



Empowering Decision-Making Process of Competition Authorities:

The Settlement Mechanism &

The Commitment Mechanism

Nur Seda Köktürk

Deputy Head External Relations & Competition Advocacy Dept.

Outline

- The Settlement Mechanism in General
- The Settlement Procedure in Turkish Competition Law
- Important Settlement Decisions of Rekabet Kurulu



The Settlement Mechanism

What is a settlement in competition law?

- A method based on the principle of <u>obtaining reduced</u> <u>fines</u> and reaching an agreement regarding specific measures in return for <u>accepting liability that</u> <u>undertakings committed the violation</u> under investigation and <u>giving up certain rights</u> granted to them, thus allowing for the <u>early termination of the investigation</u>»
- Settlement is not a right granted to undertakings, but a power of competition authorities.



The Settlement Mechanism

- Why has there been need for settlement procedure as an alternative to ordinary decision-making process?
 - High costs,
 - Long investigation processes,
 - Long judicial review processes,
 - Benefits for undertakings (cost, reputation, trade secrets)
- Example: Lysine cartel in the US ve EU



The Settlement Mechanism

The main reasons behind settlement mechanism:

- Optimal use of resources and economic efficiency,
- Legal certainty,
- The characteristics and complexity of the market and the violation
- Risk of inaccurate one-sided decisions,
- Guidance in terms of new types of violations,
- Expectation from undertakings in terms of cooperation



Outline

- The Settlement Mechanism in General
- The Settlement Mechanism in Turkish Competition Law
- Important Settlement Decisions of Rekabet Kurulu



- The introduction of the settlement mechanism to Turkish competition law:
 - June 2020 Amendments in the Law No. 4054 in with the Law No. 7346
 - Harmonization with the EU acqui
 - July 2021- Regulation on the Settlement Procedure for Investigations on Anticompetitive Agreements, Concerted Practices, Decisions and Abuse of Dominant Position



The Design

- Both for the claims of anticompetitive agreements/concerted practices and abuse of dominant position
- A launched and ongoing investigation
- Either upon request or *ex officio*
- Acceptance of the alleged behavior
- Giving up on certain judicial rights
- A reduction in fines (ten to twenty-five percent)
- Final settlement decision given



- 1. The Board initiates the settlement procedure after the investigation is launched and takes into account:
 - The number of investigation parties,
 - Portion of the investigation parties applied for settlement,
 - The scope of the violation and the quality of the evidence,
 - Possibility of cooperation with the investigated parties.



- 2. The Board sends an invitation to the parties and they should notify the acceptance in due time.
- 3. The start of the settlement negotiations does not mean that the parties accepted the alleged claims against them but they must accept the existence and nature/scope of the anti-competitive behavior if they want to settle.
- 4. Settlement party gets information on: the content of the allegations, the nature and scope of the alleged violation, primary evidence that form the basis of the allegation, the discount rate to be applied, the range of administrative fines that can be imposed.



- 5. The Board gives an interim settlement decision at the end of the negotiations that include:
 - The nature and scope of the alleged violation,
 - The rate of the maximum fines calculated under *Fines Regulation*,
 - The discount rate to be applied (also under the *Active Cooperation Regulation*, if any),
 - The rate and amount of the maximum fines to be imposed,
 - The precise period of time granted for sending the settlement text (not exceeding fifteen days)



- 5. If the settlement party accepts the matters in the interim decision, it will submit a settlement letter to Rekabet Kurumu including:
 - An acknowledgment and acceptance of the existence and scope of the violation, of maximum rate and amount of the fines that may be imposed,
 - A statement that it was adequately informed about the claims and sufficient opportunity given to convey its views and explanations,
 - A statement that the fines imposed and the matters included in the settlement text would not be taken to court.
- 6. The Board will end the investigation with a final decision that includes the detection of violation and administrative fine for the relevant party.



