

GUIDELINES ON ADMINISTRATIVE FINES TO APPLY IN CASES OF AGREEMENTS, CONCERTED PRACTICES AND DECISIONS LIMITING COMPETITION AND ABUSES OF DOMINANT POSITION

1. Introduction

- (1) Article 16.3 of the Act no 4054 includes the provision: *“Those who engage in conduct prohibited by articles 4, 6 and 7 of this Act will be imposed administrative fines up to ten per cent of the gross revenue of the undertaking and associations of undertakings or of the members of such associations of undertakings to be imposed a fine, as generated at the end of the previous financial year, or, in case the former cannot be calculated, until the end of the financial year that is closest to the final decision date, as determined by the Board.”* According to this provision, the Competition Board (Board) will impose an administrative fine on the undertakings, associations of undertakings and their members at up to 10% of their annual gross revenues generated at the end of the financial year closest to the date of the final decision, as determined by the Board. This rate serves as the legal ceiling for the administrative fines to be imposed.
- (2) Article 16.4 of the Act provides that *“In case administrative fines mentioned in paragraph three are imposed on undertakings or associations of undertakings, an administrative fine up to five percent of the fine imposed on the undertaking or association of undertakings shall be imposed on managers or employees of the undertaking or association of undertakings who are determined to have a decisive influence in the infringement.”* Accordingly, managers and employees who are found to have had a decisive influence in the infringement will be imposed administrative fines.
- (3) Article 16.5 of the Act provides that *“When deciding on an administrative fine pursuant to paragraph three, the Board shall take into consideration issues such as the repetition of infringement, its duration, market power of undertakings or associations of undertakings, their decisive influence in the realization of infringement, whether they comply with the commitments given, whether they assist with the examination, and the severity of damage that takes place or is likely to take place, within the context of Article 17 paragraph two of the Law of Misdemeanors dated 30/3/2005 and numbered 5326,”*

and this provision specifies the factors to be taken into account when setting administrative fines.

- (4) The Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position (old Regulation), adopted in accordance with the provision of Article 16.7 of the Act, which states “*Issues taken into consideration in setting administrative fines to be imposed pursuant to this Article, terms for immunity from or reduction of fines in case of cooperation, and procedures and principles in relation to cooperation shall be determined by regulations to be issued by the Board,*” entered into force after its publication in the Official Gazette dated 15.02.2009 and numbered 27142, remaining in effect for around 15 years.
- (5) Today, the markets to which competition law is being applied to are becoming more and more different from the traditional markets, and business models of undertakings as well as consumer choices are changing, leading to a corresponding change in the types of infringement encountered and in the nature of the addressees of competition law. In fact, the Board has seen a need to review its fining policies in response to developments such as the increase in the market share of large technology undertakings with control of critical assets like user data stemming from a proliferation of their cross-border activities, the propagation of competition infringements to a larger area due to that increase, and the emergence of negative effects of infringements related to data monopolization on digital markets and consumer welfare.
- (6) In that framework, the Regulation on Administrative Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuses of Dominant Position (Regulation or new Regulation) was adopted with an aim to increase the effectiveness of the fine policy and strengthen the goal of deterrence while ensuring legal certainty and predictability, and it was put into force following its publication in the Official Gazette dated 27.12.2024 and numbered 32765.
- (7) The Regulation is intended to establish the principle of transparency and legal certainty in the calculation of administrative fines, and to ensure special and general deterrence of the administrative fines to be imposed on competition infringements.
- (8) Accordingly, the Regulation dispenses with the approach of setting the basic rate of fine depending only on the types of infringements, classified as “cartels” and “other violations,” and instead adopts a new method that takes into account the nature of the infringement and its negative effects on competition, in particular. In parallel, the minimum and maximum limits in the determination of the basic rate of fine based on the “cartel” and “other violations” classification is eliminated. This is intended to ensure

that the nature of the infringement and its actual or potential negative effects on competition are taken into consideration in the determination of the basic rates of fines.

- (9) The time periods to be taken into account when increasing the fine depending on the duration of the infringement are increased, which ensures a fair reflection of the objective conditions of the infringement in the fine itself. Aggravating and mitigating factors are laid out within the framework of the Board's case law¹ concerning the adoption of the fine to the subjective circumstances of the undertakings², and the minimum limit for the increase rates of aggravating factors as well as the minimum and maximum limits for the discount rates of mitigating factors are removed.
- (10) Intended to explain the rules and procedures introduced by the Regulation, these Guidelines include clarifications concerning the application of the Regulation provisions which lay out the rules and procedures related to the determination of the administrative fines to be imposed under Article 16 of the Act on those undertakings, associations of undertakings or on the members of these undertakings and their managers and employees that engage in conduct prohibited under Articles 4 and 6 of the Act.

2. Principles Concerning the Determination of the Administrative Fines

- (11) Article 4 of the Regulation sets out the principles for the determination of the administrative fines. According to Article 4.1 of the Regulation, the basic rate of fine is the first step for setting the administrative fine and will be determined by the Board separately for each violation. The Board will conduct an assessment to determine whether the actions of the undertakings constitute one or multiple violations. Actions that constitute separate violations will be fined separately.
- (12) Accordingly, whether or not undertakings' actions constitute a single violation will be determined on a file-by-file basis. When determining the number of infringements, the Board determines whether one or more infringements are concerned by taking into consideration various factors including the geographic markets in which the conduct forming the basis of the infringement took place, relevant product markets, input and output markets, nature of the conduct, temporal unity of conduct, whether the conduct is carried out during the execution of the same decision, whether they form a strategic whole, whether the actions are carried out through unilateral conduct of the

¹ The corresponding footnotes include information on the Board decisions involving the aggravating and mitigating factors taken into account when imposing administrative fines.

² In these Guidelines, the concept of undertaking is used to cover associations of undertakings to be fined, so long as they have the appropriate characteristics.

undertaking, fundamental distinction between the nature and substance of the conduct³.

