



**International
Competition
Network**

ANTI-CARTEL ENFORCEMENT TEMPLATE

**CARTELS WORKING GROUP
Subgroup 2: Enforcement Techniques**

**Turkish Competition Authority
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ICN ANTI-CARTEL ENFORCEMENT TEMPLATE

IMPORTANT NOTES:

This template is intended to provide information for the ICN member competition agencies about each other's legislation concerning anti-competitive practices, particularly hardcore cartels. At the same time the template supplies information for businesses participating in cartel activities about the rules applicable to them; moreover, it enables businesses and individuals which suffer from cartel activity to get information about the possibilities of enforcement of their rights in private law in one or more jurisdictions.

Reading the template is not a substitute for consulting the referenced statutes and regulations. This template should be a starting point only.

[Please include, where applicable, any references to relevant statutory provisions, regulations or policies as well as references to publicly accessible sources, if any.]¹

1. Information on the law relating to cartels

A. Law(s) covering cartels: [availability (homepage address) and indication of the languages in which these materials are available]	<p>Combating monopolization and cartelization is a duty assigned to the State by Article 167 of The Constitution of Türkiye.</p> <p>https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf</p> <p>The main act covering the cartels is the Act on the Protection of Competition No. 4054 (the Competition Act)</p> <p>https://www.rekabet.gov.tr/tr/Sayfa/Mevzuat/4054-sayili-kanun (Turkish version)</p> <p>https://www.rekabet.gov.tr/en/Sayfa/Legislation/act-no-4054 (English version)</p> <p>To be able to provide accurate information, Article 235 of The Turkish Penal Code should be mentioned as well. Under this article corruption in public tenders is prohibited and imprisonment fines from three to seven years are levied on offenders.</p> <p>Sub-section (2) (d) of the Article which is regarded as an example of involvement in mischief during a public tender is specifically relevant. By the wording of the Act, "Conclusion of open or secret</p>
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¹ Editor's note: all the comments in [square brackets] are intended to assist the agency when answering this template, but will be removed once the completed template is made public.

	<p>agreements among the bidders or those willing to participate in the tender with the intention of affecting the bid contract conditions and especially the contract price.” is deemed as illegal. For the text of the Turkish Penal Code see : http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5237.pdf (Turkish Version) http://www.wipo.int/wipolex/en/text.jsp?file_id=247129 (English Version) It should be emphasized that even though the public tenders are being also investigated by prosecutors, cartels are mainly subject to an administrative regime which is carried out by the Turkish Competition Authority.</p>
<p>B. Implementing regulation(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Regulation on Active Cooperation for Detecting Cartels (Leniency Regulation) https://www.rekabet.gov.tr/Dosya/regulations/1-pdf (English Version)</p> <p>Regulation on Fines In Cases of Agreements, Concerted Practices and Decisions Limitin (Regulation on Fines) https://www.rekabet.gov.tr/Dosya/regulations/2-pdf (English Version)</p>
<p>C. Interpretative guideline(s) (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Guidelines on Leniency Regulation https://www.rekabet.gov.tr/Dosya/guidelines/14-pdf (English Version)</p>
<p>D. Other relevant materials (if any): [availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>The decisions of the Competition Board create precedents that might be applied similar cases. It say that those decisions are In line with the approach adopted by EU courts. For the case law see https://www.rekabet.gov.tr/tr/Kararlar (Turkish Version)</p> <p>In addition decisions of The Council of State shapes the practice.</p>

2. Scope and nature of prohibition on cartels

<p>A. Does your law or case law define the term “cartel”? [Please quote.]</p> <p>If not, please indicate the term you use instead. [Please quote.]</p>	<p>There is no definition of cartel in the Competition Act. However, both the Leniency Regulation and the Regulation on Fines adopted by the Competition Board define cartels as "<i>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 quotas, and bid rigging</i>".</p>
<p>B. Does your legislation or case law distinguish between very serious cartel behaviour (“hardcore cartels” – e.g.: price fixing, market sharing, bid rigging or production or sales quotas²) and other types of “cartels”? [Please describe how this differentiation is made and identify the most egregious types of conduct.]</p>	<p>No. See point 2.A for the definition of cartels. Apart from cartels, Article 4 of the Competition Act also prohibits other types of anti-competitive agreements and concerted practices such as those that involve complicating the activities of competing undertakings, excluding firms operating in the market by boycotts or other behavior, preventing potential new entrants to the market, tying, and except exclusive dealing, applying different terms to persons with equal status for equal rights, obligations and acts. These types of infringements are defined as “other violations” in Regulation on Fines.</p>
<p>C. Scope of the prohibition of hardcore cartels: [including any exceptions, exclusions and defences e.g. for particular industries or sectors. Please also describe any other limitations to the ban on hardcore cartels.]</p>	<p>Article 4 of the Competition Act prohibits anti-competitive agreements, concerted practices and decisions. It does not introduce any exception or exclusions for hardcore cartels. Although Article 5 of the Competition Act provides for an exemption system, it is unlikely that hardcore cartels satisfy conditions for exemption from the prohibition of the Article 4 of the Competition Act.</p> <p>According to Article 5 of the Competition Act, exemption from the general prohibition in Article 4 can be granted by the Competition Board if all the conditions listed below are satisfied:</p> <ul style="list-style-type: none"> a) Ensuring new developments and improvements, or economic or technical development in the production or distribution of goods and in the provision of services, b) Benefitting the consumer from the above-mentioned, c) Not eliminating competition in a significant part of the relevant market, d) Not limiting competition more than what is compulsory for achieving the goals set out in sub-paragraphs (a) and (b).
<p>D. Is participation in a hardcore cartel illegal <i>per se</i>³? [If the situation differs for civil, administrative and criminal</p>	<p>Yes</p>

² In some jurisdictions these types of cartels – and possibly some others – are regarded as particularly serious violations. These types of cartels are generally referred to as “hardcore cartels”. Hereinafter this terminology is used.

