

**REGULATION ON FINES TO APPLY
IN CASES OF AGREEMENTS, CONCERTED PRACTICES AND DECISIONS
LIMITING COMPETITION, AND ABUSE OF DOMINANT POSITION**

General Preamble

(1) It is provided for under the Act No. 4054 on the Protection of Competition (the Act), Article 16, paragraph three, that undertakings and associations of undertakings which engage in behaviors prohibited under Article 4 and 6 of the Act may be given fines up to ten percent of their annual gross revenues which generated by the end of the fiscal year preceding the final decision or, if that cannot be calculated, by the end of the fiscal year closest to the date of the final decision, and which is to be determined by the Competition Board (the Board). It is ruled under the Act, Article 16, paragraph five, that, in deciding the fine according to paragraph three, the Board shall take account of points such as the repetition and duration of the violation, market power of the undertakings or associations of undertakings, their decisive influence on the occurrence of the violation, whether or not they conform to the commitments made, whether or not they assist with the examination, and the gravity of the damage which occurred or which is likely to occur.

(2) It is provided for under the Act, Article 16, paragraph four, that fines may be given to the managers or employees of undertakings or associations of undertakings, who are found to have had decisive influence on the violation, up to five percent of the fine given to the undertakings or associations of undertakings pursuant to paragraph three.

(3) It is ruled under the Act, Article 16, last paragraph, that the points taken account of in the determination of fines shall be determined by regulations to be issued by the Board. Article 27 of the Act gives the Board the duty and power to issue communiqués and make the necessary regulations related to the implementation of the Act.

(4) In line with the aforementioned clauses, to provide for the procedures and principles relating to the fines to be given to undertakings and associations of undertakings which engage in behaviors prohibited under Article 4 and 6 of the Act, and their managers and employees, pursuant to Article 16, paragraphs three and

four, of the Act, this regulation, which shall be denominated as the Fines Regulation, has been prepared. The goals intended to be accomplished by the Fines Regulation is as follows:

a) Ensuring transparency, objectivity and consistency in fining process.

b) Taking account of such points as assistance with examinations and active cooperation, while determining the fines, and thus promoting them.

c) Fines having the nature of ensuring special and general deterrence. Special deterrence is the prevention of those undertakings, which are the addressee of fines, from violating the Act. General deterrence is the deterrence of those undertakings which are likely to violate the Act or which continue a violation that has not been detected yet. In this context, fines should be determined as having the nature of ensuring both types of deterrence.

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(REGULATION ON FINES)**

SECTION ONE

Purpose, Scope, Basis and Definitions

Purpose and scope

ARTICLE 1 – (1) The purpose of this Regulation is to provide for the procedures and principles relating to the setting and assessment of fines to be given to those undertakings and associations of undertakings or the members of such associations, as well as managers and employees thereof, that engage in behaviors prohibited under Article 4 and 6 of the Act No. 4054 on the Protection of Competition, pursuant to Article 16 of the same Act.

Basis

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

Definitions

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

- a) Active Cooperation Regulation: the Regulation on Active Cooperation for Detecting Cartels,
- b) Other violations: the behaviors that are prohibited under Article 4 and 6 of the Act on the Protection of Competition No. 4054 and which are outside the definition of cartel.
- c) Act: the Act No. 4054 on the Protection of Competition,
- d) 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.
- e) The Board: the Competition Board,
- f) The Authority: the Competition Authority,

g) Annual gross revenue: the net sales in the uniform account plan, or if this cannot be calculated, the revenue closest to the net sales, which is to be determined by the Board.

SECTION TWO

Principles, Base Fine, Aggravating and Mitigating Factors

Principles relating to the determination of fines

ARTICLE 4 – (1) In determining fines to be applied to undertakings and associations of undertakings or members of such associations;

a) The base fine shall be calculated within the framework of Article 5 of this Regulation. In case more than one independent behavior – in terms of market, nature and chronological process – that are prohibited under Articles 4 and 6 of the Act are detected, the base fine shall be calculated separately for each behavior.

b) Following the calculation of the base fine, aggravating and mitigating factors shall be considered within the framework of Articles 6 and 7 of this Regulation, and an increase and/or reduction shall be made.

