COMPETITION AUTHORITY

(Upon Judicial Decision)

DECISION OF THE COMPETITION BOARD

File number : 2011-4-091
Decision Number : **25-01/23-20**
Decision Date : 09.01.2025

A. MEMBERS IN ATTENDANCE
Chairman : Birol KÜLE
Members : Ahmet ALGAN, Şükran KODALAK, Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN, Cengiz ÇOLAK, Rıdvan DURAN

B. RAPPORTEURS: Noyan DELİBAŞI, Cüneyd DAL, Sebahat Gözde BİRCAN, Burçin GÜLEŞ, Derya ERMİŞ, Ayberk GÜLTEKİN

C. UNDER EXAMINATION:

1- Akbank TAŞ
Sabancı Center 4.Levent 34330 İstanbul

2- T.C. Ziraat Bankası AŞ
Finanskent Mahallesi, Finans Caddesi 44/A Ümraniye/İstanbul

3- Türkiye İş Bankası AŞ
İş Kuleleri 34330 Levent Beşiktaş/İstanbul

4- Denizbank AŞ
Büyükdere Cad. No:141 34394 Esentepe/İstanbul

5- Yapı ve Kredi Bankası AŞ
Yapı Kredi Plaza D Blok Plaza Büyükdere Cad. 34330 Levent – Beşiktaş/İstanbul

6- Türk Ekonomi Bankası AŞ
İnkılap Mah. Sokullu Cad. No:7A Ümraniye 34768/İstanbul

7- Türkiye Vakıflar Bankası TAO
Finanskent Mahallesi Finans Caddesi No:40/1 Ümraniye/İstanbul

8- Türkiye Halk Bankası AŞ
Finanskent Mahallesi Finans Caddesi No:42/1 34760 Ümraniye/İstanbul

9- Türkiye Garanti Bankası AŞ -Garanti Ödeme Sistemleri AŞ - Garanti Konut Finansmanı Danışmanlık AŞ'den oluşan ekonomik bütünlük
Levent Nispetiye Mah. Aytar Cad. No:2 Beşiktaş 34340 İstanbul

10- ING Bank AŞ
Reşitpaşa Mahallesi Eski Büyükdere Caddesi No:8 34467 Sarıyer/İstanbul

11- HSBC Bank AŞ
Esentepe Mah. Büyükdere Cad. No:128 34394 Şişli/İstanbul

(1) **D. SUBJECT OF THE FILE: Following the annulment of the Board's decision dated 08.03.2013 and numbered 13-13/198-100 by the decisions with various numbers and dates of the Ankara 2nd Administrative Court, the study initiated by the Competition Board decision dated 09.06.2022 and numbered 22-26/418-M concerning Akbank TAŞ, T.C. Ziraat Bankası AŞ, Türkiye İş Bankası AŞ, Denizbank AŞ, Yapı ve Kredi Bankası AŞ, Türk Ekonomi Bankası AŞ, Türkiye Vakıflar Bankası TAO, Türkiye Halk Bankası AŞ, the economic entity composed of Türkiye Garanti Bankası AŞ-Garanti Ödeme Sistemleri AŞ-Garanti Konut Finansmanı Danışmanlık AŞ, ING Bank AŞ and HSBC Bank AŞ, in order to fulfill the requirements of the aforementioned court rulings.**

(2) **E. PHASES OF THE FILE:** As a result of the investigation conducted to determine whether the banks operating in Türkiye violated Article 4 of the Act No. 4054 (the Act No. 4054) by entering into an agreement and/or engaging in concerted practices concerning the joint determination of interest rates, fees and commissions related to deposit, loan and credit card services, the Competition Board (the Board), with its decision dated 08.03.2013 and numbered 13-13/198-100, decided to impose administrative fines on Akbank TAŞ (AKBANK), T.C. Ziraat Bankası AŞ (ZİRAAT), Türkiye İş Bankası AŞ (İŞ BANKASI), Denizbank AŞ (DENİZBANK), Yapı ve Kredi Bankası AŞ (YAPI KREDİ), Türk Ekonomi Bankası AŞ (TEB), Türkiye Vakıflar Bankası TAO (VAKIFBANK), Türkiye Halk Bankası AŞ (HALKBANK), the economic entity composed of Türkiye Garanti Bankası AŞ-Garanti Ödeme Sistemleri AŞ-Garanti Konut Finansmanı Danışmanlık AŞ (GARANTİ), ING Bank AŞ (ING), HSBC Bank AŞ (HSBC) and Finans Bank AŞ (FİNANSBANK)[1].

(3) In the subsequent process, each bank filed an administrative lawsuit requesting the annulment of the relevant administrative act (the annulment lawsuit or annulment lawsuits). Accordingly, the first stage of the administrative judicial proceedings consisting of 12 separate cases brought for the annulment of the Board's decision dated 08.03.2013 and numbered 13-13/198-100 commenced with the filing of a lawsuit before Ankara 2nd Administrative Court. Ankara 2nd Administrative Court found no illegality in the administrative act that was the subject of the lawsuit and dismissed the lawsuits[2] (the dismissal decision or dismissal decisions)

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[1] The commercial title of the relevant undertaking was Finansbank AŞ, however it was amended as QNB Finansbank AŞ on 20.10.2016 (https://www.qnbfinansbank.com/qnb-finansbanki-taniyin, Accesed: 02.06.2022).

[2] Since the administrative judicial process proceeded in the same manner for each plaintiff/party to the investigation, except for FİNANSBANK, the administrative judicial process concerning AKBANK is presented below for review:
In the case filed by Akbank TAŞ, Ankara 2nd Administrative Court, by its decision dated 05.12.2014 and numbered E. 2014/137, K. 2014/1393, dismissed the case. Upon the plaintiff's appeal, the 13th Chamber of the Council of State upheld the decision by its ruling dated 16.12.2015 and numbered E. 2015/2974, K. 2015/4612. Following the upholding decision, the plaintiff filed a request for rectification, and the13th Chamber of the Council of State, by its decision dated 21.05.2019 and numbered E. 2016/4017, K. 2019/1779, accepted the request for rectification and annulled the Ankara 2nd Administrative Court's decision dated 05.12.2014 and numbered E. 2014/137, K. 2014/1393.
Ankara 2nd Administrative Court, by its decision dated 19.07.2019 and numbered E. 2019/1108, K. 2019/1463, did not comply with the annulment decision of the 13th Chamber of the Council of State, insisted on its previous decision, and dismissed the case. Upon the plaintiff's appeal of this dismissal, the 13th Chamber of the Council of State annulled the decision by its ruling dated 31.05.2021 and numbered E. 2019/2656, K. 2021/1104. The Board's request for rectification was rejected by the Plenary Session of the Administrative Law Chambers of the Council of State on 24.02.2022, numbered E. 2021/3539, K. 2022/658.

(4) The dismissal decisions of Ankara 2nd Administrative Court were appealed by the plaintiff banks. The 13th Chamber of the Council of State, upon reviewing the case files, found no illegality in the relevant Board decision and upheld the decisions of the Ankara 2nd Administrative Court that had dismissed the actions (the upholding decision or upholding decisions).

(5) Following the upholding decision rendered by the 13th Chamber of the Council of State, the plaintiff banks filed requests for rectification of the decision. However, since FİNANSBANK did not apply for rectification within fifteen days following the notification of the upholding decision of the 13th Chamber of the Council of State, its request for rectification was rejected by the 13th Chamber due to being time-barred. Consequently, the upholding decision -namely, the judicial ruling establishing that the Board's decision dated 08.03.2013 and numbered 13-13/198-100 was lawful- became final with respect to FİNANSBANK. Therefore, at this stage, the administrative judicial process concerning the Board's decision continued for the remaining 11 plaintiff banks, excluding FİNANSBANK.

(6) Upon reevaluating the case file while examining the request for rectification, the 13th Chamber of the Council of State accepted the plaintiffs' request for rectification and decided to overturn the decision of the Ankara 2nd Administrative Court and to remit the case to the first-instance court for a new examination (the reversal decision or reversal decisions).

(7) Subsequently, upon the case file being remitted to it as the first-instance court, the Ankara 2nd Administrative Court insisted on its initial ruling, in other words, it maintained its view that the Board's decision dated 08.03.2013 and numbered 13-13/198-100 was lawful.

(8) Upon the insistence decision of Ankara 2nd Administrative Court, the plaintiff banks appealed this decision, and accordingly, the case file was referred to the Plenary Session of the Administrative Law Chambers of the Council of State (DİDDK), which is the competent authority to review the appeal. DİDDK, by a vote of seven to six, decided to overturn the insistence decision of the Ankara 2nd Administrative Court that was the subject of the appeal.

(9) Subsequently, the Authority filed a request for rectification regarding the decision of DİDDK that overturned the insistence decision of the Ankara 2nd Administrative Court. Upon examining the rectification request, DİDDK rejected the request (the rectification rejection decision or rectification rejection decisions), and thus the case file was once again referred back to the Ankara 2nd Administrative Court, whose insistence decision had been overturned.

(10) Ankara 2nd Administrative Court, through its decisions issued with different numbers and dates, ruled to annul the Board's decision dated 08.03.2013 and numbered 13-13/198-100. The Board reviewed the Information Note dated 07.06.2022 and numbered 2011-4-091/BN-01, which had been prepared to fulfill the requirements of the aforementioned court rulings, during its meeting on 09.06.2022, and decided, with the number 22-26/418-M, to carry out a study to ensure compliance with the judicial decisions within the scope of the file, taking into account Articles 16 and 17 of the Act No. 4054 as well as other relevant provisions during the related procedures. The findings and assessments reached as a result of the study conducted pursuant to this Board decision are presented below.

Following the annulment decision, Ankara 2nd Administrative Court, by its ruling dated 26.04.2022 and numbered E. 2022/920, K. 2022/855, annulled the administrative act that was the subject of the case.

(11) **F. RAPPORTEUR OPINION:** In the relevant report, in summary, it is concluded that a decision shall be taken that

- The economic entity composed of Türkiye Garanti Bankası AŞ-Garanti Ödeme Sistemleri AŞ-Garanti Konut Finansmanı Danışmanlık AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Akbank TAŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said undertaking based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Yapı ve Kredi Bankası AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said undertaking based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Türkiye İş Bankası AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said undertaking based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- T.C. Ziraat Bankası AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Türkiye Halk Bankası AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Türkiye Vakıflar Bankası TAO violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said undertaking based on its 2023 revenues pursuant to the third paragraph of

Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph and subparagraph (a) of the third paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.

- Türk Ekonomi Bankası AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- Denizbank AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said undertaking based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- HSBC Bank AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- ING Bank AŞ violated Article 4 of the Act no. 4054 through its anti-competitive actions. Accordingly, an administrative fine shall be imposed on the said economic entity based on its 2023 revenues pursuant to the third paragraph of Article 16 of the Act No. 4054 and subparagraph (b) of the first paragraph of Article 5 of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position.
- The amount of the administrative fine to be imposed on each undertaking involved in the study conducted within the scope of the file cannot exceed the amount of the administrative fine previously imposed on the said undertakings by the Board's decision dated 08.03.2013 and numbered 13-13/198-100, due to prohibition of reformatio in peius principle and thus
    - The economic entity composed of Türkiye Garanti Bankası AŞ-Garanti Ödeme Sistemleri AŞ-Garanti Konut Finansmanı Danışmanlık AŞ shall be imposed 213.384.545,76 TL
    - Akbank TAŞ shall be imposed 172.165.155,00 TL,
    - Yapı ve Kredi Bankası AŞ shall be imposed 149.961.870,00 TL
    - Türkiye İş Bankası AŞ shall be imposed 146.656.400,00 TL,
    - Ziraat Bankası AŞ shall be imposed 148.231.490,00 TL,
    - Türkiye Halk Bankası AŞ shall be 89.691.370,00 TL,
    - Türkiye Vakıflar Bankası TAO shall be imposed 82.172.910,00 TL,
    - Türk Ekonomi Bankası AŞ shall be imposed 10.668.726,00 TL,
    - Denizbank AŞ shall be imposed 23.055.396,00 TL,
    - HSBC Bank AŞ shall be imposed 14.875.404,00 TL,
    - ING Bank AŞ shall be imposed 12.072.792,00 TL

G. EXAMINATION AND EVALUATION

(12) As detailed above, the administrative judicial process commenced as a result of annulment lawsuits filed by the undertakings, on which the Board decided to impose administrative fines with its decision dated 08.03.2013 and numbered 13-13/198-100. Among the plaintiffs, FİNANSBANK did not apply for rectification within fifteen days following the notification of the upholding decision of the 13th Chamber of the Council of State; consequently, FİNANSBANK's request for rectification was rejected by the 13th Chamber of the Council of State due to being time-barred, and the upholding decision—namely, the judicial ruling establishing that the Board's decision dated 08.03.2013 and numbered 13-13/198-100 was lawful—became final with respect to FİNANSBANK. Therefore, at this stage, the administrative judicial process concerning the Board's decision continued for the remaining 11 plaintiff banks, excluding FİNANSBANK.

(13) Ultimately, following the stages of appeal, cassation, and rectification, the aforementioned Board decision was annulled as a result of decisions issued by the Ankara 2nd Administrative Court with various numbers and dates. The Board reviewed the Information Note prepared to ensure compliance with the relevant court decisions during its meeting on 09.06.2022 and decided, with the decision number 22-26/418-M, to carry out a study within the scope of the file to implement the requirements of the judicial decisions.

(14) In line with the explanations made above, the parties of this study are

- GARANTİ[3]
- AKBANK
- YAPI KREDİ
- İŞ BANKASI
- ZİRAAT
- HALKBANK
- VAKIFBANK
- DENİZBANK
- HSBC
- ING
- TEB

The documents, assessments, and matters related to the determination of fines concerning the aforementioned undertakings are presented in the relevant sections below.

G.1. Relevant Market

(15) In competition law assessments, the primary purpose of defining the relevant market is to identify the competitive conditions faced by the undertakings under review, thereby revealing existing or potential competitors that have the ability to constrain these undertakings' behavior and prevent them from acting independently of competitive pressures.

(16) However, the significance of market definition may vary depending on the type of competition infringement under examination. For instance, in cases of abuse of dominant position, defining the relevant market is considered a prerequisite because

[3] As indicated in the Phases of the File Section, Türkiye Garanti Bankası AŞ, Garanti Ödeme Sistemleri AŞ and Garanti Konut Finansmanı Danışmanlık AŞ are accepted within the same economic entity and the expression "GARANTİ" refers to the said economic entity.

a determination of dominance must be made first. Similarly, in the assessment of whether a concentration has anti-competitive effects, the definition of the relevant market is an important factor for evaluating competitive pressure. Nonetheless, it is generally accepted that in infringements where the elements of the violation and/or the parties to the collusion remain unchanged regardless of how the market is defined such as in horizontal agreements the definition of the relevant market may not be necessary. Paragraph 20 of the Relevant Market Guidelines states "*in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be made*". Accordingly, if it is concluded that possible market definitions will not prejudice the evaluation concerning the existence of a violation, a market definition may not be made.

(17) Paragraph 3 of the Guidelines on the Definition of the Relevant Market is as follows: *"In determining the relevant product market, the market comprising the goods or services which are the subject of a merger or an acquisition, and the goods or services which are deemed identical in the eye of consumers in terms of their prices, intended use and characteristics is taken into account; other factors that may affect the market determined shall also be assessed."* In other words, the relevant product market encompasses all products that are considered substitutable by consumers in terms of their characteristics, prices, and intended use. In defining the relevant product market, in addition to demand-side substitution, supply-side substitution is also taken into account where it has an equivalent effect.

(18) Looking at the Board's decisions concerning financial services, the relevant market can be defined in its broadest sense as "banking services" or based on each main service type as "deposit services," "loan services" and "credit card services." Alternatively, the market can be defined more narrowly according to specific sub-activities, such as "corporate loans," "housing loans," "loan services offered to SMEs" or "personal and commercial loan services."[4]

(19) When examining the types of services related to the documents obtained within the scope of the file, it can be stated, as detailed in later sections of the decision, that the documents obtained from the undertakings primarily concern deposit, loan, credit card, and public deposit services.

(20) In this context, the relevant product market can be defined in its broadest sense as "banking services" or more narrowly as "deposit services," "loan services," "credit card services," and "public deposit services," among others. On the other hand, it is thought that whether the relevant product market is defined broadly or narrowly does not affect the attribution of the infringement to the undertakings under investigation.

(21) As stated above, depending on paragraph 20 of the Relevant Market Guidelines stating that "*in case the transaction under examination does not pose concerns for competition within the framework of potential alternative market definitions in terms of both product and geography, or in case there are competition distorting effects for all alternative definitions, a market definition may not be made"*, it is not necessary to define the relevant product market.

[4] See Board decisions dated 24.03.2010 and No. 10-26/353-127, dated 06.12.2006 and No. 06-87/1120-325, dated 28.01.2010 and No. 10-10/89-39, dated 11.11.2009 and No. 09-54/1297-328.

(22) It is concluded that the relevant geographic market can be defined as “Türkiye” since the banking services under examination are provided nationwide.

G.2. The Annulled Board Decision dated 08.03.2013 and numbered 13-13/198-100

(23) In the aforementioned Board decision, it was determined that 12 undertakings operating in the banking sector engaged in anti-competitive conduct aimed at jointly determining the interest rates and fees applied to various banking services. The decision states that these actions were carried out within the framework of a collusion covering deposit, loan, and credit card services, including public deposits.

(24) The matters forming the basis for the relevant reasoning are explained in the Board decision in light of the assessments made regarding the documents. Within this framework, the following evaluations were included in the relevant Board decision:

- The collusion, based on the earliest and latest identifiable documents, took place between 21.08.2007 and 22.09.2011 and covered agreements and/or concerted practices in the areas of loans, deposits, and credit card services, involving all 12 banks that were parties to the investigation. According to the documents obtained regarding this matter, the common plan of the collusion consisted of jointly determining pricing strategies.
- The elements of the aforementioned collusion were determined, and its implementation and monitoring were carried out through a series of communications, information exchanges, and agreements among the parties. The first evidence of the said collusion was identified as a document dated 21.08.2007, obtained during on-site inspections at GARANTİ. This document indicates that a communication took place between AKBANK and GARANTİ regarding the interest rate to be applied to housing loans.
- Document No. 2, dated 27.09.2007, obtained from YKB, revealed that YKB, AKBANK, GARANTİ, İŞ BANKASI, VAKIFBANK, HALKBANK, and ZİRAAT reached a gentlemen’s agreement to jointly determine the maximum interest rate applicable to deposits and not to price above that rate. Consequently, it was observed that a collusion regarding price setting for loan and deposit services was established by these seven major market-making banks and that this collusion began to be implemented from 21.08.2007, based on the earliest identified document.
- The first evidence for 2008, Document No. 3 dated 25.06.2008, revealed that GARANTİ, YKB, AKBANK and İŞ BANKASI organized a meeting to discuss certain matters related to banking services. It is understood that the general managers (GMs) of GARANTİ, YKB, and AKBANK attended the meeting but GM of İŞ BANKASI could not participate but was informed of the discussions. The statements in Document No. 4 indicate the scope of the meeting. In a document containing correspondence among YKB’s senior executives dated 04.07.2008, it was indicated that GARANTİ contacted YKB on 03.07.2008 and proposed a gentleman’s agreement not to price deposit interest rates above 20%, which YKB accepted. The statement in the document, “*We are expecting that Akbank and Garanti Bank will comply with this agreement,”* shows that the two mentioned banks were also parties to the agreement.
- However, upon learning that AKBANK applied an interest rate of 20.60% on 04.07.2008, this date being a transition day raised a suspicion that there was a disruption in communication, and the validity of the gentleman’s agreement at the general manager level was confirmed. In addition to confirming the agreement’s

validity, the document indicates that whether İŞ BANKASI and the publicly owned banks were also parties to the agreement was inquired. Subsequently, the Head of Treasury Management at YKB reported that these banks had indeed participated in the gentleman's agreement.