³ For the purposes of this template the notion of ‘per se’ covers both ‘per se’ and ‘by object’, as these terms are synonyms used in different jurisdictions.

liability, please clarify this.]	
E. Is participation in a hardcore cartel a civil or administrative or criminal offence, or a combination of these?	Under the Competition Act, participation in a hardcore cartel is an administrative offence in general. On the other hand, as it is stated at point 1.A. above, bid rigging in public tenders is a criminal offence as well. Besides detection and punishment of cartels via administrative and criminal procedures, Articles 57 and 58 of the Competition Act stipulate the right to compensation of claimants aggrieved from prevention, distortion or restriction of competition, which leads to civil litigation.

3. Investigating institution(s)

A. Name of the agency, which investigates cartels: [if there is more than one agency, please describe the allocation of responsibilities]	Turkish Competition Authority (Rekabet Kurumu) Since bid riggings in public tenders are regulated by both the Competition Act and the Penal Code, public prosecutors investigate the offence as well as Turkish Competition Authority. On the other hand, administrative and criminal procedures conducted by the authorities concerned are executed independently; in other words, initiation of a criminal case does not cease administrative procedure, or vice versa. Hence, there is no allocation of responsibilities between Turkish Competition Authority and public prosecutors.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 / ANKARA E-mail: international@rekabet.gov.tr ; zgocer@rekabet.gov.tr Tel.: (+90) 312 291 44 02 Fax.: (+90) 312 266 53 28 Website: www.rekabet.gov.tr (Turkish and English)
C. Information point for potential complainants:	Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 Ankara - Türkiye E-Mail: webmaster@rekabet.gov.tr Tel.: (+90) 312 291 44 44 An application guide for potential complainants is available at website link below: http://www.rekabet.gov.tr/en-US/Application-Guide-List Also: Mr. Faik Metin Tiryaki Vice President – Head of Cartel and Investigation on Spot Support Unit Tel : +90 312 291 40 43 E-Mail: fmtiryaki@rekabet.gov.tr
D. Contact point where complaints can be lodged:	Turkish Competition Authority (Rekabet Kurumu) Address: Üniversiteler Mahallesi 1597. Cadde No:9 Bilkent Çankaya 06800 Ankara - Türkiye

	E-Mail: webmaster@rekabet.gov.tr
E. Are there other authorities which may assist the investigating agency? If yes, please name the authorities and the type of assistance they provide.	Case handlers, if considered necessary, may request assistance from the police or the gendarme.

4. Decision-making institution(s)⁴ [to be filled in only if this is different from the investigating agency]

A. Name of the agency making decisions in cartel cases: [if there is more than one agency, please describe the allocation of responsibilities.]	Competition Board within the Turkish Competition Authority. Criminal courts can also make decisions in criminal investigations for bid rigging in public tenders.
B. Contact details of the agency: [address, telephone and fax including the country code, email, website address and languages available on the website]	See point 3.B above.
C. Contact point for questions and consultations:	See point 3.C above
D. Describe the role of the investigating agency in the process leading to the sanctioning of the cartel conduct.	<p>The case handlers responsible for the investigation of the case. They use the investigatory powers indicated in point 7 below. In order to impose a substantive fine, the Competition Board either decides to initiate an investigation, or to conduct a preliminary inquiry for determining whether or not it is necessary to initiate an investigation.</p> <p>The investigation is concluded within 6 months at the latest. In cases where it is deemed necessary, the Competition Board may grant an additional period of 6 months only once.</p> <p>An investigation report, which is prepared by case handlers at the end of the investigation stage, is notified to all members of the Competition Board and the parties concerned.</p> <p>Those determined to have infringed the Competition Act are notified to submit their written pleas to the Competition Board. The case handlers charged with conducting the investigation declare an additional written opinion against the pleas to be submitted by the parties, and this is also notified to all members of the Competition Board and the parties concerned. The parties may reply to such opinion.</p> <p>Hearing is held upon the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defence. The Competition Board may decide on its own initiative to hold</p>

⁴ Meaning: institution taking a decision on the merits of the case (e.g. prohibition decision, imposition of fine, etc.)

	<p>a hearing.</p> <p>The decision is made on the same day after the hearing, or if not possible, within 15 days, together with its grounds.</p> <p>In cases where a hearing is not requested by the parties, and the Competition Board does not decide to hold a hearing on its own initiative, the final decision is made within 30 days following the end of the investigation stage, pursuant to the examination to be performed on the file.</p> <p>In case the parties concerned fail to attend the hearing despite the decision to hold a hearing, the decision is made within one week following the date of the meeting determined, pursuant to the examination to be performed on the file.</p>
<p>E. What is the role of the investigating agency if cartel cases belong under criminal proceedings?</p>	<p>As stated above public bid riggings have also criminal character. However, that does not preclude Turkish Competition Authority to investigate undertakings as legal entities since the criminal investigation usually addresses the real persons and these two procedures have different legal standards. Therefore it is possible that two investigations, namely one criminal and one administrative to be carried out simultaneously. Moreover, even the criminal investigation is not pursued more or the suspects are not sentenced the Authority may proceed the process.</p> <p>With a view to provide a more precise information it should be emphasized that criminal court has also jurisdiction to impose monetary fines on undertakings involved in bid rigging. In this case ne bis in idem issue may be relevant. However, so far such a situation has not been experienced.</p>

