



**International  
Competition  
Network**

# **ANTI-CARTEL ENFORCEMENT TEMPLATE**

**CARTELS WORKING GROUP  
Subgroup 2: Enforcement Techniques**

**TURKEY**

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# ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

## IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning (hardcore) cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses which suffer from cartel activity to get information about the possibilities of lodging a complaint in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

## 1. Information on the law relating to cartels

### A. Laws covering cartels:

Combating monopolization and cartelization is a duty assigned to the State by Article 167 of The Constitution of Turkish Republic.

[https://www.tbmm.gov.tr/anayasa/anayasa\\_2011.pdf](https://www.tbmm.gov.tr/anayasa/anayasa_2011.pdf) (Turkish Version)

[https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf) (English Version)

The main act covering the cartels is Act on the Protection of Competition No 4054 (the Competition Act)

<http://www.rekabet.gov.tr/tr-TR/Sayfalar/4054-Sayili-Kanun>

(Turkish version)

<http://www.rekabet.gov.tr/en-US/Pages/Act-No-4054>

(English version)

To be able to provide accurate information Article 235 of The Turkish Penal Code should be mentioned as well. Under this article corruption in public tenders is prohibited and imprisonment fines from three to seven years are levied on offenders.

	<p>Sub-section (2) (d) of the Article which is regarded as an example of involvement in mischief during a public tender is specifically relevant. By the wording of the Act, “Conclusion of open or secret agreements among the bidders or those willing to participate in the tender with the intention of affecting the bid contract conditions and especially the contract price.” is deemed as illegal.</p> <p>For the text of the Turkish Penal Code see :  <a href="http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf">http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf</a>  (Turkish Version)  <a href="http://www.wipo.int/wipolex/en/text.jsp?file_id=247129">http://www.wipo.int/wipolex/en/text.jsp?file_id=247129</a>  (English Version)</p> <p>It should be emphasized that even though the public tenders are being also investigated by prosecutors, cartels are mainly subject to an administrative regime which is carried out by the Turkish Competition Authority.</p>
<p><b>B. Implementing regulations:</b></p>	<p>Regulation on Active Cooperation for Detecting Cartels (Leniency Regulation)  <a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik8.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik8.pdf</a> (Turkish Version)  <a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik10.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik10.pdf</a> (English Version)</p> <p>Regulation on Fines In Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuses ( Regulation on Fines)  <a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik9.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik9.pdf</a> (Turkish Version)  <a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik11.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik11.pdf</a> (English Version)</p>
<p><b>C. Interpretative guidelines:</b></p>	<p>Guidelines on Leniency Regulation  <a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fGuide%2fPi%2fC5%2f9Fmanl%C4%B1k+K%C4%B1lavuzu+(22.3.2013)+(ENG).pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fGuide%2fPi%2fC5%2f9Fmanl%C4%B1k+K%C4%B1lavuzu+(22.3.2013)+(ENG).pdf</a>  (English version)</p>
<p><b>D. Other relevant materials:</b></p>	<p>The decisions of the Competition Board create precedents that might be applied similar cases. It seems possible to say that those decisions are In line with the approach adopted by EU courts. For the case law see : <a href="http://www.rekabet.gov.tr/tr-TR/Gerekceli-Kurul-Karar-Listesi">http://www.rekabet.gov.tr/tr-TR/Gerekceli-Kurul-Karar-Listesi</a>  (Turkish Version)</p> <p>In addition decisions of The Council of State shapes the practice.</p>

## 2. Scope and nature of prohibition on cartels

<p><b>A. Does your law or case law define the term “cartel”?</b></p>	<p>There is no definition of cartel in the Competition Act. However, both the Leniency Regulation and the Regulation on Fines adopted by the Competition Board in 2009 define cartels as "<i>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 quotas, and bid rigging</i>".</p>
<p><b>B. Does your legislation or case law distinguish between very serious cartel behavior and other types of “cartels”?</b></p>	<p>No. See point 2.A for the definition of cartels. Apart from cartels, Article 4 of the Competition Act also prohibits other types of anti-competitive agreements and concerted practices such as those that involve complicating the activities of competing undertakings, excluding firms operating in the market by boycotts or other behavior, preventing potential new entrants to the market, tying, and except exclusive dealing, applying different terms to persons with equal status for equal rights, obligations and acts. These types of infringements are defined as “other violations” in Regulation on Fines.</p>
<p><b>C. Scope of the prohibition of hardcore cartels:</b></p>	<p>Article 4 of the Competition Act prohibits anti-competitive agreements, concerted practices and decisions. It does not introduce any exception or exclusions for hardcore cartels. Although Article 5 of the Competition Act provides for an exemption system, it is unlikely that hardcore cartels satisfy conditions for exemption from the prohibition of the Article 4 of the Competition Act.</p> <p>According to Article 5 of the Competition Act, exemption from the general prohibition in Article 4 can be granted by the Competition Board if all the conditions listed below are satisfied:</p> <ul style="list-style-type: none"> <li>a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services,</li> <li>b) Benefitting the consumer from the above-mentioned,</li> <li>c) Not eliminating competition in a significant part of the relevant market,</li> <li>d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).</li> </ul>
<p><b>D. Is participation in a hardcore cartel illegal <i>per se</i>?</b></p>	<p>Yes.</p>
<p><b>E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?</b></p>	<p>Under the Competition Act, participation in a hardcore cartel is an administrative offence in general. On the other hand, as it is stated at point 1.A. above, bid rigging in public tenders is a criminal offence as well. Besides detection and punishment of cartels via administrative and criminal procedures, Articles 57 and 58 of the Competition Act stipulate the right to compensation of claimants aggrieved from prevention, distortion or restriction of competition, which leads to civil litigation.</p>

