

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

SECTION ONE Preliminary Provisions

Purpose and scope

ARTICLE 1- (1) The purpose and scope of the Regulation herein is to lay out the procedures and principles relating to the determination of the fines to be imposed on those undertakings and associations of undertakings, or on the members of such associations and the managers and employees thereof, which engage in conduct prohibited under Articles 4 and 6 of the Act on the Protection of Competition dated 7/12/1994 and numbered 4054, pursuant to Article 16 of the same Act.

Basis

ARTICLE 2- (1) This Regulation is prepared based on Articles 16 and 27 of the Act on the Protection of Competition, dated 7/12/1994 and numbered 4054.

Definitions

ARTICLE 3- (1) In this Regulation,

- a) Decisive influence shall mean indispensable role in the formation and/or continuation of the infringement,
- b) the Act shall refer to the Act no 4054,
- c) the Board shall mean the Competition Board,
- ç) Undertaking shall mean natural and legal persons who produce, market and sell goods or services in the market, as well as entities forming a single economic unit that can take independent decisions,
- d) Association of undertaking shall mean any kind of association with or without a legal personality, formed by undertakings to accomplish particular goals,
- e) Settlement Regulation shall mean the Regulation on the Settlement Procedure Applicable in Investigations on Agreements, Concerted Practices and Decisions Restricting Competition, and Abuses of Dominant Position, published in the Official Gazette dated 15/7/2021 and numbered 31542.
- f) Annual gross revenue shall mean the net sales in the unified accounting plan, or, if this cannot be calculated, revenue closest to the net sales as determined by the Board (if, for any reason, undertakings are found to have accounted their (real) operating income under booking items which are not taken into consideration in the calculation of the net sales, such as ordinary revenue and profit from other activities, the amounts in question are also taken into consideration in the calculation of the annual gross revenue).

SECTION TWO

Principles, Basic Rate of Fine, Aggravating and Mitigating Factors

Principles concerning the determination of the administrative fines

ARTICLE 4- (1) The basic rate of fine to be imposed on undertakings and associations of undertakings, or on the members of these associations, will be determined by the Board separately for each infringement.

(2) If, following the calculation of the basic rate of fine, the aggravating and mitigating factors laid out in Articles 6 and 7 are found to exist together, the basic rate of fine will be increased in consideration of the aggravating factors, and then decreased over that rate in consideration of the mitigating factors.

(3) The amount of the administrative fines to be determined under the provisions of this Regulation 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, in case 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, and it may not exceed ten per cent of these revenues. Administrative fines exceeding this limit will be decreased to ten per cent of the annual gross revenues of the undertakings and associations of undertakings to be fined, or of the members of these associations.

Basic rate of fine

ARTICLE 5- (1) Basic rate of fine will be determined by applying an increase to the starting rate of fine based on the duration of the infringement, if the conditions exist.

(2) Starting rate of fine will be determined, specifically, by taking into account 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.

- (3) Starting rate of fine will be increased
- 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,
 - ç) By four fifths for infringements that lasted for longer than four, shorter than five years,
 - d) By one fold for infringements that lasted for longer than five years,

Aggravating factors

ARTICLE 6- (1) If, after the Board has found an infringement of Articles 4 and/or 6 of the Act no 4054, the same undertaking or association of undertakings 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.

(2) The basic rate of fine 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 clause in Article 12.3 of the Settlement Regulation is violated.

(3) Where the aggravating factors listed in paragraphs one and two coexist, the rates of increase specified under each paragraph are added together and applied to the basic rate of fine.

Mitigating factors

MADDE 7- (1) The basic rate of fine or the aggravated rate of fine calculated in accordance with Article 6 may be decreased if the relevant undertaking or association of undertakings proves the existence of circumstances such as

- a) With the exception of fulfillment of legal obligations, provision of assistance in on-site inspections 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,
- b) Coercion by other undertakings to the infringement,
- c) Limited participation in the infringement,
- ç) Infringing activities having a small share in the annual gross revenues,
- d) Having overseas sale revenues within the annual gross revenues that were taken as the basis of the administrative fine.

Administrative fines to be imposed on managers and employees

ARTICLE 8- In case administrative fines are imposed on undertakings or associations of undertakings under the framework of this Regulation, managers or employees of the undertaking or associations of undertakings who were found to have had a decisive influence in the infringement are also imposed administrative fines at up to five per cent of the fine imposed on the undertakings or associations of undertakings.

SECTION THREE **Various and Final Provisions**

Abolished regulation

ARTICLE 9- (1) Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, published in the Official Gazette dated 15/2/2009 and numbered 27142 has been abolished.

Entry into force

ARTICLE 10- (1) This Regulation shall enter into force on the date of its publication.

Execution

ARTICLE 11- (1) The President of the Competition Authority shall execute the provisions of this Regulation.