5. Handling complaints and initiation of proceedings

<p>A. Basis for initiating investigations in cartel cases: [complaint, ex officio, leniency application, notification, etc.]</p>	<p>Preliminary inquiry or investigation may be commenced on the basis of applications (complaints, informing, leniency applications, or notifications) filed with the Competition Board or ex officio.</p>
<p>B. Are complaints required to be made in a specific form (e.g. by phone, in writing, on a form, etc.)? [If there is a requirement to complete a specific form, please, indicate its location (website address).]</p>	<p>According to the Communiqué on Application Procedure Related to Violations of Competition Law, all complaints shall be lodged in writing and sent to the TCA's address via mail or delivered directly. There is no specific form to complete but all complaints shall meet some requirements of form.</p> <p>Complaints made by individuals are required to include name, identification number, address and signature of the complainant. Complaints of legal persons shall include business/company name, address, authorized signatory list of the legal person and signature of an authorized person from this list who is entitled to represent and bind the legal entity. Complaints made by a representative are required to include proof of representation or an approved copy of it, addresses of representative and represented legal or natural person, and signature of the representative.</p> <p>As a principle, no action shall be taken by the Authority in accordance with complaints which only consist of subjective asseverations about an infringement, do not rely on concrete information and/or documents, and which considered to be failed for showing serious and enough</p>

	<p>indications of an infringement, even the requirements of form listed above is met.</p> <p>Complaints lodged via email, fax, telephone or oral complaints will be considered as informing. Sua sponte actions may be taken about these complaints, in case regarded as serious.</p>
<p>C. Legal requirements for lodging a complaint against a cartel: [e.g. is legitimate interest required, or is standing to make a complaint limited to certain categories of complainant?]</p>	<p>According to Article 9(2) of the Competition Act, natural and legal persons who have a legitimate interest are entitled to file a complaint.</p> <p>See also points 3.D. and 5.B.</p>
<p>D. Is the investigating agency obliged to take action on each complaint that it receives or does it have discretion in this respect? [Please elaborate.]</p>	<p>According to Article 40 of the Competition Act; should an informing or complaint falls under the scope of the Act and meet requirements stated on point 5.B., Turkish Competition Authority shall take action on the application concerned.</p>
<p>E. If the agency intends not to pursue a complaint, is it required to adopt a decision addressed to the complainant explaining its reasons?</p>	<p>No</p>
<p>F. Is there a time limit counted from the date of receipt of a complaint by the competition agency for taking the decision on whether to investigate or reject it?</p>	<p>There is not a specific time limit set forth by the Competition Act for Turkish Competition Authority to make a decision upon receipt of a complaint. However, as a general rule regulated under the Code of Administrative Procedure, the Authority shall take action within 60 days, otherwise it is deemed to have rejected the application.</p>

6. Leniency policy⁵

<p>A. What is the official name of your leniency policy (if any)? [Please indicate its public</p>	<p>Leniency Regulation. See point 1.B.</p> <p>For a complete and accurate understanding of the leniency policy of the Turkish Competition Authority, all the answers granted under point 6 on leniency policy must be taken into</p>
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⁵ For the purposes of this template the notion of ‘leniency’ covers both full leniency and a reduction in the sanction or fines. Moreover, for the purposes of this template terms like ‘leniency’ ‘amnesty’ and ‘immunity’ are considered as synonyms.

availability.]	account together with the Leniency Regulation in its entirety.
B. Does your jurisdiction offer full leniency as well as partial leniency (i.e. reduction in the sanction / fine), depending on the case?	Yes. Both full and partial leniency is possible
C. Who is eligible for full leniency [only for the first one to come forward or for more participants in the cartel]?	<p>First of all, Leniency Regulation provides for both corporate and individual full leniency.</p> <p>With respect to corporate full leniency, only the first undertaking which submits the information and evidence, independently from its competitors, before the Competition Board decides to carry out a preliminary inquiry, shall be granted immunity from fines. It is necessary that there exists no prior individual full leniency application. (See especially Article 4(1) of the Leniency Regulation).</p> <p>In case the Competition Board has already initiated a preliminary inquiry or an investigation, the first undertaking which submits the information and evidence, independently from its competitors, as of the decision by the Competition Board to carry out preliminary inquiry until the notification of the investigation report, shall be granted immunity from fines on condition that the Turkish Competition Authority does not have, at the time of the submission, sufficient evidence to find the violation of Article 4 of the Competition Act. It is necessary that there exists neither prior individual full leniency application nor corporate full leniency application before the Competition Board decides to carry out a preliminary inquiry (See especially Article 4(2) of the Leniency Regulation).</p> <p>In case, the undertaking is eligible for full leniency, then managers or employees are also eligible for it (see especially Article 4(3) of the Leniency Regulation).</p> <p>Similar principles also apply for individual full leniency applications by the managers and employees of the relevant undertakings (See especially Article 7 of the Leniency Regulation).</p>
<p>D. Is eligibility for leniency dependent on the enforcing agency having either no knowledge of the cartel or insufficient knowledge of the cartel to initiate an investigation?</p> <p>In this context, is the date (the moment) at which participants in the cartel come forward with information (before or after the opening of an investigation) of any relevance for the outcome of leniency applications?</p>	<p>For corporate and individual full leniency, the Turkish Competition Authority should have insufficient knowledge of the cartel.</p> <p>The date at which participants come forward with information is relevant.</p> <p>See point 6.C.</p>
E. Who can be a beneficiary of the leniency program (individual / businesses)?	As Leniency Regulation provides for both corporate and individual leniency, undertakings and/or their managers and employees can be the beneficiaries.