### 3. Investigating institution

<b>A. Name of the agency, which investigates cartels:</b>	Turkish Competition Authority (Rekabet Kurumu) Since bid riggings in public tenders are regulated by both the Competition Act and the Penal Code, public prosecutors investigate the offence as well as Turkish Competition Authority. On the other hand, administrative and criminal procedures conducted by the authorities concerned are executed independently; in other words, initiation of a criminal case does not cease administrative procedure, or vice versa. Hence, there is no allocation of responsibilities between Turkish Competition Authority and public prosecutors.
<b>B. Contact details of the agency:</b>	Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 / ANKARA E-mail: <a href="mailto:international@rekabet.gov.tr">international@rekabet.gov.tr</a> ; <a href="mailto:aarioz@rekabet.gov.tr">aarioz@rekabet.gov.tr</a> Tel.: (+90) 312 291 44 13 Fax.: (+90) 312 266 53 28 Website: <a href="http://www.rekabet.gov.tr">www.rekabet.gov.tr</a> (Turkish and English)
<b>C. Information point for potential complainants:</b>	Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 Ankara - Türkiye E-Mail: <a href="mailto:rek@rekabet.gov.tr">rek@rekabet.gov.tr</a> Tel.: (+90) 312 291 44 44 Fax.: (+90) 312 266 79 20  An application guide for potential complainants is available at website link below: <a href="http://www.rekabet.gov.tr/en-US/Application-Guide-List">http://www.rekabet.gov.tr/en-US/Application-Guide-List</a>  Directorate of Istanbul Liason Office (Rekabet Kurumu İstanbul İrtibat Bürosu Müdürlüğü) Address: İstiklal Caddesi, Odakule İş Merkezi, Kat:8 No:142 Beyoğlu İstanbul - Türkiye E-Mail: <a href="mailto:rek.ist@rekabet.gov.tr">rek.ist@rekabet.gov.tr</a> Tel: (+90) 212 243 33 86 - 87 Fax: (+90) 212 243 33 52  Also: Mr. Hasan Hüseyin ÜNLÜ Vice President – Head of Cartel and Investigation on Spot Support Unit Tel : +90 312 291 44 06 Fax : +90 312 266 68 41

	<p>E-Mail : <a href="mailto:hunlu@rekabet.gov.tr">hunlu@rekabet.gov.tr</a></p> <p>Mr. Hüseyin COŞGUN Acting Legal Counsel – In Charge Expert At Cartel and Investigation on Spot Support Unit Tel : + 90 312 291 44 68 Fax : + 90 312 266 68 41 E-Mail : <a href="mailto:hcosgun@rekabet.gov.tr">hcosgun@rekabet.gov.tr</a></p>
<b>D. Contact point where complaints can be lodged:</b>	<p>Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 Ankara - Türkiye E-Mail: <a href="mailto:rek@rekabet.gov.tr">rek@rekabet.gov.tr</a></p>
<b>E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.</b>	<p>Case handlers, if considered necessary, may request assistance from the police or the gendarme.</p>

## 4. Decision-making institution

<b>A. Name of the agency making decisions in cartel cases:</b>	<p>Competition Board within the Turkish Competition Authority. Criminal courts can also make decisions in criminal investigations for bid rigging in public tenders.</p>
<b>B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]</b>	<p>See point 3.B above.</p>
<b>C. Contact point for questions and consultations:</b>	<p>See point 3.C above.</p>
<b>D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.</b>	<p>The case handlers responsible for the investigation of the case. They use the investigatory powers indicated in point 7 below. In order to impose a substantive fine, the Competition Board either decides to initiate an investigation, or to conduct a preliminary inquiry for determining whether or not it is necessary to initiate an investigation.</p>

	<p>The investigation is concluded within 6 months at the latest. In cases where it is deemed necessary, the Competition Board may grant an additional period of 6 months only once.</p> <p>An investigation report, which is prepared by case handlers at the end of the investigation stage, is notified to all members of the Competition Board and the parties concerned.</p> <p>Those determined to have infringed the Competition Act are notified to submit their written pleas to the Competition Board. The case handlers charged with conducting the investigation declare an additional written opinion against the pleas to be submitted by the parties, and this is also notified to all members of the Competition Board and the parties concerned. The parties may reply to such opinion.</p> <p>Hearing is held upon the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defence. The Competition Board may decide on its own initiative to hold a hearing.</p> <p>The decision is made on the same day after the hearing, or if not possible, within 15 days, together with its grounds.</p> <p>In cases where a hearing is not requested by the parties, and the Competition Board does not decide to hold a hearing on its own initiative, the final decision is made within 30 days following the end of the investigation stage, pursuant to the examination to be performed on the file.</p> <p>In case the parties concerned fail to attend the hearing despite the decision to hold a hearing, the decision is made within one week following the date of the meeting determined, pursuant to the examination to be performed on the file.</p>
<p><b>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</b></p>	<p>As stated above public bid riggings have also criminal character. However, that does not preclude Turkish Competition Authority to investigate undertakings as legal entities since the criminal investigation usually addresses the real persons and these two procedures have different legal standards. Therefore it is possible that two investigations, namely one criminal and one administrative to be carried out simultaneously. Moreover, even the criminal investigation is not pursued more or the suspects are not sentenced the Authority may proceed the process.</p> <p>With a view to provide a more precise information it should be emphasized that criminal court has also jurisdiction to impose monetary fines on undertakings involved in bid rigging. In this case <i>ne bis in idem</i> issue may be relevant. However, so far such a situation has not been experienced.</p>

