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A NEW PROCEDURE IN COMPETITION LAW: SETTLEMENT

One of the significant amendments to Law No. 4054 on the Protection of Competition (the "**Competition Law**") was the introduction of the settlement mechanism into Turkish competition law on 24 June 2020. The settlement procedure, which has been in force in the EU and many EU countries, such as France and the UK, can be simply defined as a reduction in administrative fines in return for the admission of a competition law violation by an investigated undertaking. Article 43 of the Competition Law states that if an undertaking admits the existence and alleged scope of a competition law violation, it will benefit from a reduction of up to 25% of the administrative fine imposed at the end of the investigation. The procedures and principles regarding the settlement procedure have been introduced with the Regulation on Settlement Procedure to be Applied to Investigations Regarding Anti-Competitive Agreements, Concerted Practice and Decisions and Abuse of Dominant Position (the "**Settlement Regulation**"), which entered into force on 15 July 2021.

Scope of Settlement

A settlement procedure may be applied to investigations concerning anti-competitive agreements, concerted practice and decisions, as well as investigations concerning abuse of dominant position. As per the Competition Law and Settlement Regulation, a settlement procedure can be initiated upon the request of an undertaking under investigation or ex officio by the Competition Board (the "**Board**"). Accordingly, the Board will grant the undertaking a definite term in which to submit a settlement letter to accept the existence and scope of the relevant violation.

As per the Settlement Regulation, the Board may consider the following factors in its decision to initiate a settlement process: (i) the number of parties to the investigation, (ii) whether a significant number of investigated parties applied for the settlement, (iii) the scope of the violation and the nature of evidence, and (iv) the probability of reaching a joint agreement

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with the investigated parties regarding the existence and scope of the violation. Accordingly, initiating a settlement procedure is the Board's sole discretion.

The Settlement Regulation allows for hybrid settlements. In other words, in cases where there are multiple parties to an investigation, a settlement procedure may only be initiated for the parties that choose to settle. Therefore, it is not mandatory for all of the parties to apply for settlement.

The Settlement Regulation also clarifies the application of the Regulation on Active Cooperation for Detecting Cartels (the "**Active Cooperation Regulation**") into the settlement procedure. In this regard, the Settlement Regulation states that parties applying for settlement will also be able to benefit from an active cooperation reduction in the fined amount. Therefore, the reduction rates determined within the scope of the Active Cooperation Regulation and the settlement procedure will be combined and applied altogether when calculating the overall reduction on the administrative monetary fine. However, the investigated parties are not entitled to apply for a reduction based on the Active Cooperation Regulation, once the settlement letter is submitted to the Turkish Competition Authority.

Settlement Negotiations

According to the Settlement Regulation, the settlement negotiations will commence as soon as possible if the Board accepts the settlement requests, or if the investigated undertakings accept the Board's settlement invitation in due time. If the Board initiates the settlement process *ex officio*, the investigated undertakings must notify the Board on their willingness to proceed with the settlement negotiations within fifteen days following receipt of the settlement invitation. The settlement negotiations will be recorded in written form as agreed by the undertakings participating the settlement meetings. According to the Settlement Regulation, participation in the settlement meetings does not imply admission of the alleged competition law violation. Therefore, parties have the right to withdraw from the settlement process until the settlement letter has been submitted. The Settlement Regulation also ensures that all of the information and documents submitted by the withdrawing parties in the settlement negotiations will be excluded from the scope of the case file and, thus, cannot constitute a basis for the Board's final decision on the investigation.

Settlement Interim Decision and Settlement Letter

According to the Settlement Regulation, the Board will render an interim decision upon the settlement negotiations. The interim decision will include (i) the nature and scope of the alleged violation, (ii) the upper limit of the administrative monetary fine to be calculated as per the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, (iii) the reduction rate to be applied as a result of the settlement procedure, (iv) the reduction rate to be applied based on the Active Cooperation Regulation, if any, and (v) the upper limit of the penalty rates and amounts to be imposed. By stipulating a reduction rate to be determined between 10% and 25%, the Settlement Regulation sets a lower limit at the Board's discretion on the reduction rate.

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The settling party will submit a settlement letter to the Board if it accepts the context of the interim decision. To cease the investigation for the settling party, the Board will render a final decision within fifteen days upon the submission of the settlement letter, which will include the establishment of a violation and the administrative monetary fine to be imposed. The parties submitting a settlement letter are not entitled to file a lawsuit against the administrative fine nor any other matters specified by the Board in the settlement letter.

The Settlement Regulation also regulates that a duly submitted settlement letter cannot be withdrawn. Therefore, the investigated parties are not entitled to withdraw from the settlement procedure once the settlement letter is submitted. However, if there are missing issues which should be included in a settlement letter already submitted, the Board will grant the party submitting the settlement letter a period of seven days in which to complete the missing issues. If these deficiencies are not remedied within this period, the Board will terminate the settlement process.

Conclusion

The introduction of the Settlement Regulation has been a significant development in terms of increasing the predictability of the application of the settlement procedure. The Settlement procedure will ensure more efficient use of public resources. In addition, the undertakings will benefit from shorter investigation periods and significant reductions in administrative fines.

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