<p>F. What are the conditions of availability of full leniency: [e.g. provide decisive evidence, maintain cooperation throughout, not to be the ringleader, cease the infringement, restitution, etc.]</p>	<p>According to the Leniency Regulation, applicants for full leniency should</p> <ul style="list-style-type: none"> a) submit information and evidence in respect of the alleged cartel including the products affected, the duration of the cartel, the names of the undertakings party to the cartel, specific dates, locations and participants of cartel meetings, b) should not conceal or destroy information or evidence related to the alleged cartel, c) end its involvement in the alleged cartel except for when otherwise is requested by the assigned unit of the Turkish Competition Authority 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 within the Turkish Competition Authority, e) maintain active cooperation until the Competition Board takes the final decision after the investigation is completed. <p>Moreover, it is necessary that the undertakings and relevant individuals should not have coerced other undertakings into joining the cartel.</p> <p>See especially Article 6 and 9 of the Leniency Regulation for the relevant conditions of full leniency.</p>
<p>G. What are the conditions of availability of partial leniency (such as reduction of sanction / fine / imprisonment): [e.g.: valuable, potential, decisive evidence by witnesses or on basis of written documents, etc.? Must the information be sufficient to lead to an initiation of investigations?]</p>	<p>Regarding corporate partial leniency, the undertakings which submit the information and evidence cited in point 6.F above, independently from its competitors, as of the decision by the Competition Board to carry out preliminary inquiry until the notification of the investigation report, but which cannot benefit from full leniency, shall benefit from reduction of fines. In this case, managers and employees of undertakings admitting the cartel and making an active cooperation shall also benefit from reduction of a fine. In this case, managers and employees who admit the violation and cooperate actively benefit from reduction of fine. See especially Article 5 of the Leniency Regulation.</p> <p>Regarding individual partial leniency, similar rules are applied. See especially Article 8 of the Leniency Regulation.</p> <p>On whether the information should be sufficient to lead to an initiation</p>
<p>H. Obligations for the beneficiary after the leniency application has been accepted: [e.g. ongoing, full cooperation with the investigating agency during the proceedings, etc.]</p>	<p>See point 6.F.</p>
<p>I. Are there formal requirements to make a leniency application? [e.g. must applications take a particular form or include particular information/data, must they be in writing or can they be made orally, etc.]</p>	<p>There is no official form. Information cited in the Leniency Regulation should be submitted. Oral application may also be made.</p> <p>See points 6.F. and 6.J.</p>
<p>J. Are there distinct procedural steps within the leniency program? [e.g.: provisional guarantee of leniency ("PGL") and further steps leading to a</p>	<p>A unit was assigned by the Competition Board for the implementation of the Leniency Regulation and this was announced on the web site of the Turkish Competition Authority (Leniency Unit).</p> <p>The assigned unit may give time to undertakings and the</p>

<p>final leniency agreement / decision)?]</p>	<p>relevant managers and employees for submitting information and evidence in respect of the alleged cartel including the products affected, the duration of the cartel, the names of the undertakings party to the cartel, specific dates, locations and participants of cartel meetings and completing their application. To be eligible for this period, the undertaking and the managers and employees concerned must provide information concerning affected products, the duration of the cartel and the names of the parties to the cartel.</p> <p>The application and request for time to prepare information and evidence shall be made by the representative of the undertaking (in individual leniency applications, by the individual himself or his representative) in writing. However, the information mentioned above may be submitted orally. In that case, the submitted information shall be kept as an internal correspondence after it is written by the assigned case handlers and confirmed by the representative of the undertaking (in individual leniency applications, by the individual himself or his representative).</p> <p>A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence shall be given to the undertaking or the applicant by the assigned unit.</p> <p>After the application for full leniency is completed, the Competition Board shall decide on granting immunity from fines and the applicant shall be notified thereof.</p> <p>Similarly, after the application for partial leniency is completed, the Competition Board shall decide on reduction of fines to be imposed on the undertaking concerned and its managers and employees who admit the cartel and make an active cooperation and the applicant shall be notified thereof (in individual leniency applications, the Competition Board shall decide on reduction of fines to be imposed on managers or employees.).</p> <p>Therefore, it should be said that the Competition Board shall decide whether the applicants benefit from full or partial leniency before the investigation is completed.</p> <p>Finally, in corporate full leniency applications, while the Competition Board takes its final decision after the investigation is completed, the undertaking and its managers and employees who satisfy the relevant conditions for full leniency shall be granted immunity from fines. However, if the Competition Board finds that the undertaking cannot be granted full leniency due to failure of satisfying the conditions</p>
<p>K. At which time during the application process is the applicant given certainty with respect to its eligibility for leniency, and how is this done?</p>	<p>See point 6.J.</p>
<p>L. What is the legal basis for the power to agree to grant leniency? Is leniency granted on the basis of an agreement or is it laid down in a (formal) decision? Who within the agency decides about leniency applications?</p>	<p>Article 16 of the Competition Act, and the Leniency Regulation constitute the legal bases to grant leniency. It is the Competition Board who decides about the leniency applications and leniency is granted by a decision of the Competition Board.</p>

