

DRAFT REGULATION ON ACTIVE COOPERATION FOR DETECTING CARTELS

SECTION ONE

Preliminary Provisions

Purpose and Scope

ARTICLE 1- (1) The purpose of this Regulation is to regulate the procedures and principles in terms of non-imposition and reduction of fines mentioned in Article 16 of the Act no 4054 on the Protection of Competition with regard to undertakings and their managers and employees making an active cooperation with the Competition Authority for the purposes of detecting cartels that are prohibited under Article 4 of the same Act.

Basis

ARTICLE 2- (1) This Regulation is prepared on the basis of Articles 16 and 27 of the Act dated 7/12/1994 and numbered 4054.

Definitions

ARTICLE 3- (1) For the purposes of implementing this Regulation, the following definitions shall apply:

a) Applicant: Undertakings and associations of undertakings which apply for active cooperation as well as managers and employees thereof who apply for active cooperation independently from them within the scope of this Regulation

b) Assigned unit: Cartel and On-Site Inspection Support Unit in case of active cooperation applications made before the Board takes a decision to initiate a preliminary inquiry; the professional department which conducts the inquiry in case of active cooperation applications made after the preliminary inquiry is initiated

c) The Act: the Act no 4054 on the Protection of Competition

d) Cartel: Agreements restricting competition and/or concerted practices between competitors for fixing prices; allocation of customers, providers, territories or trade channels; restricting the amount of supply or imposing quotas, and bid rigging

e) Cartel facilitator: Undertakings and associations of undertakings which mediates for organizing and/or maintaining a cartel, facilitates the organization and/or maintenance of a cartel with their activities, without carrying out activities at the same level of production or distribution chain as the parties to the cartel

f) Party to the cartel: Undertakings that operate in the same level of the market and are party to the agreements and/or concerted practices listed in sub-paragraph (d)

g) Document with added value: Information and documents which will reinforce the Board's ability to prove the cartel, taking into account the evidence held by the Competition Board

h) The Board: The Competition Board

i) The Authority: The Competition Authority.

SECTION TWO

Immunity from Fines or Reduction of Fines to be imposed to Undertakings and Associations of Undertakings

Immunity from Fines

ARTICLE 4- (1) The first applicant which submits the information and evidence and meets the requirements laid down in Article 6 of this Regulation, independently from other parties to the cartel and cartel facilitators, before the Board decides to carry out a preliminary inquiry, shall be granted immunity from fines. The implementation of this paragraph depends on the fact that an application pursuant to Article 7(1) of this Regulation has not been made.

(2) The first applicant which submits the information and evidence, and meets the conditions laid down in Article 6 of this Regulation, independently from other parties to the cartel and cartel facilitators, following the decision by the Board to carry out a preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that there is not sufficient evidence to conclude that there is a violation of Article 4 of the Act. The implementation of this paragraph depends on the fact that an application pursuant to Article 4(1) and 7 of this Regulation has not been made.

(3) Managers and employees of the applicant covered by the scope of this Article shall also be granted immunity from fines.

Reduction of Fines

ARTICLE 5 – (1) The applicants, which submit the information and evidence and meet the conditions stated in Article 6 of this Regulation independently from other parties to the cartel and cartel facilitators, but which are not covered by the provision related to immunity from fines in Article 4, as of the decision of the Board to carry out a preliminary inquiry, within three months following the notification of the investigation notification, only until the notification of the investigation report, shall benefit from reduction of fines. In this case, the fines to be imposed to the applicants' managers and employees who make an active cooperation shall be reduced or may not be given at all. Within this framework,

a) The fine to be imposed to the first applicant shall be reduced by twenty five percent to fifty percent. In that case, the fines to be imposed to the applicant's managers and employees who make an active cooperation shall be reduced at least by twenty five percent or may not be imposed at all.