- (13) Where more than one infringement is identified, the provisions of the Regulation will be applied separately for each. In that framework, the basic rate of fine and the aggravating and mitigating factors, if any, will be assessed separately for each infringement. Ultimately, the final amount of the administrative fines set for each infringement will not exceed 10% of the annual gross revenue generated at the end of the financial year preceding the final decision, or, if that cannot be calculated, the revenue generated at the end of the financial year closest to the date of the final decision, as determined by the Board..
- (14) The method for applying the increase based on the aggravating factors and the discount based on the mitigating factors following the determination of the basic rate of fine is set out in Article 4.2 of the Regulation. Accordingly, the basic rate of fine is increased in light of the aggravating factors, and then a discount will be applied over that rate, taking into consideration any mitigating circumstances.
- (15) According to Article 4.3 of the Regulation, administrative fines will be calculated over the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of those associations, generated at the end of the financial year preceding the final decision, or, where this cannot be calculated, over the annual gross revenues generated at the end of the financial year that is closest to the date of the final decision, as determined by the Board. The rate of the fine calculated in accordance with Article 5 of the Regulation, as well as with Articles 6 and 7 if applicable, will be applied to the gross revenues generated at the end of the financial year preceding the final decision, which will give the final amount of the administrative fines to be imposed under the Regulation.
- (16) For each separate infringement, the amount of the administrative fines calculated by the application of the Regulation provisions may not exceed 10% of the revenues of the undertakings to be fined. Fines exceeding this limit will be discounted to 10% of the annual gross revenues of the undertakings to be fined, for each separate infringement. Any discount to be applied to the administrative fines in accordance with

³ Board decisions dated 25.03.2021, numbered 21-17/208-86; dated 15.12.2022, numbered 22-55/863-357; dated 24.02.2022, numbered 22-10/152-62; dated 17.08.2023, numbered 23-39/754-263; dated 23.11.2023, numbered 23-54/1044-376; dated 17.08.2023, numbered 23-39/755-264, and the Decision of the 13th Chamber of the Council of State dated 02.12.2020, numbered 2020/1939 E. and 2020/3507 K.

the provisions of the Regulation on Active Cooperation⁴ and the Settlement Regulation⁵ will be calculated over the final amount of the fine calculated as per the provisions of the Regulation.

3. Determination of the Basic Rate of Fine

- (17) Article 16.5 of the Act provides, *“When deciding on an administrative fine pursuant to paragraph three, the Board shall take into consideration issues such as the repetition of infringement, its duration, market power of undertakings or associations of undertakings, their decisive influence in the realization of infringement, whether they comply with the commitments given, whether they assist with the examination, and the severity of damage that takes place or is likely to take place, within the context of Article 17 paragraph two of the Law of Misdemeanors dated 30/3/2005 and numbered 5326.”* The relevant paragraph of the Misdemeanor Law no 5326 (Law no 5326), referenced in the provision, notes, *“Administrative fines can also be determined by setting out a minimum and maximum limit in the law. In this case, the determination of the amount of the administrative fine takes into consideration the injury created by the misdemeanor together with the culpability and economic status of the offender.”* These provisions specify which points will be taken into consideration when setting administrative fines.
- (18) In accordance with the aforementioned provisions, factors related to the nature of the infringement, the actual or potential damages caused and the duration of the infringement are taken into consideration in the determination of the basic rate of fine, with the circumstances specific to the undertaking to be fined taken into account in the determination of the final rate of the fine as aggravating and mitigating factors.
- (19) The first step in setting the administrative fines to be imposed on undertakings and associations of undertakings is the determination of the basic rate of fine under Article 5 of the Regulation. The basic rate of fine itself is obtained by taking the starting rate of fine determined in accordance with Article 5.2, and applying the rate of increase based on the duration of the infringement, set out in the third paragraph of the same Article, if the necessary conditions exist.

⁴ Regulation on Active Cooperation for Detecting Cartels, which entered into force following its publication in the Official Gazette dated 16.12.2023 and numbered 32401.

⁵ Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of Dominant Position, which entered into force following its publication in the Official Gazette dated 15.07.2021 and numbered 31542.

3.1. Starting Rate of Fine

- (20) The Board may set the starting rate of fine, which serves as the foundation of the basic rate of fine, at up to 10% of the annual gross revenues of the undertaking to be fined generated at the end of the financial year preceding the final decision, or if that cannot be determined, at the end of the financial year closest to the date of the final decision, as determined by the Board.
- (21) Accordingly, when setting the starting rate of fine, the Board will consider various factors, including but not limited to the severity of the actual or potential damages stemming from the infringement and whether the infringement concerned has the characteristics of a naked and/or hardcore one. Thus, if the severity of the actual or potential damages caused by the infringement is high, or if the infringement is of a naked and/or hardcore nature, then the starting rate of fine may be set close to the legal upper limits.

3.1.1. Severity of the Actual or Potential Damages Caused by the Infringement

- (22) One of the factors that can be taken into account when setting the starting rate of fine is the severity of the actual or potential damages caused by the infringement. In the most general sense, competitive damages may be defined as any anti-competitive outcome that arises or may potentially arise on competition, which is the primary interest protected by competition law, and thus on the benefits attributed to the competitive process by the law regime, stemming from a behavior condemned by the law regime. In this framework, the damages may involve the competition in general and thus consumers, trade partners such as buyers and suppliers, third parties such as current or potential competitors, or the economy in general. Therefore, as one of the factors taken into consideration in setting the starting rate of fine, damages may be evaluated by the existing and potential negative effects not only on the competition level of the relevant market, but also on the other interests protected by competition.
- (23) For example, determination of the starting rate of fine can take into account the negative effects of the anti-competitive conduct which may prevent the growth and development of the national economy due to its nature and scope, which makes the implementation of macroeconomic policies harder, and which complicates fighting against force majeure circumstances such as earthquakes, fires and pandemics, and similar conduct. While calculating the numerical value of the damages is not required, such a calculation may be done to determine their severity. The severity of the actual or potential damages can also vary depending on factors such as the level of

implementation of the infringement, its intensity, the position of the parties in the relevant market, the products affected, and the geographic area covered by the infringement. Accordingly, the severity of the damages caused by infringements that lead to concrete anti-competitive outcomes on competition elements such as price, output, quality, innovation, variety and market entries or exits would be higher than infringements with less intensity; the severity of the damages caused by infringements committed by undertakings comprising a significant portion of the relevant market would be higher than those committed by undertakings controlling a relatively limited portion of the market, and the severity of the damages caused by infringements that affect a larger area would be higher than those affecting a more limited region. Similarly, actual or potential damages caused by infringements would be higher if they affect goods and services which are indispensable to consumers or buyers or have no close substitutes, which correspond to a significant portion of the budget of the consumers or buyers, which are an important input for the economy in general, and which risk spreading the disruption in the competitive elements to other markets for goods and services. If the severity of the actual or potential damages caused by the violation is high, the starting rate of the fine to be determined would be more likely approach the legal upper limits.