- Accordingly, it was observed that the settlement, which was found to be reached among seven undertakings pursuant to the documents dated 2007, continued to be implemented in June 2008 and thereafter.
- It was understood that the four documents mentioned above concretely set out the common plan of the settlement, and that this settlement was maintained through agreements covering various communications and exchanges of information on prices, carried out at later dates among all of the banks that were parties to the investigation. Indeed, through numerous communications that took place among managers and employees at various levels, primarily GMs and deputy general managers (DGM), agreements were established to jointly increase credit and deposit interest rates, fees, and commissions, or to jointly determine strategies regarding changes in such rates; competitively sensitive information such as price strategies and targets was shared, thereby enabling coordinated conduct and continued implementation of the common plan.
- The parties to this settlement regarding banking services were not limited to the seven banks that initially established the settlement; FİNANSBANK, HSBC, DENİZBANK, ING, and TEB subsequently joined the settlement in relation to certain types of services.
- Furthermore, according to document No. 10 dated 10.06.2010, the scope of the settlement was expanded as of at least the specified date to include credit card services. Thus, it was established that the settlement was implemented among the 12 undertakings that are the subject of the investigation and concerned the joint determination of prices to be applied in connection with credit, deposit, and credit card services.
- Based on the aforementioned documents, it was determined that a settlement aimed at price fixing was established among 12 undertakings operating in the banking sector. The implementation of the common plan of this settlement was carried out through a series of agreements executed to coordinate the determination of interest rates and fees for numerous products within the scope of credit, deposit, and credit card services. Although the number of parties involved in these agreements varied, a significant portion of the 12 banks regularly participated in most of these agreements.
- Therefore, it was concluded that a common plan aimed at price fixing had been established among the banks at the GM and DGM level, and that subsequent sub-agreements ensured the identification and implementation of the elements of the infringement. The fact that the subject matter and the parties to the settlement changed over time, or that some of the agreements were not put into practice, was deemed irrelevant for the finding above. Based on this assessment, it was concluded that each agreement and/or concerted practice carried out among the parties did not constitute a separate infringement; rather, the agreements in question constituted elements of a single settlement whose ultimate objective was price coordination.
- Since these acts were evaluated within the scope of a single settlement, it was not necessary for each piece of evidence forming the basis of the investigation to

contain information on all elements of the infringement or to have equivalent probative value. This is because each communication between the undertakings ultimately served the purpose of forming the elements of the common plan and maintaining the settlement. Thus, for the standard of proof regarding the infringement, what mattered was the assessment of the evidence as a whole.

- The statements contained in the aforementioned documents demonstrated a restriction of competition by object and thus the existence of the infringement. In addition, the investigation examined whether the price coordination that was the subject of the settlement was actually put into practice. Upon reviewing documents numbered 2, 3, 4, 6, 9, 25, 26, and 27, it was determined that the parties indeed implemented the jointly and communicatively determined prices in line with the settlement. Moreover, based on documents numbered 14, 16, 19, 20, and 21, it was established that, as an element of the settlement concerning deposit services, anticompetitive conduct was also carried out in the provision of banking services relating to public deposits.
- The conduct of the state-owned banks regarding public deposits was not evaluated as a separate settlement and a separate infringement, but rather within the scope of the “settlement” mentioned above, which involved all banks that were parties to the investigation and was found to be anticompetitive

(25) As a result of the evaluations carried out, it was concluded that AKBANK, DENİZBANK, FİNANSBANK, GARANTİ, HALKBANK, HSBC, ING, İŞ BANKASI, TEB, VAKIFBANK, YKB, and ZİRAAT had established a settlement aimed at price fixing concerning deposit, credit, and credit card services and that through the communications and practices within the scope of this settlement considered as agreements and/or concerted practices, they violated Article 4 of the Act No. 4054. The actions of the undertakings in question were assessed under the category of “other infringements” pursuant to Article 5(1)(b) of the Regulation on Fines to Be Imposed in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (the 2009 Fines Regulation), and the basic fines were determined accordingly.

(26) Article 28, paragraph one of the Administrative Procedure Law (APL) stipulates that “*The administration is obliged to take action or perform the necessary conduct without delay in accordance with the requirements of decisions of the Council of State, regional administrative courts, administrative courts and tax courts on the merits or regarding the stay of execution.”* Within the framework of this provision, the annulment decision issued by Ankara 2nd Administrative Court with various dates and numbers must be complied with. In this respect, the reasoning set out in the annulment decisions of the administrative judiciary is of importance for the assessments to be made and for the decision to be issued by the Board. This is because whether the Board is required to issue a new administrative act following the relevant annulment decisions, and if so, the scope of such new administrative act, must be determined in line with the reasoning set forth in the decision of the administrative judiciary.

(27) At this point, it should be noted that in the annulment decisions of the administrative judiciary it was stated that:

- In the relevant Board decision, it was concluded that all 12 banks operating in Türkiye violated Article 4 of the Act 4054 on the grounds that they acted in coordination within the framework of a single framework agreement or common plan concerning deposit, loan, credit card, and public deposit services,

- However, it was not demonstrated, at a sufficient level of standard of proof (beyond reasonable doubt), that the undertakings alleged to have participated in the infringement were aware of the said framework agreement or common plan,
- The authority took an action based on an incomplete investigation; although the conclusion section of the challenged Board decision found that all 12 banks that were the subject of the investigation violated Article 4 of the Act No. 4054 in the areas of deposit, loan and credit card services, an examination of the information and documents in the file shows that some banks participated in the infringement only with respect to a single service, while some banks did not participate in any infringement with respect to certain services,
- Therefore, it cannot be claimed that all 12 banks participated in the infringement in all sectors (deposit, loan, credit card and public deposit), nor can all 12 banks be held responsible for all infringements that occurred among different banks across different sectors.

It was also stated that the challenged administrative act was unlawful because instead of carrying out separate assessments about the relevant banks for each service in which each bank participated, the approach of a single continuous infringement was adopted.

(28) In summary, the annulment decisions of the administrative judiciary emphasize that it could not be demonstrated that the banks that were the subject of the investigation acted in coordination under a single framework agreement or common plan; it is unlawful to hold all banks responsible for all infringements that occurred among different banks in different sectors and an infringement assessment must therefore be made separately for each service in which each bank participated.

(29) Some of the points referred to in the annulment decisions are as follows:

> *"…in cases where it cannot be demonstrated that infringements carried out through bilateral or multilateral agreements or concerted practices among different undertakings in relation to different markets were implemented within the framework of a single framework agreement or common plan, or where it cannot be demonstrated that an undertaking participating in certain elements of a framework agreement was aware or should have been aware of such framework agreement, each undertaking must be held responsible not for the whole infringement, but only for the part in which it participated.*
>
> *In this context, properly determining the scope and boundaries of the framework agreement or common plan within the approach of a single continuous infringement, establishing the connection and coordination among agreements or concerted practices carried out among several undertakings, and demonstrating that the undertakings participating in the infringement were aware or should have been aware of the framework agreement are of great importance for determining the limits of the undertakings' liability, an error in establishing these matters would excessively broaden the undertakings' liability in terms of administrative fines, limitation periods, and especially private law liability, thereby potentially placing undertakings in situations not aligned with the material reality."*

(30) Within this framework, the unlawfulness identified in the relevant decisions is explained as follows:

> *"In this case, it is understood that the respondent authority failed to demonstrate, at a sufficient level of proof (beyond reasonable doubt), that all 12 banks operating*

in Türkiye acted in coordination within the framework of a single framework agreement or common plan concerning deposit, loan, credit card and public deposit services, and that the undertakings participating in the infringement were aware of the said framework agreement or common plan; that the findings included in the challenged Board decision were not supported by the necessary evidence; and that the authority adopted an action based on an incomplete investigation.

Indeed, although the conclusion section of the challenged Board decision found that all 12 banks subject to the investigation violated Article 4 of the Act No. 4054 in the areas of deposit, loan and credit card services, an examination of the information and documents in the file shows that some banks participated in the infringement only with respect to a single service (For example, TEB only in relation to deposits, and HSBC only in relation to credit card services), while some banks did not participate in any infringement with respect to certain services (For example, there is no evidence that public banks participated in the infringement concerning loan services); thus, it cannot be claimed that all 12 banks participated in the infringement in all sectors (deposit, loan, credit card and public deposit), and it is unlawful to hold all 12 banks responsible for all infringements that occurred among different banks in different sectors.

To be more clear, in the present dispute, where it is clear that it cannot been demonstrated that the 12 banks that were the subject of the investigation acted in coordination within the framework of a single framework agreement or common plan, the challenged administrative act, which was issued under the approach of a single continuous infringement instead of assessing the relevant banks in terms of each service they participated separately, was found to be unlawful."

(31) Considering the reasoning in the annulment decisions, it is understood that none of the reasons contains a finding or assessment that the banks that were the subject of the investigation did not violate the Act No. 4054, nor is there any finding that the nature of the infringement identified by the Board for each bank is unlawful. Accordingly, the reason for annulment is that each bank's responsibility should have been determined separately for each service in which it participated in the infringement, whereas all banks were held responsible for all services -deposit, loan, credit card, and public deposit -in the investigation. This point is reflected in the annulment decision as follows: *"It cannot be demonstrated, at a sufficient level of proof (beyond reasonable doubt), that all 12 banks acted in coordination within the framework of a single framework agreement or common plan concerning deposit, loan, credit card and public deposit services".* Based on this reasoning, it is understood that in order to comply with the annulment decision, the responsibility of the banks that are the investigation must be determined not based on the "single continuous infringement" approach adopted in the Board decision for all identified infringements, but separately for each service in which they participated in the infringement.

(32) At this stage, before proceeding to the assessment of the infringing conduct in light of the evidence in the file, evaluations will be provided below concerning:

i. Whether the infringing conduct is time-barred,

ii. The content of the study to be undertaken in light of the judicial decisions

iii. The theoretical framework under which the conduct among competitors that restricts competition may be assessed.

G.3. Assessment on the Statute of Limitations

(33) Statute of limitations is generally defined as "*the transformation of a factual situation into a legally recognized one through the passage of time determined by law and the occurrence of certain conditions, thereby being protected by the state authority."*[5] In a more specific sense, also covering misdemeanors, statute of limitations in criminal law refers to the inability to impose sanctions against persons who have committed an act constituting a crime or misdemeanor or who acted negligently if no sanction is applied within a certain period; and consequently, the impossibility of imposing sanctions in the future. In this respect, the statute of limitations serves both to prevent proceedings and investigations from being unnecessarily prolonged by imposing duties on the sanctioning authorities, and to ensure legal predictability by preventing individuals from remaining under the threat of sanctions for unreasonable periods due to their unlawful conduct.

(34) In the Act No. 4054, the statute of limitations was regulated under Article 19 until it was repealed in 2008. In the repealed first paragraph of Article 19, titled "Statute of Limitations for Fines and Periodic Fines," limitation periods of three and five years were stipulated depending on the type of infringement, while the fourth paragraph of the same article stated clearly that initiating judicial review against the decision interrupts the statute of limitations. Thus, in cases where an administrative action was brought against Board decisions, the time spent in judicial proceedings was explicitly stated to interrupt the limitation period.

(35) However, the said provision was repealed by the Law No. 5728 on "Amendments to Various Laws and Certain Other Laws for the Purpose of Harmonization with the Fundamental Criminal Codes," published in the Official Gazette dated 08.02.2008 and numbered 26781, and the statute of limitations for competition infringements became subject to the general provisions of the Misdemeanors Law No. 5326. Statute of limitations is regulated in Articles 20 and 21 of the Misdemeanors Law Article 20 concerns the statute of limitations for investigation, while Article 21 concerns the statute of limitations for enforcement. Within this framework, the statute of limitations for investigation refers to the period that begins with the commission of the act constituting a misdemeanor or the occurrence of the result, and which prevents the imposition of an administrative fine on the person once the statutorily prescribed time expires[6] whereas the statute of limitations for enforcement refers to the loss of enforceability of an administrative sanction decision after the expiration of a certain period following its finalization.[7]

(36) In determining whether the conduct of undertakings, which constitute misdemeanors and form the subject matter of the administrative act to be issued in this case, has become time-barred, it is necessary to consider Article 20 of Law No. 5326. According to paragraph three of this article, the statute of limitations for misdemeanors requiring a proportional administrative fine is eight years, and this period begins to run from the commission of the misdemeanor or the occurrence of the result. The Misdemeanors Law does not contain any provision that suspends or interrupts the statute of limitations for investigation.

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[5] ARSLAN, M. (2016), *Vergi hukukunda zamanaşımı*, Yaklaşım Yayıncılık, Ankara, p.27.

[6] ÖZDEMİR, A.N. (2022), *Rekabet Kurulu Kararlarında Zamanaşımının Uygulanması*, Competition Journal, Vol.:22, No:1, p.72

[7] KANGAL, Z. (2011), *Kabahatler Hukuku,* On İki Levha Yayınları, İstanbul, p.235

(37) The Board, in its various decisions, has consistently not taken into account the time spent in administrative judicial proceedings in calculating the statute of limitations.[8] Likewise, the Council of State has held in several decisions that the time spent in administrative judicial review shall not be considered within the statute of limitations period. For example, in the decision of the 13th Chamber of the Council of State dated 28.01.2014 and numbered E.2010/2941, K.2014/145, the Chamber stated:

> *"Although paragraph 3 of Article 20 of the Misdemeanors Law No. 5326 stipulates an eight-year statute of limitations for misdemeanors requiring a proportional administrative fine, as established in the settled case law of the Council of State, in cases where an administrative sanction issued before the expiration of the statute of limitations is annulled by the administrative judiciary in a manner requiring the administrative authority to issue a new administrative act, the statute of limitations cannot be deemed to run. Therefore, given that the final decision of the Competition Board dated 05.10.2001 and numbered 01-47/483-120 concerning the acts of the plaintiff company continuing until the year 2000 was issued within the statute of limitations, that the said decision was annulled by the Council of State on the grounds that 'the participation and vote of the Board member who conducted the investigation in the final decision meeting was unlawful,' and that the procedural defect was remedied through a new Board meeting without the participation of the investigating member, it is beyond doubt that the statute of limitations could not have run during this process; thus, the plaintiff's allegation in this respect is without legal merit."*[9]

(38) There are also many Board decisions referring to this established case law of the Council of State. For instance, in the Board's *Artı Marin* decision, reference was made to the 13th Chamber's decision dated 01.11.2011 and numbered E.2008/13179, K.2011/4829, which stated *"…given that the said decision was annulled by the Council of State … and that a new decision was issued in accordance with the reasoning of the Council of State following the judicial process, it is clear that the statute of limitations does not run during the period spent in judicial proceedings."* Many similar Board decisions have been issued based on the same reasoning.[10]

(39) Accordingly, based on the established case law of both the Board and the Council of State, and accepting that the statute of limitations does not run during the time spent in administrative judicial proceedings, it has been concluded that the conduct of the banks that is the subject of the investigation has not become time-barred.

G.4. Evaluation

(40) Following the assessments above regarding the statute of limitations, it is also appropriate to explain the scope of the administrative act to be issued by the Board for the purpose of complying with the annulment decisions. In light of the findings contained in the annulment decisions, providing a general framework regarding the legal basis and scope under which the documents constituting the infringement in the annulled Board decision dated 08.03.2013 and numbered 13-13/198-100 should be

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[8] For instance, Board decisions dated 31.01.2013 and No. 13-08/94-55, dated 11.01.2018 and No. 18-02/20-10, dated 10.01.2019 and No. 19-03/23-10.

[9] In the dissenting opinion of the Council of State 13th Chamber's decision, it was stated that since Article 20 of the Misdemeanors Law No. 5326 does not provide for any grounds that would suspend the statute of limitations for investigation, and since it is not possible to expand the grounds for interruption of the statute of limitations through interpretation, it must be accepted that the violation in the present case is time-barred.

[10] *Turkcell Vehicle Tracking* Decision of the Board dated 19.12.2013 and No. 13-71/988-414.

examined will contribute to a better understanding of the document-specific assessments presented below.

(41) In fulfilling the requirements of the annulment decisions rendered by the administrative judiciary, the matters that constitute and do not constitute the grounds for the annulment of the Board's decision determine the scope of the Board's review and the content of the decision to be issued upon such review.

(42) As stated above, the annulment decisions do not include any finding or assessment that the banks, which had been fined on the grounds of violating Article 4 of the Act No. 4054, did not in fact commit the alleged infringement. In this regard, no unlawfulness has been established as to the nature of the infringement. It is understood that the relevant Board decision was found unlawful because the banks were held liable for all the activity areas listed as deposits, loans, credit cards, and public deposits collectively, whereas the Board should have identified, for each bank separately, the services in respect of which the infringement had occurred and should have determined their individual liability.

(43) The annulment decisions indicate that, in order for the various actions of undertakings at different times to be assessed as a single continuous infringement, it must be sufficiently demonstrated that the undertakings acted within the framework of an framework agreement or a common plan; however, in the case at hand, it could not be demonstrated beyond reasonable doubt that the banks found to have restricted competition were aware of a framework agreement or a common plan. Therefore, the banks must be assessed separately for each service in respect of which they participated in the infringement.

(44) Accordingly, it is understood that the assessment to be conducted in this case for the purpose of complying with the decision of the administrative judiciary must depart from the "single continuous infringement" approach adopted in the annulled Board decision and instead reevaluate the conduct of the parties to the investigation. In determining the appropriate service segmentation for this reevaluation, the annulment decision adopted a four-part classification. Thus, the relevant services were divided into deposits, loans, credit cards, and public deposits, and the Board decision was found unlawful because the banks were held liable for a framework infringement covering all of these services rather than determining their individual liability for each service. This classification set out in the reasoning of the annulment decision will also be taken into account herein; moreover, the assessment will identify, in the narrowest sense, the specific services to which the infringements detected in the evidentiary documents pertain. In this way, the specific service in which each bank committed an infringement will be established, ensuring compliance with the annulment judgment.