b) The fines to be imposed to the second applicant shall be reduced by twenty five percent to forty percent. In that case, the fines to be imposed to the applicant's managers and employees who make an active cooperation shall be reduced at least by twenty percent or may not be imposed at all.

c) The fines to be imposed to the other applicants shall be reduced by fifteen percent to thirty percent. In that case, the fines to be imposed to the applicant's managers and employees who make an active cooperation shall be reduced at least by fifteen percent or may not be imposed at all.

d) In case it becomes necessary, as a result of the evidence submitted, that the amount of the fine shall be increased due to the extension of the duration of the violation or similar reasons, the increase shall not affect the first applicant to submit the evidence concerned and its managers and employees who make an active cooperation.

Requirements and procedure

ARTICLE 6 - In order to be covered by Articles 4 and 5 of this Regulation, an applicant must:

a) submit information and documents in respect of the products affected, the geographical scope of the cartel, the duration of the cartel, the names and/or trade names and addresses of the undertakings party to the cartel and of cartel facilitators, if any, dates, locations and participants of cartel meetings, communication tools used and the alleged cartel,

b) not conceal or destroy information or evidence related to the alleged cartel,

c) end its involvement in the alleged cartel except when otherwise is requested by the assigned unit on the ground that detecting the cartel would be complicated,

d) keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit,

e) maintain active cooperation until the Board takes the final decision after the investigation is completed,

f) allow that its current managers and employees are asked for written and/or oral information, if necessary. If its former managers' and employees' written and/or oral information deemed necessary, the applicant shall pay utmost attention for the accomplishment of this.

(2) In order to benefit from article 5 of this Regulation, the information and documents submitted within the scope of subparagraph (a) of the paragraph one should have an added value.

(3) The assigned unit may give time to applicants for submitting information and evidence mentioned in subparagraph (a) of paragraph one and completing their application. To be eligible for this period, the applicant must provide information concerning the products affected by the cartel, the duration of the cartel and the names and/or trade names of the parties to the cartel and cartel facilitators if any.

(4) The application and request for time to prepare information and evidence, if any, shall be made by the applicant in writing. However, the information mentioned in subparagraph (a) of paragraph one may be submitted orally. In that case, the submitted information is written by the assigned unit and confirmed by the applicant and shall be kept as an internal correspondence. Those who are under investigation may analyze this information, which can be used as evidence, within the premises of the Authority, after the investigation report is notified.

(5) A letter showing the date and time of the application, as well as the request for time to prepare the relevant information and evidence, if any, shall be given to the undertaking concerned by the assigned unit.

(6) After the application pursuant to Article 4 of this Regulation is completed, the Board shall decide on granting immunity from fines to the applicant depending on the requirements in paragraph one and on the fact that the applicant has not coerced other parties to cartel and cartel facilitators into violation, and the applicant shall be notified thereof. After the application under Article 5 of this Regulation is completed, the Board shall decide on reduction of fines to be imposed on the applicant and its managers and employees who make an active cooperation depending on the requirements in paragraph one and two, and the applicant shall be notified thereof.

(7) If the applicant acquires additional information and documents after the applications within the scope of articles 4 and 5 of this Regulation are completed, those information and documents shall be submitted immediately to the Authority's registry before the second written plea period has ended.

(8) While the Board takes its final decision after the investigation is completed, the applicant covered by the scope of Article 4 and its managers and employees shall not be imposed fines. On the other hand, if the Board finds that the applicant cannot be granted immunity from fines because of violation of the requirements in paragraph one or coercing other parties to the cartel and cartel facilitators into violation, the Board may reduce the fines to be imposed to the applicant by one third to one-half. In that case, the fines to be imposed to the applicant's managers and employees who make an active cooperation shall be reduced at least by one-third or may not be imposed at all.

(9) While the Board takes its final decision after the investigation is completed, the Board shall reduce the fines to be imposed to the applicants covered by the scope of Article 5 of this Regulation and their managers and employees who make an active cooperation, taking into account the quality, efficiency and timing of the cooperation. The reduction may not be less than the minimum amount and more than the maximum amount in the range of reduction notified to the applicants after the application is completed.

