are required to submit their applications within three months following the investigation notice. It can be inferred that the TCA aims to accelerate active cooperation processes, which is a significant tool for obtaining evidence in cartel cases.

The scope of the information and documents to be submitted regarding the cartel has been defined to include other information and documents such as the geographical scope of the cartel, the names of the cartel facilitators and the tools used for the cartel meetings. Furthermore, the Active Cooperation Regulation emphasizes that the applicant must show utmost care and diligence in seeking the information of its current and former executives and employees when deemed necessary. Lastly, if the applicant obtains additional information and documents about the cartel, it must submit such information and documents to the TCA immediately, before the second written defense period ends.

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Conclusion

The recently adopted Active Cooperation Regulation incorporates important amendments to align with both the developments encountered in enforcement practice and the recent amendments to the legislation as well as to make the active cooperation mechanism a more effective tool.

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