

**REGULATION ON THE SETTLEMENT PROCEDURE APPLICABLE
IN INVESTIGATIONS ON AGREEMENTS, CONCERTED PRACTICES
AND DECISIONS RESTRICTING COMPETITION AND ABUSES OF
DOMINANT POSITION**

SECTION ONE

Purpose, Scope, Grounds and Definitions

Purpose and scope

ARTICLE 1- (1) The purpose of this Regulation is to set out the rules and procedures concerning the settlement process applicable under Article 43 of the Act no 4054 to those undertakings or associations of undertakings against whom an investigation has been initiated in relation to conduct prohibited under Articles 4 and 6 of the Act on the Protection of Competition, dated 7/12/1994 and numbered 4054, provided they acknowledge the existence and scope of the violation.

Grounds

ARTICLE 2 – (1) This Regulation has been prepared based on Articles 27 and 43 of the Act no 4054.

Definitions

ARTICLE 3 – (1) In this Regulation;

- a) “Active Cooperation Regulation” refers to the Regulation on Active Cooperation for Detecting Cartels, published in the Official Gazette dated 15/2/2009 and numbered 27142,
- b) “Regulation on Fines” refers to the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, published in the Official Gazette dated 15/2/2009 and numbered 27142,
- c) “File” refers to all information and documents obtained, created or collected within the scope of the investigation,
- ç) “Act” refers to the Act on the Protection of Competition no 4054,
- d) “Board” refers to the Competition Board,
- e) “Authority” refers to the Competition Authority,
- f) “Investigation party” refers to the undertakings or associations of undertakings against which an investigation is initiated,
- g) “Settlement” refers to the procedure for concluding the investigation with a final decision by applying a reduction to the administrative fines to be imposed on those parties that acknowledge the existence and scope of the violation,
- ğ) “Interim settlement decision” refers to the decision to be taken by the Board at the end of the settlement negotiations containing the points expected to be included in the text,
- h) “Settlement text” refers to the written statement of the settlement party acknowledging the existence and scope of the violation, prepared following the settlement interim decision,
- ı) “Final settlement decision” refers to the final decision to be taken by the Board at the end of the settlement process,
- i) “Settlement party” refers to the undertaking or associations of undertakings involved in the settlement process initiated upon request or *ex officio*,

SECTION TWO

Settlement Process

General settlement principles

ARTICLE 4 – (1) The Board may initiate the settlement procedure after the investigation has been launched, either upon request of the investigation parties or *ex officio*.

(2) In initiating the settlement procedure, the Board takes into consideration the procedural benefits arising from the rapid conclusion 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 points:

- a) The number of investigation parties,
- b) Whether a considerable portion of the investigation parties applied for settlement,
- c) The scope of the violation and the quality of the evidence,
- ç) Whether it is possible to arrive at a common understanding with the investigation parties regarding to the existence and scope of the violation.

(3) The Board may settle with those investigation parties who acknowledge the existence and scope of the violation until the notification of the investigation report.

(4) A reduction of ten percent to twenty-five percent may be applied to the administrative fines as a result of the settlement procedure.

(5) In the event that the process is concluded with a settlement, the administrative fines imposed and the points included in the settlement text shall not be actionable by the settlement parties.

(6) In the following cases, the Board may decide to terminate the settlement procedure for all or some of the settlement parties until the final settlement decision is taken:

- a) If it becomes clear that the ongoing settlement process will not result in the expected procedural benefits or that it is impossible to arrive at a common understanding with the investigation parties regarding the existence and scope of the violation,
- b) If there is a risk of obscuring the evidence,
- c) If there is a failure to fulfill the confidentiality obligation specified in Article 12.

Initiation of the Settlement Process

ARTICLE 5 – (1) The investigation parties submit their settlement requests to the Authority in writing. The Board may accept or reject this request, in consideration of the points listed in the second paragraph of Article 4, or it may decide to invite the other parties, if any, to the settlement negotiations.

(2) When the parties apply for settlement, if more detailed research is needed to reveal the nature and scope of the alleged violation, the Board may postpone its decision under the first paragraph.

(3) If the Board initiates the settlement process *ex officio*, it invites the investigation parties for settlement negotiations. Within fifteen days following the notification of the aforementioned invitation, the investigation parties notify the Board in writing on whether they wish to start settlement negotiations. Any statement made after the expiration of this period is not be taken into consideration.

Settlement negotiations

ARTICLE 6 – (1) If the Board accepts the request of the investigation parties or if the investigation parties accept the invitation sent by the Board within the due period, the Authority launches settlement negotiations with the relevant parties as soon as possible.

(2) Initiation of the settlement negotiations does not mean that the settlement parties have accepted the alleged violation. Settlement parties may withdraw from the settlement procedure until the submission of the settlement text.

(3) In case settlement negotiations have been initiated with more than one settlement party, it is essential that the negotiations be conducted separately.

(4) Settlement negotiations are recorded in the minutes agreed upon by the participants of the negotiations. These minutes are kept as internal correspondence.

(5) During the settlement negotiations, it is ensured that the settlement party gets information on the following matters, provided that the security of the investigation is not endangered:

a) The content of the allegations concerning the settlement party,
b) The nature and scope of the alleged violation,
c) Primary evidence that form the basis of the allegation of violation concerning the party of the settlement, provided that it is limited to informing the relevant party on the nature and scope of the alleged violation and is stripped of any trade secrets and confidential information,

ç) The discount rate to be applied if the process is concluded with a settlement,

d) The range of administrative fines that can be imposed on the settlement party.

(6) In the settlement negotiations, the settlement party gives its opinion on the issues included in paragraph five.