(10) Information or evidence submitted by applicants and by their managers and employees pursuant to Article 4 and 5 and may be used as evidence even if it is found that requirements stated in Article 6(1) are violated. The fact that an applicant and its managers and employees are found to violate the requirements stated in Article 6 does not create any rights for parties to the cartel or cartel facilitators or their managers and employees.

(11) Information and documents submitted by parties whose active cooperation application is not accepted since the condition in article 6(2) of this Regulation is not met shall be taken out of the scope of the file and not be made a basis for the final decision to be taken at the end of the investigation.

SECTION THREE

Immunity from Fines or Reduction of Fines to be imposed to Managers and Employees

Immunity from Fines

ARTICLE 7- (1) The first manager or employee who submits the information and evidence and meets the requirements laid down in Article 9 of this Regulation, independently from the parties to the cartel and cartel facilitators, before the Board decides to carry out a preliminary inquiry shall be granted immunity from fines. The implementation of this paragraph depends on the fact that an application pursuant to Article 4(1) of this

Regulation has not been made.

(2) The first manager or employee who submits the information and evidence, and meets the conditions laid down in Article 9 of this Regulation, independently from its competitors and cartel facilitators and their managers and employees, following the decision by the Board to carry out a preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that there is not sufficient evidence to conclude that there is a violation of Article 4 of the Act. The implementation of this paragraph depends on the fact that an application pursuant to article 4 and 7(1) of this Regulation has not been made.

Reduction of Fines

ARTICLE 8 – (1) The managers and employees, who submit the information and evidence and meet the conditions stated in Article 9 of this Regulation independently from parties to the cartel and cartel facilitators, but who are not covered by the provision related to immunity from fines in Article 7, as of the decision of the Board to carry out a preliminary inquiry, within three months following the notification of the investigation notification, only until the notification of the investigation report, shall benefit from reduction of fines or may be granted immunity from fines. Within this framework,

a) The fine to be imposed on the first manager or employee shall be reduced at least by twenty five percent or may not be imposed at all.

b) The fine to be imposed on the second manager or employee shall be reduced at least by twenty percent or may not be imposed at all.

c) The fines to be imposed to other managers or employees may be reduced at least by fifteen percent or may not be imposed at all.

In case it becomes necessary, as a result of the evidence submitted, that the amount of the fine shall be increased due to the extension of the duration of the violation or similar reasons, the increase shall not affect the first manager or employee to submit the evidence concerned.

Requirements and procedure

ARTICLE 9 - In order to be covered by Articles 7 and 8 of this Regulation, a manager or an employee must:

a) submit information and documents in respect of the products affected, the geographical scope of the cartel, the duration of the cartel, the names and/or trade names and addresses of the undertakings party to the cartel and of cartel facilitators, if any, dates, locations and participants

of cartel meetings, communication tools used and the alleged cartel

b) not conceal or destroy information or evidence related to the alleged cartel,

c) end their involvement in the alleged cartel except when otherwise is requested by the assigned unit on the ground that detecting the cartel would be complicated,

d) keep the application confidential until the end of the investigation, unless otherwise is requested by the assigned unit,

e) maintain active cooperation until the Board takes the final decision after the investigation is completed.

(2) In order to benefit from article 8 of this Regulation, the information and documents submitted within the scope of subparagraph (a) of the paragraph one should represent an added value.

(3) The assigned unit may give time to managers and employees for submitting information and evidence mentioned in subparagraph (a) of paragraph one and completing their application. To be eligible for this period, the applicant must provide information concerning the products affected by the cartel, the duration of the cartel and the names and/or trade names of the parties to the cartel and cartel facilitators if any.