3.1.2. Nature of the Infringement

- (24) Another factor that might be taken into account in the determination of the starting rate of fine is the nature of the infringement. In the Regulation, the nature of the infringement refers to whether it is a naked and/or hardcore infringement. In this framework, it might be noted that infringements where efficiency arguments are not accepted, such as price fixing between competitors, customer or region allocation, supply restrictions, and bid rigging will be considered naked infringements. Assessments in this context can also examine which competitive parameter/s the violation concerns as well as whether the infringement is implicit by nature and/or whether it is susceptible to being caught.
- (25) On the other hand, if the undertakings committing the infringement have market power, and/or if the infringement have a large adverse effect on consumer welfare, the infringement may be considered hardcore. Whether an infringement is a hardcore one is distinct from the severity of the damages and is evaluated taking into account the market power of the undertakings committing the infringement, and, thus the actual or potential negative effects of the infringement on consumer welfare. In this framework, the factors to take into account when assessing if an infringement is hardcore include

the share of the undertakings in the relevant market, brand recognition, brand and patent ownership, whether the undertakings own goods or services that may lead to disruptive innovation, whether they have an input that is indispensable for the competitors, their vertically integrated structure, and their ability to prevent market entry and growth. Additionally, the characteristics of the market and the sector where the infringement is committed can be taken into consideration when assessing the severity of the infringement. In that framework, the assessment may examine if the infringement took place in public service markets, in sectors related to health or environment protection, and in newly competitive or innovative markets.

- (26) Under the provision introduced with Article 5.2 of the Regulation, undertakings committing those infringements that are considered to cause the most damage to competition due to their naked or hardcore nature may face higher fines.

3.2. Duration of the Infringement

- (27) The second factor to consider when setting the basic rate of fine is the duration of the infringement. Article 5.3 of the Regulation specifies the rates of increase to apply to the starting rate of fine due to the duration of the infringement.
- (28) The increase to apply to the starting rate of fine due to duration involve infringements which last at least one year, and it is staggered in yearly steps from one to five years. Accordingly, the starting rate of fine will be increased by one fifth for infringements that last one year or longer than one but shorter than two years, by two fifths for infringements that last two years or longer than two but shorter than three years, by three fifths for infringements that last three years or longer than three but shorter than four years, and by four fifths for infringements that last four years or longer than four but shorter than five years. For infringements that last five years or more, the starting rate of fine will be increased by one fold. On the other hand, no increase will be applied to the starting rate of fine for infringements that last less than a year, and the starting rate of fine will be taken as the basic rate of fine in those cases.
- (29) In the calculation of a full year, the one-year period shall be deemed to have expired in the following year on whichever day of the year the period began. For instance, if it is determined that the infringement started on 25.10.2022 and came to an end on 25.10.2023, the duration of the infringement will be calculated as one year, and the rate of increase will be one fifth in accordance with Article 5.3(a).
- (30) When calculating the periods, the Code of Civil Procedure no 6100 and the Turkish Code of Obligations no 6098 will be applied as appropriate.

4. Determination of the Basic Rate of Fine

(31) The second stage in setting the administrative fines to be imposed on the undertakings is the determination of the final rate of fine. Once the basic rate of fine is set, the final rate of fine will be calculated by evaluating the aggravating factors listed in Article 6 of the Regulation and/or the mitigating factors listed in Article 7. Consideration of the aggravating and mitigating factors allows adapting the fine to the specific circumstances of the undertakings that committed the infringement, and thus ensures a fairer fine. The aggravating and mitigating factors in the Regulation are selected in light of the precedent decisions of the Board and the requirements of an effective fining policy.

4.1. Aggravating Factors

(32) Aggravating factors are laid out in Articles 6.1 and 6.2 of the Regulation. The first paragraph includes a provision that specifies an increase in the basic rate of fine in case of repetition. The second paragraph lists the other factors that might aggravate the basic rate of fine, on the discretion of the Board. The upper limit to which the basic rate of fine may be increased in case of aggravating factors is specified, and the lower limits are removed. The third paragraph regulates the method of increase that will be adopted in case the aggravating factors listed in the first two paragraphs coexist.

4.1.1. Repetition

(33) Under Article 6.1 of the Regulation, if an undertaking which is found to have engaged in a competition infringement before the date of the decision commits a repeat infringement, the administrative fine to be imposed will be increased due to repetition.

(34) According to the Article concerned, if, after the Board has found an infringement of Articles 4 and/or 6 of the Act no 4054, the same undertaking commits a repeat infringement of Articles 4 and/or 6 of the Act, the basic rate of fine will be increased by up to one fold. An increase in the fine applied as a result of this provision will not require that the undertaking infringe the same Article of the Act. When assessing the phrase “the same undertaking or association of undertakings,” included in the provision, the meaning of “undertaking” as defined under Article 3 of the Act and the Board precedents will be taken into consideration.

(35) The existence of a previous infringement to serve as the basis of the repetition will be determined by looking at whether there is a Board decision on the matter. Going back from the start of the infringement comprising the subject matter of the administrative fine, if there is a Board decision concerning the undertaking in question establishing

that the undertaking violated Article 4 or 6 of the Act no 4054, then this decision will serve as the basis of repetition⁶. Since the Board decision concerned is an executive administrative action which benefits from the presumption of legality, it will be taken into consideration in repetition increases unless it is suspended or annulled by administrative courts.

- (36) A Board decision that has served as the basis of repetition in the past cannot be the subject of a repetition increase in other decisions of the Board. In other words, the Board decision or decisions that will serve as the basis of repetition must not have been taken into account as an aggravating factor in the determination of administrative fines for another Board decision. According to this paragraph, one or more Board decisions which were not previously used as the grounds for repetition increase will be taken into consideration to increase the basic rate of fine by up to one fold.