(45) Given that the principal basis of the decisions of the administrative judiciary was the Board's failure to properly assess whether the conditions for establishing a single continuous infringement were satisfied, it is important to provide a brief theoretical explanation of this concept. A single continuous infringement is deemed to exist where multiple agreements and/or concerted practices can be linked to each other because they pursue the same economic objective or form part of a common plan[11]. The single continuous infringement approach aims to classify as a single infringement various conduct that pursues the same economic objective within the framework of a common

[11] BELLAMY, C. and G. D. CHILD (2008), *European Community Law of Competition*, Sixth Edition, Oxford University Press, New York, p. 129.

plan and spans a certain period.[12] Under this approach, the conduct of the undertakings party to the infringement is not assessed separately for each violation in a static manner; instead, conduct that is spread over time and directed toward the same economic objective is treated as elements of a framework agreement restricting competition among undertakings and is evaluated as a single ongoing infringement. The European Commission likewise explains, "*The Commission considers therefore that it is artificial to sub-divide the individual actions into separate infringements as it is clear that the actions were undertaken in the context of an overall common plan pursuing the same anti-competitive purpose.*"[13]

(46) In this context, it is understood that the single continuous infringement approach allows for multiple actions that meet certain conditions to be treated as a single infringement, thereby preventing undertakings from being sanctioned multiple times by considering more than one practice that may constitute an infringement as separate infringements. For this to be possible, several conditions must be cumulatively met. In competition law practice, a single continuous infringement may be established only where multiple infringing actions are carried out within a common plan/framework agreement and are directed toward the same objective. All conduct carried out under such a framework is included in the umbrella infringement and assessed collectively. It is understood that, for this assessment, the infringements committed within the same framework must also exhibit common characteristics in other respects. For example, the involvement of the same parties, the chronological sequence of the conduct, the fact that the conduct concerns the same products/services and the geographic scope, and the fact that the nature of the infringement is the same may be considered common elements in assessing a single continuous infringement. However, broad categorization at the stage of determining these common elements may lead to an undue expansion of the undertakings' liability. For instance, if the geographic scope, duration, or relevant activities of the umbrella infringement are expanded, an undertaking may be held liable for a geographic area, period, or activity in which it did not participate in any infringing conduct. The annulment decisions highlighted this risk and found the Board decision unlawful because banks were held liable for services/activities in which they had not engaged in any infringing conduct.

(47) Indeed, in the annulled Board decision, all 12 banks were held liable for a framework agreement/understanding that concerned deposits, loans, credit cards, and public deposits and violated Article 4 of the Act No. 4054. It was found that the agreement had been implemented in the Turkish geographic market between 21.08.2007 and 22.09.2011, and each bank was fined for the period during which they participated to this agreement. However, it is understood that the administrative judiciary annulled this decision on the grounds that there was not any uniformity in respect of the services for which the banks were held liable, and therefore it was not possible to claim the existence of a framework agreement; accordingly, a new administrative act must be issued in line with this reasoning.

(48) Within this framework, the assessment must identify the specific services in respect of which the parties to the investigation engaged in anticompetitive conduct, in order to determine their individual liability. In this regard, in determining the liability of the banks based on the evidence obtained in the case, documents found to concern the same

[12] ERSOY, B. (2015), *Rekabet Hukukunda Devam Eden Tek Bir İhlal Yaklaşımı*, Competition Authority Expert Thesis, p.16.
[13] Case COMP/36.545/F3 Amino Acids [2001] OJ L 152/24 para. 236-237.

anticompetitive conduct have been assessed jointly, whereas documents indicating distinct anticompetitive understanding have been evaluated separately.

G.4.1. The Theoretical Framework concerning the Agreements and Concerted Practices between Competitors that Restrict Competition

(49) Before addressing the contents of the documents that are the subject of the infringement within the file, a brief theoretical explanation regarding agreements and concerted practices between competitors that restrict competition under Article 4 of the Act No. 4054 is provided for consideration in the assessment of the document contents from a competition law perspective.

(50) According to Article 4 of the Act, *"agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect or likely effect the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services are illegal and prohibited."* Within the scope of this provision, joint action by undertakings with their competitors in parameters affecting competition is deemed unlawful. Accordingly, undertakings are expected to make their economic decisions regarding matters that affect competition in the market independently. That is to say, the concept of competition requires each firm to act independently in the market and not to coordinate its market conduct with that of its competitors.[14]

(51) On this basis, it is considered necessary to explain the concepts of agreement and concerted practice in order to clearly understand Article 4 of the Act No. 4054. The concept of an agreement is interpreted broadly in competition law practice; an agreement does not need to be in written form, legally binding, or contain any sanction. On the contrary, the concept of an agreement refers to any concurrence of wills between parties that prevents an undertaking from making independent decisions. The concept of a concerted practice, on the other hand, within the scope of Article 4 of the Act No. 4054, concerns situations where an explicit concurrence of wills cannot be demonstrated, yet a form of coordination is established among competitors that substitutes their independent decision-making mechanisms.

(52) In this context, certain information exchange activities between competitors may be assessed as agreements and/or concerted practices within the scope of Article 4 of the Act No. 4054. Information exchanges may constitute an infringement under competition law if they contain sensitive information, primarily regarding supply and pricing, that could distort the competitive environment. The exchange of sensitive information between competitors can make the market more transparent and significantly reduce, or even completely eliminate, competition by creating coordinated effects on decisions that undertakings are expected to make independently. In this regard, as stated in the Guidelines on Horizontal Cooperation Agreements (Horizontal Guidelines), information such as prices, quantities, customers, costs, sales data, capacity utilization rates, tender specifications, contract terms, stock levels, R&D activities, and investment plans are considered competitively sensitive information that may influence undertakings' strategies. In addition, information exchanges between competitors may occur mutually or unilaterally. Although it may be said that unilateral information sharing poses less risk than mutual information exchange, unilateral

[14] WHISH, R. (2006), *Information Sharing Agreements*, Swedish Competition Authority (comp.), in The Pros and Cons of Information Sharing, Kalmar, Sweden.

sharing of competitively sensitive/strategic information with competing undertakings may also be treated as an infringement.[15]

(53) In line with the aforementioned theoretical explanations, the contents of the documents included in the file, which constitute the subject of the suspected infringement, together with the findings and evaluations regarding these documents, are presented below for the purpose of fulfilling the requirements of the decision of the administrative judiciary.

G.4.2. Evaluation of the Documents

Document 1

(54) The e-mail obtained during the on-site inspection made at GARANTİ sent on 21.08.2007 by DGM responsible for Retail Banking and Distribution Channels (.....) to GM (.....), with DGM responsible for (.....) and the Retail Banking Management Coordinator (.....) included in the CC section with the subject "akbank 1.41" has the nature of an internal correspondence and includes the following:

> *" Mr. (.....)*
> *Akbank will made housing loan 1.41% tomorrow...*
> *İşbank has not taken any steps yet...*
> *Shall we wait for 1-2 days Mr. (.....)?"*

(55) Document 1 shows that the e-mail states that AKBANK will apply 1.41% monthly term in housing loans the following day (22.08.2007) and İŞ BANKASI has not made any changes and GARANTİ GM is asked for opinion about what kind of policy GARANTİ should follow. From this perspective, GARANTİ does not have any information about İŞ BANKASI, and the statement about AKBANK is about AKBANK's future pricing strategy. Within this framework, it is concluded that GARANTİ and AKBANK communicated about housing loan interest rate changes and future interest rates on 21.08.2007 because the document states that the interest rate to be applied by AKBANK in housing loans will change the following day becoming 1.41%.

(56) The Investigation Report dated 03.08.2012 and no 2011-4-091/SR (the Investigation Report), which forms the basis of the annulled Board decision, found in the evaluation regarding Document 1 dated 21.08.2007 that GARANTİ and AKBANK exchanged information about future pricing policies, which led to coordination among undertakings because the two banks had parallel housing loan interest rates shortly after the correspondence.

(57) On the other hand, it is not possible to decide that İŞ BANKASI was aware of the communication between AKBANK and GARANTİ and/or was a party to the information exchange because it is stated in Document 1 that İŞ BANKASI has not made any changes. It is not possible to infer that İŞ BANKASI exchanged information about future housing loan interest rate or any other competitively sensitive strategy with AKBANK and GARANTİ. Therefore, in terms of Document 1, only AKBANK and GARANTİ violated article 4 of the Act No. 4054 by means of exchanging future information about housing loan interest rates.

Document 2

(58) The e-mail obtained during the on-site inspection at YAPI KREDİ sent on 27.09.2007 by Private Banking İstanbul Europe Region Assistant Manager (.....) to Head of Branch Sales (.....) with Head of Private Banking Sales Group (.....), Head of Money and

[15] Horizontal Guidelines para. 46 and for instance Board decisions dated 11.04.2007 and No. 07-31/325-120, dated 18.04.2011 and No. 11-24/464-139

Foreign Exchange Markets (.....), Head of Treasury Management Fixed Income Securities Group (.....), Private Banking Regional Manager (.....) and Private Banking Regional Assistant Manager (.....) included in the CC section, with the subject "Deposit at a Loss" has the nature of an internal correspondence and includes the following:

> *"Due to the gentlemen's agreement we informed our sales team not to accept deposits over the maximum rate you give as the treasury at a loss.*
>
> *In that case, we may have to apply interest at the end of the maturity on the operational risk form for our branches, which have difficulty and which have high deposits and portfolios.*
>
> *However, our branches are complaining that certain banks, especially Akbank, apply 18.75% interest rate to customers by maintaining the account in their passbook. Today we see that an amount that exited us has been entered in a passbook of a common customer with Akbank with an interest rate of 18.75%.*
>
> *Declaring 18.75% rate and entering it into a passbook in a bank, with which the gentlemen's agreement is made, while we are saying that this rate is not given by major market-making banks raises trust issues with our consumers..."*

(59) The abovementioned document obtained during the on-site inspection at YAPI KREDİ is an internal correspondence. The examination of the expressions therein indicate that

- There is a gentlemen's agreement between certain banks on deposit interests.
- Due to that gentleman's agreement, YAPI KREDİ Private Banking İstanbul Europe Regional Directorate informed the sales team not to accept deposits at the maximum interest rate given by YAPI KREDİ Treasury Management.
- However, YAPI KREDİ learned that AKBANK and other banks in the market that are party to the gentleman's agreement accepted deposits at 18.75% interest rate.
- YAPI KREDİ informed its customers that major market-making banks do not apply the said interest rates, however, the banks party to the gentlemen's agreement apply such rate, which led to trust issues among YKB customers.

(60) Although the document does not include information about the date or the parties of the gentlemen's agreement or the agreed interest rate, it is obvious that YAPI KREDİ and AKBANK are among the parties. Apart from that, *"Declaring 18.75% rate and entering it into a passbook in a bank, with which the gentleman's agreement is made, while we are saying that this rate is not given by major market-making banks raises trust issues with our consumers..."* is guiding in terms of the parties to the gentleman's agreement. YAPI KREDİ mentions major market-making banks and gives information about the maximum limits during the meetings with its customers. This indicates that YAPI KREDİ is aware of its competitors' future conduct and therefore major market-making banks are party to the gentleman's agreement.

(61) Within the framework of the examinations made at the time of the investigation, it is understood that *"major market-making banks"* include YAPI KREDİ, AKBANK, GARANTİ, İŞ BANKASI, ZİRAAT, HALKBANK and VAKIFBANK in line with the scaling according to active size among the banks operating as market-making during 2007-2008 period.

(62) It is seen that there is not a clear expression as to the agreed interest rate, the amount or time period to which this rate will be applied. However, the said banks agreed on the maximum limit of the interest in the gentlemen's agreement on deposit interests, as seen in document 4 given below. The analysis made under the scope of the file

regarding the deposit interests set by the said banks during the relevant period revealed that

- The said seven banks consistently applied interest rates of 18.75% and above on YTL denominated deposits with maturities of 31 days or less during the first three weeks of September 2007.
- However, as a result of a communication whose exact date could not be determined, the banks sought a gentlemen's agreement and within the framework of this agreement aimed to set a ceiling below 18.75% for the interest rate to be applied to deposits of the specified type.
- In line with this agreement, between 24.09.2007 and 28.09.2007, there was a significant decrease in both the number of deposits on which the banks applied interest rates of 18.75% and above and the share of these deposits in the total deposit volume, except AKBANK.
- As of 01.10.2007, apart from exceptional cases, the six banks except AKBANK, ceased applying interest rates of 18.75% and above on YTL-denominated deposits with maturities of 31 days or less.
- AKBANK decreased its interest rate above 18.75% apart from exceptional cases as of 08.10.2007.

The reasons why banks sometimes did not comply with the said agreement were examined during the investigation process. It was concluded that banks exceptionally had to apply interest rates above the agreed one due to special conditions and it did not mean deviating from the settlement. As a result, it was concluded that during the examined period, the major market-making banks - GARANTİ, AKBANK, İŞ BANKASI, YAPI KREDİ, HALKBANK, VAKIFBANK and ZİRAAT- sought a gentlemen's agreement to set a maximum level for the interest rates to be applied to deposits. Before 27.09.2007, they agreed on a maximum level below 18.75%, there were deviations from the settlement during 24-28.09.2007 and 01-05.10.2007 weeks, however as of 08.10.2007, the said seven banks complied with the gentlemen's agreement and thus violated article 4 of the Act No. 4054.

Document 3

(63) The e-mail marked as highly important and confidential, which was obtained during the on-site inspection in GARANTİ and which was sent on 25.06.2008 from YAPI KREDİ Executive Board Member and General Manager (.....) to member of İŞ BANKASI Board of Directors and GM (.....), member of AKBANK Board of Directors and GM (.....) and member of GARANTİ Board of Directors and GM (.....) with the subject *"Breakfast at Yapı Kredi?"* includes the following expressions:

> *"While we were together with (.....) for an occasion, we thought that we had better come together soon.*
>
> *Especially in an environment where cost pressures are increasing, regulatory authorities' views on some of our business lines and global developments are not progressing very promisingly, we thought it would be useful for the four of us to discuss certain issues in an informal setting.*
>
> *...Would Thursday, July 3rd (alternative Tuesday, July 1st) be convenient for your schedule?..."*

(64) The document in question does not contain an explicit statement regarding the agenda of the breakfast meeting. However, the invitation sent by (.....) to the other GMs

includes the sentence, *"Especially in an environment where cost pressures are increasing, regulatory authorities' views on some of our business lines and global developments are not progressing very promisingly, we thought it would be useful for the four of us to discuss certain issues in an informal setting,*" which reveals the purpose of the meeting. Considering that Documents 3 and 4 indicate that the relevant banks were in a competition-restricting understanding concerning deposit interest rates, the meeting mentioned in the correspondence in Document 2 strengthens the likelihood that it was related to this competition-restricting understanding among the banks regarding deposit interest rates. In this respect, since Document 2 has a supportive nature for Documents 3 and 4, which constitute the basis for the existence of the competition-restricting understanding, it would be appropriate to assess these documents together.

Document 4

(65) The e-mail obtained during the on-site inspection at YAPI KREDİ sent on 04.07.2008 by Head of Treasury Management Fixed Income Securities Group (.....) to GM (.....), with Head of Treasury Management (.....) and Head of Money and Foreign Exchange Markets (.....) included in the CC section, with the subject *"about YTL deposit pricing"* has the nature of an internal correspondence and includes the following:

> *"I would like to provide short information about deposit pricing.*
>
> *Yesterday Garanti Bank called us and offered a gentlemen's agreement for 20% interest for monthly term. Today we did not talk about an interest above that interest rate, especially with the advantage that there are not any large value transactions that may cause problems. However, we have heard that Akbank applies 20.60% interest for this term. There might be a communication breakdown since it is a transition day. Based on the issue mentioned by Mr (.....)[16], after the confirmation of the agreement on the general managers level, starting from Monday, we will continue to comply with this limit. On the other hand, (.....)'s return at (.....) ytl level and the return of our customer (.....), who received rates from public banks at (.....) ytl amount are critical for us. We can make these transactions at the beginning of the week, however, due to the liquidity coverage ratio, it is likely that we may need to take new transactions to replace the deposits that leave over the weekend.*
>
> *Therefore, we are expecting that Akbank and Garanti Bank will comply with this agreement during the first three workdays of the week, depending on whether İş Bank and public banks are included in this agreement, I think it is possible to pay those deposits to other banks. Decreasing interests are critical for all of us, however, I believe that at least half of the deposits that are lost due to liquidity ratio should be compensated during the last two days. To put it in figures, as of this morning, we have (.....) ytl margin in terms of liquidity sufficiency. On the other hand, (.....) deposit transactions "higher than (.....) YTL" made in the last three days correspond to (.....) YTL. Therefore, we will need for your guidance to set a strategy for Ykb according to the developments towards the end of the week."*

(66) Head of Treasury (.....) responded on the same day

> *"Hello, Public banks and iş bank are included"*

[16] According to the Board decision, the said person is (…), who was in charge of retail sale management at YAPI KREDİ at the time.

(67) Upon examining the correspondence contained in Document 4, the following points are understood:

- On Thursday, 03.07.2008, GARANTİ contacted YAPI KREDİ and proposed a gentlemen's agreement not to exceed an interest rate of 20% for monthly-term deposits in YTL.
- Following this proposal, as of 14:53 on Friday, 04.07.2008, YAPI KREDİ did not accept deposits with an interest rate exceeding 20% for monthly terms.
- On the same day, it was learned that AKBANK had offered an interest rate of 20.60% for monthly-term deposits, but this was attributed to a breakdown in communication between the banks.
- On the same day, after YAPI KREDİ received confirmation that there was an agreement at the general manager level among the aforementioned banks, YAPI KREDİ decided to adhere to the 20% interest rate limit for monthly-term deposits starting from Monday, 07.07.2008.
- YAPI KREDİ expected that AKBANK and GARANTİ would also comply with this agreement during the period 07–09.07.2008,
- However, since two customers with a total of 830 million TL in time deposits at YAPI KREDİ had reached the rollover date, it was important for YAPI KREDİ to know whether İŞ BANKASI and the state-owned banks, which were competitor banks, were included in this agreement,
- As of 15:11, the Head of Treasury Management at YAPI KREDİ informed the Head of the Fixed Income Securities Group that the state-owned banks and İŞ BANKASI were also included in the agreement.

In this context, it is understood that GARANTİ, YAPI KREDİ, İŞ BANKASI and AKBANK violated Article 4 of the Act No. 4054 by sharing competitively sensitive information regarding pricing in deposit services.

(68) When Documents 2, 3 and 4 mentioned above are examined as a whole, it is understood, in summary, that the banks referred to in these documents were in a mutual understanding regarding deposit interest rates. Within the framework of the examinations related to document 2 dated 27.09.2007 made at the time of the investigation, it is understood that the expression "major market-making banks" in the document include YAPI KREDİ, AKBANK, GARANTİ, İŞ BANKASI, ZİRAAT, HALKBANK and VAKIFBANK in line with the scaling according to active size among the banks operating as market-making during 2007-2008 period. Furthermore, based on the economic analyses conducted during the investigation process regarding the deposit interest rates applied by the relevant banks, it is assessed that these banks acted in line with the gentleman's agreement.

