

# GEDİK & ERAKSOY

February 2014

## *New System on the Determination of Fines*

*The TCA has recently announced its Draft Regulation on the fines imposed in case of violation of the Act No 4054.*

The major change introduced by the Draft Regulation relates to the turnover on which the TCB bases its fine. Pursuant to the new rule, in determining the basic amount of the fine to be imposed, instead of looking at the total turnover of the undertaking concerned the TCB will take the value of the undertaking's sales of goods or services in the market to which the infringement relates.

The below comparison table summarises the main topics introduced by the Draft Regulation:

<b>Changed Topics</b>	<b>Current Regime</b>	<b>Draft Regulation</b>
<b>Turnover of undertakings</b>	Total turnover (net sales)	Turnover (net sales) in the relevant market
<b>Turnover of associations</b>	Only the association's turnover	Sum of the turnovers (in the relevant market) of its members, if the conduct in question relates to the activities of the members
<b>Base fine</b>	<ul style="list-style-type: none"><li>- Between 2 % and 4 % of the total turnover for cartels</li><li>- Between 0.5 % and 3 % of the total turnover for other violations</li><li>- Increased by half if lasted between 1 to 5 years</li><li>- Increased by one fold if lasted longer than 5 years</li></ul>	<ul style="list-style-type: none"><li>- Up to 30 % of the turnover in the relevant market</li><li>- Set at the higher end of the scale in case of horizontal price-fixing, bid rigging, market/customer sharing and output-limitation agreements</li><li>- Multiplied by the number of years of participation in the infringement (If less than six months = ½ year, If longer than six months but shorter than one year = 1 year)</li></ul>
<b>Aggravating circumstances</b>	<ul style="list-style-type: none"><li>- Increased up to ¼ if coercing others into the violation</li><li>- Increased between ½ to one fold if commitments made to satisfy the anti-competitive concerns are not met</li><li>- Increased between ½ to one fold in case of recidivism</li></ul>	<ul style="list-style-type: none"><li>- Increased up to ½ if coercing, leading or organizing the others</li><li>- Increased by ½ if commitments made to satisfy the anti-competitive concerns are not met</li><li>- Increased by one fold in case of recidivism within a period of 8 years</li></ul>

Changed Topics	Current Regime	Draft Regulation
<b>Mitigating circumstances</b>	Decreased between 1/4 and 3/5 in case of: - Assistance to the investigation beyond legal obligations - Encouragement by public authorities - Voluntary payment of damages to those harmed	Decreased up to 1/3 in case of: - Assistance to the investigation beyond legal obligations (other than leniency) - Encouragement or coercion by public authorities - Payment of damages - Termination of the violation upon the beginning of the investigation, except for hard core restrictions  In any case, total reduction cannot exceed ¾.
<b>Discretionary powers</b>	No specific provision	If necessary, the TCB can: - increase the fine to make it more deterrent - decrease the fine to ease the financial difficulties of the undertaking concerned
<b>Fines to managers and employees</b>	- Between 3 % and 5 % of the fine imposed on the undertaking, if they had a decisive influence on the cartel - Up to 5 % of the fine imposed if they had a decisive influence on other violations	- Up to 5 % of the fine imposed on the undertaking, in the event they play an active role in the creation of the infringement

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