(2) The amount of fine to be determined in accordance with the provisions of this Regulation may not exceed ten percent of the annual gross revenue of the undertakings and associations of undertakings or the members of such associations to be fined, which generated at the end of the fiscal year preceding the final decision, or if that cannot be calculated, by the end of the fiscal year closest to the date of the final decision, and which shall be calculated by the Board. Fines exceeding this limit shall be reduced to ten percent of the annual gross revenues of the undertakings and associations of undertakings or the members of such associations to be fined; after which, if the conditions exist, paragraphs two and three of Article 7 of this Regulation and the provisions of Active Cooperation Regulation shall apply.

(3) Where undertakings or associations of undertakings are given the fines as specified under paragraph three of Article 16 of the Act, the fine that shall apply to the managers and employees of undertakings or associations of undertakings may not exceed five percent of the fine given to the undertaking or association of undertakings.

Base fine

ARTICLE 5 – (1) While the base fine is being calculated, a percentage:

a) for cartels, between two percent and four percent, and

b) for other violations, between five thousandth and three percent,

of the annual gross revenues of the undertakings and associations of undertakings or the members of such associations, which generated at the end of the fiscal year preceding the final decision, or if that cannot be calculated, at the end of the fiscal year closest to the date of the final decision, and which shall be determined by the Board, shall be taken as the basis.

(2) In the determination of the percentages written under paragraph one, issues such as the market power of the concerned undertakings or associations of undertakings, and the gravity of the damage which occurred or is likely to occur as a result of the violation shall be considered.

(3) The amount of fine determined according to paragraph one;

a) shall be increased by half for violations which lasted longer than one year, shorter than five years.

b) shall be increased by one fold for violations which lasted longer than five years.

Aggravating factors

ARTICLE 6 – (1) The base fine shall be increased by half to one fold;

a) for each repetition in case of the repetition of the violation,

b) in case the cartel is continued after the notification of the investigation decision.

(2) The base fine may be increased;

a) by half to one fold, where the commitments made for the elimination of the competition problems raised within the scope of Article 4 or 6 of the Act are not met,

b) by up to half, where no assistance with the examination is provided,

c) by up to one fourth, where other undertakings are coerced into the violation.

Mitigating factors

ARTICLE 7 – (1) Provided the concerned undertaking or association of undertakings proves that assistance with the examination has been provided apart from the fulfillment of the legal obligations, there has been incentive by public authorities or coercion by other undertakings concerning the violation, those who

were damaged have been indemnified voluntarily, the other violations have been ceased, those activities which are the subject of the violation have a considerably low share in the annual gross revenues; the base fine may be reduced by one fourth to three fifth.

(2) In an ongoing investigation, the fine to be given to an undertaking which cannot benefit from the arrangement for non-imposition of fines under the Active Cooperation Regulation, shall be reduced by one fourth if it presents the information and documents specified under Article 6 of the Active Cooperation Regulation before the Board decides to conduct a preliminary inquiry into another cartel. The provisions of the Active Cooperation Regulation for non-imposition of fines, or reduction in fines to be given, are reserved.

(3) In case the undertakings or associations of undertakings that engaged in the other violations acknowledge their violations and take active cooperation, the fine shall be reduced by one sixth to one fourth.

Fines to be applied to managers and employees

ARTICLE 8 – (1) Each of the managers and employees of the undertaking who were detected to have had decisive influence on the cartel shall be separately given between three percent and five percent of the fine given to the undertaking, taking into account points such as active cooperation.

(2) Fines shall not apply, or reductions shall be made in the fines to be given, to those managers and employees of the undertaking which take active cooperation with the Authority for the uncovering of cartels, within the framework of the provisions of the Active Cooperation Regulation.

(3) Managers and employees of the undertaking or association of undertakings, who were detected to have had decisive influence on the other violations, may be given fines up to five percent of the fine given to the concerned undertaking or association of undertakings. Those who actively cooperate with the Authority for uncovering the violation of the law may not be fined or may be offered reduction in fines to be given, taking into account the nature, effectiveness and timing of the violation.

SECTION THREE

Provisional and Final Provisions

Ongoing investigations

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

Enforcement

ARTICLE 9 – (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.