(69) In line with the findings reached as a result of the investigation, it is concluded, based on Document 3 dated 25.06.2008 and Document 4 dated 04.07.2008, that the managers of YAPI KREDİ, AKBANK and GARANTİ, who came together at the meeting, reached an agreement on the upper limit of the monthly deposit interest rate, and that İŞ BANKASI, although not attending the meeting, was aware of the agreement being made/to be made and supported it. On the other hand, in accordance with the economic analyses conducted during the investigation process and included in the Board's decision, it is understood that ZİRAAT, HALKBANK and VAKIFBANK were also parties to the agreement, and that the understanding established among these seven banks in 2007 continued to be implemented in June 2008 and thereafter.

(70) As a result, within the framework of the correspondence contained in Documents 2, 3, and 4, it is determined that YAPI KREDİ, AKBANK, GARANTİ, İŞ BANKASI, ZİRAAT, HALKBANK and VAKIFBANK violated Article 4 of the Act No. 4054 by acting in concert regarding deposit interest rates.

Document 5

(71) The e-mail obtained during the on-site inspection at GARANTİ sent on 21.10.2008 by the DGM responsible for Financial Institutions and Corporate Banking (.....) to the Director of Corporate Banking Coordination Unit with the subject *"Akbank (Classified)"* has the nature of an internal correspondence and includes the following:

> *" (.....)[17] called. He said we cannot legally increase in project finance and business loans but shall we make an increase in export loans together*
>
> *He asks for increasing to L+500 I said let's think about it and talk on Friday. Please consider until I come.*

(72) In the e-mail sent by (.....) with the same subject on (.....) 31.10.2008, it is stated *"I said that we don't have enough low-value credits to make the pricing discount worthwhile."*

(73) From the content of the correspondence, it is understood that AKBANK wished to act jointly with GARANTİ to increase export loans and, in this context, proposed raising the interest rate to LIBOR+500. The document shows that AKBANK's proposal was considered by GARANTİ, but GARANTİ rejected it on the grounds that the potential benefit of a coordinated increase in export loan interest rates would be limited. In this respect, it appears that the deputy general managers of the mentioned banks tried to form a basis for an anti-competitive agreement in an area where they should have been competing. Additionally, in GARANTİ's response to AKBANK's request for a joint increase, competitively sensitive information regarding GARANTİ's export loan volume was shared. Furthermore, the statement in the document that *"we cannot legally increase project finance and business loans"* indicates that the AKBANK official intended to coordinate an increase in these loan interest rates as well, but it was not possible due to the relevant legislation.

(74) Upon evaluating the above correspondence, it is concluded that GARANTİ and AKBANK violated Article 4 of the Act No. 4054 by sharing competitively sensitive information with the aim of jointly increasing export loan interest rates.

Document 6

(75) The e-mail obtained during the on-site inspection at GARANTİ sent on 23.10.2008 by the DGM responsible for Individual Banking and Distribution Channels (.....) to GM, with DGM responsible for Treasury included in the CC section with the subject *"housing loan interests"* has the nature of an internal correspondence and includes the following:

> *"We are proposing a 5-point increase.*
> *We will come to 1.84 (compound 24.45) We are thinking of making discounted 1.82 (24.16 compound)*
> *We agreed with competition, they are all coming.*
> *If it is convenient for you, we want to send an e-mail to start tomorrow. …*
> *Note: We will make the same increase (5 point) in auto and stanby."*

(76) From the document referred to above, it is understood that GARANTİ intended to increase the monthly housing interest rate by 5 basis points (0.05%), which would bring the monthly rate to 1.84%, and the discounted loan interest rate would rise to 1.82%;

[17] (.....) worked in AKBANK until 31.01.2011.

it was also agreed with the group referred to as 'competition' that they would implement similar increases. The same document indicates that a 5-basis-point increase would also be applied to auto and consumer loans. Within this framework, it is thought that GARANTİ and the banks grouped under "competition" reached an agreement to jointly raise interest rates for housing, auto, and consumer loans in banking services.

(77) However, the term "competition" mentioned in the document, which is stated to be a party to the agreement, is ambiguous in terms of which banks it refers to. In Board Decision no 13-13/198-100, regarding the term "competition" in the document, it was noted that this term was used in some documents obtained during on-site inspections to refer to rival banks; in another document obtained at GARANTİ during on-site inspections, the term "competition" was followed by[18] İŞ BANKASI, AKBANK, FİNANSBANK and YAPI KREDİ. Therefore, it is concluded that the word "competition" in Document 6 refers to these banks together with GARANTİ.

(78) Within this framework, during the investigation, the interest rates and change dates for consumer loans, auto loans, and housing loans announced by the aforementioned banks on the date of the document in question, 23.10.2008, and in the few days following that date, were examined. As a result of this examination, it was found that the banks increased interest rates on housing, consumer, and auto loans in a period very close to the date the email was sent; in particular, the increase rates for housing loans were largely similar, and since the weighted interest rates were applied in the loans granted by the banks were predominantly the increased rates, the effects of the anti-competitive agreement were observed in the market.

(79) Therefore, when the content of the aforementioned document and the economic analyses based on this document are evaluated as a whole, it is concluded that GARANTİ, İŞ BANKASI, AKBANK and YAPI KREDİ violated Article 4 of the Act No. 4054 by reaching an agreement to increase interest rates on housing, consumer, and auto loans.

Document 7

(80) The e-mail obtained during the on-site inspection at YAPI KREDİ sent on 28.11.2008 by the Head of Branch Sales (.....) to employees of Branch Sales Department (.....), (.....) and (.....) includes the following:

> *"Hello*
> *Akbank gives max (.....) above (.....).*
> - *If you apply a term between January 2 and January 23…*
> - *It is likely that it will be (.....) percent on Monday. PBM said that they generally (based on the practices in previous years) increase interest rates on December 1.*
> - *Interest rates have increased this week.* ***He said that they apply lower rates compared to the market when other banks apply higher rates. However, the situation will turn to the contrary and they will apply a rate higher than the market.***
>
> *(...)*
> *For your information..."*

(81) Regarding Document 7, dated 28.11.2008, obtained during the on-site inspection at YAPI KREDİ, it is understood that AKBANK provided YAPI KREDİ with information on the interest rate offered for high-value deposits. This situation allowed competitors to

[18] Within the framework of the decision dated 2013, it is seen in some of the documents obtained during on-site inspections that "competition" is used to refer to rival banks. More detailed evaluations are provided between paragraphs 163 and 172 of the Board decision No. 13-13/198-100.

become aware of AKBANK's future pricing policies, reducing market uncertainty and creating a basis for coordination among competitors. In this respect, the sharing of information on future pricing policies for deposit services among competing banks is considered to be of a competition-restricting nature, and it is concluded that YAPI KREDİ and AKBANK violated Article 4 of the Act No. 4054.

Document 8

(82) The e-mail obtained during the on-site inspection at YAPI KREDİ sent on 02.06.2009 by the Head of Retail Banking Sales and Loan Assistance Group (.....) to the Head of Individual Banking Marketing Department, Head of SME Marketing Department, Head of CRM and Campaign Management Department, with the Head of Retail Banking Marketing Groups (.....), Head of Strategic Planning, CRM and Budget Management Group (.....) and Retail Banking Sales SGM (.....) included in the CC section, with the subject *"Rival Information*addition"* has the nature of an internal correspondence and includes the following:

*Other information we received from **Garanti Bank** about cross sales,*

*They are following **effectiveness rate** in their portfolios and they have product groups, for some product groups to be taken into account, at least two products under their umbrella should be actively used (such as payments, card, deposit)*

Product groups:

- *checking: TL, FC*
- *Time deposit: TL, FC*
- *Investment Repo, fund, eurobond, stock, bond, bill*
- *Personal loan: Housing, auto, individual, single account (similar to flexible account)*
- *Loans SME loans*
- *Credit Card All cards are under this group*
- *Payments: Invoice, standing order, credit card automatic payment, for SME, additionally there are products such as checkbook, check collection, member merchant, tax, social security authority payment*
- *Insurance: Elementary, life*
- *Other: IPA, internet banking*

We are trying to get the being active criteria for those products, some of those we got

Checking TL min (.....)
Checking FC min (.....)
Time deposit tl min (.....)
Time deposit FC min (.....)
repo min (.....)
eurobond min (.....)
Stock min (.....)
Single account min (.....)
Credit card monthly min (.....) expenditure
Invoice payment (.....)
Checkbook, use of min (.....) check leaves monthly
Check collection monthly (.....)
Member merchant monthly (.....)
Elementary ins. min (.....)
Life ins. (.....)
IPA min (.....)
fund min (.....)
In the segment corresponding to our affluent segment, Garanti Bank's effectiveness rate is average (.....) product group, their target is (.....)"

(83) Upon examining the content of the above-mentioned document, it is understood that YAPI KREDİ obtained information from GARANTİ regarding GARANTİ's cross-selling practices. This information included the product groups used by GARANTİ in evaluating cross-selling effectiveness, the scope of these product groups, the criteria of being active for determining effectiveness in the evaluation, GARANTİ's average effectiveness rate during the relevant period, and the average effectiveness rate it aimed to achieve in the future.

(84) In Board Decision no 13-13/198-100, regarding the concept of cross-selling, it was noted that cross-selling is one of the most important marketing practices of banks, as it enables consumers to make effective use of a greater number of products offered by the bank, thereby increasing customer loyalty and gaining a competitive advantage. Therefore, information regarding banks' cross-selling policies is considered competitively sensitive information about banks' sales strategies. Looking at the services to which the cross-selling information in the document relates, it is understood that they pertain to credit cards, loans, and deposit services. Accordingly, the sharing of information and targets regarding cross-selling among competing banks is considered to be of a competition-restricting nature, and it is concluded that YAPI KREDİ and GARANTİ violated Article 4 of the Act No. 4054.

Document 9

(85) The e-mail obtained during the on-site inspection at GARANTİ sent on 22.10.2009 by the Director of Retail Sale/Mass Banking Sales Management Unit (.....) to the Director of Housing and Auto Loans Products Management Unit, with the Director of Individual Banking Sales Group (.....) and Assistant Director at Mass Banking Sales Management (.....) included in the CC section, with the subject *"ING bank refinancing sms"* has the nature of an internal correspondence and includes the following:

> *"Ingbank sends refinancing request message through sms to all customers whose data are available, regardless of whether they have a housing loan or not. As far as I can remember, you said that* ***the banks agreed among themselves not to send messages.***

(86) On the same day, (.....) responded by asking "**Is there such gentlemen's agreement between banks?"** On 24.10.2009, (.....) replied

> *"First, işbank sent sms for refinancing. Then when other banks did the same* ***we knew that they took such a decision.*** *From the beginning, we also prepared all data and sms. However, as we thought that we were harming ourselves and* ***with other banks' agreement we did not do that. Ing is sending now. In short, there is a deviation."***

(87) On the same day (.....) replied "*Today* ***akbank*** *called me*. ***They said your housing loans are seen, let's apply refinancing. As far as I see, everyone is attacking****, we have to do something."* On the same day, (.....) replied *"On Monday, we can tell (.....) and (.....) our request on the issue. I also think that everyone knows refinancing, it is necessary to make a difference as a bank."*

(88) Upon examining the document contents, it is indicated that the banks reached an agreement among themselves not to send messages to customers regarding the refinancing of housing loans. From the expressions in the document, it is understood that

- Short messages containing offers to restructure loans with different interest rates and maturities were first sent by **İŞ BANKASI** to customers who had housing loans at other banks,

- Subsequently, other banks also began this practice,
- However, the banks made a **gentleman's decision** among themselves not to send these messages on the grounds that they would harm each other,
- Later, ING did not comply with this agreement and began sending refinancing messages to all customers whose mobile phone numbers were available, regardless of whether they had a housing loan or not,
- AKBANK similarly began sending messages, and all banks were active in refinancing offers.

(89) It is understood from the document that FİNANSBANK, AKBANK, İŞ BANKASI, and ING agreed not to send messages offering refinancing[19] on housing loans to customers. The term "other banks" in the document raised the question of whether banks providing mortgage services other than those mentioned were also included in the agreement, which was further examined. During the investigation, in order to evaluate Document 9, all 12 banks involved in the investigation were requested to provide, from the entry into force of the Mortgage Law to the present, the start and end dates of campaigns regarding mortgage refinancing, the campaign and announcement tools used such as SMS and e-mail, and the proportion of customers who refinanced their loans in all of credit customers on the basis of the number of customers and volume. Based on the information received from the banks, the campaign start dates of the banks mentioned in the e-mail were examined. In 2009, the first campaign was carried out by İŞ BANKASI on 3 September, AKBANK started to make announcements on 17 September, and then ING started refinancing campaign on 6 October. Considering this sequence together with the information in the e-mail:

- It is confirmed that the first campaign was conducted by İŞ BANKASI, as stated in the e-mail.
- The e-mail mentions that AKBANK made a similar announcement after İŞ BANKASI, which is confirmed by the data related to AKBANK in the table.
- The e-mail indicates that the banks had agreed by making a gentlemen's decision not to make announcements to avoid harming each other, but ING did not comply. The date of ING's announcement confirms this.
- FİNANSBANK officials at the time the e-mail was obtained stated that preparations for the campaign had been made, but they did not conduct the campaign because they thought they would ***"undermine themselves"*** and that *they were following the agreement with other banks*. The information obtained confirms that FİNANSBANK did not run a campaign at that time.

(90) Within this framework, it is understood that the banks mentioned in the document agreed not to conduct refinancing campaigns after 17.09.2009, but ING did not comply with this decision and resumed a campaign on 06.10.2009. Considering the approximately 20-day period between these two dates, it is evident that the gentlemen's agreement among the banks was applied for a limited time.

(91) On the other hand, regarding whether other banks providing housing loan services, apart from the banks mentioned, were also included in this agreement as implied by the term "other banks" in the document, the examination and evaluation of the

[19] Refinancing is the repayment of an existing loan by taking out a new loan from another bank under more favorable terms, such as more convenient maturity, interest rate and monthly installment amounts.

information and documents obtained did not reveal any evidence that banks outside the aforementioned banks were party to the agreement described in the document.

(92) Within the framework of the explanations provided above, it is concluded that restricting customer information and offers regarding refinancing—a key competitive element in mortgage loans—through a joint decision by FİNANSBANK, AKBANK, İŞ BANKASI and ING is of a competition-restricting nature, and that the aforementioned banks violated Article 4 of Law No. 4054

Document 10

(93) The e-mail chain obtained during the on-site inspection at HSBC first sent on 08.06.2010 between the Director of Personal Banking-Credit Card Management Unit (.....) to the DGM responsible for Personal Banking Management and Assistance Services (.....), the Head of Personal Banking Group (.....) and Head of Personal Banking-Credit Cards Customer Segment Unit (.....) with the subject *"Delay Notification Fee"* includes the following:

Mrs. (.....)

As of April 2009, we started to collect monthly 1 TL Late Payment Notification Fee for sending an SMS and/or through calling".

We gain (.....) on average every month through late payment notification fee. We see that rival banks are increasing delay notification fees to gain additional revenues. (The fees of competition are attached) Accordingly we are proposing to increase the Late Payment Notification Fee to 2 TL in August after announcing it in June. We will be able to gain (.....) additional income in 2010 together with the said update.

Respectfully submitted for your opinion and approval.

Yours sincerely,

Attachment: Late payment notification fees collected by banks
Late Payment Notification Fee

Yapi Kredi	*No fee*
Garanti	*1.25 TL*
Akbank	*1.5 TL*
İş Bank	*2 TL*
Finansbank	*1.5 TL (For Fix Card 2 TL)*
HSBC	*1 TL*

(94) (.....) replied on 10.06.2010, "*I agree on the increase but raising it from 1 TL to 2 TL means 100% increase. 1.5 tl or 1.25 tl is more reasonable, isn't it?"*

(95) (.....) replied on the same day:

"Mrs (.....)

We learnt from insider information that Akbank is also planning to increase the late payment fee to 2 TL. We propose 2 TL because İş Bankası is collecting 2 TL, Akbank is planning to increase the fee and customers are not price sensitive. (On average, we receive 2 complaints monthly due to delay notification fee.)

Alternatively, we are proposing to increase late payment notification fee to 1.5 TL and reevaluate it after 6 months depending on the feedback from customers and the situtation of competition. With a fee of 1.5 TL, we will gain (.....) additional revenues.

Submitted for your opinion.

Respectfully,

(96) Upon evaluating the above-mentioned document, it is understood that AKBANK and HSBC were in coordination with respect to credit card late payment notification fees. The statement by the HSBC official referring to AKBANK's credit card late fee as *"insider information we obtained"* further confirms this. In this context, it is seen that, based on the information obtained from AKBANK, HSBC officials were aware that AKBANK could raise the credit card late payment notification fee to 2 TL.

(97) During the investigation, it was found that AKBANK announced the change in the late payment notification fee to its customers in statements between 02.07.2010 and 30.07.2010, while the correspondence in Document 10 is dated 06.10.2010. Therefore, it was not possible for HSBC to have obtained this pricing information from publicly available sources, indicating that HSBC learned about AKBANK's future pricing strategy before it was announced to customers and, taking this information into account, increased its own fee. Furthermore, based on the economic analyses included in the file and the Board decision, considering the share of revenue from credit card late payment notification fees in the total revenues of the banks, the effect of coordination between the banks was found to be significant.

(98) Accordingly, it is assessed that AKBANK and HSBC violated Article 4 of the Act No. 4054 by sharing competitively sensitive information with each other regarding credit card late payment notification fees.

Document 11

(99) The e-mail obtained during the on-site inspection at DENİZBANK sent on 30.06.2010 by the Director of Personal Banking Marketing Product Management Unit (.....) to the Director of Fund Management and Private Banking Group Monetary Markets Unit (.....), with the DGM of Retail Banking Group (.....), Fund Management and Private Banking DGM (.....), Director of Personal Banking Marketing Group (.....), Director of Personal Banking Sales Management Group (.....) and some employees included in the CC section, with the subject *"Deposit Interest Change"* has the nature of internal correspondence and includes the following:

> *As you proposed on the phone, to be valid as of tomorrow morning, we have updated our rate table so that at all deposit and authority levels, or rates will decrease 20 bps in TL and 10 bps in FC.*
>
> *In this case, our monthly rates in business authorization will decrease*
>
> - *In TL from 9.90% to 9.70%*
> - *In FC from 4% to 3.90 %*
>
> *We are updating out rates as 10% and 4% in the new deposit.*
>
> *Meanwhile, we inquired whether Ak, YKB, Garanti, İş, Finans, ING and TEB are planning to change the rates tomorrow. Garanti/ING/Finans/TEB are planning a change. ING will decrease tomorrow; Garanti/Finans/TEB are planning to change on Monday. With respect to interest, only TEB gave a clear information, they will price it 9.60% for TL.*
>
> *Accordingly, can we ask your recent opinion about an interest change for FC by taking into account the opinion of the Sales?*

(100) Upon examining the content of the document above, it is observed that while updating its TL and foreign currency deposit interest rates, DENİZBANK contacted its competitors and obtained information regarding whether they would change the relevant rates, thereby gathering insights into their future market behavior. In this context, the exchange of the information about price, which was not implemented yet or publicly disclosed, is considered to reduce uncertainty in the market and thus restrict

competition. On the other hand, based on the content of the document given above, it cannot be conclusively determined that AKBANK, YAPI KREDİ and İŞ BANKASI participated in the said exchange of future information. As a result, it is concluded that DENİZBANK, GARANTİ, ING, FİNANSBANK and TEB violated Article 4 of the Act No. 4054 by sharing competitively sensitive information regarding deposit services.

