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# New settlement regulation enters into force

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### Introduction

On 15 July 2021 the Turkish Competition Authority (the Authority) issued the Regulation on Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position (the Settlement Regulation), also published in the Official Gazette of the Republic of Turkey on the same day.<sup>(1)</sup>

The legal basis of the Settlement Regulation is article 43 of Law 4054 on the Protection of Competition, as amended by Law 7246 on 24 June 2020.<sup>(2)</sup> As per article 43 of Law 4054, after initiating an investigation and before the investigation report is released to the parties, the Turkish Competition Board (the Board) may, upon the request of the parties concerned or on its own initiative, commence the settlement procedure. The relevant article also provides that the rules and procedures of the settlement procedure will be established by a regulation to be issued by the Board.

In light of this authority on secondary legislation, the Board initially prepared a draft regulation on settlements (the Draft Settlement Regulation) that opened for public consultation earlier in 2021. The published Settlement Regulation is a result of the Authority's assessment of the results of the public consultation.<sup>(3)</sup>

This article aims to illustrate the main differences between the Draft Settlement Regulation and the Settlement Regulation.

### Initiating settlement mechanism

The Settlement Regulation stipulates that the Board may delay rendering a decision under article 5(1) regarding the parties' request to initiate settlement procedures if more detailed research is deemed necessary to reveal the nature and scope of the alleged violation.

In addition, article 5(3) of the Settlement Regulation provides that if the Authority *ex officio* invites the investigation parties to settlement negotiations, the parties should declare whether they accept the invitation to initiate settlement negotiations with the Authority within 15 days, whereas the Draft Settlement Regulation had merely stated "within reasonable time".

With this change, the relevant article has become more compatible with the principle of legal certainty and has removed the ambiguity of the concept of "reasonable time", which may have resulted in the loss of rights on the part of the investigated authorities, if they failed to pinpoint what the Board would consider "reasonable".

### Settlement negotiations

Article 6 of the Settlement Regulation concerning the negotiation phase states that the settlement negotiations shall start as soon as the Board accepts the settlement request, or the investigation parties duly accept the Board's invitation. As such, the Settlement Regulation has maintained the wording of the Draft Settlement Regulation. That said, had the Settlement Regulation set forth a specific time for the initiation of the negotiation phase, it would have served better in terms of legal certainty.

In a similar vein, article 6(5) of the Settlement Regulation has removed the burden for the case handlers to inform the parties about the "duration" of the alleged violation. However, it would have been more accurate in terms of legal certainty if the Settlement Regulation had kept the reference to the duration as well as adding the requirement for parties to acknowledge the time interval in which the violation is evaluated.

The Settlement Regulation has made the same change to the wording of articles 7(1) and 9(2) pertaining to the interim and final settlement decisions, and has removed the references to the duration of the infringement.

### Settlement letter

As per article 8 of the Settlement Regulation, after the interim decision is issued, if the parties agree on the matters set forth in the article, they will submit a settlement letter including, *inter alia*, an express declaration of admission of the existence and scope of the violation.

The extent of the admission requirement has been pared down from that set out under the Draft Settlement Regulation, where the settlement parties had been obliged to admit the duration and consequences of the violation, and the liabilities arising from it.

One of the most significant changes in the Settlement Regulation is that if there are deficiencies in the settlement letter submitted, the Board will grant, once the parties fail to correct the deficiencies. This amendment in the Regulation will allow the parties an opportunity to correct wording that may have been inadvertently incomplete or mistranslated, and would therefore prevent the intended procedural benefits of the settlement procedure from being lost after the procedure was fully implemented.

## Finalising settlement procedure

The Settlement Regulation states that the Board must set out the reasons for its decisions:

- to terminate the procedure for the reasons stated under article 4(6); or
- to reject the settlement request as per article 5(1), in its final settlement decision.

With this change, article 11(2) is now compatible with the duty of public authorities and administrations to give reasons and justify their decisions or actions.

The Regulation has also added a provision under article 11 prohibiting the resubmission of a request for settlement in cases where:

- the process had not resulted in settlement;
- the invitation sent by the Board within the framework of article 5 was not accepted; or
- the invitation was not answered within the time limit.

## Reduction of fines

Article 4(4) of the Settlement Regulation provides that the Board has the discretion to grant a settlement reduction of between 10% and 25%, indicating that the actual reduction of the fine due to settlement would not be less than 10%. With this minimum reduction rate, which was not present in the Draft Settlement Regulation, it is considered that resorting to the settlement mechanism will be more attractive to the parties under investigation.

## Comment

Although the Settlement Regulation is similar to the Draft Settlement Regulation in essence, it differs from the Draft Settlement Regulation in certain aspects. The Settlement Regulation sets forth that the Board may delay its decision given under article 5(1) if further detailed research is needed, and introduces certain amendments in order to better observe the principles of legal certainty and reasoned decision-making.

Also, the Settlement Regulation vests the Board with the authority to grant an additional seven days' to resubmit a settlement letter if there are deficiencies in the original, which the Draft Settlement Regulation did not.

While it is noteworthy that the amendments to the Draft Settlement Regulation have made the settlement mechanism more attractive and bolstered the legal principles of procedural efficiency, legal certainty, and administrative accountability, there may yet be a few issues to address in the future.

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## Endnotes

- (1) Further information is available [here](#).
- (2) Further information is available [here](#).
- (3) Further information is available [here](#).