Interim settlement decision

ARTICLE 7 – (1) Following the conclusion of the settlement negotiations, the Board gives its interim decision concerning the process. The decision includes the following:

a) The nature and scope of the alleged violation,

b) The rate of the maximum administrative fines calculated under the Regulation on Fines,

c) The discount rate to be applied as a result of the settlement procedure,

ç) The discount rate to be applied, if any, under the Active Cooperation Regulation,

d) The rate and amount of the maximum administrative fines to be imposed,

e) The precise period of time granted for sending the settlement text to the Authority, not exceeding fifteen days,

f) The fact that the Board will not be bound by the terms included in the interim decision if the settlement text is not sent in due time,

(2) If the maximum administrative fines calculated within the scope of the Regulation on Fines exceeds ten percent of the annual gross revenues of the undertakings, associations of undertakings or their members generated at the end of the financial year before the final settlement decision, or, if this cannot be calculated, their annual gross revenues generated at the end of the financial year closest to the date of the final settlement decision, as determined by the Board, then any fine exceeding this rate is discounted down to ten percent of the annual gross revenues of the undertakings, associations of undertakings or their members to be fined, and the settlement discount is applied over this amount.

(3) If there is a leniency application together with the settlement process, the discount rate determined within the scope of the Active Cooperation Regulation and the discount rate determined under the settlement procedure are added and applied together.

(4) Matters included in the interim settlement decision cannot be made a subject of negotiation by the settlement parties .

Settlement text

ARTICLE 8 – (1) If the settlement party accepts the points laid out in the interim settlement decision, it submits a settlement text containing the following:

a) A clear statement by the settlement party acknowledging the existence and scope of the violation,

b) The maximum rate and amount of the administrative fines that the Board may impose on the settlement party for the violation, and that the party accepts the rate and amount of these fines within the framework of the settlement procedure.

c) A statement that the settlement party was adequately informed about the allegations against itself and sufficient opportunity was given to the party to convey its views and explanations.

ç) A statement that the administrative fines imposed and the matters included in the settlement text would not be taken to court by the settlement party.

(2) The settlement text must be signed by the persons authorized to represent the settlement party and presented in writing. However, the statement concerning the points in the first paragraph can also be presented verbally. In that case, after the statement is made, the assigned professional personnel transcribe the statement and get the transcription confirmed by the persons authorized to represent the settlement party. The settlement text is stored as internal correspondence.

(3) If there is anything missing in the submitted settlement text, for one time only, the Board notifies the parties that these should be filled in within seven days, and that otherwise the first paragraph of Article 11 would be applied.

(4) The duly submitted settlement text may not be withdrawn.

Final settlement decision

ARTICLE 9 – (1) Within fifteen days following the entry of the settlement text into the Authority records, the investigation is concluded for the relevant party with a Board decision establishing the violation and setting out the administrative fines imposed.

(2) In addition to the matters specified in Article 52 of the Act, the final settlement decision also includes the following:

a) The content of the allegations made about the settlement party,

b) The nature and scope of the violation,

c) Evidence on the settlement party that forms the basis for the establishment of the violation,

ç) The discount rate applied to the settlement party and the administrative fines imposed according to the settlement procedure,

d) That the settlement party acknowledged the existence of the violation and accepted the administrative fines.

(3) Where the investigation is continuing for at least one undertaking or association of undertakings, the reasoned final settlement decision is not notified to the settlement party before the final decision to be made at the end of the investigation is taken.

SECTION THREE

Special Provisions

Application of the Active Cooperation Regulation during the settlement process

ARTICLE 10 – (1) Undertakings parties to the settlement may make a separate application in order to benefit from Articles 4 and 5 of the Active Cooperation Regulation. However, in terms of those who submit a settlement text, any application made within the framework of the Active Cooperation Regulation after the date of entry of this text into the Authority records is not taken under consideration.

(2) The periods stipulated in the Active Cooperation Regulation are applied if the process does not result in a settlement.

Conclusion of the process without a settlement

ARTICLE 11 – (1) Where the settlement party does not send the settlement text in due time, where the missing elements in the settlement text sent are not corrected in due time, where the Board decides to terminate the settlement process under Article 4.6, or where the settlement party withdraws from the settlement process in accordance with Article 6.2, it is considered that the process did not result in a settlement for the relevant party and the ordinary investigation procedure is followed. In this case, the information and documents submitted by the settlement

party as part of the settlement negotiations are excluded from the scope of the file and are not used as a basis for the final decision to be taken as a result of the investigation.

(2) The grounds for the Board decision terminating the settlement procedure under Article 4.6 or rejecting the settlement request under Article 5.1 is included in the final decision.

(3) Where the process does not conclude with a settlement, where the invitation sent by the Board within the framework of Article 5 is not accepted, or where this invitation is not answered within the due time period, another settlement request may not be submitted.

Confidentiality Obligation

ARTICLE 12 – (1) The settlement party keeps the content of the settlement negotiations and the information and documents it accessed within the scope of these negotiations confidential until the final decision to be taken regarding the other parties to the investigation.

(2) If it is determined, after the final settlement decision, that the confidentiality obligation has been violated, this decision may be withdrawn, and a new investigation may be launched against the relevant undertaking or association of undertakings.

(3) Violation of the confidentiality obligation may be considered an aggravating factor in determining the administrative fines to be imposed on the undertakings or associations of undertakings in the investigation to be launched under the second paragraph.

SECTION FOUR

Provisional and Final Provisions

Ongoing investigations

PROVISIONAL ARTICLE 1 – (1) The provisions of this Regulation also applies to investigations started before its entry into force but for which the investigation report has not been notified.

Entry into Force

ARTICLE 13 – (1) This Regulation enters into force on the date of its publication.

Execution

ARTICLE 14 – (1) The provisions of this Regulation are executed by the President of the Competition Authority.