4.1.2. Discretionary Aggravating Factors

- (37) Article 6.2 of the Regulation includes the other aggravating factors that have been used in the Board's case law. The Board may increase the basic rate of fine by up to one fold if these factors are present.
- (38) First of all, decisive influence of an undertaking in the infringement is laid out as an aggravating factor. The concept of "*decisive influence*," referenced in the provision, is defined in Article 3.1(b) of the Regulation as an "*indispensable role in the formation and/or continuation of the infringement*." In this framework, for instance, the definition of the strategic elements of an anti-competitive agreement, leading a meeting or holding meetings to implement or maintain an agreement, playing a leading or encouraging role in the infringement, forcing the other undertakings into the infringement, imposing control, pressure, discouragement and sanction mechanisms on the other undertakings through warnings, instructions, guidance, and similar conduct may indicate the presence of decisive influence.⁷ In that sense, when setting

⁶ Board decisions dated 20.05.2009 and numbered 09-23/491-117; dated 23.12.2009 and numbered 09-60/1490-379; dated 17.09.2013 and numbered 13-54/756-316; dated 19.12.2013 and numbered 13-71/988-414; dated 14.01.2016 and numbered 16-02/44-14, dated 09.06.2016 and numbered 16-20/326-146; dated 09.02.2017 and numbered 17-06/58-24; dated 16.02.2017 and numbered 17-07/84-34; dated 19.07.2017 and numbered 17-23/384-167; dated 28.11.2017 and numbered 17-39/636-276; dated 10.01.2019 and numbered 19-03/23-10; dated 16.01.2020 and numbered 20-04/47-25; dated 11.06.2020 and numbered 20-28/349-163; dated 12.11.2020 and numbered 20-49/675-295; dated 08.04.2021 and numbered 21-20/248-105; dated 05.08.2021 and numbered 21-37/524-258; dated 03.08.2023 and numbered 23-36/671-227; dated 17.08.2023 and numbered 23-39/755-264.

⁷ Board decisions dated 19.12.2008, numbered 08-74/1180-455; dated 25.03.2021, numbered 21-17/208-86; dated 18.01.2024, numbered 24-05/83-33.

the administrative fine to be imposed, it is possible to take into account the role played by undertakings in the formation and continuance of the infringement.

- (39) Another aggravating factor laid out in the relevant paragraph is whether the infringement continued following the notification of the investigation decision. This is intended to ensure that, when notified of the initiation of an investigation on suspicions of violating the Act, the undertakings concerned terminate their anti-competitive conduct as soon as possible, thereby minimizing the actual or potential harm created by the competition infringement.⁸
- (40) Finally, Article 12.3 of the Settlement Regulation, titled “*Confidentiality Obligation*,” states that failing to comply with the confidentiality obligation may be considered an aggravating factor in determining the administrative fines. Accordingly, in light of the relevant provision of the legislation, the violation of the confidentiality obligation of Article 12.3 of the Settlement Regulation has been added as an aggravating factor into Article 6.2 of the Regulation.

4.1.3. Application of More Than One Aggravating Factor

- (41) Article 6.3 of the Regulation explains how to determine the rate of increase in case it is determined that the aggravating factors listed in the first two paragraphs of the Article coexist. Accordingly, if repetition is present at the same time as one or more of the aggravating factors listed in the second paragraph, the rates of increase laid out under both of the paragraphs will be added together and applied to the basic rate of fine set within the framework of Article 5. This will give the rate of increase to be applied under Article 6.
- (42) On the other hand, if the aggravating factors set out in Article 6.2 coexist, a single rate of increase will be determined under this particular paragraph.
- (43) For instance, if it is decided that a one (1) fold increase should be applied under Article 6.1 and a half (1/2) fold increase should be applied under Article 6.2, the total rate of increase to be applied under this Article would be one and a half times (3/2) the basic rate of fine. Adding this rate of increase to the basic rate of fine will give the aggravated rate of fine. If the basic rate of fine is set at 2%, the rate of increase due to aggravating factors will be one and a half times 2%, corresponding to 3%. Applying a one and a half fold increase to the basic rate of fine will give an aggravated rate of fine at 5%⁹.

⁸ Board decisions dated 24.11.2005, numbered 05-79/1082-309; dated 19.09.2006, numbered 06-66/885-255; dated 03.11.2009, numbered 09-51/1245-314.

⁹ Aggravated rate of fine=basic rate of fine (%2) + aggravating factors (1 + 1/2=3/2) = %2 + %2*(3/2)=%5.

4.2. Mitigating Factors

- (44) To ensure a fair punishment of competition infringements, it is required to take the mitigating factors into consideration, which can entail applying a discount for the undertaking to be fined.
- (45) Accordingly, Article 7 of the Regulation includes a non-exhaustive list of the mitigating factors the Board may take into consideration when setting the final rate of fine. Where the undertaking can prove the presence of these factors, a discount may be applied to the administrative fines, on the discretion of the Board.
- (46) Article 7.1(a) of the Regulation lists the provision of assistance by the undertaking during on-site inspections among the mitigating factors. Provision of assistance in on-site inspections beyond the fulfillment of legal obligations, by offering physical and/or technical facilities to ensure faster or more efficient completion of on-site inspections or by the inspected party submitting any additional information or documents connected to the subject of the inspection on their own accord may be accepted as a mitigating factor.¹⁰
- (47) The undertaking's fulfillment of the requirements listed in Article 15 of the Act concerning the execution of the on-site inspection will not be accepted as a mitigating factor under this sub-paragraph. Accordingly, allowing the professional staff to examine the books, all types of data and documents of undertakings and associations of undertakings kept on physical or electronic media and in information systems, and to take copies and physical samples thereof, responding to any request for written or oral statements on particular issues, providing the copies of the requested information, documents books and other instruments to the professional staff performing the on-site inspection, and allowing the on-site examination of any assets of the undertakings will not be considered as assistance in on-site inspection beyond the fulfillment of legal obligations.
- (48) Article 7.1(b) of the Regulation notes that being forced into the infringement by other undertakings is another mitigating factor. Article 16.5 of the Act lists the factors that may be taken into consideration under Article 17.2 of the Act no 5326 when setting the administrative fine. In accordance with the paragraph in question, where administrative

