CPI Columns
Europe

February 2025

Turkish Competition Authority Updates Regulation on Fines

By Neyzar Ünübol & Ali Tunçsav

Turkish Competition Authority Updates Regulation on Fines

By Neyzar Ünübol[1] & Ali Tunçsav[2]

The Turkish Competition Authority (the "TCA") recently introduced a new regulation on monetary fines, i.e. the Regulation on Fines to Apply in Cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position (the "New Regulation on Fines"), which entered into force on December 27, 2024. The New Regulation on Fines replaced the TCA's previous regulation on monetary fines, which has been in force for over 15 years (the "Previous Regulation").

The New Regulation on Fines introduces many changes regarding the applicable monetary fines in cases of competition law infringements. The TCA announced that the main reason behind the new regulations is to reflect the Competition Board's approach on determining fines over the last 15 years, which has significantly changed with the emergence of new market characteristics, business models, consumer preferences, and types of competition law infringements.[3] The most significant changes relate to (i) the Competition Board's increased discretion in determining base fine ratios, (ii) the effect of the duration of the infringement on determining the base fine ratio, and (iii) significant revisions to aggravating and mitigating factors.

Determination of the Base Fine Ratios

Before the adoption of the New Regulation on Fines, the Previous Regulation introduced two main categories for the determination of fines: (i) "cartel infringements" and (ii) "other infringements." Accordingly, the base-level fine for cartel infringements was determined to be between 2-4 percent of the relevant undertaking's turnover, while this ratio was between 0.5-3 percent for "other infringements."

However, the New Regulation on Fines does not differentiate between "cartel infringements" and "other infringements" nor does it stipulate range-based fine rates. Therefore, the New Regulation on Fines grants the Competition Board a broader margin of discretion in determining the base fine ratio. That said, the principle set out by the Law No. 4054 on the Protection of Competition (the "Competition Law") that the overall monetary fine must not exceed 10 percent of the company's latest turnover remains unchanged.

Further, the Previous Regulation stated that when determining a base fine ratio, the TCA would mainly consider (i) the undertakings' market power and (ii) the severity of the actual/potential damage caused by the infringement. However, the New Regulation on Fines outlines that the TCA will also consider whether the infringement is a hard-core infringement, besides the severity of the damage incurred/likely to be incurred. In this regard, the New Regulation does not refer to the undertakings' market power as a primary factor when determining the base fine, instead signals that the nature of the infringement will be an essential factor when determining the base fine ratio. On a related note, since resale price maintenance is considered a hard-core infringement -like cartels - under Turkish competition law, this may result in higher monetary fines in cases involving resale price maintenance too.

Effect of the Duration of the Infringement

The Previous Regulation stipulated that the base fine ratio would be increased by (i) 50

---

[1] Competition Law Counsel, Kolcuoğlu Demirkan Koçaklı (nunubol@kolcuoglu.av.tr)
[2] Senior Associate, Kolcuoğlu Demirkan Koçaklı (atuncsav@kolcuoglu.av.tr)

[3] Please see: https://www.rekabet.gov.tr/tr/Guncel/rekabeti-sinirlayici-anlasma-uyumlu-eyle-446c79e85ac4ef1193da0050568585c9.

percent for infringements for one to five years and (ii) 100 percent for infringements that lasted more than five years. The New Regulation on Fines introduces different time intervals regarding base fine increase rates for infringements that have continued for different periods. The New Regulation on Fines introduces a more detailed increase schedule based on the duration of the infringement.

The following increases will be applied to the base fine ratio under the New Regulation on Fines:

- 20% for infringements that last one to two years,
- 40% for infringements that last two to three years,
- 60% for infringements that last three to four years,
- 80% for infringements that last four to five years,
- 100% for infringements that last longer than five years.

Aggravating and Mitigating Factors

The New Regulation on Fines also includes revisions to the aggravating and mitigating factors, which are considered to set the final fine ratio.

As aggravating factors, the Previous Regulation mainly considered (i) recidivism (i.e. repetition of the same type of violation under Competition Law) and (ii) continuation of the cartel following receipt of the investigation notice. The Previous Regulation stated that, in cases of recidivism, the base monetary fine would be increased by 50 percent to 100 percent. The New Regulation on Fines preserves the concept of recidivism as an aggravating factor, but it removes the lower limit set by the Previous Regulation (i.e. an increase of 50 percent) and solely introduces a maximum increase rate of 100 percent.

In addition, while the Previous Regulation referred to the "continuation of the cartel" as an aggravating factor, the New Regulation refers to this concept as the "continuation of infringement." Accordingly, even though the continuation of the relevant competition law breach still constitutes an aggravating factor under the New Regulation, the TCA paves the way for applying this aggravating factor in cases other than cartels.

The New Regulation on Fines further introduces (i) the existence of a decisive influence in the infringement and (ii) the infringement of the confidentiality obligation as aggravating factors. If these factors exist, the TCA is entitled to increase the base monetary fine ratio up to 100 percent. On a related note, the New Regulation states that if one or more aggravating factors are present, the overall increase rates based on the aggravating factors will be applied cumulatively by summing up all the applicable increase rates and applying them to the base fine ratio.

As for mitigating factors, the New Regulation excludes most of those set out under the Previous Regulation, such as encouragement by public bodies, voluntary compensation payment, and termination of other infringements. Instead, the New Regulation replaces these with the following mitigating factors: (i) facilitating on-site inspections beyond legal obligations, (ii) pressure from other businesses that contributed to the infringement, (iii) limited participation in the infringement, (iv) the subject of infringement constituting a minor proportion of the company's annual income and (v) the presence of foreign sales revenues within the company's annual income. In addition, unlike the Previous Regulation which provided specific range-based rates, the New Regulation does not provide any upper or lower limits of reduction rates in cases of mitigating factors, thereby leaving the reduction rates entirely to the Competition Board's discretion.

Conclusion

The most significant change brought by the New Regulation is the departure from range-based base fine ratios applicable to different types of infringements. Since the New Regulation removes the limits for determining base fine ratios and reductions of mitigating factors, the Competition Board is now equipped with extended discretionary powers. In this sense, the New Regulation on Fines allows the Competition Board to impose higher fines not only on cartel cases, but also for non-cartel infringements. Although this may create ambiguities and reduce legal certainty in terms of predicting monetary fines, the Competition Board's future decisions are expected to provide further guidance on the application of the New Regulation on Fines in practice.