

The Settlement Regulation has been published by the Turkish Competition Authority

3 Sep 2021

Regulation on Settlement Procedure Applicable in Investigations Regarding Abuse of Dominant Position, Concerning the Restriction of Competition Agreement, Concerted Actions and Decisions ("**Settlement Regulation**"), which is secondary legislation as regards settlement in competition violations has been published in the Official Gazette on 15 July 2021 with number 31542 and entered into force.

Pursuant to article 43 of Law numbered 4054 on the Protection of Competition ("**Law**"), it is possible to reach an agreement between investigated undertakings and the Turkish Competition Authority ("**TCA**") in investigations initiated against violation of articles 4 and 6 of the Law. The settlement procedures and principles are regulated by the Settlement Regulation.

Settlement Process

After the commencement of an investigation, the Turkish Competition Board ("**Board**") may initiate the settlement process upon the request of the parties to the investigation or *ex officio*. (*Settlement Regulation, article 4/1*)

In initiating the settlement process, the Board takes into account the procedural benefits to be arisen from the quick and early completion of the investigation process and the differences of opinion regarding the existence or scope of the violation. In this context, the Board may consider the following:

- Number of investigation parties,
- Whether a significant number of the parties to the investigation resorted to settlement,
- The scope of the violation and the nature of the evidence,
- Whether it is possible to reach a conclusion with the investigated parties regarding the existence and scope of the violation (*Settlement Regulation, article 4/2*).

It is possible for the Board to settle with the investigation parties who accept the existence and scope of the violation until the notification of the investigation report. (*Settlement Regulation, article 4/3*)

Termination of Settlement Process

The Board may decide to terminate the settlement process for all or some of the parties until the final settlement decision is rendered in the following cases:

- Where it is understood that the expected procedural benefit from the ongoing settlement process cannot be achieved or that it is not possible to reach a conclusion with the investigation parties regarding the existence and scope of the violation,
- Where there is a danger of obfuscation of the evidence,
- In case of failure to fulfill the confidentiality obligation regarding the content of the settlement negotiations and within the scope of the settlement negotiations (*Settlement Regulation, article 4/6*).

Settlement Procedure

The parties to the investigation submit their requests for settlement to the TCA in writing. By taking into account the elements in article 4(2) of the Settlement Regulation, the Board may:

- accept the settlement request,
- refuse the settlement request, or
- decide to invite other parties, if any, to settlement meetings (*Settlement Regulation, article 5/1*).

In addition, if a deeper investigation is needed to reveal the nature and scope of the alleged violation at the stage of the parties' request for settlement, the Board may postpone its decision (*Settlement Regulation, article 5/2*).

In cases where the Board initiates a settlement process ex officio, it invites the parties to settlement negotiations. Within 15 days from the receipt of this invitation, the parties notify the TCA in writing on whether they accept to start the negotiations. Notifications made after this period is not taken into account (*Settlement Regulation, article 5/3*).

The commencement of settlement negotiations is not deemed that the settlement parties have accepted the alleged violation against them. The parties to the settlement may withdraw from the settlement process until the submission of the settlement letter (*Settlement Regulation, article 6/2*).

During the negotiations, the parties may obtain information on:

- the content of the allegations against the relevant party;
- the nature and scope of the alleged violation;
- the primary evidence used to determine the alleged violation;
- potential reduction rates for administrative fines; and
- the range of potential administrative fines (*Settlement Regulation, article 6/5*).

Settlement negotiations are recorded with the minutes agreed by the participants in the negotiations. These minutes are kept as internal correspondence within the TCA (*Settlement Regulation, article 6/4*).

Interim Settlement Decision

Following the completion of the settlement negotiations, the Board concludes its interim decision regarding the process. The decision includes the following:

- The nature and scope of the alleged violation,
- The calculated maximum rate of administrative fine,
- The reduction rate to be applied as a result of the settlement procedure,
- The reduction rate to be applied within the scope of active cooperation, if any,
- The maximum rate of administrative fine and amount to be imposed,
- A definite period (max. 15 days) for the relevant party to submit the settlement letter to the TCA,
- If the settlement letter is not sent in due time, the Board will not be bound by the matters included in the interim decision (*Settlement Regulation, article 7/1*).

