

Amendments in the Regulation on Active Cooperation for Detecting Cartels

After the draft publication and a webinar conducted by the Turkish Competition Authority ("Authority"), a new Regulation on Active Cooperation for Detecting Cartels, known as the "Leniency Regulation", was officially released in Turkey via the Official Gazette and came into effect on December 16, 2023. This regulation replaced the former leniency regulation that had been in effect since February 15, 2009, referred to as the "Former Regulation".

Under the Leniency Regulation, the leniency program is now accessible to not only the parties involved in cartels but also to cartel facilitators. This expansion of the program's scope grants full immunity to participants in hub-and-spoke cartels and other facilitators, who are subject to administrative sanctions in the same manner as cartel participants. This broadens the avenues for the Authority to accept leniency applications. According to the Leniency Regulation, parties involved in cartels or cartel facilitators who provide the necessary information and documents and meet the specified conditions can apply for leniency within three months after receiving an Investigation Notice. Furthermore, if an applicant acquires additional information and documents after the initial application, they can submit these materials before the conclusion of the second written defense period.

To qualify for immunity or a reduction in fines under the Leniency Regulation, applicants must satisfy the following conditions:

- Submission of information about the products affected by the cartel
- Disclosure of information regarding the geographical scope of the cartel.
- Provision of information on the duration of the cartel.
- Disclosure of the names, trade names, and addresses of the cartelists and cartel facilitators.
- Reporting the dates, locations, and participants of cartel meetings.
- Furnishing any other relevant information or documents related to the cartel activity.

In line with European Union legislation, the Leniency Regulation introduces an additional requirement for applicants to be eligible for a fine reduction. This requirement stipulates that applicants must provide documents considered valuable, defined in the Leniency Regulation as information and/or documents that will strengthen the Board's ability to prove the existence of the cartel, taking into account the evidence already



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in the possession of the Board. This requirement aims to distinguish clearly between the active cooperation procedure and the settlement procedure. While the Leniency Regulation provides only a basic definition of "documents that hold value," it is expected that the forthcoming revised Guideline on Leniency Programs will offer more comprehensive guidance on determining which documents qualify as valuable. Additionally, if a leniency application from a particular undertaking is rejected due to its submitted documents not meeting the criteria of "documents that hold value," the information and documents provided by that undertaking will be excluded from the scope of the file. Consequently, they will not serve as a basis for the final decision made at the conclusion of the investigation.

It is noteworthy that the Leniency Regulation has broadened the scope for submitting information and documents to encompass meetings conducted in digital environments, as well as the pertinent information and documents generated during these digital interactions.





Practice Area News

The Provision of False or Misleading Information or Document. In its decision (August 17, 2023, 23-39/752-261), the **Board** emphasized the importance of the accuracy of the submitted information or documents, where the investigated high school has been imposed an administrative fine as the Authority separately calculated the course fees based on a submitted table differently than the actual fees provided by the undertaking within one of its previously submitted response petitions.

The Prevention of On-Site Inspection. According to the separate opinion of a Board member provided in the decision (August 17, 2023, 23-39/717-246), due to the ongoing judicial review of an individual application process concerning the **Constitutional Court's** violation decision related to on-site inspections, the **Authority** retains the authority to carry out on-site inspections. However, the separate opinion advised that decisions regarding cases involving administrative fines should be deferred until a clear legal precedent is established.

The Board's Approach towards the Re-evaluation of the Commitments. In its decision (August 3, 2023, 23-36/684-236), the **Board** reevaluated BSH's online sales commitments for authorized sellers, notably against Arçelik's newly imposed 15% online sales restriction for its dealers—a condition not present when BSH's original commitments were established. This reassessment, driven by significant market shifts, led to the modification of BSH's online sales criteria and two new criteria, directly addressing the competitive and regulatory dynamics highlighted by Arçelik's allowed restrictions.

Annual Mergers and Acquisitions Outlook Report for the Year 2023. Throughout 2023, the **Authority** conducted reviews on 217 mergers, acquisitions, and privatizations, with 94 targets based in Turkey. The total transaction value for the 97 deals involving Turkey-based companies amounted to TRY 163 billion (approx. EUR 5 billion). In contrast, transactions between foreign entities reached TRY 57,362 trillion (approx. EUR 1.746 trillion), underscoring the substantial scale and international dimension of these operations.

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