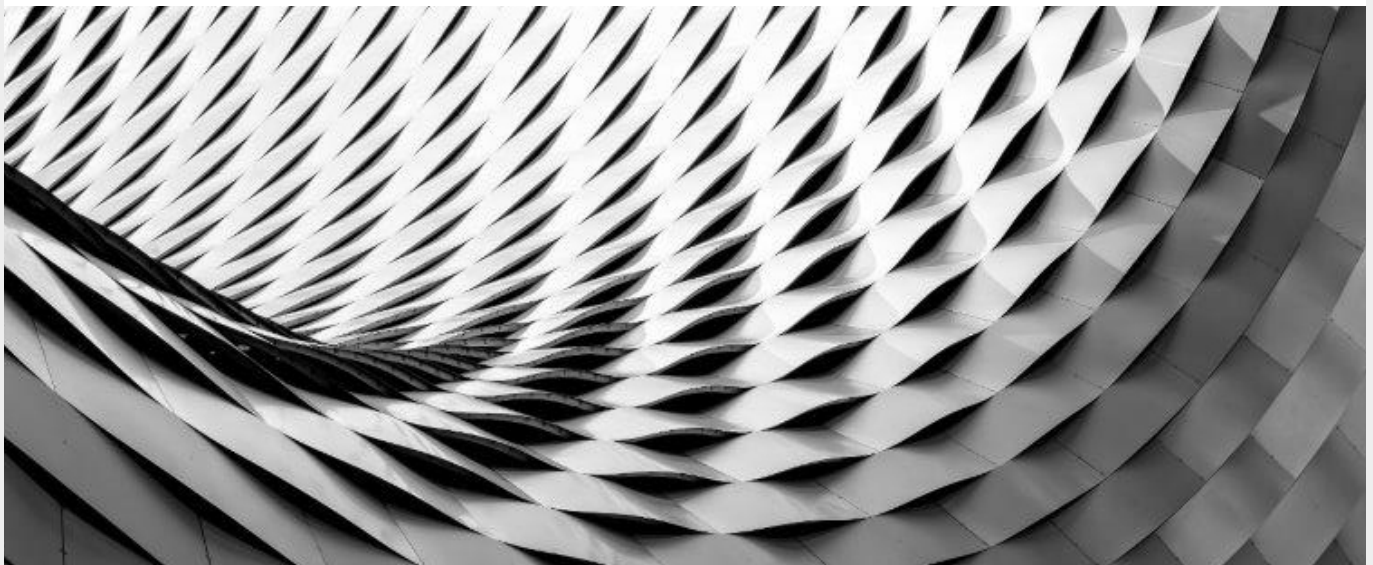


New Turkish Leniency Regulation enters into force

December 2023



Dear Clients, Colleagues and Friends,

The Regulation on Active Cooperation for Detecting Cartels (“**New Active Cooperation Regulation**” or “**New Leniency Regulation**”), which provides immunity from fines or reduction in fines to undertakings, undertaking managers and employees who actively cooperate with the Turkish Competition Authority (“**Authority**”) for the purpose of uncovering cartels prohibited under Turkish Competition Law, has entered into force after its publication in the Official Gazette dated 16 December 2023 and numbered 32401.

The Leniency Regulation had entered into force in 2009, and no significant amendment has been made to the said legislation since then. It can be considered that the New Active Cooperation Regulation aims to eliminate the uncertainties in practice in the context of the Authority’s strong sanctions against cartels, especially with the introduction of new concepts to the leniency mechanism, such as cartel facilitators, to encourage leniency applications for violations such as hub and spoke cartels, and also, harmonisation of the leniency program with the European Union legislation by introducing the requirement for applicants to submit documents with significant added value. Against this background, it can be stated that the leniency program has been adapted to today’s conditions with the New Active Cooperation Regulation.

The principle amendments brought by the New Active Cooperation Regulation are as follows:

1. Incorporation of Cartel Facilitators to the Leniency Mechanism

The new Active Cooperation Regulation introduces the definition of “cartel facilitator” for “*undertakings and associations of undertakings that facilitate the establishment and/or maintenance of a cartel through their*

activities, without operating at the same level of the production or distribution chain with the cartel parties". Thus, in hub and spoke cartels where the establishment of a cartel between undertakings operating at the same level is mediated by an undertaking operating in a upstream or downstream market, a significant step has been introduced that paves the way for undertakings acting as "cartel facilitators" operating in the downstream or upstream market of the cartel to benefit from the leniency program.

2. Introduction of the Requirement to Submit Documents with Significant Added Value

In parallel with the European Union legislation, the New Active Cooperation Regulation requires the applicants to submit documents "*with significant added value*", in other words, information and/or documents that will reinforce the Board's ability to prove the cartel, taking into account the evidence already available to the Board. Accordingly, in order for the applicant to benefit from a reduction in fines, the information and documents to be submitted to the Authority must add significant value.

With the aforementioned provision, the distinction between the active cooperation mechanism, which is essentially a method of obtaining evidence, and the settlement mechanism, which is an alternative case conclusion method, has become clearer. The mechanisms regulated under the New Leniency Regulation allow the Authority to unearth cartels and collect evidence from cartel parties in exchange for full immunity from fines or lower fines. The settlement procedure, on the other hand, is an alternative method by which the investigated undertakings can accept the allegations in exchange for a reduction in fines.

3. Leniency Application for Non-Cartel Violations

The New Active Cooperation Regulation introduces provisions paving the way for the applicant to benefit from an exemption or reduction in fines within the scope of the leniency mechanism, even if the applicant applies for leniency on the assumption that it constitutes a cartel infringement, but it is later decided by the Board that the relevant infringement does not in fact qualify as a cartel. This amendment is expected to eliminate concerns of undertakings that hesitate to apply to the leniency program due to uncertainties regarding the nature of the infringement.

4. Timing Restrictions

The New Active Cooperation Regulation introduces certain deadlines for applicants to apply for leniency and to benefit from reduction in fines. Accordingly, in order to be eligible for a reduction in fines, the applicant must apply to the Authority "*within three months following the notification of the investigation, provided that it is before the notification of the investigation report*".

In addition, following the completion of applications made for leniency or reduction from fines, if any additional information and documents are obtained by the applicant, these must be submitted to the Authority immediately and in any case, before the end of the second written defence period. Accordingly, it is considered that the Authority aims to accelerate the processes in the evaluation of the leniency application.

5. Discount Ranges for Administrative Fines

In terms of discount ranges to be granted to the applicant, the New Active Cooperation Regulation reduces certain minimum discount thresholds to a certain extent, while also increasing the maximum thresholds at certain rates. Accordingly, the increase in the upper limits of the discount ranges is considered to incentivise applications.

6. Procedural Regulations

With a procedural amendment, undertakings or associations of undertakings that apply to the leniency program will be obligated to provide written and/or oral statements of the current managers and employees of the applicant if deemed necessary by the Authority. Furthermore, in cases where the former executives' and employees' written and/or oral statement is deemed necessary by the Authority, the applicant will also be obligated to show "utmost diligence and care" to ensure this.

The New Active Cooperation Regulation published in the Official Gazette can be accessed [here](#).

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