(4) The application and request for time to prepare information and evidence, if any, shall be made by the applicant in writing. However, the information mentioned in subparagraph (a) of paragraph one may be submitted orally. In that case, the submitted information is written by the assigned unit and confirmed by the applicant and shall be kept as an internal correspondence. Those who are under investigation may analyze this information, which can be used as evidence, within the premises of the Authority, after the investigation report is notified.

(5) A letter showing the date and time of the application, as well as the request for time to prepare the relevant information and evidence, if any, shall be given to the applicant by the assigned unit.

(6) After the application pursuant to Article 7 of this Regulation is completed, the Board shall decide on granting immunity from fines to the manager or employee concerned depending on the requirements in paragraph one and on the fact that the manager or employee has not coerced other parties to the cartel and cartel facilitators into violation, and the applicant shall be notified thereof. After the application under Article 8 of this Regulation is completed, the Board shall decide on reduction of fines to be imposed on the manager and employee concerned depending on the requirements in paragraph one and two, and the applicant shall be notified thereof.

(7) If the applicant acquires additional information and documents after the applications within the scope of articles 7 and 8 of this Regulation are completed, those information and documents shall be submitted immediately to the Authority's registry before the second written plea period has ended.

(8) While the Board takes its final decision after the investigation is completed, the Board shall not impose fines to the manager or employee covered by the scope of article 7 of this Regulation. On the other hand, if the Board finds that the manager or employee cannot be granted immunity from fines because of coercing other parties to the cartel and cartel facilitators into violation, the Board may reduce the fines to be imposed to the applicant by at least one third.

(9) While the Board takes its final decision after the investigation is completed, the Board shall reduce the fines to be imposed to a manager and employee covered by the scope of Article 8 of this Regulation, taking into account the quality, efficiency and timing of the cooperation. The reduction may not be less than the minimum amount and more than the maximum amount in the range of reduction notified to the applicant after the application is completed.

(10) Information or evidence submitted by those making an application pursuant to Article 7 and 8 and may be used as evidence even if it is found that requirements stated in Article 9, paragraph one are violated. The fact that a manager or an employee is found to violate the requirements stated in Article 9 does not create any rights for other parties to the cartel or cartel facilitators or their managers and employees.

(11) Information and documents submitted by managers or employees whose active cooperation application is not accepted since the condition in article 9(2) of this Regulation is not met shall be taken out of the scope of the file and not be made a basis for the final decision to be taken at the end of the investigation.

SECTION FOUR

Temporary and Final Provisions

Other Provisions

ARTICLE 10- Of the active cooperation applications made within the scope of this Regulation, in terms of those applications which the Board accepts and has taken a decision per article 6(6) and 9(6) about, in case it is decided that the violation is not a cartel at the end of the investigation, the provisions of this Regulation shall still apply.

Repealed Legislation

ARTICLE 11- (1) The Regulation on Active Cooperation for Detecting Cartels, which was published in the Official Gazette dated 12/11/2005 and numbered 25991, has been repealed, provided that the provisions of the Provisional Article 2 of this Regulation are reserved.

Ongoing Investigations

PROVISIONAL ARTICLE 1 – (1) The three-month period laid down in article 5(1) and 8(1) of this Regulation shall not be applied to the investigations initiated before this Regulation has entered into force.

Ongoing active cooperation applications

PROVISIONAL ARTICLE 2 – (1) In terms of active cooperation applications made before this Regulation enters into force, of the provisions related to conditions and procedures and the provisions related to reduction rates of the Regulation on Active Cooperation for Detecting Cartels, which was published in the Official Gazette dated 15/2/2009 and no 27142, the favorable provisions shall continue to apply.

Entry into Force

ARTICLE 12 - This Regulation, which has been drawn up after the opinions of the Ministry of Treasury and Finance and the Presidency of Strategy and Budget have been taken, shall enter into force on the date of its publication.

Execution

ARTICLE 13 - (1) The provisions of this Regulation shall be executed by the President of the Competition Authority.