<p>M. Do you have a marker⁶ system? If yes, please describe it.</p>	<p>Yes. A letter showing the date and time of the application and the request for time to prepare the relevant information and evidence shall be given to the applicant concerned by the assigned unit.</p>
<p>N. Does the system provide for any extra credit⁷ for disclosing additional violations? [e.g. a hardcore cartel in another market]</p>	<p>Yes. According to the Article 7(2) of the Regulation on Fines, in an ongoing investigation, the fine to be given to an undertaking which cannot benefit from the full leniency under the Leniency Regulation, shall be reduced by one fourth if it presents the information and documents specified in point 6.F. above before the Competition Board decides to conduct a preliminary inquiry into another cartel.</p>
<p>O. Is the agency required to keep the identity of the beneficiary confidential? If yes, please elaborate.</p>	<p>The application is kept confidential until the end of the investigation, unless otherwise is requested by the assigned unit.</p>
<p>P. Is there a possibility of appealing an agency's decision rejecting a leniency application?</p>	<p>Yes</p>
<p>Q. Contact point where a leniency application can be lodged [telephone and fax including the country code, plus out of hours contacts (if any)]:</p>	<p>As provided in point 6.J., a unit was assigned by the Competition Board for the implementation of the Leniency Regulation and this was announced on the web site of the Turkish Competition Authority. The unit is headed by the Vice President of the Turkish Competition Authority. The unit operates within business hours. Communication details are as follows: Tel: + 90 312 291 44 06 / + 90 312 291 44 68 Fax: + 90 312 266 68 41 E-mail: pismanlik@rekabet.gov.tr For more detailed contact see point 3.C.</p>
<p>R. Does the policy address the possibility of leniency being revoked? If yes, describe the circumstances where revocation would occur. Can an appeal be made against a decision to revoke leniency?</p>	<p>Yes. Regarding corporate leniency, according to Article 6(6) of the Leniency Regulation while the Competition Board takes its final decision after the investigation is completed, it may find that the undertaking cannot be granted full leniency because it has violated the conditions mentioned in point 6.F. In that case, the fines to be imposed to the undertaking's managers and employees who admit the cartel and make an active cooperation may be reduced or may not be imposed at all. Moreover, regarding individual leniency, according to Article 9(6) of the Leniency Regulation, while the Competition Board takes its final decision after the investigation is completed, it may find that a manager or an employee cannot be granted full leniency because of acting as a coercer. In that case, fines to be imposed on the manager or employee concerned may be reduced. As the revocation of leniency will be addressed in the final</p>

⁶ A marker protects an applicant's place in the queue for a given period of time and allows it to gather the necessary information and evidence in order to meet the relevant evidential threshold for immunity.

⁷ Also known as: "leniency plus", "amnesty plus" or "immunity plus". This category covers situations where a leniency applicant, in order to get as lenient treatment as possible in a particular case, offers to reveal information about participation in another cartel distinct from the one which is the subject of its first leniency application.

	decision of the Competition Board, an appeal can be made against it
S. Does your policy allow for “affirmative leniency”, that is the possibility of the agency approaching potential leniency applicants?	There is no provision on affirmative leniency in Leniency Regulation. However, it can be done in practice
T. Does your authority have rules to protect leniency material from disclosure? If yes, please elaborate which parts are protected and what does protection actually mean.	Yes. Communiqué On The Regulation of The Right Of Access To The File And Protection of Trade Secrets deems the documents obtained under Article 6(3) and 9(3) of The Regulation on Active Cooperation for Detecting Cartels as intra-authority correspondence and bans the disclosure of them.

7. Settlement

A. Does your competition regime allow settlement? If yes, please indicate its public availability (link to the relevant rules, guidelines, etc.).	One of the changes to competition law in 2020 was the the introduction of settlement mechanism. Following this change, the TCA adopted the Regulation On The Settlement Procedure Applicable In Investigations On Agreements, Concerted Practices And Decisions Restricting Competition And Abuses Of Dominant Position See below: https://www.rekabet.gov.tr/Dosya/regulations/regulation-on-the-settlement-procedure-20210908173216927-pdf
B. Which types of restrictive agreements are eligible for settlement [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?	The settlement mechanism would be applicable for any type of violation falling under Articles 4 of Law No. 4054 and would not exclude clear and hardcore violations.
C. What is the reward of the settlement for the parties?	The Regulation envisages a 10% to 25% reduction in fines.
D. May a reduction for settling be cumulated with a leniency reward?	A settlement procedure does not prejudice a party’s benefits under a leniency application. Pursuant to Article 7/3 of the Regulation, a party could still benefit from reductions awarded under these two different procedures, i.e., the reduction of the fine granted to the parties for settlement will be added to their leniency reward.
E. List the criteria (if there is any) determining the cases which are suitable for settlement.	Non Applicable.
F. Describe briefly the system [who can initiate settlement – your authority or the parties, whether your authority is obliged to settle if the parties	The settlement procedure can commence after the initiation of an investigation based upon the investigated parties’ written request or ex officio by the Board. In case the investigated parties request a settlement, the Board may accept or reject the request, or may decide to invite the other investigated

<p>initiate, in which stage of the investigation settlement may be initiated, etc.].</p>	<p>parties (if any) for settlement discussions. If the Board commences the settlement process ex officio, the investigated parties should submit their intention to commence the settlement discussions within 15 days following the receipt of the Board's invitation. Any submissions after this period would not be taken into consideration.</p> <p>The Regulation indicates that once the investigated parties' request for settlement is accepted or they duly accept the Board's invitation, the settlement discussions will start as soon as possible. Article 6/2 of the Regulation underlines that a party would not be deemed to accept the allegations because it participates in settlement discussions and the parties might rescind their acceptance before the submission of the settlement letter. As per Article 6/5 of the Regulation, during these discussions, the Authority will enable the parties to obtain information on: (i) the content of the allegations against the relevant party; (ii) the nature and scope of the alleged violation; (iii) the primary evidence used to determine the alleged violation; (iv) potential reduction rates; and (v) the range of potential administrative fines. The settling party will also be allowed to provide its opinions on the foregoing matters during the discussions. Settlement discussions shall be recorded with the minutes of the discussion to be agreed by the parties that attended the discussion. These records will be kept as the Authority's internal correspondence, i.e., the records cannot be accessed under the right of access to file as per Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets.</p>
<p>F. Describe the procedural efficiencies of your settlement system [e.g. shorter decision, etc.].</p>	<p>The Board benefits from the procedure through concluding the investigation process rapidly and eliminating any differences in opinion of the investigated parties and the Board itself on the existence and scope of the violation.</p>
<p>G. Does a settlement necessitate that the parties acknowledge their liability for the violation?</p>	<p>Yes.</p>
<p>H. Is there a possibility for settled parties to appeal a settlement decision at court?</p>	<p>As also stipulated under Article 43 of Law No. 4054, the Regulation deprives settling parties from appealing the administrative monetary fine and content of the settlement letter.</p>