Document 12

(101) The e-mail obtained during the on-site inspection at GÖSAS sent on 07.09.2010 by Member Merchant Marketing Director (.....) to GM (.....), with DGM responsible for Sales and Member Merchant Marketing (.....), DGM responsible for HR, Purchasing and Marketing Assistance Services (.....), Member Merchant Marketing Coordinator (.....), Member Merchant Marketing Network Management Director (.....) and HR Director in the CC section with the subject *"about YKB"* has the nature of an internal correspondence and includes the following:

> *"We are in touch with YKB and they say that they don't make special efforts for increasing the turnover. They definitely didn't decrease the prices. To the contrary, they want to increase.*
>
> *This month both banks have lost turnover. Since our loss is greater, we fell to the the second rank. When we look into the reasons:*
>
> *The reasons why YKB lost less turnover:*
>
> *(...)*
>
> *+ Profit margins: They are very far away from their profit objective and they were seriously criticized by the management (...) Thus, they have problems and they are seeking for a solution. They want to increase prices. They want to get other banks onside while they are doing that. They are thinking of speaking about this and making this together. …"*

(102) The above-mentioned document pertains to correspondence exchanged among GARANTİ's senior management, and the content of this correspondence includes an assessment of YAPI KREDİ's credit card turnover growth. More specifically, it appears that there was communication between GARANTİ and YAPI KREDİ regarding the profitability ratios of both banks. Indeed, GARANTİ explicitly states that it was in contact with YAPI KREDİ, and GARANTİ officials were aware that YAPI KREDİ had deviated from its profit target and intended to increase prices.

(103) Another point that needs to be assessed within the scope of the relevant document is the statement in the correspondence that is *"...They want to get other banks onside while they are doing that. They are thinking of speaking about this and making this together.* This statement raises suspicion that other banks may also have been involved in the exchange of such information. However, apart from GARANTİ and YAPI KREDİ, whose involvement is clearly understood from the content of the correspondence, there is no clear indication that any other banks took part in the information exchange concerning the matters addressed in the document. Therefore, within the scope of this document, it is concluded that only GARANTİ and YAPI KREDİ can be held responsible.

(104) Therefore, it is concluded that GARANTİ and YAPI KREDİ violated article 4 of the Act No. 4054 since they restricted competition by means of sharing competitively sensitive information about profitability and pricing strategy in member merchant commissions in terms of credit cards.

Document 13

(105) The SMS obtained during the on site inspection at GARANTİ sent on 28.10.2010 by AKBANK's DGM responsible for Corporate Banking (.....) To GARANTİ's Financial Institutions and Corporate Banking DGM (.....) is as follows:

> *Good morning my friend. Let's make a benchmark again at lunch on Tuesday. I'll come with the information attached. Ask for a similar preparation to your colleagues if you wish. Bye.*
> *- TL, FC Loans.*
> *- TL, FC Checking deposit average.*
> *- TL, FC Time deposit average.*
> *- İmport FC sales, Export FC Purchase.*
> *- Profit*
> *- Total Commission*
> *- Collection and clearance figures.*
> *- The number of customers.*
> *- The total number of visits."*

(106) The said message was forwarded on the same date by (.....) to Corporate Banking Coordination Unit Director (.....) with the subject "Akbank- (.....)". On 01.11.2010 (.....) replied, "*The information is given below but our definition of corporate customer is different from Akbank that means the figures are not comparable."*

(107) Upon examining the content of the document, it is understood that the DGMs of AKBANK and GARANTİ were going to meet for a lunch on Tuesday, 02.11.2010, that the AKBANK DGM suggested conducting a benchmarking between the two banks during this lunch, and that the GARANTİ DGM accepted this proposal and instructed the relevant unit to prepare the necessary information. The information to be benchmarked between the two banks included data such as TL and foreign currency loans; TL and foreign currency demand and time deposit averages; figures for foreign currency sales for imports and foreign currency purchases for exports; profit; total commissions; collection and clearing figures; total number of customers; and total number of visits. It is understood that these data primarily relate to credit, deposit, and credit card services.

(108) In light of the information and documents contained in the file and forming the basis of the assessment, it is concluded that the information to be shared between the DGMs of the two banks concerns the banks' core business areas and consists of data used as input in their decision-making processes regarding commercial strategies. Although it may be stated that some of this information[20] is periodically disclosed to the public by the banks, the document in question contains no indication as to the period that would form the basis of the benchmarking. In addition, since it would not be expected for a DGM to instruct relevant personnel to prepare information that is already publicly available, it is concluded that the information to be shared between the AKBANK and GARANTİ DGMs had not yet been made public; in other words, it constituted trade secrets for the banks and therefore amounted to competitively sensitive information.

(109) In this context, it is concluded that GARANTİ and AKBANK violated Article 4 of the Act No. 4054 by sharing information that affects their strategic decisions such as price levels and supply quantities regarding credit, deposit, and credit card services.

[20] It is observed that banks include information such as the breakdown of loans and deposits in terms of TL and foreign currency and total number of customers under the scope of their periodic activity reports.

(110) Since the parties involved in the actions described in Documents 14, 16, 19, 20 and 21 are public banks, and because all of these documents pertain to public deposit services, it is deemed appropriate to evaluate them together. In this framework, the contents of the relevant documents will first be presented, followed by an overall assessment of the documents as a whole.

Document 14

(111) The e-mail obtained during the on-site inspection at VAKIFBANK sent on 29.11.2010 to Resource Management Director (.....) to DGM responsible for Treasury and Investment Banking (.....) with the subject "(.....)" has the nature of internal correspondence and its content is given below:

> *(.....) is asking for deposit for the money obtained from public offering they are asking the amount as (.....) TL. They are asking about the rate for 1 and 2 months. They also asked ziraat and halk. Shall i have an agreement with them and take a certain part or shall we price all but this firm is telling the rates to the other parties i must say"*

(112) On the same date, (.....) replied, *"Good morning, let's make an agreement and take a certain part."*

Document 15

(113) The e-mail obtained during the on-site inspection at DENİZBANK, sent on 20.12.2020 by Personal Banking Marketing Product Management Unit Director (.....) to Retail Banking DGM (.....), Personal Banking Marketing Group Director (.....), Personal Banking Sales Management Group Director (.....) and Personal Banking Marketing Product Management Officer (.....) with the subject "Required Reserve Ratios are Published in the Official Gazette..." includes the following:

> *" Mr. (.....)*
>
> *Upon the announcement of TCMB, Mr. (.....) used the calculation sent by Mr. (.....) to see the cost effect to our Bank if we apply higher interests for a longer maturity.*
>
> *(...)*
>
> *Rival banks that we talked to and (.....) are planning to monitor the market until the beginning of the month and not to make any changes maturity-based pricing approaches yet. So, we also prefer to wait for a while as a strategy.*

(114) Upon examining the content of the document above, it is understood that, following the restructuring by the Central Bank of the Republic of Türkiye (TCMB) of the required reserve ratios for TL and foreign currency based on maturities, banks experienced an increase in deposit costs. In this context, it appears that DENİZBANK reviewed its pricing strategy for deposit services by consulting with competitor banks In line with the statement in the document, "*… they are planning to monitor the market until the beginning of the month and not to make any changes in their maturity-based pricing approaches yet. Therefore, as a strategy, we also prefer to wait for a while,"* it is concluded that DENİZBANK became aware of its competitors' forward pricing strategies as a result of these conversations and took this information into account when determining its own strategy.

On the other hand, since no concrete information or document was found during the investigation to identify which competitor banks DENİZBANK contacted, it is concluded that only DENİZBANK, whose involvement in competitively sensitive information exchange with rivals is established, should be held responsible within the scope of this document. In this regard, it is determined that DENİZBANK violated Article 4 of the Act

No. 4054 by engaging in competitively sensitive information exchange regarding deposit services.

Document 16

(115) The e-mail obtained during the on-site inspection at VAKIFBANK, sent by the Branch Manager (.....) on 31.01.2011 to Resource Management Director (.....), with Central Anatolia Regional Director (.....), Head of Treasury (.....) and with the DGM responsible for Treasury and Investment Banking (.....) included in the CC section with the subject *"the Gentlemen's Agreement"* has the nature of internal correspondence and its content is given below[21]:

> *We have always been told that you made a gentlemen's agreement, between our Bank and other two public banks (Ziraat Bankası and HalkBankası) concerning public deposit.*
>
> *We were told that pricing was set after talking with Ziraat Bankası and Halkbankası so that they would not be cross.*
>
> *And we do not exceed the prices coming from them so the amounts remain at those banks. I wish everyone adhered to the agreement and our deposits remained under our umbrella.*
>
> *However what we experienced today - which is explained below - shows the reality and that gentlemen's agreement did not work in such way.*
>
> *Although it was said that they talked with other banks and agreed on 7% for 35 days, (.....) TL amount belonging to (.....) Municipality in my (.....) Branch exited my branch because Ziraat Bank made 7.50% pricing.*
>
> *It was found that the rate was 7.50% after talking with (.....) Municipality officials and the Director of Ziraat Banks's relevant Branch.*
>
> *The Director of Ziraat Bank stated that pricing was authorized by the Regional Director.*
>
> *As understood, although Ziraat Bank General Directorate stated that they were loyal to the negotiations made with you, they became very successful in attracting the money with a different policy by not complying with the gentlemen's agreement through Region channel.*
>
> *We already demonstrate our unity with our branch, regional directorate and general directorate.*
>
> *What kind of understanding of gentlement's agreement is this, Ziraat Bank's perspective and policy is to continue the gentlemen's agreement by offering a different rate by the General Directorate and Regional Directorate. It must be the way to get the deposit from a rival bank with which they have a gentlemen's agreement.*
>
> *I wrote about this situation because I got very upset and I can't get over it because in return for the deposit we could not get due to complying with the gentlemen's agreement, the deposit in my Bank went away.*
>
> *Maybe you know this situation and have faced it many times but I would like to inform you and share how other banks work and how they see the gentlemen's agreement."*

(116) On the same date, (.....) replied to (.....) and (.....) and said, *"Let's talk about this"*

[21] The expressions are underlined in the original document.

Document 17

(117) The e-mail obtained during the on-site inspection at HSBC sent on 30.03.2011 by Personal Banking-Credit Cards Product Management Unit Director (.....) to DGM responsible for Personal Banking and Assistance Services has the nature of an internal correspondence and includes the following:

> *"...Among the proposals attached, especially, we want to apply "Cash Point Expire Date" this year. Up to now, we are only deleting the points of inactive customers. From this year on, we want to bring 2-year expire date structure for all points (Cash Points and Miles). With this structure, we will delete all unused points that were gained before December 2009 in December 2011. In this way, we will have (.....) net savings.*
>
> *Note: We talked with Garanti Bankası, Finansbank, Yapı Kredi and Akbank. They are trying to recover their loss by increasing the fees. They have not finalized the fee increases yet."*

(118) Upon examining the content of the document, it is observed that HSBC set a validity date for the points awarded on credit cards, planning to reset the points accumulated on customers' bankcards at the end of two years in order to achieve a certain level of savings. Additionally, it is noted that discussions were held with some banks and that a note was included indicating that these banks would implement fee increases. The note in the correspondence states: *"We talked with Garanti Bank, Finansbank, Yapı Kredi and Akbank. They are trying to recover their loss by increasing the fees.*

(119) The specific type of fee referenced in the e-mail is not explicitly identified. However, as also indicated in the Board decision, upon examining the content of the Excel file titled *"Interest Rate Reduction Action List"* attached to the e-mail, it can be inferred that the fee mentioned in the e-mail refers to the credit card late payment notification fee and/or the cash advance withdrawal fee. Indeed, among many other items listed in the attachment, proposed increases to these fees are also included.

Based on this, it is concluded that HSBC, GARANTİ, FİNANSBANK, YAPI KREDİ, and AKBANK violated Article 4 of the Act No. 4054 by exchanging future information among themselves regarding credit card fees.

Document 19

(120) The e-mail obtained during the on-site inspection at HALKBANK sent on 14.06.2011 by an Assistant Director in Deposit and Cash Management Department (.....) to the Head of Deposit and Cash Management Department (.....), with the subject "Pricing" is an internal correspondence and includes the following:

> *Vakıf requested 9.30% for (.....) Municipality (.....) for 32 days. They supported us for (.....) Municipality. We gave 9.30%*
> *They may ask a different rate from you for (.....) Municipality.*
> *We asked them for support for (.....) There won't be any problem.*
> *We used 9.40 for (.....) Provincial Special Administration. The money is at Vakıf. They helped us for our return.*

Document 20

(121) The e-mail obtained during the on-site inspection at HALKBANK sent on 13.07.2011 by an Assistant Director in Deposit and Cash Management Department (.....) to the Head of Deposit and Cash Management Department (.....), with the subject " (.....)" is an internal correspondence and includes the following:

"We give (.....)'s (.....) TL deposit the rate we use for (.....) for 33 days by agreeing with Ziraat and Vakıf. 33 days 7.90%.

(.....) Ziraat, (.....) Vakıf (.....) TL may be transferred to us. "We all have the same rate."

Document 21

(122) The e-mail obtained during the on-site inspection at HALKBANK sent on 13.07.2011 by an Assistant Director in Deposit and Cash Management Department (.....) to the Head of Deposit and Cash Management Department (.....), with the subject " (.....)" includes the following:

"All (.....) money is at Ziraat. Today Vakıf send (.....) TL on behald of (.....) to Ziraat. Then (.....) made a tender for this money. We agreed and offered 7.90. Then Ziraat called and said their Branch Manager applied a different pricing and they remained at them with 8% and apologized.

As a result, (.....) TL stayed at Ziraat for 33 days at 8%.

(123) When the documents above are examined as a whole, it is understood that ZİRAAT, HALKBANK, and VAKIFBANK acted in a coordinated manner in public deposit tenders. In Document 14, an internal VAKIFBANK correspondence dated 29.11.2010, VAKIFBANK inquires whether, for a deposit tender in which they were invited to submit an offer, they should agree with ZİRAAT and HALKBANK to price only part of the deposit or the entire amount. The response indicates that an agreement was indeed reached with these banks and that VAKIFBANK was instructed to take only part of the deposit. Inquiries conducted during the investigation also confirmed that, consistent with this agreement, the banks in question submitted identical interest rate offers in the relevant tender and shared the deposit.

(124) Furthermore, Document 16, an internal VAKIFBANK correspondence dated 31.01.2011, repeatedly states that a gentleman's agreement existed among VAKIFBANK, HALKBANK, and ZİRAAT, and that public deposits were priced through consultations among these banks in line with this arrangement. However, there is a complaint that in one public deposit tender, ZİRAAT did not adhere to the agreed interest rate and instead offered a higher rate, thereby violating the gentlemen's agreement and causing the deposit to go away from VAKIFBANK.

(125) In another case involving a public deposit tender, Document 19 -an internal HALKBANK correspondence dated 14.06.2011 -indicates that VAKIFBANK requested HALKBANK to submit an offer at 9.30% and that HALKBANK submitted a lower interest rate in the subject tender because VAKIFBANK had supported HALKBANK in another deposit tender the previous day. In addition, the document shows that, on the date of the document, HALKBANK and VAKIFBANK exchanged requests for support regarding interest rates for two different public deposit tenders and mutually assisted one another.

(126) Finally, Documents 20 and 21, dated 13.07.2011, show that HALKBANK, ZİRAAT, and VAKIFBANK agreed to submit the same interest rate offer for a public deposit, but the deposit was ultimately awarded entirely to ZİRAAT. According to the content of the document, after winning the entire deposit, a ZİRAAT official called a HALKBANK official to explain that the ZİRAAT branch manager had applied a different pricing, causing the deposit to remain with ZİRAAT, and apologized for the situation.

(127) Within the framework of the information and documents provided above, it is concluded that there was an agreement among ZİRAAT, HALKBANK and VAKIFBANK to engage in bid rigging in tenders concerning public deposits and this agreement between the

banks covered at least seven public deposit tenders held between 29.11.2010 and 13.07.2011. Accordingly, it is concluded that ZİRAAT, HALKBANK and VAKIFBANK violated article 4 of the Act No. 4054 by means of bid rigging in public tenders.

Document 22

(128) The e-mail obtained during the on-site inspection at YAPI KREDİ sent on 04.08.2011 to Investor Relations and Strategic Planning Director (.....), Acting GM (.....), GM (.....) and DGM responsible for Financial Planning and Financial Affairs (.....) includes the following:

> *"Just informed (via internal sources) that Garanti will reduce deposit rates 25 bps effective from tomorrow. regards"*
>
> . . .

Document 23

(129) In the e-mail obtained during the on-site inspection at YAPI KREDİ sent on 04.08.2011 to Investor Relations and Strategic Planning Director (.....), Acting GM (.....), GM (.....) and DGM responsible for Financial Planning and Financial Affairs (.....), it is stated *"CBRT just lowered policy rate to 5.75% (from 6.25%) Corridor also narrowed by increasing O/N borrowing to 5% (from 1.5%). Lending rate stil at 9%"* . . .

> *"Dear all,*
>
> *After today's policy rate adjustment (-50bps) we should quickly adjust our price offer as follow:*
>
> ** decrease deposits rate (Garanti will decrease by 25 bps, pls check, may be we can be more aggressive?)*
>
> ** no decrease in loans rate (for the time being)*
>
> *Pls come up with a quick proposal in that sence and a calculation on the impact on 2011 forecast, also including the effect on liquidity / funding after material increase of the O/N borrowing rate by 350 bps"*

The e-mail sent as a response by Monetary and Foreign Currency Group Director (.....) on 05.08.2011 to Acting GM (.....), DGM responsible for Retail Banking (.....), DGM responsible for Corporate and Commercial Banking (.....), DGM (.....), DGM responsible for Risk Management (.....), DGM responsible for Private Banking and Asset Management (.....) and GM (.....) includes the following:

> *"Only Garanti seems to take a quick action, by cutting its internet rates by approximately %0.25. However, for the mid size tickets, they decreased their rate from %10.25 to %9.50 for 1 month, and from %10.50 to 9.75% for maturities above 3 months. (As to remind our current mid sized ticket rate is %9.45-%9.55 dump for 1 month, that means Garanti decreased its rates to our current level). Ak, Ziraat and Isbank say that they havent decided yet the new level at the moment.*
> *As a first step, we propose:*
> *- for Application 3 (mid rates) %0.50 decrease for maturities 1 day-1 month and %0.25 decrease for maturities above 1 month*
> *- for Application 2 (max rates) %0.25 decrease for maturities 28-184 days, %0.50 decrease for 185-366 days and %0.40 decrease for maturities above 367 days (so that 6 months max rate will be %9.50+%0.45 branch commission and 1 year will be %9.75+%0.45)*
> *- for new Money campaign, %0.25 decrease for 46-62 days. (current campaign rate is %10)*
> *- for long term deposits with interim payments, %0.25 decrease for the ones with fix payments.*

All of the above rates will be reviewed if rate cut wave among banks continues."
…

(130) On the same date, Acting GM replied *"Thank you (.....). Is this only your proposal or the proposal agreed with the business?"* . . . Then, Money and Foreign Currency Markets Group Director (.....) replied, "*This is our proposal, the only call we receive today is from (.....)-retail and they said they are fine to cut 0,25 only. I ll tell our team to share total plan with retail and commertial then to speed up the process, if it is fine with all"*

(131) GM (.....) replied, "*Ok. Pls keep us posted from the holidays, for the outflows, inflows, competition and the market evolution on a daily basis."*

"Here is the summary of Friday
(…)
**For the small and mid sized tickets banks above used almost the same prices. But most of them except Garanti have expressed that they havent decided on the new level.*
We will be in touch with the marketfor the new level prices next week."
(...)

