

## **REGULATION ON ACTIVE COOPERATION FOR DETECTING CARTELS**

### **General Preamble**

(1) Paragraph six of Article 16 of the Act No. 4054 on the Protection of Competition (the Act) provides for that fines mentioned in paragraphs three and four of Article 16 may not be imposed to those making an active cooperation with the Competition Authority (the Authority) for purposes of revealing contrariness to the Act, or reductions may be made in penalties to be imposed pursuant to such paragraphs taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly. The last paragraph of Article 16 of the Act states that terms for immunity from or reduction of fines in case of cooperation, and procedures and principles in relation to cooperation shall be determined by regulations to be issued by the Board. Article 27 of the Act gives the Board duty and power to issue communiqués and make the necessary regulations related to the implementation of the Act.

(2) Price increase caused by cartels which are regarded as the most serious competition infringements leads to transfer of income from customers to cartel members. Another damage of cartels is that some of the customers cannot afford to buy the relevant product and therefore are deprived of the good or service concerned. Cartels lessen the pressures on their members that lead them to reduce the costs and to innovate. These damages create other economic, social, cultural and political problems. For instance, prices increase, efficiency is eliminated, entrepreneurship lessens, and social problems arise because many people cannot buy products of better quality at lower price.

(3) Compared to other types of infringements, it is more difficult to detect and investigate cartels that are secret by nature unless parties to the cartel do not cooperate with the Authority. Therefore, it would be beneficial if penalties are not imposed to or reduced for those who make active cooperation with the Authority independently from other undertakings party to the cartel and their managers and employees for detecting and investigating cartels.

(4) Those who make active cooperation with the Authority for detecting and investigating cartels should not be left in a disadvantageous position as compared to those who do not cooperate. Therefore, in cases where the Regulation does not have

a clear provision, hesitations arise, and which require interpretation, it is essential that the conclusion shall be in favor of those who cooperate.

(5) In line with the aforementioned explanations, this Regulation, which shall be denominated Active Cooperation (Leniency) Regulation, has been prepared in order to regulate the principles and procedures in terms of non-imposition and reduction of fines mentioned in paragraphs three and four of Article 16 of the Act with regard to those making an active cooperation with the Authority for detecting and investigating cartels.

**REGULATION ON ACTIVE COOPERATION FOR DETECTING CARTELS**  
**(ACTIVE COOPERATION/LENIENCY REGULATION)**

**SECTION ONE**

**Purpose, Scope, Basis and Definitions**

**Purpose and scope**

**ARTICLE 1** – (1) The purpose of this Regulation is to regulate the procedures and principles in terms of non-imposition and reduction of fines mentioned in Article 16 of the Act No. 4054 on the Protection of Competition with regard to undertakings or their managers and employees making an active cooperation with Competition Authority for the purposes of detecting cartels that are prohibited under Article 4 of the same Act.

**Basis**

**ARTICLE 2** – (1) This Regulation has been drawn up based on Articles 16 and 27 of the Act dated 7/12/1994 and numbered 4054 on the Protection of Competition.

**Definitions**

**ARTICLE 3** – (1) In implementation of this Regulation, the terms express the following:

a) Assigned unit: the unit assigned by the Competition Board for the implementation of this Regulation and announced on the web site of the Competition Authority,

b) Act: the Act No. 4054 on the Protection of Competition,

c) Cartels: competition-restrictive agreements and/or concerted practices between competitors for fixing prices; allocation of customers, providers territories or trade channels; restricting the amount of supply or imposing quotes, and bid rigging.

d) The Board: the Competition Board,

e) The Authority: the Competition Authority.

## **SECTION TWO**

### **Immunity from Fines or Reduction of Fines to be Imposed to Undertakings**

#### **Immunity from fines**

**ARTICLE 4 – (1)** The first undertaking which submits the information and evidence, and meets the requirements laid down in Article 6 of this Regulation, independently from its competitors, before the Board decides to carry out a preliminary inquiry, shall be granted immunity from fines. The implementation of this paragraph depends on the fact that an application pursuant to paragraph one of Article 7 of this Regulation has not been made.

(2) The first undertaking which submits the information and evidence, and meets the conditions laid down in Article 6 of this Regulation, independently from its competitors, as of the decision by the Board to carry out preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that the Authority does not have, at the time of the submission, sufficient evidence to find the violation of Article 4 of the Act. The implementation of this paragraph depends on the fact that an application pursuant to paragraph one of Article 4 and Article 7 of this Regulation has not been made.

(3) Managers and employees of the undertaking covered by the scope of this Article shall be granted immunity from fines.