¹⁰ Board decisions dated 03.11.2009, numbered 09-51/1245-314; dated 13.08.2013, numbered 13-47/662-283; dated 22.01.2014, numbered 14-04/80-33; dated 11.08.2014, numbered 14-27/556-239; dated 16.02.2017, numbered 17-07/84-34; dated 09.07.2020, numbered 20-33/439-196; dated 26.04.2021, numbered 21-23/274-120; dated 30.09.2021, numbered 21-46/671-335; dated 26.05.2022, numbered 22-24/390-161; dated 10.11.2022, numbered 22-51/753-312; dated 08.12.2022, numbered 22-54/834-344; dated 05.01.2023, numbered 23-01/12-7; dated 07.06.2023, numbered 23-26/492-169; dated 18.01.2024, numbered 24-05/63-21.

finances are laid out by indicating a lower and upper limit in the relevant legislation, the culpability of the offender will be taken into account when setting the amount of the administrative fine. Article 12 of the Act no 5326 notes that, unless stated otherwise in that Act, the provisions of the Turkish Criminal Code no 5237 (Code no 5237) concerning justification causes and causes eliminating culpability will also be applied to misdemeanors. Code no 5237 lists force and violence, menace and threat among the reasons that set aside or reduce criminal responsibility. In that framework, it is possible to consider being forced into the competition infringement by other undertaking(s) as a reflection of the point explained above. This can serve as grounds for a discount in the fine to be imposed on the undertaking which committed the competition infringement under force and violence, menace and threat¹¹.

- (49) Article 7.1(c) of the Regulation introduces a mitigating factor for those undertakings with limited participation in the infringement. In this framework, the relevant mitigating factor may be taken into account for those parties which immediately terminated the infringement after the Board's intervention, had limited participation in the meetings related to the anti-competitive agreement, implemented the infringement in a manner more limited than what was agreed upon, and which were involved in the conduct comprising the subject of the anti-competitive agreement but refrained from implementing the agreement, remained passive and/or adopted competitive behavior.¹² However, the infringement having a limited scope or duration will be taken into consideration when determining the basic rate of fine under Article 5 of the Regulation.
- (50) In Article 7.1(ç) of the Regulation, the provision of the old Regulation, phrased as "*Infringing activities having a very small share in the annual gross revenues,*" is amended as "*Infringing activities having a small share in the annual gross revenues,*" expanding the field of application for the mitigating factor related to the share of the infringing conduct within annual gross revenues.
- (51) In the previous Board decisions which applied discounts due to infringing conduct having a small share within the gross revenues, the Board generally took the revenues acquired from the product or service comprising the subject matter of the infringement

¹¹ Board decisions dated 22.03.2010, numbered 10-25/350-124; dated 11.11.2010, numbered 10-72/1503-572; dated 07.11.2016, numbered 16-37/628-279; dated 10.11.2022, numbered 22-51/754-313; dated 10.11.2022, numbered 22-51/754-313.

¹² Board decisions dated 8.07.2009, numbered 09-32/703-163; dated 28.01.2010, numbered 22-10/102-48; dated 2.06.2011, numbered 22-33/713-220; dated 17.08.2023, numbered 23-39/231-112; dated 11.03.2021, numbered 23-13/174-75; dated 17.08.2023, numbered 23-39/644-270, and the Decision of the 13th Chamber of the Council of State dated 02.12.2020, numbered 2020/18 E. and 2020/3507 K.

to determine if the revenue acquired from the infringing conduct had a small share within the total revenues¹³.

- (52) The provision added to Article 7.1(d) of the Regulation states that “*Having overseas sale revenues within the annual gross revenues that were taken as the basis of the administrative fine,*” could be taken into consideration as a mitigating factor. Thus, export activities of undertakings are accepted as a factor that can be considered when setting the administrative fine. Import policies and competition policies have a complementary nature in terms of ensuring the effective operation of the markets and the development of the national economy. Therefore, export policies that aim to ensure undertakings are competitive in international markets may be taken into account when applying competition policies which serve to maintain fair competition conditions. In this framework, an undertaking generating export sale revenues may be seen as a mitigating factor when punishing the infringements it commits. On the other hand, the existence of export sales revenues among the gross revenue generated by an undertaking can mean the activities of that undertaking are important in terms of their effect on the Turkish market, as well.