## 5. Handling complaints and initiation of proceedings

<p><b>A. Basis for initiating investigations in cartel cases:</b></p>	<p>Preliminary inquiry or investigation may be commenced on the basis of applications (complaints, informing, leniency applications, or notifications) filed with the Competition Board or ex officio.</p>
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<p><b>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)?</b></p>	<p>According to the Communiqué on Application Procedure Related to Violations of Competition Law, all complaints shall be lodged in writing and sent to the TCA's address via mail or delivered directly. There is no specific form to complete but all complaints shall meet some requirements of form.</p> <p>Complaints made by individuals are required to include name, identification number, address and signature of the complainant. Complaints of legal persons shall include business/company name, address, authorized signatory list of the legal person and signature of an authorized person from this list who is entitled to represent and bind the legal entity. Complaints made by a representative are required to include proof of representation or an approved copy of it, addresses of representative and represented legal or natural person, and signature of the representative.</p> <p>As a principle, no action shall be taken by the Authority in accordance with complaints which only consist of subjective asseverations about an infringement, do not rely on concrete information and/or documents, and which considered to be failed for showing serious and enough indications of an infringement, even the requirements of form listed above is met.</p> <p>Complaints lodged via email, fax, telephone or oral complaints will be considered as informing. <i>Sua sponte</i> actions may be taken about these complaints, in case regarded as serious.</p>
<p><b>C. Legal requirements for lodging a complaint against a cartel:</b></p>	<p>According to Article 9(2) of the Competition Act, natural and legal persons who have a legitimate interest are entitled to file a complaint.</p> <p>See also points 3.D. and 5.B.</p>
<p><b>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect?</b></p>	<p>According to Article 40 of the Competition Act; should an informing or complaint falls under the scope of the Act and meet requirements stated on point 5.B., Turkish Competition Authority shall take action on the application concerned.</p>
<p><b>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</b></p>	<p>No.</p>
<p><b>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</b></p>	<p>There is not a specific time limit set forth by the Competition Act for Turkish Competition Authority to make a decision upon receipt of a complaint. However, as a general rule regulated under the Code of Administrative Procedure, the Authority shall take action within 60 days, otherwise it is deemed to have rejected the application.</p>



## 6. Leniency policy

<b>A. What is the official name of your leniency policy (if any)?</b>	<p>Leniency Regulation. See point 1.B.</p> <p>For a complete and accurate understanding of the leniency policy of the Turkish Competition Authority, all the answers granted under point 6 on leniency policy must be taken into account together with the Leniency Regulation in its entirety.</p>
<b>B. Does your jurisdiction offer full leniency as well as partial leniency, depending on the case?</b>	<p>Yes. Both full and partial leniency is possible.</p>
<b>C. Who is eligible for full leniency?</b>	<p>First of all, Leniency Regulation provides for both corporate and individual full leniency.</p> <p>With respect to corporate full leniency, only the first undertaking which submits the information and evidence, independently from its competitors, before the Competition Board decides to carry out a preliminary inquiry, shall be granted immunity from fines. It is necessary that there exists no prior individual full leniency application. (See especially Article 4(1) of the Leniency Regulation).</p> <p>In case the Competition Board has already initiated a preliminary inquiry or an investigation, the first undertaking which submits the information and evidence, independently from its competitors, as of the decision by the Competition Board to carry out preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that the Turkish Competition Authority does not have, at the time of the submission, sufficient evidence to find the violation of Article 4 of the Competition Act. It is necessary that there exists neither prior individual full leniency application nor corporate full leniency application before the Competition Board decides to carry out a preliminary inquiry (See especially Article 4(2) of the Leniency Regulation).</p> <p>In case, the undertaking is eligible for full leniency, then managers or employees are also eligible for it (see especially Article 4(3) of the Leniency Regulation).</p> <p>Similar principles also apply for individual full leniency applications by the managers and employees of the relevant undertakings (See especially Article 7 of the Leniency Regulation).</p>
<b>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</b>	<p>For corporate and individual full leniency, the Turkish Competition Authority should have insufficient knowledge of the cartel.</p> <p>The date at which participants come forward with information is relevant.</p> <p>See point 6.C.</p>