8. Commitment

<p>A. Does your competition regime allow the possibility of commitment?</p> <p>If yes, please indicate its public availability [link to the relevant rules, guidelines,</p>	<p>According to the amended Art. 43 of Law No 4054, during a preliminary inquiry or an investigation, in case undertakings or associations of undertakings concerned make commitments for eliminating competition concerns occurred within the scope of Article 4 or 6 and those commitments are accepted by the Board, an investigation may not be initiated about those undertakings or associations of undertakings, or the ongoing investigation may be terminated. Hard-core restrictions (e.g.</p>
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<p>etc.].</p>	<p>price-fixing, market sharing) are excluded from the commitment mechanism</p> <p>For Communiqué On The Commitments To Be Offered In Preliminary Inquiries And Investigations Concerning Agreements, Concerted Practices And Decisions Restricting Competition, And Abuse Of Dominant Position (Communiqué No: 2021/2) see:</p> <p>https://www.rekabet.gov.tr/Dosya/communiques/communiqu-2021-2-20210402120741924-pdf (English Version)</p>
<p>B. Which types of restrictive agreements are eligible for commitment [e.g. hardcore cartels, other types of cartels, vertical agreements only ...]?</p> <p>Are there violations which are excluded from the commitment possibility?</p>	<p>Commitments shall not be accepted for naked and hard-core infringements, such as price-fixing between competitors, region and customer allocation, or supply restriction.</p>
<p>C. List the criteria (if there are any) determining the cases which are suitable for commitment.</p>	<p>Non Applicable.</p>
<p>D. Describe, which types of commitments are available under your competition law.[e.g.: behavioural / structural]</p>	<p>Depending on the nature of competition problems, behavioral or structural commitments can be offered individually or jointly. The commitment must be proportional to the competition problems, able to solve those, quickly realizable and efficiently applicable. General statements by the parties that they will comply with the Act shall not constitute a commitment. Commitments concerning third party conduct cannot be offered.</p>
<p>E. Describe briefly the system [who can initiate commitment – your authority or the parties, in which stage of the investigation commitment may be initiated, etc.]</p>	<p>Parties who want to end an investigation conducted about them by means of a commitment may request to offer commitments during preliminary inquiry or investigation process. Requests to offer commitments during the investigation process shall be submitted to the Authority within three months after the notification of the investigation has been sent under the scope of paragraph two, article 43 of the Act. Requests to offer commitments submitted to the Authority after the said period has expired shall not be taken into account.</p> <p>The parties shall commence the commitment procedure by submitting their request to offer commitments to the Authority in written form.</p> <p>After the parties submit their request to offer commitments to the Authority, the Board shall decide to initiate commitment discussions or reject the request to offer commitments and discontinue the commitment procedure, considering whether the agreement, decision or practice in question constitutes a naked and hard-core infringement and other issues it deems necessary.</p> <p>In case competition problems that are the subject matter of the examination are not sufficiently clear at the time when the parties submit their request to offer commitments and further analysis is required, the Board may postpone the decision which it takes according to paragraph one. The said decision</p>

	<p>may be taken during the investigation process in case such situation arises during the preliminary inquiry.</p> <p>During the commitment discussions, except for trade secrets and confidential information belonging to other undertakings, associations of undertakings and persons, the competition problems examined shall be disclosed to the parties that offer the commitments and information and documents that form the basis of the examination shall be submitted to the parties. In case a notification of investigation is sent to the parties within the scope of Article 43, paragraph two of the Act, information and documents that form the basis of determining the problems may not be submitted to the parties again.</p> <p>The discussions may be made in oral or written form. Oral discussions shall be recorded in minutes agreed by the parties present in the discussions.</p> <p>The commitment text shall clearly cover the commitment submitted. The commitment text cannot include alternative commitments. The commitment text shall indicate the following issues: competition problems to be solved by the commitment, when the commitment starts to be implemented, for how long and in which way the commitment will be implemented, time periods to be complied with for implementation, under what conditions such periods can be expanded, the effect of the commitment to the market, how the commitment will solve the competition problem, how compliance with the commitment can be monitored and other issues deemed necessary. In case a structural commitment is offered, the commitment text shall include the details about the divestiture process.</p> <p>In cases where the implementation of the commitment requires an agreement with third parties, documents showing that an agreement can be made with third parties shall be submitted to the Authority together with the commitment text.</p> <p>The Board shall assess whether the commitment eliminates the competition problems as well as other issues deemed necessary, taking into account the facts stated in article 8 and 9. of the Communique 2021/2.</p> <p>In case the Board finds the commitment appropriate as a result of the assessment it made according to paragraph one, it shall render the commitment binding for the party concerned and shall decide not to initiate an investigation or discontinue the ongoing investigation, or to request opinion from third parties.</p> <p>In case the Board does not find the commitment appropriate as a result of the assessment it made according to paragraph one, it shall decide that parties can make amendments to the commitment at this stage and only for one time within the framework of its assessments and a time period it sets or it shall decide to discontinue the commitment procedure</p>
<p>I. Does a commitment decision necessitate that the parties acknowledge their liability for the violation?</p>	<p>No.</p>
<p>J. Describe how your authority monitors the parties' compliance to the</p>	<p>The compliance by the parties with the commitment can be monitored through regular reports prepared by the parties, assignment of third parties for supervisory purposes, or cooperation with professional associations or relevant public</p>