¹³ Board decisions dated 16.06.2009, numbered 09-28/600-141; dated 23.12.2009, numbered 09-60/1490-379; dated 06.08.2010, numbered 10-53/1057-391; dated 23.09.2010, numbered 10-60/1274-480; dated 23.12.2010, numbered 10-80/1687-640; dated 07.03.2011, numbered 11-13/243-78; dated 18.04.2011, numbered 11-24/464-139; dated 13.10.2011, numbered 11-52/1343-474; dated 03.05.2012, numbered 12-24/711-199; dated 28.08.2012, numbered 12-42/1321-434; dated 01.10.2012, numbered 12-47/1413-474; dated 20.11.2012, numbered 12-58/1556-558; dated 22.01.2014, numbered 14-04/80-33; dated 20.08.2014, numbered 14-29/588-255; dated 07.08.2014, numbered 14-26/530-235; dated 09.06.2016, numbered 16-20/326-146; dated 07.11.2016, numbered 16-37/628-279; dated 14.12.2017, numbered 17-41/640-279; dated 29.03.2018, numbered 18-09/180-85; dated 22.11.2018, numbered 18-44/703-345; dated 13.02.2020, numbered 20-10/119-69; dated 11.06.2020, numbered 20-28/349-163; dated 08.04.2021, numbered 21-20/248-105; dated 30.09.2021, numbered 21-46/672-336; dated 28.10.2021, numbered 21-53/747-360; dated 17.02.2022, numbered 22-09/130-50; dated 24.02.2022, numbered 22-10/152-62; dated 03.03.2022, numbered 22-11/169-68; dated 14.04.2022, numbered 22-17/283-128; dated 18.05.2022, numbered 22-23/379-158; dated 26.05.2022, numbered 22-24/390-161; dated 07.07.2022, numbered 22-32/508-205; dated 29.09.2022, numbered 22-44/644-271; dated 10.11.2022, numbered 22-51/753-312; dated 29.12.2022, numbered 22-57/899-369; dated 05.01.2023, numbered 23-01/12-7; dated 05.01.2023, numbered 23-01/25-11; dated 23.02.2023, numbered 23-10/154-48; dated 02.03.2023, numbered 23-12/185-61; dated 09.03.2023, numbered 23-13/223-72; dated 23.03.2023, numbered 23-15/269-91; dated 30.03.2023, numbered 23-16/284-98; dated 06.04.2023, numbered 23-17/314-104; dated 05.07.2023, numbered 23-29/563-190; dated 05.07.2023, numbered 23-29/565-192; dated 13.07.2023, numbered 23-31/589-199; dated 20.07.2023, numbered 23-32/629-211; dated 20.07.2023, numbered 23-32/630-212; dated 31.08.2023, numbered 23-40/764-268; dated 31.08.2023, numbered 23-40/768-270; dated 05.10.2023, numbered 23-47/890-314; dated 05.10.2023, numbered 23-47/897-317; dated 26.10.2023, numbered 23-50/979-356; dated 09.11.2023, numbered 23-53/999-363; dated 09.11.2023, numbered 23-53/1005-365; dated 30.11.2023, numbered 23-55/1077-381; dated 07.12.2023, numbered 23-56/1104-389; dated 07.12.2023, numbered 23-56/1126-403; dated 07.12.2023, numbered 23-56/1127-404; dated 04.01.2024, numbered 24-01/6-2; dated 04.01.2024, numbered 24-01/18-6; dated 11.01.2024, numbered 24-03/28-10; dated 18.01.2024, numbered 24-05/61-19; dated 24.01.2024, numbered 24-06/92-40; dated 08.02.2024, numbered 24-08/138-56.

- (53) Consequently, the Board may apply a discount in consideration of the structure of the market in which the infringement took place, whether infringing products or the market(s) where the undertaking operates are subsidized under export promotion policies, and the share of the export sales within annual gross revenues.
- (54) At the same time, the financial power an undertaking acquires through its export activities can lead to negative effects such as increasing its market power and making the competition infringement sustainable or systematic. In other words, export activities can enable the undertaking to finance its conduct resulting in anti-competitive foreclosure. Thus, when determining whether a discount should be applied to the undertaking due to its export activities and if yes, the rate of the discount to be applied, the aforementioned points will be taken into consideration.
- (55) Since Article 7.1 of the Regulation does not include an exhaustive list of mitigating factors, the Board may consider additional mitigating factors. In particular, matters considered mitigating factors under the old Regulation may constitute reasons for discount. For instance, encouragement by public authorities in the infringement¹⁴, existence of buyer power in the market¹⁵, lack of an established case law on the conduct to be imposed administrative fines¹⁶, and the presence of force majeure¹⁷ are circumstances that can be considered among mitigating factors.
- (56) If one or more of the mitigating factors listed in Article 7 are simultaneously present, the Board sets a single rate of discount for all of the relevant mitigating factors and applies it to the basic or aggravated rate of fine. For example, if the aggravated rate of

¹⁴ Board decisions dated 8.07.2009, numbered 09-32/703-163; dated 16.03.2012, numbered 22-12/383-112; dated 18.06.2013, numbered 22-38/489-213; dated 17.08.2023, numbered 23-39/287-120; dated 9.12.2014, numbered 23-49/877-397; dated 17.08.2023, numbered 23-39/699-313, and the Decision of the 13th Chamber of the Council of State dated 02.12.2020, numbered 2020/15 E. and 2020/3507 K.

¹⁵ Board decisions dated 30.10.2012, numbered 12-52/1479-508; dated 28.10.2021, numbered 21-53/747-360; dated 22.09.2022, numbered 22-43/629-262; dated 29.09.2022, numbered 22-44/644-272; dated 29.09.2022, numbered 22-44/644-273; dated 29.09.2022, numbered 22-44/644-274; dated 29.09.2022, numbered 22-44/644-275; dated 29.09.2022, numbered 22-44/644-276; dated 29.09.2022, numbered 22-44/644-277; dated 29.12.2022, numbered 22-57/899-369; dated 26.01.2023, numbered 23-06/88-27; dated 26.01.2023, numbered 23-06/89-28; dated 09.02.2023, numbered 23-07/101-31; dated 09.02.2023, numbered 23-07/104-32; dated 23.02.2023, numbered 23-10/165-51; dated 09.03.2023, numbered 23-13/212-68; dated 28.09.2023, numbered 23-46/869-307; dated 05.10.2023, numbered 23-47/897-317; dated 26.10.2023, numbered 23-50/979-356.

¹⁶ Board decisions dated 12.01.2023, numbered 23-03/34-14; dated 19.01.2023, numbered 23-05/59-19; dated 9.02.2023, numbered 23-07/116-36; dated 17.08.2023, numbered 23-39/326-111; dated 21.03.2024, numbered 23-14/270-110; dated 17.08.2023, numbered 23-39/319-131, and the Decision of the 13th Chamber of the Council of State dated 02.12.2020, numbered 2020/1939 E. and 2020/3507 K.

¹⁷ In the Board decision dated 18.04.2024 and numbered 24-19/423-173, the fact that the infringing undertaking had been affected by the Kahramanmaraş earthquake of February 7, 2022 was considered a reason for discount.

fine is set at 4% and the discount rate based on mitigating factors is set at one-fourth (1/4), the mitigated rate of fine will be 3%.

- (57) There are no upper or lower limits for the discount that can be applied under this Article. The Board will determine, on a discretionary basis, whether mitigating factors should be applied and, if so, what their rate should be, depending on the circumstances of the particular case.

5. Calculation of the Amount of the Administrative Fine¹⁸

- (58) The rate of the fine obtained in accordance with Article 5 of the Regulation, as well as with Articles 6 and 7 if applicable, will be applied to the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of those associations, generated at the end of the financial year preceding the final decision, or, where this cannot be calculated, to the annual gross revenues generated at the end of the financial year that is closest to the date of the final decision, as determined by the Board. This will give the amount of the administrative fine.
- (59) The amount of the administrative fines will not exceed 10% of the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of those associations, generated at the end of the financial year preceding the final decision, or, where this cannot be calculated, over the annual gross revenues generated at the end of the financial year that is closest to the date of the final decision, as determined by the Board. Consequently, for each infringement, administrative fines exceeding this limit will be decreased to 10% of the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of these associations.