<p><b>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</b></p>	
<p><b>E. Who can be a beneficiary of the leniency program (individual / businesses)?</b></p>	<p>As Leniency Regulation provides for both corporate and individual leniency, undertakings and/or their managers and employees can be the beneficiaries.</p>
<p><b>F. What are the conditions of availability of full leniency:</b></p>	<p>According to the Leniency Regulation, applicants for full leniency should</p> <ul style="list-style-type: none"> <li>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,</li> <li>b) should not conceal or destroy information or evidence related to the alleged cartel,</li> <li>c) end its involvement in the alleged cartel except for when otherwise is requested by the assigned unit of the Turkish Competition Authority on the ground that detecting the cartel would be complicated,</li> <li>d) keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit within the Turkish Competition Authority,</li> <li>e) maintain active cooperation until the Competition Board takes the final decision after the investigation is completed.</li> </ul> <p>Moreover, it is necessary that the undertakings and relevant individuals should not have coerced other undertakings into joining the cartel.</p> <p>See especially Article 6 and 9 of the Leniency Regulation for the relevant conditions of full leniency.</p>
<p><b>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment):</b></p>	<p>Regarding corporate partial leniency, the undertakings which submit the information and evidence cited in point 6.F above, independently from its competitors, as of the decision by the Competition Board to carry out preliminary inquiry until the notification of the investigation report, but which cannot benefit from full leniency, shall benefit from reduction of fines. In this case, managers and employees of undertakings admitting the cartel and making an active cooperation shall also benefit from reduction of a fine. In this case, managers and employees who admit the violation and cooperate actively benefit from reduction of fine. See especially Article 5 of the Leniency Regulation.</p> <p>Regarding individual partial leniency, similar rules are applied. See especially Article 8 of the Leniency Regulation.</p> <p>On whether the information should be sufficient to lead to an initiation</p>

	of investigations, in principle, it is sufficient that the applicant admits the violation.
<b>H. Obligations for the beneficiary after the leniency application has been accepted:</b>	See point 6.F.
<b>İ. Are there formal requirements to make a leniency application?</b>	There is no official form. Information cited in the Leniency Regulation should be submitted. Oral application may also be made. See points 6.F. and 6.J.
<b>J. Are there distinct procedural steps within the leniency program?</b>	<p>A unit was assigned by the Competition Board for the implementation of the Leniency Regulation and this was announced on the web site of the Turkish Competition Authority (Leniency Unit).</p> <p>The assigned unit may give time to undertakings and the relevant managers and employees for submitting 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 and completing their application. To be eligible for this period, the undertaking and the managers and employees concerned must provide information concerning affected products, the duration of the cartel and the names of the parties to the cartel.</p> <p>The application and request for time to prepare information and evidence shall be made by the representative of the undertaking (in individual leniency applications, by the individual himself or his representative) in writing. However, the information mentioned above may be submitted orally. In that case, the submitted information shall be kept as an internal correspondence after it is written by the assigned case handlers and confirmed by the representative of the undertaking (in individual leniency applications, by the individual himself or his representative).</p> <p>A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence shall be given to the undertaking or the applicant by the assigned unit.</p> <p>After the application for full leniency is completed, the Competition Board shall decide on granting immunity from fines and the applicant shall be notified thereof.</p> <p>Similarly, after the application for partial leniency is completed, the Competition Board shall decide on reduction of fines to be imposed on the undertaking concerned and its managers and employees who admit the cartel and make an active cooperation and the applicant shall be notified thereof (in individual leniency applications, the Competition Board shall decide on reduction of fines to be imposed on managers or employees.).</p> <p>Therefore, it should be said that the Competition Board shall decide whether the applicants benefit from full or partial leniency before the investigation is completed.</p> <p>Finally, in corporate full leniency applications, while the Competition Board takes its final decision after the investigation is completed, the undertaking and its managers and employees who satisfy the relevant conditions for full leniency shall be granted immunity from fines. However, if the Competition Board finds that the undertaking cannot be granted full leniency due to failure of satisfying the conditions</p>

	<p>mentioned in point 6.F above or acting as a coercer, fine to be imposed 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 or may not be imposed at all.</p> <p>In corporate partial leniency applications, undertakings, and their managers and employees who admit the cartel and make an active cooperation may benefit from reduction of fines, depending on the quality, efficiency and timing of the cooperation.</p> <p>In individual full leniency applications, while the Competition Board takes its final decision after the investigation is completed, a manager or an employee who satisfy the relevant conditions for full leniency shall be granted immunity from fines. However, if the Competition 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.</p> <p>In individual partial leniency applications, while the Competition Board takes its final decision after the investigation is completed, a manager or an employee who satisfy the conditions for partial leniency may benefit from reduction of fines depending on the quality, efficiency and timing of the cooperation.</p> <p>See especially Articles 6 and 9 of the Leniency Regulation.</p>
<p><b>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</b></p>	<p>See point 6.J.</p>
<p><b>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</b></p>	<p>Article 16 of the Competition Act, and the Leniency Regulation constitute the legal bases to grant leniency.</p> <p>It is the Competition Board who decides about the leniency applications and leniency is granted by a decision of the Competition Board.</p>
<p><b>M. Do you have a marker system? If yes, please describe it.</b></p>	<p>Yes. A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence shall be given to the applicant concerned by the assigned unit.</p>
<p><b>N. Does the system provide for any extra credit for disclosing additional violations?</b></p>	<p>Yes. According to the Article 7(2) of the Regulation on Fines, in an ongoing investigation, the fine to be given to an undertaking which cannot benefit from the full leniency under the Leniency Regulation, shall be reduced by one fourth if it presents the information and documents specified in point 6.F. above before the Competition Board decides to conduct a preliminary inquiry into another cartel.</p>
<p><b>O. Is the agency required to keep the identity of the beneficiary</b></p>	<p>The application is kept confidential until the end of the investigation, unless otherwise is requested by the assigned unit.</p>