Points to Mention

- ✓ In case settlement negotiations have been initiated with more than one party, the negotiations should be conducted separately.
- ✓ 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.
- ✓ Matters in the interim settlement decision cannot be made a
 subject of negotiation by the settlement parties .



Points to Mention

- ✓ When parties apply for settlement, the Board may postpone
 its decision if more research is needed.
- ✓ The negotiations may be terminated by the Authority.
- ✓ The settlement party may withdraw from settlement procedure until the submission of the settlement text.
- ✓ In such cases, the ordinary investigation procedure is followed.
- ✓ The information and documents submitted by the settlement party as part of the settlement negotiations are excluded from the file and not used as in the final decision.



Outline

- The Settlement Mechanism in General
- The Settlement Procedure in Turkish Competition Law
- Important Settlement Decisions of Rekabet Kurulu



Number of Settlement Decisions:

2021: 4

2022: 34

2023: 68

! Between September-December 2023; 16 out of 20 decisions concerning vertical agreements were concluded with settlement.



- Philips
- Beypazarı Kınık
- Decisions in Cosmetic Sector



- *Philips* case (2021)
 - First settlement case
 - Philips and its 4 resellers/distributors
 - Domestic appliances market
 - Claim: Resale price maintanance and restricting online sales of retailers (single conduct)
 - Reduction of 25% in fines



• Beypazarı - Kınık case (2022)

- 2 seperate decisions
- First decisions to apply leniency and settlement mechanisms together
- Mineral water market
- <u>Claim</u>: Beypazarı and Kınık's information exchange on the current and future prices and change date of prices of their products (cartel)
- Undertaking applied for leniency and settlement at the same time.
- Kınık: 35% leniency + 25% settlement discount
- Beypazarı: 30% leniency + 25% settlement discount in fines.



- Cases in Cosmetic Sector (2022&2023)
 - Cosmetics and personal care markets
 - <u>Similar claims</u>: Resale price maintanance and restricting online sales of retailers (single conduct)
 - Starting with *Hayırlı El* (2022), then both brand-owning companies and chain markets started do be investigated
 - As of December 2023, 22 of the investigations have been concluded through settlements
 - Each undertaking has been granted a 25% discount
 - Administrative fine of TL 161,661,249.26 in total.



Outline

- The Commitment Mechanism in General
- The Commitment Mechanism in Turkish Competition Law
- Important Commitment Decisions of Rekabet Kurulu



The Commitment Mechanism

- Why is there a need for a commitment mechanism?
 - To <u>prevent the damages</u> that occur as a result of competition law infringements at an <u>early phase</u>
 - Savings in time and costs for public institutions and undertakings (detailed investigation processes)



The Commitment Mechanism

The Commitment Mechanism

- Brings closure to preliminary inquiries and investigations,
- Targets competition issues before they become infringements,
- Allows undertakings to change their potential anticompetitive conduct that does not constitute a hard-core infringement.



Outline

- The Commitment Mechanism in General
- The Commitment Mechanism in Turkish Competition Law
- Important Commitment Decisions of Rekabet Kurulu



- The introduction of the commitment mechanism to Turkish competition law:
 - June 2020 Amendments in the Law No. 4054 in with the Law No. 7346
 - Harmonization with the EU acqui
 - July 2021- Communiqué On The Commitments To Be Offered In Preliminary Inquiries And Investigations Concerning Agreements, Concerted Practices And Decisions Restricting Competition, And Abuse Of Dominant Position



The Design

- Both for the claims of anticompetitive agreements/concerted practices and abuse of dominant position
- Not applicable to <u>naked and hard-core infringements</u>
- Submitted by the undertakings under investigation during an ongoing preliminary inquiry or investigation
- No need to accept the alleged behavior
- Investigation is ended in case offered commitments found appropriate to eliminate competition problems
- Commitments are binding
- Monitoring process