#### **Reduction of a fine**

**ARTICLE 5 – (1)** The undertakings which submit the information and evidence, and meets the conditions stated in Article 6 of this Regulation, independently from its competitors, as of the decision by the Board to carry out preliminary inquiry until the notification of the investigation report, but which are not covered by the provision related to immunity from fines in Article 4 shall benefit from reduction of fines. In this case, managers and employees of undertakings admitting

the cartel and making an active cooperation shall benefit from reduction of a fine. In this framework,

a) The fine to be imposed to the first undertaking shall be reduced by one-third to by half. In that case, the fines to be imposed to the undertaking's managers and employees who admit the cartel and make an active cooperation may be reduced at least by one-third or may not be imposed at all.

b) The fine to be imposed to the second undertaking shall be reduced by one-fourth to by one-third. In that case, the fines to be imposed to the undertaking's managers and employees who admit the cartel and make an active cooperation may be reduced at least by one-fourth or may not be imposed at all.

c) The fines to be imposed to other undertakings shall be reduced by one-sixth to by one-fourth. In that case, the fines to be imposed to the undertaking's managers and employees who admit the cartel and make an active cooperation may be reduced at least by one-sixth or may not be imposed at all.

(2) In case it becomes necessary, as a result of the evidence submitted, that the amount of fine shall be increased because of reasons such as extension of the duration of the violation the increase shall not affect the first undertaking to submit the evidence concerned and its managers and employees who admit the cartel and make an active cooperation.

### **Requirements and procedure**

**ARTICLE 6** – (1) In order to be covered by Articles 4 and 5 of this Regulation, an undertaking must:

a) submit information and evidence in respect of the alleged cartel including the products affected, the duration of the cartel, the names of the undertakings party to the cartel, specific dates, locations and participants of cartel meetings,

b) not conceal or destroy information or evidence related to the alleged cartel,

c) end its involvement in the alleged cartel except for when otherwise is requested by the assigned unit on the ground that detecting the cartel would be complicated,

d) keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit,

e) maintain active cooperation until the Board takes the final decision after the investigation is completed.

(2) The assigned unit may give time to undertakings for submitting information and evidence mentioned in subparagraph (a) of paragraph one and completing their application. To be eligible for this period, the undertaking concerned must provide information concerning affected products, the duration of the cartel and the names of the parties to the cartel.

(3) The application and request for time to prepare information and evidence, if any, shall be made by the representative of the undertaking in writing. However, the information mentioned in subparagraph (a) of paragraph one may be submitted orally. In that case, the submitted information shall be kept as an internal correspondence after it is written by the assigned professional staff and confirmed by the representative of the undertaking. Those who are under investigation may analyze this information, which can be used as evidence, within the premises of the Authority, after the investigation report is notified.

(4) A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence, if any, shall be given to the undertaking concerned by the assigned unit.

(5) After the application pursuant to Article 4 of this Regulation is completed, the Board shall decide on granting immunity from fines to the undertaking concerned depending on the requirements in paragraph one and on the fact that the undertaking concerned has not acted as a coercer, and the applicant shall be notified thereof. After the application under Article 5 is completed, the Board shall decide on reduction of fines to be imposed on the undertaking concerned and its managers and staff who admit the cartel and make an active cooperation depending on the requirements in paragraph one, and the applicant shall be notified thereof.

(6) While the Board takes its final decision after the investigation is completed, the undertaking covered by the scope of Article 4 and its managers and employees shall be granted immunity from fines. On the other hand, if the Board finds that the undertaking cannot be granted immunity from fines because of violation of the

requirements in paragraph one or acting as a coercer, one third to half of the fine may be reduced. In that case, the fines to be imposed to the undertaking's managers and employees who admit the cartel and make an active cooperation may be reduced at least by one-third or may not be imposed at all.

(7) While the Board takes its final decision after the investigation is completed, undertakings covered by the scope of Article 5 and their managers and employees who admit the cartel and make an active cooperation may benefit from reduction of fines, taking into account the quality, efficiency and timing of the cooperation. The reduction may not be less than the minimum amount and more than the maximum amount in the range of reduction notified to the applicants after the application is completed.

(8) Information or evidence submitted by undertakings making an application pursuant to Article 4 and 5 and by their managers and employees may be used as evidence even if it is found that requirements stated in Article 6 are violated. The fact that an undertaking and its managers and employees are found to violate the requirements stated in Article 6 does not create any right for other undertakings or their managers and employees.

### **SECTION THREE**

#### **Immunity from Fines or Reduction of Fines to be Imposed to Managers and Employees**

##### **Immunity from fines**

**ARTICLE 7 – (1)** The first undertaking manager or employee who submits the information and evidence, and meets the requirements laid down in Article 9 of this Regulation, independently from undertakings party to the cartel and their managers and employees, before the Board decides to carry out a preliminary inquiry shall be granted immunity from fines. The implementation of this paragraph depends on the fact that an application pursuant to paragraph one of Article 4 of this Regulation has not been made.