<p><b>confidential? If yes, please elaborate.</b></p>	
<p><b>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</b></p>	<p>Yes.</p>
<p><b>Q. Contact point where a leniency application can be lodged:</b></p>	<p>As provided in point 6.J., a unit was assigned by the Competition Board for the implementation of the Leniency Regulation and this was announced on the web site of the Turkish Competition Authority. The unit is headed by the Vice President of the Turkish Competition Authority. The unit operates within business hours. Communication details are as follows:</p> <p>Tel: + 90 312 291 44 06 / + 90 312 291 44 68</p> <p>Fax: + 90 312 266 68 41</p> <p>E-mail: <a href="mailto:pismanlik@rekabet.gov.tr">pismanlik@rekabet.gov.tr</a></p> <p>For more detailed contact see point 3.C.</p>
<p><b>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</b></p>	<p>Yes. Regarding corporate leniency, according to Article 6(6) of the Leniency Regulation while the Competition Board takes its final decision after the investigation is completed, it may find that the undertaking cannot be granted full leniency because it has violated the conditions mentioned in point 6.F. 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 or may not be imposed at all.</p> <p>Moreover, regarding individual leniency, according to Article 9(6) of the Leniency Regulation, while the Competition Board takes its final decision after the investigation is completed, it may find that a manager or an employee cannot be granted full leniency because of acting as a coercer. In that case, fines to be imposed on the manager or employee concerned may be reduced.</p> <p>As the revocation of leniency will be addressed in the final decision of the Competition Board, an appeal can be made against it.</p>
<p><b>S. Does your policy allow for "affirmative leniency", that is the possibility of the agency approaching potential leniency applicants?</b></p>	<p>There is no provision on affirmative leniency in Leniency Regulation. However, it can be done in practice.</p>
<p><b>T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate.</b></p>	<p>Yes. Communiqué On The Regulation of The Right Of Access To The File And Protection of Trade Secrets deems the documents obtained under Article 6(3) and 9(3) of The Regulation on Active Cooperation for Detecting Cartels as intra-authority correspondence and bans the disclosure of them.</p>

## 7. Settlement

<b>A. Does your competition regime allow settlement?</b>	No.
<b>B. Which types of restrictive agreements are eligible for settlement?</b>	Not applicable.
<b>C. What is the reward of the settlement for the parties?</b>	Not applicable.
<b>D. May a reduction for settling be cumulated with a leniency reward?</b>	Not applicable.
<b>E. List the criteria (if there is any) determining the cases which are suitable for settlement.</b>	Not applicable.
<b>F. Describe briefly the system.</b>	Not applicable.
<b>F. Describe the procedural efficiencies of your settlement system.</b>	Not applicable.
<b>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</b>	Not applicable.
<b>H. Is there a possibility for settled parties to appeal a settlement decision at court?</b>	Not applicable.

## 8. Commitment

<b>A. Does your competition regime allow the possibility of commitment?</b>  If yes, please indicate its public availability.	No.
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<p><b>B. Which types of restrictive agreements are eligible for commitment?</b></p> <p><b>Are there commitments which are excluded from the commitment possibility?</b></p>	<p>Not applicable.</p>
<p><b>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</b></p>	<p>Not applicable.</p>
<p><b>D. Describe, which types of commitments are available under your competition law.</b></p>	<p>Not applicable.</p>
<p><b>E. Describe briefly the system.</b></p>	<p>Not applicable.</p>
<p><b>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</b></p>	<p>Not applicable.</p>
<p><b>J. Describe how your authority monitors the parties' compliance to the commitments.</b></p>	<p>Not applicable.</p>
<p><b>K. Is there a possibility for parties to appeal a commitment decision at court?</b></p>	<p>Not applicable.</p>