<p>commitments.</p>	<p>authorities and institutions. In case it is required that third parties be assigned for supervisory purposes, the Board must approve that the third party offered by the parties is appropriate.</p> <p>Concerning the monitoring of the commitment, the right of the Board to make an examination ex officio is reserved.</p> <p>When the parties entirely fulfill the commitments, they shall document this to the Authority. Thereupon, the Board shall take a decision establishing that the commitments have been fulfilled.</p>
<p>K. Is there a possibility for parties to appeal a commitment decision at court?</p>	<p>Yes.</p>

9. Investigative powers of the enforcing institution(s)⁸

<p>A. Briefly describe the investigative measures available to the enforcing agency such as requests for information, searches/raids⁹, electronic or computer searches, expert opinion, etc. and indicate whether such measures requires a court warrant.</p>	<p>Request for Information is cited in Article 14 of the Competition Act which is as follows:</p> <p>"Request for Information</p> <p>Article 14- In carrying out the duties assigned to it by the Competition Act, the Competition Board may request any information it deems necessary from all public institutions and organizations, undertakings and associations of undertakings.</p> <p>Officials of these authorities, undertakings and associations of undertakings are obliged to provide the requested information within the period to be determined by the Competition Board."</p> <p>Article 15 of the Competition Act provides powers to use during on the spot investigations which is as follows:</p> <p>"On-the-Spot Inspection</p> <p>Article 15- In carrying out the duties assigned to it by the Competition Act, the Competition Board may perform examinations at undertakings and associations of undertakings in cases it deems necessary. To this end, it is entitled to:</p> <p>a) Examine the books, all types of data and documents of undertakings and associations of undertakings kept on physical or electronic media and in information systems, and take copies and physical samples thereof,, b) Request written or oral statement on particular issues, c) Perform examinations on the spot with regard to any</p>
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⁸ "Enforcing institutions" may mean either the investigating or the decision-making institution or both.

⁹ "Searches/raids" means all types of search, raid or inspection measures.

	<p>assets of undertakings.</p> <p>Examination is performed by experts employed at the disposal of the Competition Board. While going for an examination, experts carry with them an authorization certificate showing the subject-matter and purpose of the examination, and that an administrative fine shall be imposed should incorrect information be provided.</p> <p>Furthermore, the TCA adopted the Guideline on the Examination of Digital Data during On-Site Examinations in 2020.</p>
B. Can private locations, such as residences, automobiles, briefcases and persons be searched, raided or inspected? Does this require authorisation by a court?	No. On the other hand, although private belongings may not be searched, should there is a dispute regarding a certain document or belonging found in the premises of an undertaking, it is required that the undertaking proves whether the document or belonging is private.
<u>C. Can servers located outside the territory (abroad or in a cloud) be inspected? Are there special rules for this investigative power? Please explain!</u>	<p>The amendment made to the Art. Law. No. 4054 in 2020 clarified the investigative powers of the Authority, specifically for the on-spot inspections.</p> <p>According to the Guideline on the Examination of Digital Data during On-Site Examinations issued in 2020, Authority experts are authorized to inspect all kinds of servers, desktops, computers/laptops, information systems, such as portable devices, and other storage tools, such as CD, DVD, USB, external hard disks, back-up records and cloud services that contain the undertaking's digital data.</p> <p>See: https://www.rekabet.gov.tr/Dosya/kilavuzlar/yerinde-inceleme-kilavuz1-20201009091644514-pdf (Turkish Verison)</p>
<u>C.D.</u> May evidence not falling under the scope of the authorisation allowing the inspection be seized / used as evidence in another case? If yes, under which circumstances (e.g. is a post-search court warrant needed)?	Yes. The decisional practice of the Competition Authority demonstrates that such evidence can be obtained and used. The ratio of that approach may be explained on the basis of the competence of <i>ex officio</i> acting. However it should be stated that this issue has not been contested before a court.
<u>D.E.</u> Have there been significant legal challenges to your use of investigative measures authorized by the courts? If yes, please briefly describe them.	Yes. It was alleged that the Article as to investigation on spot unconstitutional since it allows to perform without a court order obtained in advance. However, the court decided that the allegation is not serious and dismissed it.

10. Procedural rights of businesses / individuals

A. Key rights of defence in cartel cases: [e.g.: right of	According to Article 42 of the Competition Act: " In case the Competition Board deems the claims put forward in
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access to documents in the possession of the enforcing authority, right to a written statement of the case against the defendant, right to respond to that case in writing, right to respond orally, right to confront companies or individuals that make allegations against the defendant, right to legal representation before the enforcing authorities, right not to self-incriminate, etc.] Please indicate the relevant legal provisions.

applications for informing or complaint serious and sufficient, informers or complainants are notified in writing that the claims put forward have been deemed serious and that an inquiry has been initiated.

In cases where the Competition Board either expressly rejects applications, or is deemed to have rejected them by means of failure to notify within due period, anyone who documents to have a direct or indirect interest may resort to jurisdiction against the rejection decision of the Competition Board."