(132) Both Document 22 and Document 23, which were about deposit interests, were obtained from YAPI KREDİ. The correspondence shown in the documents covered a three-day period and thus they are linked to each other in this regard. In summary, in Document 22, which is an internal correspondence of YAPI KREDİ dated 04.08.2011, the information said to be obtained via internal sources that GARANTİ would reduce its deposit interest rates by 25 bps as of 05.08.2011 was given to YAPI KREDİ senior executives. It is seen from another internal correspondence of YAPI KREDİ, Document 23, that YAPI KREDİ uses GARANTİ's pricing information as an input while determining its pricing strategy. It is inferred from the expression in Document 23 "*Ak, Ziraat and Isbank say that they havent decided yet the new level at the moment."* that the information sharing was not limited to GARANTİ but covered AKBANK and ZİRAAT. The expressions in YAPI KREDİ's internal correspondence dated 06.08.2011 included in Document 23 stating *"For the small and mid sized tickets banks above used almost the same prices. But most of them except Garanti have expressed that they havent decided on the new level. We will be in touch with the marketfor the new level prices next week.*" indicate that the anticompetitive communication between banks was continuous.

(133) Within this framework, as stated before, sharing future pricing strategies with competitors may lead to restrictive effects on competition. In this regard, as indicated by Document 22 and Document 23, it is concluded that the information exchange among GARANTİ, YAPI KREDİ, AKBANK, ZİRAAT and İŞ BANKASI about future pricing policy in terms of deposit services constitute a violation article 4 of the Act No. 4054.

(134) Thus, depending on the evaluation of the dates, content and the aim of correspondence included in the documents together, the following conclusions are made: Document 22 and Document 23 indicates an anticompetitive understanding among banks on deposit interests. The banks had the same will to restrict competition, as shown by the documents and it would be appropriate to evaluate them together since they indicate the same anticompetitive understanding. In line with this, based on the evaluation of Document 22 and 23 together, YAPI KREDİ, GARANTİ, AKBANK, ZİRAAT and İŞ BANKASI violated article 4 of the Act No. 4054 by means of *exchanging competitively sensitive information* regarding deposit services.

Document 25

(135) The e-mail obtained during the on-site inspection at YAPI KREDİ, sent on 19.09.2011 by Loan, Bank and Prepaid Cards Product Manager (.....) to "Cards Product Management" and "Brand and Marketing Communication" units includes the following:

> *"We will increase cash withdrawal fee starting from October 21, 2011 as stated below. Regarding this, urgently, statement back-page revision and application form revision are necessary.*
> *(.....) can you urgently convey the request for statement and application form amendment for all card types to LO.*
> *The websites should be revised on October 21, since CAF changes accordingly, the relevant areas should also be revised.*
> *The required update for (.....) service commission tariff should be made.*
> *If there are any channels that I skipped please add them to the list*
> *For Yapı Kredi ATM's, Yapı Kredi İnternet Banking and Yapı Kredi Telephone Banking 3% of the amount+5 TL [22] (PREVIOUSLY 3% 3 TL)*
> *For Yapı Kredi branches and other national/foreign banks*
> *It will change as 3% of the amount+7 TL [23] (PREVIOUSLY 3% +4 TL)*

Document 26

(136) The e-mail obtained during the on-site inspection at GARANTİ sent on 20.09.2011 by GM of GÖSAŞ (.....) to GM of GARANTİ (.....), Head of Unit responsible for Financial Marketing and Analysis (.....), DGM responsible for General Accounting (.....) and GARANTİ DGM responsible for Treasury (.....) with the subject *"TCMB left CC interests unchanged"* information that TCMB did not change the maximum contractual (cash advance) interest rate and late payment interest rates was provided. (.....) responded by asking how the budget was. GÖSAŞ DGM responsible for Finance and Risk Management made the following explanations:

> *" (.....) interest is in the budget. Quarterly (.....) million will write us plus.*
>
> *For the loss from cash withdrawal (.....) million tl is budgeted.*
>
> *To balance the loss from cash advance I'll propose to marketing to raise the current 3+3% cash withdrawal fee to 3+5% tl. Akbank has changed to this pricing. Yapı kredi told me yesterday that they pulled the trigger to change to this.*

(137) In the e-mail sent upon this, (.....) stated "*Yes (.....). But we'll make other changes. (.....) if the figures are so (.....) let's talk and increase."*

Document 27

(138) The e-mail obtained during the on-site inspection made at GÖSAŞ, sent on 22.09.2011 by Finance MIS Director to Product Management Assistant Director (.....), Product Management Senior Official (.....), Accounting and Settlement Assistant Director (.....), copied to Marketing Coordinator (.....), Accounting and Settlement Manager (.....), DGM responsible for Finance and Risk Management (.....), Customer Management Director (.....), Customer Management Director (.....) and (.....), with the subject *"Cash Advance Fee",* the following is stated:

> *"After the latest regulation related to cash, our cash turnover will decrease from (.....) million level on average monthly and we will lose (.....) TL revenues annually.*
>
> *In order to compensate at least a part of this loss, with the decision taken yesterday,*

[22] The expressions are bold in the original document.
[23] The expressions are bold in the original document.

At on-us side It was decided the the 3%+3 cash advance fee will be changed to 3%+5. I request your assistance in sending messages in statements and entering systematic parameter in the following 40 days starting from tomorrow.

(Akbank and ykb started to send messages in statements)"

(139) The abovementioned Document 25, Document 26, and Document 27 are about credit card cash withdrawal fees. The correspondence shown in the documents covered a four-day period and thus they are linked to each other in this regard. Examination of the said documents as a whole indicates that the content of the correspondence points out the exchange of future information on credit card cash withdrawal fee among rival banks. In this regard, it is concluded that it would be appropriate to evaluate the said documents together since they are related to the same anticompetitive understanding.

(140) Accordingly, it is stated in Document 25, which is an internal correspondence of YAPI KREDİ dated 19.09.2011 that as of 21.10.2011, the cash withdrawal fee for cash advances withdrawn via YAPI KREDİ ATMs as well as internet and telephone banking, already set at 3% + 3 TL would be increased to 3% + 5 TL and the fee charged for cash withdrawal transactions carried at YAPI KREDİ branches and at other banks' branches both domestically and abroad would be increased from 3% + 4TL to 3% + 7 TL.

(141) It is stated in Document 26, which is an internal correspondence of GARANTİ dated 20.09.2011, it was proposed to increase the cash withdrawal fee from 3% + 3 TL to 3% + 5 TL and it was stated that AKBANK started to apply those fees and YAPI KREDİ took steps to apply the same fees the day before. It is clearly understood from the content of the document that GARANTİ learned about the cash withdrawal fees that YAPI KREDİ and AKBANK were going to implement and suggested applying the same prices.

(142) In Document 27, which is GARANTİ's internal correspondence, it is seen that a decision was made to revise the amount as proposed, instructions were given to make the necessary preparations for this and it is stated that AKBANK and YAPI KREDİ began announcing the said change a week ago.

(143) The cash withdrawal/cash advance fee referred to in the documents above is an important element of competition in banks' credit cards services and as such, it should be determined independently by card issuing banks. In line with this, it is seen that sharing information about fees that had not been announced yet among competitors restricted competition.

(144) During the investigation process, for June-December 2011 period, the initial publication dates of cash withdrawal fees of GARANTİ, YAPI KREDİ and AKBANK, the channels through which these changes were announced, and the statements in which they first appeared as well as internal correspondence and decision texts related to the changes and cash withdrawal fees before and after the changes were investigated and examined. As a result of the examination carried out and the information and documents obtained, it was understood that GARANTİ obtained the information regarding AKBANK's change from publicly available sources. However, it was found that GARANTİ became aware of YAPI KREDİ's change to its cash withdrawal fee before the change was announced to customers/public.

(145) In light of the explanations, it is concluded that the exchange of information on future cash withdrawal fees between GARANTİ and YAPI KREDİ is anticompetitive. In this regard, it is determined that YAPI KREDİ and GARANTİ violated Article 4 of the Act

No. 4054 by engaging in competitively sensitive information exchange regarding credit card services.

Evaluation of Document 18, 24 and 28

(146) Since there was no allegation of violation about the undertakings in the Board decision dated 08.03.2013 and numbered 13-13/198-100 depending on Document 18, 24 and 28, it was not deemed necessary to evaluate the said documents.

G.5. General Evaluation

(147) As stated above, following the annulment of the Board decision dated 08.03.2013 and numbered 13-13/198-100 by the administrative judiciary, İn order to fulfill the requirements of the said annulment decision per article 28 of APL, it was decided to carry out a study with the decision dated 09.06.2022 and numbered 22-26/418-M. The study conducted takes into account the principal basis of the annulment decision of the administrative judiciary that whether the conditions for establishing a single continuous infringement were satisfied was not properly assessed and the relevant banks must be assessed separately for each service in respect of which they participated in the infringement, the practices of the banks under investigation that constituted an infringement and the documents demonstrating those practices were examined again. Within the framework of the examination made, the table provided below shows the documents pertaining to the violation inn question, the relevant products and services and the banks to which the documents are related

Table 1: Documents Pertaining to the Violation, Their Content and Related Banks

Relevant Documents and the Period They Cover	Relevant Parties / The Subject of the Document	AKBANK	DENİZBANK	GARANTİ	HALKBANK	HSBC	ING	İŞ BANKASI	TEB	VAKIFBANK	YAPIKREDİ	ZİRAAT
Document 1 21.08.2007	Housing Loan Interest	X		X								
Document 2, 3, 4 27.09.2007-04.07.2008	Deposit Interest	X		X	X			X		X	X	X
Document 5 21.10.2008	Export Loan Interest	X		X								
Document 6 23.10.2008	Housing, Auto and Consumer Loan Interests	X		X				X			X	
Document 7 28.11.2008	Deposit Interest	X									X	
Document 8 02.06.2009	Cross Sales Rates[24]			X							X	
Document 9 22.10.2009-24.10.2009	Housing Loan Refinancing Notification	X					X	X				

[24]Refers to selling an additional product or service to a customer who has already purchased a product or a service of the firm. (CENAL, N. (2013), *Müşteri İlişkileri Açısından Çapraz Satış Performansı Ölçümü ve Bir Araştırma*, Galatasaray University/Social Sciences Institute/Management Department Master's Thesis). In banking practice, selling a credit card to a customer who has already taken a loan from the bank is an example of cross selling. Cross selling is considered one of the most important marketing practices of banks. Through this sales method, banks aim to enable customers to make effective use of a greater number of products offered by the bank, thereby increasing customer loyalty and gaining a competitive advantage. Therefore, information regarding banks' cross selling policies is considered part of information on banks' sales strategies and can be regarded as competitively sensitive information.

Document 10 08.06.2010-10.06.2010	Credit Card Late Payment Notification Fees	X				X						
Document 11 30.06.2010	Deposit Interest		X	X			X		X			
Document 12 07.09.2010	Member Merchant Commission			X							X	
Document 13 28.10.2010	Various Banking Data	X		X								
Document 14, 16, 19, 20, 21 29.11.2010-13.07.2011	Public Deposit Interest				X					X		X
Document 15 20.12.2010	Deposit Interest		X									
Document 17 30.03.2011	Credit Card Late Payment Notification Fee/Cash Advance Withdrawal Fee	X		X		X					X	
Document 22, 23 04.08.2011-06.08.2011	Deposit Interest	X		X				X			X	X
Document 25, 26, 27 19.09.2011-22.09.2011	Credit Card Cash Withdrawal Fee			X							X	

(148) In line with the explanations provided above and as shown in Table 1, within the scope of the file, it is concluded that

– GARANTİ violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Document 1: housing loan interest rates,
- Under the scope of Documents 2, 3, 4: deposit interest rates,
- Under the scope of Document 5: export loan interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 8: cross-selling ratios,
- Under the scope of Document 11: deposit interest rates,
- Under the scope of Document 12: member merchant commission rates,
- Under the scope of Document 13: corporate banking-related rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates,
- Under the scope of Documents 25, 26, and 27: credit card cash withdrawal fees.

Taking into account the first and last dated documents concerning GARANTİ (21.08.2007–22.09.2011), the said infringement, which concerns all credit, credit card, and deposit services within the framework of the points set out in the annulment decision, lasted for more than four years but less than five years,

– AKBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving

- Under the scope of Document 1: housing loan interest rates,
- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 5: export loan interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,

- Under the scope of Document 7: deposit interest rates,
- Under the scope of Document 9: refinancing of housing loans,
- Under the scope of Document 10: credit card late payment notification fees,
- Under the scope of Document 13: corporate banking-related rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates

Taking into account the first and last dated documents concerning AKBANK (21.08.2007–06.08.2011), the said infringement, which concerns all credit, credit card, and deposit services within the framework of the points set out in the annulment decision, lasted for more than three years but less than four years,

– YAPI KREDİ violated Article 4 of the Act No. 4054 through anticompetitive practices involving

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 7: deposit interest rates,
- Under the scope of Document 8: cross-selling ratios,
- Under the scope of Document 12: member merchant commission rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates,
- Under the scope of Documents 25, 26, and 27: credit card cash withdrawal fees,

Taking into account the first and last dated documents concerning YAPI KREDİ (27.09.2007–06.08.2011), the said infringement, which concerns all credit, credit card, and deposit services within the framework of the points set out in the annulment decision, lasted for more than three years but less than four years,

– İŞ BANKASI violated Article 4 of the Act No. 4054 through anticompetitive practices involving

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 9: refinancing of housing loans,
- Under the scope of Documents 22 and 23: deposit interest rates

Taking into account the first and last dated documents concerning İŞ BANKASI (27.09.2007–06.08.2011), the said infringement, which concerns all credit, credit card, and deposit services within the framework of the points set out in the annulment decision, lasted for more than one year but less than five years,

– ZİRAAT violated Article 4 of the Act No. 4054 through anticompetitive practices involving

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates,
- Under the scope of Documents 22 and 23: deposit interest rates

Taking into account the first and last dated documents concerning ZİRAAT (27.09.2007–06.08.2011), the said infringement, which concerns public deposit and deposit services within the framework of the points set out in the annulment decision, lasted for more than three years but less than four years,

- HALKBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving
    - Under the scope of Documents 2, 3 and 4: deposit interest rates,
    - Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates,

Taking into account the first and last dated documents concerning HALKBANK (27.09.2007–06.08.2011), the said infringement, which concerns public deposit and deposit services within the framework of the points set out in the annulment decision, lasted for more than three years but less than four years,

- VAKIFBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving
    - Under the scope of Documents 2, 3 and 4: deposit interest rates,
    - Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates,

Taking into account the first and last dated documents concerning VAKIFBANK (27.09.2007–13.07.2011), the said infringement, which concerns public deposit and deposit services within the framework of the points set out in the annulment decision, lasted for more than three years but less than four years,

- TEB violated Article 4 of the Act No. 4054 through anticompetitive practices involving
    - Under the scope of Document 11: deposit interest rates

Taking into account that there is only one document concerning TEB's violation allegation, the said infringement, which concerns deposit services within the framework of the points set out in the annulment decision, lasted for less than one year,

- DENİZBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving
    - Under the scope of Documents 11 and Document 15: deposit interest rates

Taking into account the first and last dated documents concerning DENİZBANK (30.06.2010-20.12.2010), the said infringement, which concerns deposit services within the framework of the points set out in the annulment decision, lasted for less than one year,

- HSBC violated Article 4 of the Act No. 4054 through anticompetitive practices involving
    - Under the scope of Document 10: credit card late payment notification fees,
    - Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,

Taking into account the first and last dated documents concerning HSBC (08.06.2010-30.03.2011), the said infringement, which concerns credit card services within the framework of the points set out in the annulment decision, lasted for less than one year,

- ING violated Article 4 of the Act No. 4054 through anticompetitive practices involving
  - Under the scope of Document 9: refinancing of housing loans,
  - Under the scope of Document 11: deposit interest rates

Taking into account the first and last dated documents concerning ING (22.10.2009-30.06.2010), the said infringement, which concerns loan and deposit services within the framework of the points set out in the annulment decision, lasted for less than one year.

(149) Nonetheless, although FİNANSBANK is mentioned among the parties in the document-specific assessments set out above in order to preserve the coherence of the overall evaluation, no evaluation was carried out in respect of FİNANSBANK because the judgment of the 13th Chamber of the Council of State upholding the decision concerning that bank became final, since FİNANSBANK did not file a timely request for rectification of the judgment.

(150) In summary, based on the examination of the documents evidencing the infringement within the file, a separate finding of infringement has been made for each bank, within the framework of the documents to which the respective bank is related. In line with the annulment judgment of the administrative judiciary, it is assessed that each bank must be held liable only for the anticompetitive conduct relating to the services in which it is active and only within the scope of the documents associated with that bank. Within this framework of determining liability, and taking into account the period covered by the documents demonstrating each bank's anticompetitive conduct across banking services in general, a single infringement finding was established for each bank concerned.

G.5.1. Evaluation of the Determination of the Administrative Fines

G.5.1.1. The Issues to be Taken into Account for the Determination of the Administrative Fines

(151) The examination, observations and evaluations made following the various decisions of the Ankara 2nd Administrative Court, which annulled the Competition Board's decision dated 08.03.2013 and numbered 13-13/198-100, and in order to comply with the court's ruling, indicate that GARANTİ, AKBANK, YAPI KREDİ, İŞ BANKASI, ZİRAAT, HALKBANK, VAKIFBANK, DENİZBANK, HSBC, ING and TEB infringed Article 4 of the Act No. 4054 through anticompetitive conduct.

(152) At this point, the specific situation of state-owned banks may be addressed for the purposes of establishing liability. In its decision dated 27.08.2020 and numbered 20-39/539-240, the Board found that the control exercised by the Turkey Wealth Fund (TVF) over the state-owned banks ZİRAAT, HALKBANK and VAKIFBANK extended beyond public ownership, general oversight and supervisory powers, and that TVF had a decisive influence over these undertakings' business plans, capital increases and strategic decisions. Accordingly, these banks were considered to form part of the same economic unit within the TVF structure. However, in the Board's decision dated 08.03.2013 and numbered 13-13/198-100, which was adopted before the transfer of these banks to the TVF, ZİRAAT, HALKBANK and VAKIFBANK were assessed as separate undertakings, and fine determinations were made on that basis. In this context, the assessments regarding ZİRAAT, VAKIFBANK and HALKBANK in the present case take into account the legal situation applicable at the dates of the documents forming the basis of the infringement. Accordingly, it is considered

appropriate to treat each of the three state-owned banks as separate undertakings for purposes of determining liability, and that administrative fines should likewise be imposed on each bank individually.