## 9. Investigative powers of the enforcing institutions

<p><b>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids, electronic or computer searches, expert opinion, etc. and</b></p>	<p>Request for Information is cited in Article 14 of the Competition Act which is as follows:</p> <p>"Request for Information</p> <p>Article 14- In carrying out the duties assigned to it by the Competition Act, the Competition Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings.</p> <p>Officials of these authorities, undertakings and associations of undertakings are obliged to provide the requested information within</p>
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<p><b>indicate whether such measures requires a court warrant.</b></p>	<p>the period to be determined by the Competition Board."</p> <p>Article 15 of the Competition Act provides powers to use during on the spot investigations which is as follows:</p> <p>"On-the-Spot Inspection</p> <p>Article 15- In carrying out the duties assigned to it by the Competition Act, the Competition Board may perform examinations at undertakings and associations of undertakings in cases it deems necessary. To this end, it is entitled to:</p> <p>a) Examine the books, any paperwork and documents of undertakings and associations of undertakings, and take their copies if needed,</p> <p>b) Request written or oral statement on particular issues,</p> <p>c) Perform examinations on the spot with regard to any assets of undertakings.</p> <p>Examination is performed by experts employed at the disposal of the Competition Board. While going for an examination, experts carry with them an authorization certificate showing the subject-matter and purpose of the examination, and that an administrative fine shall be imposed should incorrect information be provided.</p>
<p><b>B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorization by a court?</b></p>	<p>No. On the other hand, although private belongings may not be searched, should there is a dispute regarding a certain document or belonging found in the premises of an undertaking, it is required that the undertaking proves whether the document or belonging is private.</p>
<p><b>C. May evidence not falling under the scope of the authorization allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?</b></p>	<p>Yes. The decisional practice of the Competition Authority demonstrates that such evidence can be obtained and used. The ratio of that approach may be explained on the basis of the competence of <i>ex officio</i> acting. However it should be stated that this issue has not been contested before a court.</p>
<p><b>D. Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.</b></p>	<p>Yes. It was alleged that the Article as to investigation on spot unconstitutional since it allows to perform without a court order obtained in advance. However, the court decided that the allegation is not serious and dismissed it.</p>



## 10. Procedural rights of businesses / individuals

### A. Key rights of defense in cartel cases:

According to Article 42 of the Competition Act: " In case the Competition Board deems the claims put forward in applications for informing or complaint serious and sufficient, informers or complainants are notified in writing that the claims put forward have been deemed serious and that an inquiry has been initiated.

In cases where the Competition Board either expressly rejects applications, or is deemed to have rejected them by means of failure to notify within due period, anyone who documents to have a direct or indirect interest may resort to jurisdiction against the rejection decision of the Competition Board."

According to Article 43(2) of the Competition Act: "The Competition Board notifies the parties concerned of investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation, and requests that the parties submit their first written pleas within 30 days. In order to enable the commencement of the first written reply period granted to the parties, it is required that the Competition Board forwards to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims."

According to Article 44(1) of the Competition Act: "...During the investigation stage of the Competition Board, the person or persons claimed to have infringed this Competition Act may, at all times, submit to the Competition Board any information and evidence likely to influence the decision."

According to Article 44(2) of the Competition Act: "Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any paperwork drawn up within the Turkish Competition Authority in connection with themselves, and if possible, a copy of any evidence obtained."

The principles and procedures relating to access to file and the treatment of confidential information are explained in "Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets", which is available at:

<http://www.rekabet.gov.tr/File/?path=ROOT/1/Documents/Communiqu%25c3%25a9/teblig82.pdf>

According to Article 44(3) of the Competition Act: "The Competition Board may not base its decisions on issues about which the parties have not been informed and granted the right to defence.

According to Article 45 of the Competition Act: "The report prepared at the end of the investigation stage is notified to all members of the Competition Board and the parties concerned.

Those determined to have infringed the Competition Act are notified to submit their written pleas to the Competition Board within 30 days. Those charged with conducting the investigation declare an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Competition Board and the parties concerned. The parties may reply to such opinion within 30 days. In case the parties provide justifiable grounds, these periods may be extended only once and by one fold at the most.

The pleas of the parties not submitted within due period shall not be taken into account."

According to Article 46 of the Competition Act: "Hearing is held upon the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defense. Furthermore, the Competition Board may decide on its own initiative to hold a hearing.

Hearing is held within at least 30 days and at most 60 days from the end of the investigation stage. Invitations for the hearing are forwarded to the parties at least 30 days before the day of the hearing."

According to Article 47(1) of the Competition Act: "Hearings are held publicly. The Competition Board may decide to hold the hearing in camera on grounds of protecting the general morals and trade secrets.

According to Article 47(4) of the Competition Act: "The parties are obliged to notify, 7 days before the hearing at the latest, the Competition Board of the means of proof they shall utilize in the hearing. The parties may not utilize the means of proof not notified within due period."

According to Article 47(5) of the Competition Act: "During the hearing, the parties concerned may utilize any evidence and means of proof provided in the Part Two Chapter Eight of the Code of Civil Procedure. The parties claimed to have infringed this Act, or their representatives, and those who prove to the Competition Board prior to the session that they have direct or indirect interests, or their representatives may participate in sessions."

According to Article 49 of the Competition Act: "Decisions of the Competition Board are taken as a result of confidential meetings and are communicated publicly. ..."

According to Article 50 of the Competition Act: "The meeting is chaired by the Chairman of the Competition Board, or in his absence, by the Deputy Chairman, and he determines matters to be resolved. After such matters are discussed freely, the Chairman collects the votes and casts his own vote finally."

According to Article 52 of the Competition Act entitled "Points Required in Decisions":

Decisions involve the following points:

- a) Names and surnames of the members of the Competition Board who made the decision,
- b) Names and surnames of those who carried out the examination and inquiry,
- c) Names, titles, residences and distinguishing characteristics of the parties,
- d) Summary of the claims of the parties,
- e) Summary of the examination and of the economic and legal issues discussed,
- f) Opinion of the reporter,
- g) Evaluation of all evidences and pleas submitted,
- h) Grounds, and the legal basis of the decision,
- i) Conclusion,
- j) If any, writings about the dissenting votes.