6. Application of the Active Cooperation Regulation and Settlement Regulation Provisions

- (60) In case the undertaking receiving the administrative fine submits a leniency application under the Active Cooperation Regulation or a settlement application under the Settlement Regulation, the leniency or settlement discount will be applied to the amount of the administrative fine obtained in accordance with the provisions of the Regulation herein.
- (61) In case a leniency application under the Active Cooperation Regulation and a settlement application under the Settlement Regulation are submitted at the same

¹⁸ Sample calculation tables for the calculation of the amount of the administrative fines are in the Appendix of these Guidelines.

time, the discount rates determined for the settlement and leniency applications are added together and applied to the amount of the administrative fine imposed under the provisions of the Regulation¹⁹.

7. Fines Imposed on Managers and Employees

- (62) Article 8.1 of the Regulation sets out the rate of the fine to be imposed on the managers or employees of the undertakings who are found to have had a decisive influence on the infringement. This rate will not exceed 5% of the fine imposed on the relevant undertaking. There is no lower limit for the fine imposed on the managers or employees.
- (63) The grounds for Article 16 of the Act notes that a paragraph has been added stating that natural persons serving in managerial bodies of the legal personality shall be fined personally, for purposes of being deterrent. Imposing administrative fines on managers or employees is a reflection of the policies which require assigning personal responsibility to managers and employees in order to accomplish the goal of deterrence, on the grounds that sanctions targeting undertakings exclusively could be insufficient. This makes it possible to take the role and influence of managers or employees in the processes of creating and maintaining a competition infringement. In other words, a complementary element of the competition policies aimed at the punishment of competition infringements committed by undertakings is to be able to assign responsibility to the natural persons with a decisive impact on the decision-making and implementation processes of the relevant competition infringements. Consequently, in line with Article 16.4 of the Act, Article 8 of the Regulation states that administrative fines would be imposed on the managers and employees who are found to have a decisive influence on the creation and/or maintenance of competition infringements.
- (64) The concept of “decisive influence,” referenced in the provision, is defined in Article 3.1(b) of the Regulation as an “*indispensable role in the formation and/or continuation of the infringement.*” Thus, decisive influence may be said to exist where there is a strong causal link between the formation and/or continuation of the infringement and the actions of the relevant manager or employee, and it is clear that the infringement would not have happened or continued without the relevant manager or employee. In that sense, managers or employees who set up the strategy for performing the

¹⁹ See Article 7.3 of the Settlement Regulation. Also see Board decisions dated 14.04.2022, numbered 22-17/283-128; dated 18.05.2022 numbered 22-23/379-158; dated 04.01.2024, numbered 24-01/6-2; dated 11.01.2024, numbered 24-03/50-14; dated 18.01.2024, numbered 24-05/63-21.

competition infringement, led the implementation of that strategy or who provided the physical or technical tools to maintain the anti-competitive strategy may be deemed to have decisive influence²⁰.

8. Entry into Force of the Regulation

- (65) The Regulation entered into force after its publication in the Official Gazette dated 27/12/2024 and numbered 32765, and the Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, which was published in the Official Gazette dated 15.02.2009 and numbered 27142, is abolished. This Regulation entered into force on the date of its publication.

²⁰ Board decisions dated 25.11.2009, numbered 09-24/711-199; dated 30.10.2012, numbered 12-52/1479-508; dated 26.10.2023, numbered 23-50/980-357.

APPENDIX: Sample Tables for the Calculation of Administrative Fines

Table 1: Setting the Rate of the Administrative Fine²¹

	METHOD	EXAMPLE
	<p>Nature of the infringement (Identification of the conduct constituting an infringement under Article 4 or 6 of the Act)</p>	<p>Nature of the infringement Participation in a price fixing agreement restricting competition under Article 4 of the Act</p>
DETERMINATION OF THE BASIC RATE OF FINE	<p>Setting the starting rate of fine The starting rate of fine will be set between 0%-10%, taking into account, in a non-exhaustive manner, severity of the actual or potential damages caused by the infringement whether the infringement concerned is naked and/or hardcore,</p> <p>Duration Increase The basic rate of fine will be obtained by increasing the starting rate of fine</p> <p>a. By one fifth for infringements that lasted for longer than one, shorter than two years, b. By two fifths for infringements that lasted for longer than two, shorter than three years, c. By three fifths for infringements that lasted for longer than three, shorter than four years, d. By four fifths for infringements that lasted for longer than four, shorter than five years, e. By one fold for infringements that lasted for longer than five years.</p>	<p>Setting the starting rate of fine It is assumed that the starting rate of fine is set at 6% by the Board in consideration of</p> <p>(i) the severity of the actual or potential damages stemming from the infringement, (ii) the nature of the infringement, in particular.</p> <p>Duration Increase Since the infringement lasted for 3 years and 4 months, the starting rate of fine set at 6% is increased by 3/5 ($6\% \times 3/5 = 3,6$) and the basic rate of fine is established as 9.6% ($6\% + 3.6\%$).</p>
DETERMINATION OF THE BASIC RATE OF FINE	<p>Application of the aggravating factors The basic rate of fine,</p> <p>(i) is increased by 1 fold in case of repetition. (ii) may be increased by up to one fold in case the infringement continues following the notification of the investigation decision, in case decisive influence in the infringement is identified, and in case the confidentiality obligation in Article 12.3 of the Settlement Regulation is violated. (iii) the rates in sub-paragraphs (i) and (ii) are applied in sum.</p>	<p>Application of the aggravating factors The basic rate of fine is increased by,</p> <p>(i) one fourth (1/4) for repetition (ii) one fourth (1/4) for having a decisive influence on the infringement. (iii) The total rate of increase is set at half times (1/2) the basic rate of fine and when the rate of increase is applied to the basic rate of fine, which was set at 9,6%, the rate of increase is calculated to be 4.8% ($9.6\% \times 1/2$).</p>

²¹ The rates of fine as well as rates of increase and discount in the fines included in Table 1 are provided as examples. These rates do not serve as benchmarks for the administrative fines to be imposed on the undertakings. The Board shall set the rate of the administrative fine in accordance with the circumstances of each specific case.