Penalty Reduction Rates

As a result of the settlement procedure, a reduction from 10% up to 25% can be applied to the administrative fine (*Settlement Regulation, article 4/4*).

The maximum administrative fine calculated is determined by the annual gross income of the undertaking and the associations of undertakings or the members of these unions generated **(i)** at the end of the fiscal year preceding the final settlement decision, or **(ii)** at the end of the fiscal year closest to the date of the settlement final decision. If it is not possible to calculate **(ii)** and/or if the amount exceeds 10% of the annual gross income to be determined by the Board, the fines exceeding this rate are reduced to 10% of the annual gross income of the relevant undertakings.

Once the amount is determined, the settlement reduction is applied over it. (*Settlement Regulation, article 7/2*).

In case an undertaking makes a leniency application along with the settlement process, both the reduction rate regulated within the scope of active cooperation arrangements and the reduction rate determined for settlement are added and applied together (*Settlement Regulation, article 7/3*).

Settlement Letter

If the settlement party accepts the matters stated in the interim settlement decision, it submits a settlement letter containing the following elements:

- A clear statement by the settlement party that it acknowledges the existence and scope of the violation,
- The maximum rate of administrative fine and the amount that the Board may impose on the settlement party for violation, and the acceptance of this penalty rate and amount within the framework of the settlement procedure,
- The statement that the settlement party is adequately informed about the allegations against it and provided with sufficient opportunity to convey its views and explanations,
- The statement that the letter fine and the issues in the settlement text cannot be the subject of a lawsuit by the settlement party (*Settlement Regulation, article 8/1*).

If there are outstanding matters in the submitted settlement letter, the Board notifies the parties for once only requests the completion/correction of the letter within 7 days, otherwise the process will not be deemed to have resulted in settlement (*Settlement Regulation, article 8/3*).

Final Settlement Decision

The investigation is terminated regarding the settled party with a final settlement decision by the Board, which includes the detection of violation and administrative fine, within 15 days from the date of entry of the settlement letter into the TCA's records. (*Settlement Regulation, article 9/1*).

The following matters are included in the final settlement decision:

- The content of the allegations against the settlement party,
- The nature and scope of the violation,
- Primary evidence used for the finding of violation of the settlement party,
- The reduction rate applied to the settlement party and the administrative fine given according to the settlement procedure,
- Acceptance of the settlement party regarding the existence of the violation and the administrative fine (*Settlement Regulation, article 9/2*)

In cases where the investigation continues for at least one undertaking or association of undertakings, the final reasoned decision of the settlement is not provided to the settlement party before the final investigation decision is rendered (*Settlement Regulation, article 9/3*).

Non-Settlement

In the following cases, the regular investigation procedure is pursued, deeming that the process did not result in a settlement for the relevant party:

- Failure of the settlement party to send the settlement letter in due time,
- The outstanding matters in the submitted settlement letter are not completed/corrected in due time,
- The Board's decision to terminate the settlement process within the scope of article 4(6) of the Settlement Regulation, or
- Withdrawal of the settlement party from the settlement process in accordance with article 6(2) of the Settlement Regulation (*Settlement Regulation, article 11/1*).

The reasoning of the Board's decision regarding the termination of the settlement process or the rejection of the settlement request is included in the final reasoned decision of the investigation (*Settlement Regulation, article 11/2*).

In cases where the process does not result in settlement, the settlement invitation sent by the Board is not accepted, or this invitation is not answered within the due time, another settlement request cannot be made (*Settlement Regulation, article 11/3*).

You can access the full text of the Settlement Regulation at this [link](#) (Only available in Turkish).

Related Practices

- [Antitrust and Competition](#)
-

Related Attorneys

- [DR. E. SEYF? MORO?LU, LL.M.](#)
-