

A New Area in Turkish Competition Law: Leniency Regulation for Cartelists

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General Overview of the Leniency Regulation in Turkey

With the 2008 amendments to the Law on The Protection of Competition, numbered 4054 , the “Law”, the Turkish Competition Board the “Board” enacted a leniency and immunity programme for infringing companies. The regulation on "Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance" ("Regulation on Fines") and the “Regulation on Active Cooperation for the Purpose of Detection of Cartels" ("the Leniency Regulation”) entered into force on 15 February 2009. The Leniency Regulation is published in order to set out the principles and procedures for obtaining immunity from or reduction of fines for the companies actively cooperating with the Board in its detection and investigation of cartels.

The Leniency Regulation which lays down a new concept in Turkish competition law gives the Board the right to offer full immunity or a reduction of the fines that would otherwise be imposed on a cartel member company in exchange for disclosure of information on the cartel and cooperation during the investigation to be conducted by the Board. The companies which (i) inform the Board about a secret cartel and (ii) provide the Board with all the relevant information, documents and evidence available to itself regarding the cartel and (iii) maintain continuous and complete cooperation throughout the investigation benefit from a reduction of fine. The companies that are volunteer for providing information and evidence relating with the cartel, independently from their competitors, will be granted immunity from fines provided that such cooperation is given before or at the time of the Board's decision to open a preliminary inquiry. Furthermore the companies which are volunteer for cooperating with the Board but not covered by the scope of the provisions for full immunity may benefit from a significant fine reduction.

Prior to the recently enacted amendment to Article 16 of the Law regarding the administrative monetary fines, Turkish competition law did not provide for an immunity regime or a leniency programme for the companies that are volunteer for being in cooperation with the

Board. Although the previous version of Article 16 gave effect to the mitigation of fines, total immunity from fines was not possible because the Law had provided a minimum fine amount for substantive violations.

With the sub-paragraphs 6 and 7 of the amended version of the Article 16 of the Law, it is given to the Board the right to grant total immunity to companies that are volunteer to be in an active cooperation with the Board in cartel cases. The new version of the Article 16 is as follows;

"Taking into account the conduct, efficiency and timing of the cooperation and by providing explicit reasons, the Board may exempt the undertakings or association of undertakings or their managers or employees that actively cooperate with the Competition Authority in discovering an unlawful application from the application of the fines set forth in Paragraphs 3 and 4 above or such fines could be mitigated accordingly.

The conditions for determining the amount of administrative monetary fines pursuant to this article, the conditions for immunity or mitigating factors and the rules and procedures for cooperation shall be governed by the regulations which shall be issued by the Competition Board."

Principles and Procedures to Seek Leniency

On the basis of the last sub-paragraph of the amended version of Article 16, the Board issued Leniency Regulation as a secondary legislation in order to set the principles and procedures for obtaining immunity from or reduction of fines for the companies actively cooperating with the Board in its detection and investigation of cartels.

Pursuant to the Article 3 of the Leniency Regulation, cartel is defined as competition-restrictive agreements and/or concerted practices between competitors for fixing prices, allocation of customers, providers territories or trade channels, restricting the amount of supply or imposing quotes and bid rigging. A cartelist which wants to benefit from the immunity regime of the Leniency Regulation has to apply to the Board before the investigation report is officially served. The applicant must submit (i) information on the products affected by the cartel, (ii) information on the duration of the cartel, (iii) names of the cartelists, (iv) dates, locations, and participants of the cartel meetings, and (v) other information/documents about the cartel activity.

In the course of the investigation, the applicant (i) shall not have concealed or destroyed any evidence or information on the cartel, (ii) must cease its participation in the cartel, unless otherwise instructed by the relevant task force to be found by the Law where the task force considers cease of membership would be prejudicial to revealing the cartel, (ii) shall remain confidential until the notification of the investigation report, unless otherwise instructed by the relevant task force of the Law and (iv) the cooperation shall have continued until final decision of the Board upon completion of the investigation.

The first applicant, which submits information and evidence independently from its competitors, and fulfils the above mentioned requirements before the Board decides to carry out a preliminary inquiry, shall be granted immunity from fines. Also the managers and employees of the company who meets the leniency requirements shall be granted immunity from fines.

Reduction of Fines

A company which does not qualify for immunity from fines as described above, may still benefit from a reduction of any fine that would otherwise have been imposed. Such an applicant which submit the information and evidence, and meets the conditions above mentioned, independently from its competitors, as of the decision by the Board to carry out preliminary inquiry until the notification of the investigation report, but which are not covered by the provision related to immunity from fining shall benefit from reduction of fines.

- a. For the first applicant which provides information shall benefit from a reduction of 1/3 to 1/2.
- b. For the second applicant which provides information shall benefit from a reduction of 1/4 to 1/3.
- c. For subsequent applicants which provide information shall benefit from a reduction of 1/6 to 1/4 is applicable.

In addition to the company applicants, a manager/employee of a cartel list may also apply to the Board alongside the company in order to benefit from fine reductions, until the investigation report is officially served. Such applications would be made separately from the application made by the company itself. Thereupon, there may be total immunity from, or reduction of a fine for such manager/employee, depending on the application order.