

## **General Preamble**

(1) Article 16(3) of the Act No. 4054 on the Protection of Competition (the Act) provides that undertakings and associations of undertakings which engage in behaviors prohibited under Articles 4 and 6 of the Act may be given fines up to ten percent of their annual gross revenues 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). Article 16(5) of the Act states 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) Article 16(4) of the Act provides that managers or employees of undertakings or associations of undertakings who are found to have had decisive influence on the violation may be imposed fines up to five percent of the fine given to the undertakings or associations of undertakings pursuant to paragraph three.

(3) The last paragraph of Article 16 of the Act provides that the points taken account of in setting 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 imposed on undertakings and associations of undertakings which engage in behaviors prohibited under Article 4 and 6 of the Act, and on their managers and employees, pursuant to Article 16(3) and 16(4), of the Act, this regulation, which shall be titled as the Regulation on Fines, has been prepared. The goals to be accomplished by the Regulation on Fines are 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) Ensuring that fines are specifically and generally deterrent. Specific deterrence is preventing those undertakings, which are the addressee of fines, from violating the Act. General deterrence is dissuading 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 in such a way that they ensure both types of deterrence.

**REGULATION ON FINES TO APPLY  
IN CASES OF AGREEMENTS, CONCERTED PRACTICES AND DECISIONS  
LIMITING COMPETITION, AND ABUSE OF DOMINANT POSITION  
(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 setting 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: 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: agreements restricting competition 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.
- e) The Board: the Competition Board,
- f) The Authority: the Competition Authority,

g) Annual gross revenue: net sales in the uniform chart of accounts, 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 a 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, 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, and if the conditions are satisfied, Article 7(2) and 7(3) 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 Article 16(3) of the Act, the fine that shall apply to the managers and employees of undertakings or associations of undertakings, who are found to have had decisive influence on the violation, 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 rate:

- a) between two percent and four percent for cartels, and
- b) between five per thousand and three percent for other violations,,

of the annual gross revenues of the undertakings and associations of undertakings or the members of such associations which engage in behaviors prohibited by Articles 4 and 6 of the Act, 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 rates written under paragraph one, issues such as the market power of the undertakings or associations of undertakings concerned, 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 the 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 instance of repetition in case the violation is repeated,
- b) in case the cartel is maintained 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 in cases such as coercing other undertakings into the violation.

### **Mitigating factors**

**ARTICLE 7 – (1)** The base fine may be reduced at a rate of one fourth to three fifths in case the undertakings or association of undertakings concerned prove certain facts such as provision of assistance to the examination beyond the fulfillment of legal obligations, existence of encouragement by public authorities or coercion by other undertakings in the violation, voluntary payment of damages to those harmed,

termination of other violations, and occupation of a very small share by practices subject to the violation within annual gross revenues.

(2) In an ongoing investigation, the fine to be given to an undertaking which cannot benefit from the provision 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 or reduction of fines to be given, are reserved.

(3) In case the undertakings or associations of undertakings that engaged in other violations admit their violations and make 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 implemented in the fines to be imposed to those managers and employees of the undertaking who make 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 other violations, may be given fines up to five percent of the fine imposed on the undertaking or association of undertakings concerned. Those who actively cooperate with the Authority for uncovering the violation of the Act may be offered immunity from or reduction in fines to be given, taking into account the nature, effectiveness and timing of the cooperation.

## **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.

### **Entry into Force**

**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.