- Parties request to offer commitments during preliminary inquiry or investigation process to end an investigation (within three months after the notification of the investigation has been sent)
- 2. The Board decides to start commitment discussions or reject the request (postponement possible)
- 3. During the discussions competition problems, (information and documents) about the file are disclosed to the parties
- 4. The commitment text in written form should clearly cover the commitments submitted (time period determined by the Board)



- 5. The commitment text should include:
 - Competition problems to be solved by the commitment and how the commitment will solve the competition problem,
 - When the commitment starts to be implemented and for how long,
 - In which way the commitment will be implemented,
 - the effect of the commitment to the market,,
 - How compliance with the commitment can be monitored and other issues deemed necessary,
 - In case a structural commitment is offered, the commitment text shall include the details about the divestiture process.



- 6. Behavioral or structural commitments can be offered individually or jointly.
- 7. The commitment must be proportional to the competition problems, able to solve those, quickly realizable and efficiently applicable.
- 8. Commitments concerning third party conduct cannot be offered.
- 9. The Board shall assess whether the commitment eliminates the competition problems as well as other issues deemed necessary.



- 10. If commitment is found appropriate;
 - The Board makes the commitment binding for the party
 - The Board decides not to initiate an investigation or discontinue the ongoing investigation, or to request opinion from third parties
- 11. If commitmnet is not found appropriate:
 - The Board may decide parties to make amendments to the commitment at this stage and only for one time
 - The Board may decide to discontinue the commitment procedure



- 12. The decision not to initiate an investigation or discontinue the ongoing investigation by rendering the commitments binding does not include a determination whether the agreement, decision or practice that arises competition problems constitutes a violation.
- 13. For the monitoring of the commitment, the right of the Board to make an examination ex officio is reserved.
- 14. When the parties entirely fulfill the commitments and document this, the Board shall take a decision establishing that the commitments have been fulfilled.



Outline

- The Commitment Mechanism in General
- The Commitment Mechanism in Turkish Competition Law
- Important Commitment Decisions of Rekabet Kurulu



Number of Commitment Decisions:

2021: 5

2022: 5

2023: 28



- Coca Cola (2021)
- Obilet

<u>Simultaneous Utilization of Both</u> Settlement and Commitment Mechanisms:

Singer



• Coca Cola case (2021)

- Cola market
- <u>Claim:</u> Preventing the sale of competing products at the final points of sale (exclusivity clauses in its agreements with retailers)
- Commitment packaged offered include:
- It was found proportional to eliminate problems in a short time and effectively.
- The Board decided to conclude the investigation by making these commitments binding.



• *Obilet* case (2023)

- Obilet is the leading platform for bus ticket sales in Türkiye
- <u>Claim:</u> Abuse of dominance and vertical restraints excessive commission rates for bus ticket sales, tying its ticketing software services to ticket sales services and several exclusionary conducts to the competitors (ad restrictions, communication ban).
- The commitments submitted contain ten aspects (several contract examples have been developed to fulfill the commitments).
- Third party opinions also received.
- Providing guidance on how the market can be competitive becomes more important than merely imposing fines or ceasing the anticompetitive conduct.



• *Singer* case (2021)

- Both Settlement and Commitment Mechanisms were simultaneous utilized in this case.
- 2nd settlement case and also the 1st one that both mechanisms were applied.
- Sewing Machines Market
- <u>Claims:</u> Abuse of dominance and vertical restraints (RPM, online sales restrictions, indefinite non-compete clauses in dealership agreements -de facto exclusivity-)
- Rekabet Kurulu differentiated between which mechanism will be applicable to which of these allegations.



• Singer case (2021)

- 2 separate decisions were taken by the Board
- RPM and online sales restriction is categorized as **a naked and hard-core infringement**. Hence the commitment mechanism is not applicable.
- This part of the case was concluded with a settlement decision and 25% discount was applied.
- The non-compete clause in dealership agreements were found to be eligible for a commitment application.
- The commitment submitted: To remove the non-compete clause from dealership agreements.
- The Board found this sufficient and terminated the investigation.





nkokturk@rekabet.gov.tr