(153) Within this framework, an assessment must be carried out to determine the administrative fine applicable to each undertaking concerned, including the state-owned banks.

(154) Article 16(3) of the Act No. 4054 includes the provision:

> *"An administrative fine up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations to be imposed fines, which generate by the end of the financial year preceding the decision, or which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board, will be imposed to those who committed behavior prohibited in Articles 4,6 and 7 of this Act."*

(155) On the other hand, the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (Fines Regulation), which regulates the procedures and principles relating to setting fines to be imposed in accordance with article 16 of the Act No. 4054 on the Protection of Competition on the undertakings and associations of undertakings or members of such associations as well as managers and employees thereof, who conduct behavior prohibited in article 4 and 6 of the same Act, was published in Official Gazette dated 27.12.2024 and numbered 32765 and entered into force. Accordingly, when determining the administrative fine to be imposed on each undertaking, the provisions of the said Fines Regulation must be taken into account.

(156) Article 4(1) of the Fines Regulation provides that the basic fine rate applicable to undertakings and associations of undertakings (or their members) shall be determined separately for each infringement. A contrario, where a conduct is assessed as constituting a single infringement, only a single administrative fine shall be imposed. In this framework, whether the conduct in question amounts to a single infringement is assessed on a case-specific basis, taking into consideration the Board's established case law. In determining the number of infringements, the following elements are taken into account: the nature of the conduct giving rise to the infringement allegation, the geographic markets concerned, the relevant product markets, temporal continuity between the conduct, whether the conduct was carried out in execution of the same decision; whether the actions form part of a single overall strategy and whether the behavior results from unilateral actions of the undertaking. Based on these factors, the existence of a single infringement or of multiple separate infringements is established.[25]

(157) Pursuant to Article 5 of the Fines Regulation, when calculating the administrative fine based on the undertaking's gross revenues, the basic fine is determined first; thereafter, any aggravating and mitigating factors are applied pursuant to Articles 6 and 7 of the Fines Regulation to determine the final fine. Article 4(2) sets out the method for applying increases due to aggravating factors and reductions due to mitigating factors after the basic fine rate is determined. Accordingly, the basic fine rate is first increased by taking into account aggravating factors; then, a reduction is made based on this rate by considering mitigating factors. The reduction based on the

[25] See Board decisions dated 25.03.2021 and numbered 21-17/208-86, dated 15.12.2022 and numbered 22-55/863-357, dated 26.07.2023 and numbered 23-34/649-218, dated 27.02.2024 and numbered 24-10/170-66; dated 27.02.2024 and numbered 24-10/170-66; dated 24.02.2022 and numbered 22-10/152-62.

mitigating factors is applied either to the basic fine rate (if there is no aggravating factor) or, if aggravating factors are present, to the increased rate calculated under Article 6 of the Regulation.

(158) At this point, it should be noted that when determining administrative fines for undertakings within the scope of the file, it is necessary to assign individual responsibility for each bank by taking into account that bank' s conduct, in line with the reasoning of the annulment decisions of the administrative judiciary.

(159) In determining the administrative fines to be imposed on undertakings or associations of undertakings, the basic fine rate is obtained by applying the aggravation rate based on the duration, if the conditions exist, to the starting rate of fine pursuant to Article 5(1) of the Fines Regulation. Therefore, in order to determine the basic fine, first, the starting rate of fine should be determined per article 5(2) of the Fines Regulation. Article 5(3) of the Fines Regulation provides that the starting rate of fine determined under paragraph 2 shall be increased due to the duration of the infringement. Where the infringement lasts longer than one year, the increase to the starting rate of fine is made by taking into account one-year duration increments. After the starting rate of fine and the basic fine calculated by taking into account the duration of the violation are determined, the final fine rate will be calculated by considering aggravating factors under the scope of article 6 and mitigating factors under the scope of article 7 of the Fines Regulation. The rate determined will be applied to the undertakings' annual gross revenues pursuant to Article 16(3) of the Act No. 4054 in order to calculate the administrative fine. However, the final amount of the final administrative fine calculated may not exceed ten percent of the annual gross revenues generated at the end of the financial year preceding the final decision, or, if this cannot be calculated, at the end of the financial year closest to the date of the final decision, as determined by the Board.

(160) Article 5(2) of the Fines Regulation provides that the starting rate of fine shall be determined by considering, in particular, the severity of the actual or potential harm resulting from the infringement, as well as the naked and/or hard core nature of the infringement. In this context, the main factors in determining the starting rate of fine are the nature of the infringement and the actual or potential harm to competition.

(161) Within this scope, when determining the administrative fine for the infringements at issue, the harm that may have occurred or may occur due to the infringement, as well as the nature of the infringement, will first be taken into account. However, other critical elements that may be assessed in terms of the seriousness of the infringement such as the total market power of the undertakings party to the infringement, the position of the parties in the relevant market, the characteristics of the products that are the subject of the infringement, and the geographic scope in which the infringement was implemented should also be considered in determining the starting rate of fine. These matters are essentially linked to the harm that may arise from the infringement or to the naked and/or hardcore nature of the infringement and should be taken into account within this framework.

(162) In light of the information provided in the relevant sections of this decision, the Board's decision dated 08.03.2013 and numbered 13-13/198-100 found that the 11 banks under investigation engaged in agreements and/or concerted practices within the scope of various arrangements, whose parties, aims, and subjects may vary, regarding the joint determination of interest rates, fees, and commissions related to deposit, loan, and credit card services. Therefore, pursuant to Article 5(2) of the Fines Regulation, this finding must be taken into consideration.

(163) On the other hand, Article 5(3) of the Fines Regulation provides a tiered system by considering time intervals from one year to five years for the increase in the starting rate of fine for infringements lasting at least one year. Accordingly, the starting rate of fine shall be increased by one-fifth for infringements lasting longer than one year but less than two years; by two-fifths for infringements lasting longer than two years but less than three years; by three-fifths for infringements lasting longer than three years but less than four years; and by four-fifths for infringements lasting longer than four years but less than five years. For infringements lasting more than five years, the starting rate of fine shall be increased by one fold.

(164) Within this framework, the basic fine rate should be determined by applying, where applicable, an increase based on the duration of the infringement to the starting rate of fine, which is set primarily by considering the harm caused or likely to be caused by the infringement and the nature of the infringement.

(165) Furthermore, pursuant to Article 6(1) of the Fines Regulation, the basic fine rate shall be increased by up to one fold if, after the Board has determined that an undertaking or association of undertakings has violated Articles 4 and/or 6 of the Act No. 4054, the same undertaking or association of undertakings violates Articles 4 and/or 6 of the Act No. 4054 again.

(166) The purpose of the recidivism mechanism is to prevent undertakings from repeating the same type of conduct; in other words, to ensure deterrence. For recidivism to apply in competition infringements, the initial infringement must have been established by a Board decision. In addition, the established case law of the Council of State acknowledges that in order to prevent undertakings from being indefinitely subject to aggravated fines due to recidivism, the eight-year limitation period set forth in the Misdemeanors Law No. 5326 should be applied by analogy to the recidivism mechanism.

(167) In the decision of the 13th Chamber of the Council of State dated 24.03.2020 and numbered E. 2015/3353, K. 2019/4244, regarding the application of the recidivism mechanism, it is stated that *"in order for the fine to be aggravated due to recidivism, it is necessary to look back eight years from the date on which the infringing conduct began, and to consider Board decisions identifying an infringement within that period as the basis for recidivism."* In this context, it must be determined whether undertakings found to have violated the Act No. 4054 began violating the same Act again within the eight-year period following the date of the decision in which the infringement was established.

(168) In line with the relevant legislative provisions, if it is determined that an undertaking found to have violated the Act No. 4054 again violated the same Act within the eight-year period preceding the date on which the subsequent infringement began, the basic fine to be imposed on the undertaking must be increased by up to one fold pursuant to the relevant provisions of the Fines Regulation.

(169) Article 7(1) of the Fines Regulation provides that the basic fine rate, or the aggravated rate calculated pursuant to Article 6, may be reduced if the undertaking or association of undertakings proves the existence of circumstances such as assisting the on-site inspection -beyond merely fulfilling legal obligations - by offering physical and/or technical facilities that allow the inspection to be completed more quickly or more effectively, or by voluntarily providing additional information or documents relevant to the subject of the investigation during the on-site inspection; being compelled by other undertakings to participate in the infringement; limited participation in the infringement;

the low share of the infringing activities within annual gross revenues; and the existence of foreign sales revenues within the annual gross revenues forming the basis for the administrative fine.

(170) In accordance with the said legislative provisions, the assessments concerning the determination of the fine amount for each undertaking accused of an infringement are presented below.

G.5.1.2. Evaluation of the Determination of the Administrative Fines in terms of Each Undertaking

G.5.1.2.1. GARANTİ

(171) In line with the documents obtained under the scope of the file, it is concluded that GARANTİ violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Document 1: housing loan interest rates,
- Under the scope of Documents 2, 3, 4: deposit interest rates,
- Under the scope of Document 5: export loan interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 8: cross-selling ratios,
- Under the scope of Document 11: deposit interest rates,
- Under the scope of Document 12: member merchant commission rates,
- Under the scope of Document 13: corporate banking-related rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates,
- Under the scope of Documents 25, 26, and 27: credit card cash withdrawal fees.

(172) Although the conduct that is the subject to the infringement relates to different products and services such as loan, credit card, or deposit services, it can be stated that the anticompetitive behavior in question generally encompass banking products and services. Moreover, examination of the chronological sequence of the documents relating to the infringement allegations against GARANTİ, it is observed that the actions reflected in these documents form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines Regulation, that the conduct of GARANTİ that is the subject of the case constitutes a single infringement, and therefore a single administrative monetary fine should be imposed for this infringement.

(173) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of GARANTİ constituting an infringement concerns deposit, loan and credit card services.

(174) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by four-fifths for infringements lasting longer than four years but less than five years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against GARANTİ (21.08.2007–22.09.2011) is 4 years, 1 month, and 1 day, and thus exceeds four years but is shorter than five years, the starting rate of fine has been increased by four-fifths.

(175) Following the determination of the basic administrative fine, aggravating and mitigating factors must be assessed within the framework of Articles 6 and 7 of the Fines Regulation. In this regard, Article 6(1) of the Regulation provides that if an undertaking or association of undertakings, after being found by the Board to have violated Articles 4 and/or 6 of the Act No. 4054, violates the same provisions again, the basic fine rate shall be increased by up to one fold.

(176) At this point, it should be noted that in the Board's decision dated 07.03.2011 and numbered 11-13/243-78 *(the Salary Promotions decision*), administrative fines were imposed on AKBANK, DENİZBANK, FİNANSBANK, GARANTİ, İŞ BANKASI, VAKIFBANK, and YAPI KREDİ on the grounds that they had violated Article 4 of the Act No. 4054. In the same decision, although it was determined that HALKBANK had also participated in the infringement; no administrative fine was imposed on this bank due to the statute of limitations.

(177) The conclusion that the seven banks mentioned above violated Article 4 of the Act No. 4054 was made by the Board's decision dated 07.03.2011, and within the scope of that decision, the conduct of the banks was considered a single continuous agreement extending from 2001 to 2009. In line with the basic principles regarding the application of the recidivism mechanism explained above, it is necessary to determine whether, within the eight-year period following the date of that decision (07.03.2011), the undertakings found to have violated the Act No. 4054 in the *Salary Promotions* decision engaged in any other conduct constituting a separate infringement.

(178) In this regard, the infringement committed by GARANTİ within the scope of the file covers the period from 21.08.2007 to 22.09.2011, and it is therefore seen that the infringement began prior to 07.03.2011. Accordingly, following the finding in the *Salary Promotions* decision that GARANTİ violated the Act No. 4054, there is no conduct by the same undertaking, within the eight-year period thereafter, which constitutes a separate infringement. Therefore, the fine determined for GARANTİ cannot be increased on the grounds of recidivism.

(179) Consequently, no increase or reduction is applied for GARANTİ with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.2. AKBANK

(180) In line with the documents obtained under the scope of the file, it is concluded that AKBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Document 1: housing loan interest rates,
- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 5: export loan interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 7: deposit interest rates,
- Under the scope of Document 9: refinancing of housing loans,
- Under the scope of Document 10: credit card late payment notification fees,
- Under the scope of Document 13: corporate banking-related rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates

(181) Although the conduct that is the subject to the infringement relates to different products and services such as loan, credit card, or deposit services, it can be stated that the anticompetitive behavior in question generally encompass banking products and services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against AKBANK, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of AKBANK that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(182) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of AKBANK constituting an infringement concerns deposit, loan and credit card services.

(183) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against AKBANK (21.08.2007-06.08.2011) is 3 years, 11 months, and 6 days, and thus exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(184) Following the determination of the basic administrative fine, aggravating and mitigating factors must be assessed within the framework of Articles 6 and 7 of the Fines Regulation. In this regard, Article 6(1) of the Regulation provides that if an undertaking or association of undertakings, after being found by the Board to have violated Articles 4 and/or 6 of the Act No. 4054, violates the same provisions again, the basic fine rate shall be increased by up to one fold.

(185) As noted above, the *Salary Promotions* decision found that AKBANK, along with several other banks, violated Article 4 of the Act No. 4054. However, the infringement committed by AKBANK within the scope of the file covers the period from 21.08.2007 to 06.08.2011, and thus the infringement began before the date of the *Salary Promotions* decision, which is 07.03.2011. Accordingly, following the finding in the *Salary Promotions* decision that AKBANK violated the Act No. 4054, there is no conduct by the same undertaking, within the eight-year period thereafter, which constitutes a separate infringement. Therefore, the fine determined for AKBANK cannot be increased on the grounds of recidivism.

(186) Consequently, no increase or reduction is applied for AKBANK with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.3. YAPI KREDİ

(187) In line with the documents obtained under the scope of the file, it is concluded that YAPI KREDİ violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 7: deposit interest rates,

- Under the scope of Document 8: cross-selling ratios,
- Under the scope of Document 12: member merchant commission rates,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees,
- Under the scope of Documents 22 and 23: deposit interest rates,
- Under the scope of Documents 25, 26, and 27: credit card cash withdrawal fees.

(188) Although the conduct that is the subject to the infringement relates to different products and services such as loan, credit card, or deposit services, it can be stated that the anticompetitive behavior in question generally encompass banking products and services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against YAPI KREDİ, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4 of the Fines Regulation, that the conduct of YAPI KREDİ that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(189) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of YAPI KREDİ constituting an infringement concerns deposit, loan and credit card services.

(190) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against YAPI KREDİ (27.09.2007-22.09.2011) is 3 years, 11 months, and 26 days, and thus exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(191) Following the determination of the basic administrative fine, aggravating and mitigating factors must be assessed within the framework of Articles 6 and 7 of the Fines Regulation. In this regard, Article 6(1) of the Regulation provides that if an undertaking or association of undertakings, after being found by the Board to have violated Articles 4 and/or 6 of the Act No. 4054, violates the same provisions again, the basic fine rate shall be increased by up to one fold.

(192) As noted above, the *Salary Promotions* decision found that YAPI KREDİ, along with several other banks, violated Article 4 of the Act No. 4054. However, the infringement committed by YAPI KREDİ within the scope of the file covers the period from 27.09.2007 to 22.09.2011, and thus the infringement began before the date of the *Salary Promotions* decision, which is 07.03.2011. Accordingly, following the finding in the *Salary Promotions* decision that YAPI KREDİ violated the Act No. 4054, there is no conduct by the same undertaking, within the eight-year period thereafter, which constitutes a separate infringement. Therefore, the fine determined for YAPI KREDİ cannot be increased on the grounds of recidivism.

(193) Consequently, no increase or reduction is applied for YAPI KREDİ with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.4. İŞ BANKASI

(194) In line with the documents obtained under the scope of the file, it is concluded that İŞ BANKASI violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Document 6: housing, auto and consumer loan interest rates,
- Under the scope of Document 9: refinancing of housing loans,
- Under the scope of Documents 22 and 23: deposit interest rates.

(195) Although the conduct that is the subject to the infringement relates to different products and services such as loan and deposit services, it can be stated that the anticompetitive behavior in question generally encompass banking products and services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against İŞ BANKASI, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of İŞ BANKASI that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(196) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of İŞ BANKASI constituting an infringement concerns deposit, loan and credit card services.

(197) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against İŞ BANKASI (27.09.2007-06.08.2011) is 3 years, 10 months, and 10 days, and thus exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(198) Following the determination of the basic administrative fine, aggravating and mitigating factors must be assessed within the framework of Articles 6 and 7 of the Fines Regulation. In this regard, Article 6(1) of the Regulation provides that if an undertaking or association of undertakings, after being found by the Board to have violated Articles 4 and/or 6 of the Act No. 4054, violates the same provisions again, the basic fine rate shall be increased by up to one fold.

(199) As noted above, the *Salary Promotions* decision found that İŞ BANKASI, along with several other banks, violated Article 4 of the Act No. 4054. However, the infringement committed by İŞ BANKASI within the scope of the file covers the period from 27.09.2007 to 06.08.2011, and thus the infringement began before the date of the *Salary Promotions* decision, which is 07.03.2011. Accordingly, following the finding in the *Salary Promotions* decision that İŞ BANKASI violated the Act No. 4054, there is no conduct by the same undertaking, within the eight-year period thereafter, which constitutes a separate infringement. Therefore, the fine determined for İŞ KREDİ cannot be increased on the grounds of recidivism.

(200) Consequently, no increase or reduction is applied for İŞ BANKASI with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.5. ZİRAAT

(201) In line with the documents obtained under the scope of the file, it is concluded that ZİRAAT violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates,
- Under the scope of Documents 22 and 23: deposit interest rates.

(202) When the conduct that is the subject to the infringement is addressed in terms of the market they are related to, it is understood that it concerns deposit services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against ZİRAAT, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of ZİRAAT that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement[26].

(203) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of ZİRAAT constituting an infringement concerns deposit services.

(204) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against ZİRAAT BANKASI (27.09.2007-06.08.2011) is 3 years, 10 months, and 10 days, and thus exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(205) Finally, no increase or reduction is applied for ZİRAAT with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.6. HALKBANK

(206) In line with the documents obtained under the scope of the file, it is concluded that HALKBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates.

(207) When the conduct that is the subject to the infringement is addressed in terms of the market they are related to, it is understood that it concerns deposit services. Moreover, the examination of the chronological sequence of the documents concerning the

[26] Similarly, in the Board decision dated 01.04.2021 and numbered 21-18/229-96, it was decided that it was necessary to rule for only a single basic fine for anticompetitive conduct committed by undertakings in MDF and partcile board market in 2014 and 2016-2017 period.

violation allegations against HALKBANK, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of HALKBANK that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(208) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of HALKBANK constituting an infringement concerns deposit services.

