

The New Regulation on Administrative Fines to be Imposed for Agreements, Concerted Practices and Decisions Restricting Competition and Abuse of Dominant Position Has Been Published

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The Regulation on Administrative Fines to be Imposed in case of Agreements, Concerted Practices and Decisions Restraining Competition and Abuse of Dominant Position ("**Regulation**") is published in the Official Gazette dated December 27, 2024, and numbered 32765. The Regulation may be accessed through this [link](#). (Only available in Turkish language currently)

The Regulation abolishes the previous regulation and enters into force on the date of its publication with the same name through its publication in the Official Gazette dated February 15, 2009 and numbered 27142.

While the definitions of "Cartel", "Other Violations" and "Active Cooperation" are not included in the Regulation, the definitions of "Decisive Influence", "Undertaking", "Association of Undertakings" and "Settlement Regulation" are added to the Regulation.

Previously, in determining the base fine, separate fines were applied to each conduct in the event that violations were "*detected in more than one independent conduct in terms of market, quality and chronological process*"; however, the Regulation ended these conditions and stated that the base fine will be calculated separately for each conduct.

The "*market power of the relevant undertaking or association of undertakings*", which was previously stated to be taken into account in determining the base fine, has been removed from the Regulation and it is stated that (i) the gravity of the damage incurred or likely to be incurred due to the violation and (ii) whether the nature of the violation is clear and/or severe will now be taken into account in determining the base fine rate in the Regulation.

The Regulation also abolishes the distinction between "Cartel" and "Other Violations" in the determining the base fine and ensures that the fine rate is determined in the same rates for all violations.

The previous regulation stipulating that the penalty amount will increase by half for violations lasting between 1-5 years and by up to one times for violations lasting longer than 5 years has also been amended. The Regulation now provides that the base penalty rate will be increased by one-fifth for violations lasting more than one year but less than two years, by two-fifths for violations lasting more than two years but less than three years, by three-fifths for violations lasting more than three years but less than four years, by four-fifths for violations lasting more than four years but less than five years, and by one time for violations lasting more than five years.

The Regulation adds the cases of (i) recidivism (i.e., repeated violation of the same article after the determination of the violation under Articles 4 and/or 6 of the Law No. 4054 on the Protection of Competition, (ii) the existence of a decisive influence in the violation, and (iii) violation of the confidentiality obligation provided in the Article 12/3 of the Settlement Regulation among aggravating factors of the administrative monetary fine, and regulates that the base fine rate may be increased up to one time in these cases.

Although the previous regulation provided that the penalty would be increased if the cartel continues after the notification of the investigation decision, the Regulation stipulates that the base penalty rate may be increased up to one time for all conducts if it continues after the service of the investigation notice.

The Regulation abolishes the lower and upper limit of the discount rate to be applied in the presence of mitigating factors and leaves the discount rate entirely to the discretion of the Turkish Competition Authority.

The Regulation removes the conditions of incentive of public institutions, voluntary indemnification payment and cessation of other violations, which were previously included among the mitigating factors, and replaces them with the conditions of limited participation in the violation, the presence of foreign sales revenues in the annual gross revenues taken as the basis for administrative fines, and the discount reasons for active cooperation.

Pursuant to the Regulation, the penalty rate may be reduced if the on-site examination is assisted by providing physical and/or technical facilities that enable the on-site examination to be completed in a shorter period of time or to be carried out more effectively, or if additional information or documents related to the subject of the on-site examination are spontaneously submitted by the examined party during the on-site examination.

The previous regulation providing that in the case of a cartel, the managers and employees of the undertakings and associations of undertakings that have a decisive influence on the cartel will be fined, and that fines may be imposed in case of other violations, has been amended by the Regulation to provide that administrative fines will be imposed on the managers or employees of the undertakings or associations of undertakings that have a decisive influence for all violations.

Thus, as the Regulation comes into effect as of its effective date, it appears to introduce significant changes in terms of competition law practice in Türkiye.

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