Duties imposed on and rights granted to the parties with the decision made have to be written explicitly such that they do not pave the way for doubts and hesitations."

According to Article 53(2) of the Competition Act: "Decisions of the

	<p>Competition Board are published on the internet page of the Turkish Competition Authority in such a way not to disclose the trade secrets of the parties."</p> <p>According to Article 54 of the Competition Act: "In decisions of the Competition Board, periods commence as of the date the reasoned decision is communicated to the parties."</p> <p>According to the amendment to Article 55 of the Competition Act on 05.07.2012, decisions of the Competition Board shall be challenged before the competent administrative courts.</p>
<p><b>B. Protection awarded to business secrets (competitively sensitive information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</b></p>	<p>According to Article 53(2) of the Competition Act: "Decisions of the Competition Board are published on the internet page of the Turkish Competition Authority in such a way not to disclose the trade secrets of the parties."</p> <p>Additionally, according to Article 15 of the Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets: "If the Authority accepts claims that are related to the confidentiality of trade secrecy, it shall not disclose them."</p> <p>The Authority may not take into account secrecy claims related to information and documents that are indispensable to be used as evidence for proving the infringement of competition. In such cases, the Authority can disclose such information and documents that have the nature of trade secret, respecting the balance between public interest and private interest and in accordance with the proportionality criterion."</p> <p>There is no difference between trade secrets on the basis of their way of collection.</p>

## 11. Limitation periods and deadlines

<p><b>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made?</b></p>	<p>Eight years from the date of termination of the infringement.</p>
<p><b>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits?</b></p>	<p>In case of investigations, it may take around 19 months to reach a decision if all the extensions are granted.</p> <p>The breakdown of the deadlines with possible extensions is as follows:</p> <p>Start of Investigation (Investigation is to be concluded within 6 months at the latest. In cases where it is deemed necessary, the Competition Board may grant an additional period up to 6 months only once.)</p> <p>Second written defense by the relevant parties following notification of the investigation report (30 days - In case the parties provide justifiable grounds, the period may be extended only once and by one fold at the</p>

	<p>most.)</p> <p>Additional written opinion by the investigation team composed of the case handlers of the Competition Authority within 15 days against the second written defense to be submitted by the parties.</p> <p>Third written defense by the parties (30 days - In case the parties provide justifiable grounds, the period may be extended only once and by one fold at the most.)</p> <p>Hearing<sup>8</sup> (held within at least 30 days and at most 60 days from the third written defense.)</p> <p>Hearings are completed in no longer than 5 consecutive sessions, and various meetings held within the same day are deemed as one session (5 days at the latest)</p> <p>The final decision is made on the same day after the hearing, or if not possible, within 15 days.</p> <p>For further details, see especially the Articles 43, 45, 46, 47, 48 of the Competition Act.</p>
<p><b>C. What are the deadlines, statutory or otherwise to challenge the commencement or completion of an investigation or a decision regarding sanctions?</b></p>	<p>Action for annulment of the Competition Board's final decisions, measure decisions, and decisions on administrative fines shall be brought before the competent administrative court within 60 days as of communicating the decision to the parties. With respect to the appeal of the decisions of the courts of first instance, the Council of State (the supreme administrative court) has jurisdiction to hear the action concerned.</p>

## 12. Types of decisions

<p><b>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1.</b></p>	<p>The Competition Board may notify the undertaking or associations of undertakings concerned of a decision encompassing that behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement and it may impose fines.</p> <p>The Competition Board, prior to taking a decision encompassing those behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement, shall inform in writing the undertaking or associations of undertakings concerned of its opinions concerning how to terminate the infringement.</p> <p>Where the occurrence of serious and irreparable damages is likely until the final decision, the Competition Board may take interim measures which have a nature of maintaining the situation before the infringement and which shall not exceed the scope of the final decision.</p> <p>The Competition Board may impose fines on undertakings, association of undertakings, or members of such associations, and employees and managers of undertakings and association of undertakings.</p> <p>In criminal investigations regarding bid-rigging in public tenders, prison sentences may also be imposed.</p>
<p><b>B. List any other types of decisions on the merits</b></p>	<p>Not applicable.</p>

<p>of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1.</p>	
<p><b>C. Can interim measures be ordered during the proceedings in cartel cases? (If different cartels please describe both.) Which institution (the investigatory / the decision-making one) is authorized to take such decisions? What are the conditions for taking such a decision?</b></p>	<p>Where the occurrence of serious and irreparable damages is likely until the final decision, the Competition Board, the decision making organ of the Turkish Competition Authority, may take interim measures which have a nature of maintaining the situation before the infringement and which shall not exceed the scope of the final decision.</p>

