

CLIENT ALERT

COMPETITION LAW | TÜRKİYE

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THE REGULATION ON ADMINISTRATIVE FINES TO BE IMPOSED IN CASES OF AGREEMENTS, CONCERTED PRACTICES AND DECISIONS LIMITING COMPETITION, AND ABUSES OF A DOMINANT POSITION HAS BEEN PUBLISHED

The Regulation on Administrative Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuses of a Dominant Position (the "**Regulation**") was published in the Official Gazette dated 27 December 2024 and numbered 32765, entering into force on the same date. The Regulation sets out the procedures and principles for determining administrative fines to be imposed pursuant to Article 16 of Law No 4054 on the Protection of Competition ("**Law No 4054**") against undertakings, associations of undertakings and members, managers and employees of associations of undertakings that engage in behaviours prohibited under Articles 4 and 6 of Law No 4054. It replaces the previous regulation with the same name (the "**Repealed Regulation**"), which was published in the Official Gazette dated 15 February 2009 and numbered 27142 and had been in force for 15 years.

Factors such as the gradual differentiation of the nature of the markets to which competition law is applied from the traditional markets, changes in the business models of undertakings and consumer preferences, changes in the types of violations encountered and the nature of the addressees to whom competition law will be applied made it necessary to reconsider the sanction policy of the Competition Board (the "**Board**"), and therefore required the amendment of the Repealed Regulation.

As discussed in detail below, significant changes are introduced with the Regulation compared to the Repealed Regulation and the principles for determining administrative fines, base fine rates, mitigating and aggravating factors, and penalties to be imposed on managers and employees have been addressed separately.

1. PRINCIPLES FOR DETERMINING ADMINISTRATIVE FINES

The Regulation sets out that the base fine rate to be imposed on undertakings, associations of undertakings or members of such associations will be determined by the Board separately for each violation. Thus, unlike in the Repealed Regulation, it is stipulated that separate fines will be imposed for each violation without any conditions. The aggravating and mitigating factors specified in Articles 6 and 7 of the Regulation will also be taken into consideration when determining the base fine rate. In the event that aggravating and mitigating factors simultaneously exist, it is also clarified that the basic fine rate will first be increased in accordance with the aggravating factors and then reduced based on the mitigating factors.

In addition, the Regulation stipulates that administrative fines will be calculated based on the annual gross revenues of the undertakings, associations of undertakings or members of such associations at the end of the fiscal year preceding the final decision or, if it is not possible to calculate this amount, based on the annual gross revenues calculated as of the end of the fiscal year closest to the date of the final decision, as determined by the Board, and will not exceed 10% of the relevant annual gross revenues. Administrative fines that exceed this limit will be adjusted to 10% of annual gross revenues.

2. BASE FINE RATE

The distinction between cartels and other violations, which existed in the Repealed Regulation when determining the base fine rate, has been abandoned in favour of a new method taking into account the nature of the violation and its negative impact on competition. In addition, the lower and upper limits based on the distinction between cartels and other violations in determining the base fine rate have been abolished. This change aims to increase the deterrence in terms of the penalties that may be imposed under the Regulation.

Pursuant to the Regulation, the base fine rate will now be determined by increasing the initial fine rate, if necessary, due to the duration of the violation. The initial fine rate will be determined by taking into consideration, in particular, the gravity of the damage incurred or likely to be incurred due to the violation, and whether the nature of the violation is clear and/or severe.

In this context, the initial fine rate will be increased;

- 20% for violations lasting more than one year and less than two years,
- 40% for violations lasting more than two years and less than three years,
- 60% for violations lasting more than three years and less than four years,
- 80% for violations lasting more than four years and less than five years,
- 100% for violations lasting more than five years.

These time intervals are shorter than in the Repealed Regulation, with the intention of determining the fine in a fairer and more objective manner.

3. AGGRAVATING FACTORS

The Regulation sets out that, for a repeat violation of Articles 4 and 6 of Law No 4054 by the same undertaking or association of undertakings, the base fine rate will be increased by 100%.

In addition, the base fine rate may be increased by up to 100% if the violation continues after an investigation decision is announced, if the relevant undertaking has a significant effect on the formation of the violation or if the confidentiality obligation set forth in Article 12 paragraph 3 of the Regulation on Settlement Procedures Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition and Abuses of Dominant Position is violated. In this respect, a more comprehensive aggravating factor regime has been envisaged, unlike the regulation in the Repealed Regulation, which is based only on the continuation of the cartel.

If the two aggravating factors mentioned above exist simultaneously, the total increase to be applied to the base fine rate will be determined by adding up the increase rates applicable for each aggravating factor.

4. MITIGATING FACTORS

Pursuant to Article 7 of the Regulation, the mitigating factors that may be applied to administrative fines, if proven by the undertaking or association of undertakings, are as follows:

- Assisting the on-site inspection by providing physical and/or technical facilities that enable the on-site inspection to be completed in a shorter time, or to be carried out more effectively, or by spontaneously submitting additional information or documents related to the subject of the examination during the on-site inspection, in addition to meeting the legal obligations,
- The existence of pressure from other undertakings to take part in the violation,
- Having limited participation in the violation,
- Where the violation affects an insignificant portion of the annual gross revenues, and
- Having foreign sales revenues within the annual gross revenues subject to administrative fines.

The lower and upper limits regarding the reduction rates to be applied in the event of mitigating factors in the Repealed Regulation have been removed and the determination of the discount rate has been left to the discretion of the Board. Although the Regulation exhaustively lists mitigating factors, unlike in the Repealed Regulation, since the presence of foreign sales revenues in the annual gross revenues are considered as a mitigating factor, it is considered that not only domestic but also foreign sales revenues will be taken into account when calculating the relevant administrative fines.

5. ADMINISTRATIVE FINES TO BE IMPOSED ON MANAGERS AND EMPLOYEES

Where an administrative fine is imposed on an undertaking or association of undertakings in accordance with Article 8 of the Regulation, the managers and employees of the undertaking or association of undertakings who have a determinative influence (i.e. an indispensable function in the occurrence and/or continuation of the violation) in the violation subject to the administrative fine will be fined up to 5% of the administrative fine imposed on the undertaking or association of undertakings.

6. CONCLUSION

The methods used to determine some of the administrative fines imposed in the previous decisions of the Board raised questions as to whether the objective conditions were fairly implemented when determining the fine, and were opposed by some Board members and criticised by practitioners. With the Regulation, it is expected that the methods to be used to determine the amount of fines under Law No 4054 will achieve a certain standardisation over time. The fines to be imposed within the scope of infringement decisions will become more predictable in accordance with the principle of legal certainty, and thus the criticism will decrease.



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