(209) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against HALKBANK (27.09.2007-13.07.2011) is 3 years, 9 months, and 16 days, and thus exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(210) Finally, no increase or reduction is applied for HALKBANK with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.7. VAKIFBANK

(211) In line with the documents obtained under the scope of the file, it is concluded that VAKIFBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Documents 2, 3 and 4: deposit interest rates,
- Under the scope of Documents 14, 16, 19, 20 and 21: public deposit interest rates.

(212) When the conduct that is the subject to the infringement is addressed in terms of the market they are related to, it is understood that it concerns deposit services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against VAKIFBANK, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of VAKIFBANK that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(213) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. The conduct of VAKIFBANK constituting an infringement concerns deposit services.

(214) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to this provision, the starting rate of fine shall be increased by three-fifths for infringements lasting longer than three years but less than four years. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against VAKIFBANK (27.09.2007-13.07.2011) is 3 years, 9 months, and 16 days, and thus

exceeds three years but is shorter than four years, the starting rate of fine has been increased by three-fifths.

(215) Finally, no increase or reduction is applied for VAKIFBANK with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.8. TEB

(216) Under the scope of Document 11 in the file, it is concluded that TEB violated Article 4 of the Act No. 4054 through anticompetitive practices involving deposit interest rates.

(217) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. Therefore, since TEB is one of the parties to the conduct that is the subject of the file, per article 5(2) of the Fines Regulation, the objective conditions related to the harm caused by and the nature of the infringement should be taken into account.

(218) Article 5(3) of the Fines Regulation states that the duration of the violation is taken into account for the determination of the basic fine. According to the said provision, the starting rate of fine will be increased for infringements lasting more than one year. It is understood that it is not necessary to increase the starting rate of fine in terms of the duration of the infringement since there is only one document related to the infringement finding against TEB (the document dated 30.06.2010) and thus the infringement lasted less than one year.

(219) Finally, no increase or reduction is applied for TEB with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.9. DENİZBANK

(220) Under the scope of documents obtained in the file, it is concluded that DENİZBANK violated Article 4 of the Act No. 4054 through anticompetitive practices involving deposit interest rates under the scope of Documents 11 and Document 15.

(221) When the conduct that is the subject to the infringement is addressed in terms of the market they are related to, it is understood that it concerns deposit services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against DENİZBANK, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded, pursuant to Article 4(1) of the Fines regulation, that the conduct of DENİZBANK that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(222) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. Therefore, since DENİZBANK is one of the parties to the conduct that is the subject of the file, per article 5(2) of the Fines Regulation, the objective conditions related to the harm caused by and the nature of the infringement should be taken into account.

(223) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to the said provision, the starting rate of fine will be increased for infringements lasting more than one year. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against DENİZBANK (30.06.2010-20.12.2010) is

5 months and 20 days, and thus is shorter than one year, it is not necessary to increase the starting rate of fine due to the duration of the infringement.

(224) Finally, no increase or reduction is applied for DENİZBANK with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.10. HSBC

(225) In line with the documents obtained under the scope of the file, it is concluded that HSBC violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Document 10: credit card late payment notification fees,
- Under the scope of Document 17: credit card late-payment notification fees and cash advance withdrawal fees.

(226) When the conduct that is the subject to the infringement is addressed in terms of the market they are related to, it is understood that it concerns credit card services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against HSBC, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded that the conduct of HSBC that is the subject of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(227) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. Therefore, since HSBC is one of the parties to the conduct that is the subject of the file, per article 5(2) of the Fines Regulation, the objective conditions related to the harm caused by and the nature of the infringement should be taken into account.

(228) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to the said provision, the starting rate of fine will be increased for infringements lasting more than one year. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against HSBC (08.06.2010-30.03.2011) is 9 months and 22 days, and thus is shorter than one year, it is not necessary to increase the starting rate of fine due to the duration of the infringement.

(229) Finally, no increase or reduction is applied for HSBC with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.2.11. ING

(230) In line with the documents obtained under the scope of the file, it is concluded that ING violated Article 4 of the Act No. 4054 through anticompetitive practices involving,

- Under the scope of Document 9: refinancing of housing loans,
- Under the scope of Document 11: deposit interest rates.

(231) Although the conduct that is the subject to the infringement relates to different products and services such as loan and deposit services, it can be stated that the anticompetitive behavior in question generally encompass banking products and services. Moreover, the examination of the chronological sequence of the documents concerning the violation allegations against ING, it is observed that the actions reflected in these documents also form a chronological continuum. Accordingly, due to the integrity of these actions, it is concluded that the conduct of ING that is the subject

of the case constitutes a single infringement, and therefore a single administrative fine should be imposed for this infringement.

(232) As explained above, in assessing the infringements committed by the undertakings under investigation, the actual or potential harm caused by the infringement, as well as the nature of the infringement, must be taken into account. Therefore, since ING is one of the parties to the conduct that is the subject of the file, per article 5(2) of the Fines Regulation, the objective conditions related to the harm caused by and the nature of the infringement should be taken into account.

(233) According to article 5(3) of the Fines Regulation, the duration of the violation is taken into account for the determination of the basic fine. According to the said provision, the starting rate of fine will be increased for infringements lasting more than one year. Considering that the time span between the first and last dates of the documents pertaining to the infringement finding against ING (22.10.2009-30.06.2010) is 8 months and 8 days, and thus is shorter than one year, it is not necessary to increase the starting rate of fine due to the duration of the infringement.

(234) Finally, no increase or reduction is applied for ING with respect to aggravating factors under Article 6 or mitigating factors under Article 7 of the Fines Regulation.

G.5.1.3. Evaluation under the Scope of Prohibition of Reformatio in Peius Principle

(235) In order to fulfill the requirement of the Court decision, a reevaluation is made about 11 banks and it is concluded that the said undertakings violated article 4 of the Act No. 4054. Consequently, it is necessary to impose administrative fines to the undertakings that are found to have committed a competition infringement. For the determination of the administrative fine about the undertakings to be set on the basis of each undertaking, it is necessary to assess whether the new amount of fine will exceed the amounts of fine determined in the annulled Board decision dated 08.03.2013 and numbered 13-13/198-100.

(236) As a reflection of the general legal principle of “prohibition of reformatio in peius” in a case against an administrative transaction, the relevant administrative jurisdiction cannot take a decision about the substance of the case in a way to result contrary to the claimant compared to the action that is the subject of the case.

(237) In the decision of the 12th Chamber of the Council of State dated 11.05.2016 and numbered E.2012/12930, K.2016/2696, which is one of the numerous decisions of the Council of State, which consider prohibition of reformatio in peius principle, the provision stating

> *“Courts may not render a judgment that results in a more unfavorable outcome than the legal situation that would have arisen if the administrative act in question had not been brought before the court. In other words, the possibility that the claimant's legal position worsens as a result of the bringing the action is not accepted. This rule, known as prohibition of reformatio in peius and recognized in established case law, serves as a safeguard enabling individuals to bring an action without any concern while seeking to protect their rights, which they consider as violated, in this way, it also has an aspect that guarantees the freedom to seek legal remedies as stated in article 36 of the Constitution.*

points out the importance of prohibition of reformatio in peius principle in administrative jurisdiction.

(238) As a requirement of the principle of the rule of law, everyone has the freedom to seek their rights and the right to fair trial and this is protected under article 36 of the Constitution of the Republic of Türkiye. The said article stipulates that everyone has the right of allegation and defense and fair trial as either plaintiff or defendant before the courts through lawful means and procedure. According to the case law regarding the implementation of the European Convention on Human Rights, one of the components of the right to seek legal remedies and the right to fair trial is the right of access to a court. The right of access to a court also includes the ability of individuals to apply to a court to seek their rights without feeling any concern or danger. Preventing individuals from refraining from applying to a court due to the possibility of a more disadvantageous outcome for themselves is essential for ensuring the practical applicability of this right. [27] With the prohibition of reformatio in peius, individuals are prevented from facing a legal situation more severe than that existed before the lawsuit when they bring a lawsuit by exercising their freedom to seek legal remedies. In this context, the prohibition of reformatio in peius serves as a safeguard that enables individuals to apply to judicial authorities without the concern that a more severe sanction might be imposed on them.

(239) This approach regarding the prohibition of reformatio in peius is also valid in administrative procedural law for the same reasons[28]. However, in administrative procedural law, the prohibition of reformatio in peius, unlike in other types of judicial proceedings, safeguards not only the individual's ability to apply to legal remedies without concern but also their ability to initiate a lawsuit without the fear that a more disadvantageous judgment may be rendered against them.[29] The reason for this is the existence of an administrative transaction established by the administration against the individual and the possibility that a result more unfavorable than the administrative transaction itself.

(240) When the Board implements the requirement of the decisions of administrative judiciary, it issues a new decision or administrative transaction in accordance with the judgment, following it. Therefore, in ensuring the freedom to seek legal remedies, not only the possibility of filing an action for annulment but also the decision to be rendered anew by the Board following the annulment judgment is determinative. For this reason, it plays a complementary role in safeguarding the freedom to seek legal remedies, which is regarded as the underlying basis of the prohibition on the Board from rendering a decision to the detriment of the party[30]. In addition, the legislation and court case laws concerning the safeguarding of the freedom to seek legal remedies and the right to fair trial, primarily the Constitution and international conventions, also impose duties on the state to ensure that these rights are effectively realized in social life. Therefore, as stated above, the case law related to the prohibition of reformatio in peius serves for the protection of individuals' right to seek legal remedies.

(241) For this reason, the possibility that an undertaking which filed an action seeking the annulment of an administrative act imposing an administrative fine may, following the annulment decision of the administrative judiciary, be subjected by the administration

[27] GÜNDÜZ, E. (2020), "İdari Yargılama Hukukunda Aleyhe Hüküm Verme ve Aleyhe Bozma Yasağı", *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi*, Vol: XXIV, No: 2, p.351.
[28] GÜNDÜZ (2020), p. 356.
[29] ERMİŞ, D. (2024), *"Rekabet Kurulu'nun İdari Yargının İptal Kararlarının Gereğini Yerine Getirmesi*", Competition Authority Expert Thesis Series, p. 28.
[30] ERMİŞ, D. (2024), p. 27.

to a heavier administrative fine may lead to the undertaking's inability to exercise its freedom to seek legal remedies in practice.

(242) In the decision of the 13th Chamber of the Council of State, numbered E.2015/5483 and K.2015/3835, it was stated *"The Board's decision dated 16.04.2014 and numbered 14-15/277-119, which imposed an administrative fine on the plaintiff company on the grounds of violating the provisions of the Act No. 4054, was annulled on the grounds that, pursuant to the regulation in Article 16 of the Act No. 4054, since the contested Board decision was rendered in 2012, the administrative fine should have been calculated on the basis of the company's 2011 gross revenue. Accordingly, for the purpose of implementing the said judicial ruling, there was no illegality in imposing an administrative fine on the plaintiff company based on its 2011 fiscal year gross revenue. On the other hand, it is understood that although the initial fine imposed on the plaintiff company amounted to 109,418.33 TL, the plaintiff was confronted with a more severe sanction[31] as a result of exercising its lawful right to litigate, on the grounds of implementing the judicial decision. In a state governed by the rule of law, decisions adopted upon individuals' exercise of their legal rights cannot be implemented in a manner that produces adverse consequences for those individuals.*" By stating this, the Chamber held that the prohibition on reformatio in peius must also be applied to decisions rendered by the Board.

(243) The examination of the Board's case law in terms of prohibition of reformatio in peius, it is understood that the said prohibition is applied as a principle. In the Board's *Cement*[32] and *Jewelers' Association*[33] decisions, it was emphasized that in the reassessment conducted regarding the undertaking, the prohibition on reformatio in peius was applied, stating that "*(…) since the Council of State annulled [the decision] in favor of the undertaking concerned, a higher administrative fine than that imposed in the previous decision cannot be imposed* (...)" In addition, in another decision issued by the Board in parallel with the case law set forth in the aforementioned ruling of the Council of State -its decision dated 05.04.2018 and numbered 18-10/185-88 - the following statements were included: *"Within the framework of this principle[34], the Board must first apply the fine rate it has determined to TEB's[35] gross revenue for the fiscal year preceding the final decision (or, if this cannot be calculated, the fiscal year closest to the decision date) pursuant to Article 16 of the Act No. 4054. If the amount thereby obtained exceeds the amount imposed in the annulled Board decision, the Board should refrain from imposing the higher amount and instead apply the previous figure; if it is lower, then it should apply the new amount on the grounds that it is to the benefit of the party."* With these statements, it was concluded that, following an annulment decision of the administrative judiciary, the Board could not impose a heavier administrative fine on the undertaking in the new decision to be adopted on the matter.

(244) In light of all the matters explained above, the upper limit of the administrative fines to be imposed on each bank involved in the proceedings conducted within the scope of this file is established by the fine amounts applied to those banks in the annulled Board decision dated 08.03.2013 and numbered 13-13/198-100, so as to avoid ruling a more severe outcome. The amounts of fine in question are given below:

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[31]The expression "a more severe sanction" in the relevant decision refers to the Board's imposition of an administrative fine of 156.473,67 TL on the undertaking on the grounds of implementing the court decision.

[32] The decision dated 24.04.2006 and numbered 06-29/354-86, p. 149 and so on.

[33] The decision dated 26.05.2006 and numbered 06-36/463-125, para. 410, 420, 430.

[34] Referring to prohibition on reformatio in peius principle.

[35] The abbreviation "TEB" refers to Turkish Pharmacists' Association.

Table 2: The amounts of fines imposed on banks with the Board decision dated 08.03.2013 and numbered 13-13/198-100

Undertaking	The amount of fines in 2013 (TL)
AKBANK	172,165,155.00
YAPI KREDİ	149,961,870.00
GARANTİ	213,384,545.76
ZİRAAT	148,231,490.00
HSBC	14,875,404.00
TEB	10,668,726.00
VAKIFBANK	82,172,910.00
DENİZBANK	23,055,396.00
HALKBANK	89,691,370.00
ING	12,072,792.00
İŞ BANKASI	146,656,400.00
Source: The Board decision numbered 13-13/198-100.	

(245) The tables regarding the administrative fines that may be imposed to undertakings under the scope of the file are presented below.

Table 3: The Amount of Fines calculated pursuant to the Fines Regulation in Effect based on Undertakings' 2023 Turnovers

Undertaking	**2023 Turnover (TL)**	**The starting rate of fine**	**The duration of the infringement**	**Basic Fine Rate**	**Basic Fine Amount (TL)**
AKBANK	(.....)	(.....)	3 years 11 months 6 days	(.....)	(.....)
YAPI KREDİ	(.....)	(.....)	3 years 11 months 26 days	(.....)	(.....)
GARANTİ	(.....)	(.....)	4 years 1 months 1 days	(.....)	(.....)
ZİRAAT	(.....)	(.....)	3 years 10 months 10 days	(.....)	(.....)
HSBC	(.....)	(.....)	<1 year	(.....)	(.....)
TEB	(.....)	(.....)	<1 year	(.....)	(.....)
VAKIFBANK	(.....)	(.....)	3 years 9 months 16 days	(.....)	(.....)
DENİZBANK	(.....)	(.....)	<1 year	(.....)	(.....)
HALKBANK	(.....)	(.....)	3 years 9 months 16 days	(.....)	(.....)
ING	(.....)	(.....)	<1 year	(.....)	(.....)
İŞ BANKASI	(.....)	(.....)	3 years 10 months 10 days	(.....)	(.....)
Source: Turnovers are calculated depending on the information given in the annual reports published by undertakings.					

(246) As shown in Table 3, although the undertaking-specific assessments made in Section G.5.1.2 are reserved, the administrative fine amounts calculated for each undertaking based on their 2023 turnovers within the scope of the file exceed the administrative fines imposed on those undertakings in 2013.

(247) In this context, the administrative fine amounts calculated individually for each bank above are capped by the administrative fine amounts determined for the relevant banks in 2013, and the final administrative fines to be imposed on the 11 undertakings that are parties to the file are set at the same levels as the administrative fines imposed

on those undertakings in the annulled Board decision dated 08.03.2013 and numbered 13-13/198-100.

H. CONCLUSION

(248) Depending on the report prepared and the scope of the file examined, it was decided UNANIMOUSLY that,

- The economic unit composed of Türkiye Garanti Bankası AŞ, Garanti Ödeme Sistemleri AŞ, and Garanti Konut Finansmanı Danışmanlık AŞ violated Article 4 of the Act No. 4054 through anti-competitive conduct, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(ç) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 2,943,677,538 TL,
- Akbank TAŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 2,421,871,312 TL,
- Yapı ve Kredi Bankası AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 2,438,037,640 TL.
- Türkiye İş Bankası AŞ violated Article 4 of the Act No. 4054 through anti-competitive conduct, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 2,399,566,464 TL,
- T.C. Ziraat Bankası AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions. accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 4,209,497,448 TL,
- Türkiye Halk Bankası AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 2,906,232,929.76 TL,

- Türkiye Vakıflar Bankası TAO violated Article 4 of the Act No. 4054 through anti-competitive conduct, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1), (2), and (3)(c) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 3,201,305,080 TL.
- Türk Ekonomi Bankası AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1) and 5(2) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 357,414,660 TL,
- Denizbank AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions, accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1) and 5(2) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 674,399,485 TL,
- HSBC Bank AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions. accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1) and 5(2) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 124,454,095 TL,
- ING Bank AŞ violated Article 4 of the Act No. 4054 through its anti-competitive actions. accordingly, pursuant to Article 16(3) of the Act No. 4054 and Article 5(1) and 5(2) of the Regulation on Fines to be Imposed in Cases of Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position the administrative fine to be imposed on the said economic unit has been calculated as (.....)% of the undertaking's 2023 revenues, amounting to 107,841,550 TL,
- However, within the framework of the principle of the "prohibition of reformatio in peius," since it is established that even the minimum administrative fine that could be imposed on each undertaking party to the proceedings under the provisions of the Fines Regulation exceeds the amount imposed in the annulled decision of the Competition Board dated 08.03.2013 and numbered 13-13/198-100, the administrative fines determined in 2013 shall be imposed on the grounds that it is in favor of the parties,
- In line with this, the final administrative fines are set as follows:

    1) 213,384,545.76 TL for the economic unit composed of Garanti Bankası AŞ, Garanti Ödeme Sistemleri AŞ, and Garanti Konut Finansmanı Danışmanlık AŞ,

    2) 172,165,155.00 TL for Akbank TAŞ,

    3) 149,961,870.00 TL for Yapı ve Kredi Bankası AŞ,

4) 146,656,400.00 TL for Türkiye İş Bankası AŞ,
5) 148,231,490.00 TL for Ziraat Bankası AŞ,
6) 89,691,370.00 TL for Türkiye Halk Bankası AŞ,
7) 82,172,910.00 TL for Türkiye Vakıflar Bankası TAO,
8) 10,668,726.00 TL for Türk Ekonomi Bankası AŞ,
9) 23,055,396.00 TL for Denizbank AŞ,
10) 14.875.404,00 TL for HSBC Bank AŞ,
11) 12.072.792.00 TL for ING Bank AŞ,

with the judicial remedy before the Ankara Administrative Courts available within 60 days from the notification of the reasoned decision.