### 13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p><b>A. Grounds for the imposition of procedural sanctions / fines:</b></p>	<p>Articles 16 and 17 of the Competition Act are relevant for this question which are as follows:</p> <p>Article 16 - "The Competition Board shall impose administrative fines on natural and legal persons having the nature of undertakings, and on associations of undertakings or the members of such associations where;</p> <ul style="list-style-type: none"> <li>a) ...</li> <li>b) ...</li> <li>c) incomplete, incorrect or misleading information or document is provided or the information or document is not provided within the time specified or at all, during the application of Articles 14 and 15 of the Competition Act,</li> <li>d) on-the-spot inspection is prevented or made difficult, for those specified under subparagraphs (a), (b) and (c); equaling one thousandth of the annual gross revenue of the undertakings and associations of undertakings or the members of such associations which generated by the end of the fiscal year preceding the decision, or where it cannot be calculated, which generated by the end of the fiscal year closest to the date of decision, as calculated by the Competition Board, and for those specified under subparagraph (d); equaling five thousandth of their gross revenues to be determined in the same manner. However, the fine to be determined by this principle may not be less than 13.591 Turkish Liras (approx. € 6.156) ...</li> </ul> <p>Article 17- "Provided the fines laid down in paragraph one of Article 16 are reserved, in cases of</p> <ul style="list-style-type: none"> <li>a) Non-compliance with the obligations provided by or commitments given with a final decision or an interim injunction decision,</li> </ul>
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	<p>b) Preventing or impeding on-the-spot investigation,</p> <p>c) Failure to submit the requested information or the document in time in respect of the application of Articles 14 and 15, the Competition Board shall impose administrative fines on undertakings and associations of undertakings per day which amounts to five per ten thousand of the annual gross revenue of the undertakings concerned, and of associations of undertakings and/or the members of such associations, which is generated by the end of the preceding financial year and where it is not possible to calculate such revenue, of the revenue which is generated by the end of the closest financial year and which shall be determined by the Competition Board."</p>
<b>B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):</b>	Administrative.
<b>C. On whom can procedural sanctions be imposed?</b>	See point 13.A.
<b>D. Criteria for determining the sanction / fine:</b>	See point 13.A.
<b>E. Are there maximum and / or minimum sanctions / fines?</b>	See point 13.A.

## 14. Sanctions on the merits of the case

<p><b>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</b></p> <p><b>On whom can sanctions be imposed?</b></p>	<p>Bid-rigging in public tenders is an administrative offence under the Competition Act and a criminal offence under the Criminal Code. Other types of cartels are administrative offence.</p> <p>Furthermore, as it is stated at the point 2.E., claimants aggrieved from prevention, distortion or restriction of competition may bring an action before civil courts for compensation.</p> <p>According to the Competition Act, fines can be imposed on undertakings and associations of undertakings or the members of such associations and managers or employees of the undertaking or association of undertakings.</p> <p>According to the Criminal Code, prison sentences may be imposed on cartel participants in criminal investigations involving bid-riggings in public tenders.</p>
<b>B. Criteria for determining the sanction / fine:</b>	In deciding substantive fines, the Competition Board takes into account of factors such as the repetition and duration of the violation, the market power of the undertakings or associations of undertakings, their

	<p>determining impact on the occurrence of the violation, whether they conform to the commitments made, whether they assist with the inspection, the gravity of the damage which has occurred or is likely to occur.</p> <p>See also Regulation on Fines.</p>
<p><b>C. Are there maximum and / or minimum sanctions / fines?</b></p>	<p>Maximum amount of fine is up to ten percent of the annual gross revenue of the undertakings and associations of undertakings to be punished or the members of such associations which generated by the end of the fiscal year preceding the final decision, or where that cannot be calculated, which generated by the end of the fiscal year that is closest to the date of final decision, as calculated by the Competition Board.</p> <p>Where undertakings or associations of undertakings are imposed substantive fine mentioned in the previous paragraph, managers or employees of the undertaking or association of undertakings which is detected to have had a determining impact on the violation are imposed administrative fines up to five percent of the fine imposed on the undertaking or association of undertakings.</p> <p>To those associations or associations of undertakings or their managers and employees making an active cooperation with the Competition Authority for purposes of revealing contrariness to the Competition Act, penalties mentioned above may not be imposed or reductions may be made in penalties taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly.</p>
<p><b>D. Guideline(s) on calculation of fines:</b></p>	<p>Regulation on Fines. Published in the Official Gazette dated 15.2.2009 and numbered 27142.</p> <p>English and Turkish versions are also available via the website of the Turkish Competition Authority:</p> <p><a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik9.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fY%25c3%25b6netmelik%2fyonetmelik9.pdf</a></p> <p><a href="http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik11.pdf">http://www.rekabet.gov.tr/File/?path=ROOT%2f1%2fDocuments%2fRegulation%2fyonetmelik11.pdf</a></p>
<p><b>E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?</b></p>	<p>Appealing against decisions of the Competition Board does not cease the implementation of decisions, and the follow-up and collection of fines.</p> <p>If the implementation of the decision should result in damages which are difficult or impossible to compensate for, and if this decision is clearly unlawful, the competent administrative court may decide to stay the execution of the decision, stating the reasons thereof.</p>

## 15. Possibilities of appeal

<b>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</b>	In the first instance, actions for annulment of the Competition Board's final decisions, measure decisions and decisions on administrative fines shall be brought before the competent administrative court within 60 days, as of communicating the decision to the parties. Actions for appeal against the decisions of courts of first instance are heard by the Council of State (the supreme administrative court). Grounds of appeal may be substantive and/or procedural.
<b>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</b>	Competent administrative courts have jurisdiction in the first instance. Actions for appeal against the decisions of courts of first instance are challenged before the Council of State.