(2) The first undertaking manager or employee who submits the information and evidence, and meets the requirements laid down in Article 9 of this Regulation, independently from undertakings party to the cartel and their managers and employees, as of the decision by the Board to carry out preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that the Authority does not have, at the time of the submission, sufficient evidence to find the violation of Article 4 of the Act. The implementation of this paragraph depends on the fact that an application pursuant to Article 4 and paragraph one of Article 7 has not been made.

### **Reduction of a fine**

**ARTICLE 8** – (1) Undertaking managers and employees who submit the information and evidence, and meet the requirements stated in Article 9 of this Regulation, independently from undertakings party to the cartel and their managers and employees, as of the decision by the Board to carry out preliminary inquiry until the notification of the investigation report but who are not covered by the provision related to immunity from fines in Article 7 shall benefit from reduction of a fine. In this framework:

a) The fine to be imposed on the first undertaking manager or employee shall be reduced at least by one third or may not be imposed at all.

b) The fine to be imposed on the second undertaking manager or employee shall be reduced at least by one fourth or may not be imposed at all.

c) The fines to be imposed on other undertaking managers or employees shall be reduced at least by one sixth or may not be imposed at all.

(2) In case it becomes necessary, as a result of the evidence submitted, that the amount of fine shall be increased because of reasons such as extension of the duration of the violation, the increase shall not affect the first undertaking manager or employee to submit the evidence concerned.



## **Requirements and procedure**

**ARTICLE 9** – (1) In order to be covered by Articles 7 and 8 of this Regulation, an undertaking manager or employee must:

a) submit information and evidence in respect of the alleged cartel including the products affected, the duration of the cartel, the names of the undertakings party to the cartel, specific dates, locations and participants of cartel meetings,

b) should not conceal or destroy information or evidence related to the alleged cartel,

c) end its involvement in the alleged cartel except for when otherwise is requested by the assigned unit on the ground that detecting the cartel would be complicated,

d) keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit,

e) maintain active cooperation until the Board takes the final decision after the investigation is completed.

(2) The assigned unit may give time to managers and employees for submitting information and evidence mentioned in subparagraph (a) of paragraph one and completing their application. In order to be eligible for this period, the concerned person must provide information concerning the affected products, the duration of the cartel and the names of the parties to the alleged cartel.

(3) The application and request for time to prepare information and evidence, if any, shall be made by the concerned person or by his representative in writing. However, the information mentioned in subparagraph (a) of paragraph one may be submitted orally. In that case, the submitted information shall be kept as an internal correspondence after it is written by the assigned professional staff and confirmed by the concerned person or by the representative. Those who are under investigation may analyze this information which can be used as evidence, within the premises of the Authority, after the notification of the investigation report.

(4) A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence, if any, shall be given to the applicant by the assigned unit.

(5) After the application pursuant to Article 7 of this Regulation is completed, the Board shall decide on granting immunity from fines to a manager or an employee concerned depending on the requirements in paragraph one and on the fact that they have not acted as a coercer, and the applicant shall be notified thereof. After the application under Article 8 is completed, the Board shall decide on reduction of a fine to be imposed on the manager or employee concerned depending on the requirements in paragraph one, and the applicant shall be notified thereof.

(6) While the Board takes its final decision after the investigation is completed, a manager or an employee who is covered by the scope of Article 7 of this Regulation shall be granted immunity from fines. On the other hand, if the Board finds that the manager or employee cannot be granted immunity from fines because of acting as a coercer, fines to be imposed on the manager or employee concerned may be reduced at least by one third.

(7) While the Board takes its final decision after the investigation is completed, a manager or an employee covered by the scope of Article 8 of this Regulation may benefit from reduction of fines taking into account the quality, efficiency and timing of the cooperation. The reduction may not be less than the minimum amount and more than the maximum amount in the range of reduction notified to the applicant after the application is completed.

(8) Information or evidence submitted by applicants within the framework of Articles 7 and 8 of this Regulation may be used as evidence even if it is found that requirements stated in Article 9 are violated. The fact that a manager or an employee is found to violate the requirements stated in Article 9 does not create any right for other undertakings and their managers and employees.

## **SECTION FOUR**

### **Provisional and Final Provisions**

#### **Ongoing preliminary inquiries and investigations**

**PROVISIONAL ARTICLE 1 – (1)** Provisions of this Regulation shall also be applicable to the preliminary inquiries and investigations that were initiated prior to its entry into force, where the investigation report has not been notified.

### **Enforcement**

**ARTICLE 10 – (1)** This Regulation, which has been drawn up after the opinions of the Ministry of Finance and the Court of Accounts have been taken, shall enter into force on the date of its publication.

### **Execution**

**ARTICLE 10 – (1)** The President of the Competition Authority shall execute the provisions of this Regulation.