		Adding the rate of increase to the basic rate of fine gives the aggravated rate of fine at 14.4% (%4.8+%9.6)
	<p>Application of the aggravating factors</p> <p>The basic rate of fine or the aggravated rate of fine may be discounted where</p> <ul style="list-style-type: none"> (i) assistance is provided in on-site inspections beyond the fulfillment of legal obligations, by offering physical and/or technical facilities to ensure faster or more efficient completion of on-site inspections and/or by the inspected party submitting any additional information or documents connected to the subject of the inspection on their own accord, (ii) there is coercion by other undertakings into the infringement, (iii) there is limited participation in the infringement, (iv) the infringing activities have a small share in the annual gross revenues, (v) the annual gross revenues of the undertaking which were taken as the basis of the administrative fine include export sale revenues. 	<p>Application of the aggravating factors</p> <p>It is assumed that the aggravated rate of fine, set at 14.4%, is discounted by four fifths (4/5) on the grounds that</p> <ul style="list-style-type: none"> a. the undertaking concerned provided assistance in the on-site inspection²², b. Infringing activities had a small share in the annual gross revenues,²³ c. The undertaking had export sales²⁴ <p>The final rate of fine is calculated to be 2.88% (14.4%-(14.4%*4/5)).</p>
SETTING THE RATE OF THE ADMINISTRATIVE FINE	<p>Application of the Final Rate of Fine to the Total Annual Gross Revenue Generated in the Year Preceding the Final Decision</p>	<p>The amount of the administrative fine will be calculated by applying the final rate of fine to the total gross revenues generated by the undertaking or association of undertaking generated in the year preceding the final decision.</p>
APPLICATION OF THE LEGAL UPPER LIMIT	<p>Reduction of the Amount of the Final Administrative Fine to the Legal Upper Limit (10%)</p>	<p>If the amount of the administrative fine exceeds 10% of the total gross revenues generated by the undertaking or the association of undertakings in the preceding year, the amount of the administrative fines will be reduced to 10% of these revenues.</p>

²² In accordance with Article 7.1(a) of the Regulation, “Provision of assistance in on-site inspections beyond the fulfillment of legal obligations, by offering physical and/or technical facilities to ensure faster or more efficient completion of on-site inspections or by the inspected party submitting any additional information or documents connected to the subject of the inspection on their own accord may be accepted as a mitigating factor,” may be accepted as a mitigating factor.

²³ In accordance with Article 7.1(ç) of the Regulation, “Infringing activities having a small share in the annual gross revenues,” may be accepted as a mitigating factor.

²⁴ In accordance with Article 7.1(d) of the Regulation, “Having overseas sale revenues within the annual gross revenues that were taken as the basis of the administrative fine,” may be accepted as a mitigating factor.

Table 2: Calculating the Rate of the Administrative Fine²⁵

		Sample Case-1	Sample Case-2 ²⁶	
Subject of the File		Infringement of Article 4 of the Act no 4054	Infringement of Article 6 of the Act no 4054	Infringement of Article 4 of the Act no 4054
Starting Rate of Fine		5%	8%	3%
Duration		2 years (2/5 increase) (5%+5%*2/5=7%)	1 years 5 months (1/5 increase) (8%+8%*1/5=9.6%)	More than 5 years (1 fold increase) (3%+3%*1=6%)
Basic Rate of Fine		7%	9.6%	6%
Aggravating Factors²⁷	Repetition		+ (1/2 increase)	
	Continuation of the infringement	+		
	Violation of confidentiality in settlement			
	Decisive influence	+		
Aggravated Rate of Fine²⁸		Total increase=1 fold²⁹ (1/3 +2/3= 1) 7%+7%*1=14%	Increase=1/2 fold 9.6%+9.6%*1/2=14.4%	-
Mitigating Factors³⁰	Provision of assistance in the on-site inspection			+
	Limited participation in the infringement			
	Being forced into the infringement			
	Low share in turnover			
	Having export sales revenue	+		+
Mitigated Rate of Fine³¹		Discount=25% (14%-14%*25%)=10.5%	-	Discount³²=40% (6%-6%*40%)=3.6%
Settlement Discount		10%	-	-
Leniency Discount		30%	-	-

²⁵ The rates of fine as well as rates of increase and discount in the fines included in Table 2 are provided as examples. These rates do not serve as benchmarks for the administrative fines to be imposed on other undertakings. The Board shall set the rate of the administrative fine in accordance with the circumstances of each specific case.

²⁶ In Sample Case-2, the calculation is for a scenario where two separate infringements were committed by the same undertaking, falling under Article 4.1 of the Regulation.

²⁷ Whether the basic rate of fine will be increased based on the aggravating factors listed in Article 6.2 of the Regulation is left to the discretion of the Board.

²⁸ The rate of the increase to be applied to the basic rate of fine based on the aggravating factors listed in Article 6 of the Regulation is left to the discretion of the Board, up to one fold of the basic rate of fine.

²⁹ It is assumed that a one fold (100%) increase has been applied to the basic rate of fine for continuing the infringement after the notification of the investigation decision and for having a decisive influence on the infringement, under Article 6.2 of the Regulation.

³⁰ Whether the basic rate of fine or the aggravated rate of fine will be discounted based on the mitigating factors listed in Article 7 of the Regulation is left to the discretion of the Board.

³¹ Discount rates assumed for Sample Case-1 and Sample Case-2 are left to the discretion of the Board.

³² It is assumed that the Board decided to discount the rate of the fine by 40% in total, taking into account the fact that the undertaking provided assistance in the on-site inspection in accordance with Article 7(a) of the Regulation, and had export sales within the annual gross revenues which were taken as the basis of the administrative fines in accordance with Article 7(ç).

Settlement + Leniency Discounts	40% (10%+30%)	-	-
Final Rate of Fine	6.3% (10.5%-(10.5%*40%))	10% (14.4%, discounted to 10%)	3.6%