

## The Turkish Competition Board Published the Guidelines on Administrative Fines for Competition Infringements

On December 27, 2024, the Turkish Competition Board (“TCB”) adopted a new regulation on administrative fines for competition infringements (“**New Regulation**”)<sup>1</sup>, which repealed the former regulation on the same matter (“**Former Regulation**”). You can find our news article on the New Regulation [here](#).

In February 2025, the TCB published guidelines to provide further clarification on the implementation of the New Regulation (“**Guidelines**”)<sup>2</sup>.

### Background

Article 16/3 of Act on the Protection of Competition (“**APC**”) authorizes the TCB to impose an administrative fine on undertakings engaged in competition infringements of up to 10% of their turnover from the previous year. The Former Regulation embraced a structural approach, which limited the TCB’s discretion in determining the fine in specific cases. Particularly, it set certain lower and upper limits for the base fine to be determined before considering aggravating or mitigating factors, based on the type of competition infringement. Those limits were 2% to 4% for cartels and 0,5% to 3% for other infringements.

The most significant change introduced by the New Regulation is the removal of the lower and upper limits for base fines and of the categorization of infringements as “cartels” and “other infringements”. This change provides the TCB with greater flexibility in determining the base fine rate, considering the nature, severity, and intensity of the infringement. To address legal uncertainty arising from this new approach, the TCB has

issued the Guidelines to clarify the criteria for setting the base fine and to explain how aggravating and mitigating factors will be taken into account in determining the final fine. Some example scenarios for calculating fines are also included in the Guidelines to improve predictability for undertakings.

### Determination of the Base Fine

The Guidelines outline the criteria for determining the base fine. While the TCB may consider other factors it deems necessary, the base fine rate is *primarily* determined by considering the following factors;

- **Potential harm caused by the infringement:** The first factor to be considered in determining the base fine, as stated in the Guidelines, is the potential harm caused by the infringement, not only to the competitiveness of the relevant market but also to consumer welfare and the national economy. In assessing such potential harm, the TCB may consider the geographic scope of the infringement, its impact on essential goods or services, its occurrence during crises (e.g., pandemics

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<sup>1</sup> For the Regulation on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, see <https://www.rekabet.gov.tr/Dosya/para-cezalari-yonetmeligi-20250306110611418.pdf> (Date of Access: 06.03.2025)

<sup>2</sup> For the Guidelines on Administrative Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, see <https://www.rekabet.gov.tr/Dosya/ceza-yonetmeligi-kilavuzu-20250306110146946.pdf> (Date of Access: 06.03.2025)

or natural disasters), and the nature of the affected sector.

- **Severity of the infringement:** The Guidelines indicate that the base fine rate is likely to be set higher for hardcore and/or naked restrictions (i.e. *per se* violations), such as price-fixing or sharing of customers, suppliers, territories, or trade channels, and for the cases where the infringing undertakings have market power. The Guidelines also state that, in assessing the severity of the infringement, the TCB may consider the nature of the relevant sector (e.g., whether it relates to public services, health or environmental protection, or innovative markets).
- **Duration of the infringement:** Article 5/3 of the New Regulation outlines the increase in the base (initial) fine rate based on the duration of the infringement. For infringements lasting at least one year, the increase due to duration is structured in increments based on annual time intervals from one to five years. For infringements lasting five years or more, the base fine rate will be doubled. On this matter, the Guidelines merely clarify the calculation of the duration.

## Aggravating Factors

The Guidelines explain the implementation of aggravating factors listed in Article 6 of the New Regulation by categorizing them as “repetition of infringement” and discretionary aggravating factors:

- **Repetition of infringement:** According to Article 6/1 of the New Regulation, the base fine rate will be doubled if the undertaking was previously found by the TCB to infringe Article 4 or 6 of the APC.

The Guidelines clarify three points: (i) the concept of an undertaking will be taken into account when determining the existence of a previous infringement; (ii) it is sufficient for the TCB to have a decision finding an infringement; therefore it is not necessary that the decision includes an imposition of a fine or has survived judicial review; (iii) a repetition increase can apply even if the previous infringement was based on a different provision (e.g., a previous infringement of Article 6 APC may result in the application of the repetition increase for an Article 4 APC infringement). The Guidelines also highlight that an infringement which was already taken as a basis to apply a repetition increase before cannot be used again for the same purpose. While the Guidelines do not specify a time limit for a past infringement to be used in repetition analysis, the statute of limitations (8 years) may apply in this regard.

- **Discretionary aggravating factors:** The Guidelines provide that the TCB may, at its discretion, increase the base fine rate by up to one time, considering various circumstances as aggravating factors, including the following:

- o **Decisive influence:** The TCB may increase the fine if the undertaking exercises decisive influence in the infringement such as identifying strategic elements of the infringement (e.g., forming a cartel structure), ensuring its continuation (e.g., leading meetings, encouraging other businesses), and exerting

pressure on other undertakings to increase their involvement in the infringement.

- **Continuation of the infringement:** The TCB may also consider the failure of the undertaking to cease its involvement in the infringement after an investigation has been initiated as an aggravating factor.
- **Confidentiality breach:** If an undertaking breaches the confidentiality requirement during settlement negotiations, it may lead to an increase in the fine.

## Mitigating Factors

Article 7 of the New Regulation outlines several mitigating factors that may lead to a reduction in the fine, including: (i) the undertaking showing voluntary cooperation (e.g., offering technical/physical support or submitting extra documents) beyond its legal obligations provided in Article 15 APC relating to on-site inspections; (ii) the undertaking being pressured into participation in the infringement by another undertaking; (iii) the undertaking's involvement in the infringement being limited or minimal; (iv) the infringement concerning only a small portion of the undertaking's total annual turnover, and (v) the undertaking's annual turnover including export revenues. The Guidelines briefly explain the implementation of those mitigating factors.

Article 7 of the New Regulation does not set any lower or upper limit for reducing the fine based on any mitigating factor. The Guidelines also do not provide further clarification and leave this to the discretion of the TCB.

## Outlook

The New Regulation has expanded the TCB's discretion in determining administrative fines, thereby increasing legal uncertainty for undertakings. Although the Guidelines address some of those uncertainties by shedding lights to the implementation of the New Regulation, there is still less certain environment for undertakings than before the New Regulation.

In the examples given at the end of the Guidelines, the base (initial) fine rates are set at high levels, such as 5%, 6 and 8%. Given that the highest limit for the base fine was 4% for cartels, such rates in the Guidelines may signal that we are entering a new era where the TCB imposes higher fines for competition infringements. The future practice of the TCB is expected to provide more clarity on this matter.

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