According to Article 43(2) of the Competition Act: "The Competition Board notifies the parties concerned of investigations initiated by it, within 15 days of issuing the decision for the initiation of investigation, and requests that the parties submit their first written pleas within 30 days. In order to enable the commencement of the first written reply period granted to the parties, it is required that the Competition Board forwards to the parties concerned this notification letter, accompanied by adequate information as to the type and nature of the claims."

According to Article 44(1) of the Competition Act: "...During the investigation stage of the Competition Board, the person or persons claimed to have infringed this Competition Act may, at all times, submit to the Competition Board any information and evidence likely to influence the decision."

According to Article 44(2) of the Competition Act: "Those parties which are notified of the initiation of an investigation against them may, until their request for enjoying the right to hearing, ask for a copy of any paperwork drawn up within the Turkish Competition Authority in connection with themselves, and if possible, a copy of any evidence obtained."

The principles and procedures relating to access to file and the treatment of confidential information are explained in "Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets".

According to Article 44(3) of the Competition Act: "The Competition Board may not base its decisions on issues about which the parties have not been informed and granted the right to defence.

According to Article 45 of the Competition Act: "The report prepared at the end of the investigation stage is notified to all members of the Competition Board and the parties concerned.

Those determined to have infringed the Competition Act are notified to submit their written pleas to the Competition Board within 30 days. Those charged with conducting the investigation declare an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Competition Board and the parties concerned. The parties may reply to such opinion within 30 days. In case the parties provide justifiable grounds, these periods may be extended only once and by one fold at the most.

The pleas of the parties not submitted within due period shall not be taken into account."

the parties' declaration of their will to enjoy the right to hearing in their petition of reply or defense. Furthermore, the Competition Board may decide on its own initiative to hold a hearing.

Hearing is held within at least 30 days and at most 60 days from the end of the investigation stage. Invitations for the

	<p>hearing are forwarded to the parties at least 30 days before the day of the hearing."</p> <p>According to Article 47(1) of the Competition Act: "Hearings are held publicly. The Competition Board may decide to hold the hearing in camera on grounds of protecting the general morals and trade secrets.</p> <p>According to Article 47(4) of the Competition Act: "The parties are obliged to notify, 7 days before the hearing at the latest, the Competition Board of the means of proof they shall utilize in the hearing. The parties may not utilize the means of proof not notified within due period."</p> <p>According to Article 47(5) of the Competition Act: "During the hearing, the parties concerned may utilize any evidence and means of proof provided in the Part Two Chapter Eight of the Code of Civil Procedure. The parties claimed to have infringed this Act, or their representatives, and those who prove to the Competition Board prior to the session that they have direct or indirect interests, or their representatives may participate in sessions."</p> <p>According to Article 49 of the Competition Act: "Decisions of the Competition Board are taken as a result of confidential meetings and are communicated publicly. ..."</p> <p>According to Article 50 of the Competition Act: "The meeting is chaired by the Chairman of the Competition Board, or in his absence, by the Deputy Chairman, and he determines matters to be resolved. After such matters are discussed freely, the Chairman collects the votes and casts his own vote finally."</p> <p>According to Article 52 of the Competition Act entitled "Points Required in Decisions":</p> <p>Decisions involve the following points:</p> <ol style="list-style-type: none"> a) Names and surnames of the members of the Competition Board who made the decision, b) Names and surnames of those who carried out the examination and inquiry, c) Names, titles, residences and distinguishing characteristics of the parties, d) Summary of the claims of the parties, e) Summary of the examination and of the economic and legal issues discussed, f) Opinion of the reporter, g) Evaluation of all evidences and pleas submitted, h) Grounds, and the legal basis of the decision, i) Conclusion, j) If any, writings about the dissenting votes. <p>Duties imposed on and rights granted to the parties with the decision made have to be written explicitly such that they do not pave the way for doubts and hesitations."</p> <p>According to Article 53(2) of the Competition Act: "Decisions of the Competition Board are published on the internet page of the Turkish Competition Authority in such a way not to disclose the trade secrets of the parties."</p> <p>According to Article 54 of the Competition Act: "In decisions of the Competition Board, periods commence as of the date the reasoned decision is communicated to the parties."</p> <p>According to the amendment to Article 55 of the Competition Act on 05.07.2012, decisions of the Competition Board shall be challenged before the competent administrative courts.</p>
<p>B. Protection awarded to business secrets (competitively sensitive)</p>	<p>The Decisions of the Competition Board are published on the internet page of the Turkish Competition Authority in such a way not to disclose the trade secrets of the parties."</p>

<p>information): is there a difference depending on whether the information is provided under a compulsory legal order or provided under informal co-operation? Please indicate the relevant legal provisions.</p>	<p>Additionally, according to Article 15 of the Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets: “If the Authority accepts claims that are related to the confidentiality of trade secrecy, it shall not disclose them.”</p> <p>The Authority may not take into account secrecy claims related to information and documents that are indispensable to be used as evidence for proving the infringement of competition. In such cases, the Authority can disclose such information and documents that have the nature of trade secret, respecting the balance between public interest and private interest and in accordance with the proportionality criterion.”</p> <p>There is no difference between trade secrets on the basis of their way of collection.</p>
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11. Limitation periods and deadlines

<p>A. What is the limitation period (if any) from the date of the termination of the infringement by which the investigation / proceedings must begin or a decision on the merits of the case must be made? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>Eight years from the date of termination of the infringement</p>
<p>B. What is the deadline, statutory or otherwise (if any) for the completion of an investigation or to make a decision on the merits? <u>Please describe potential suspension or interruption opportunities of this limitation period and the requirements for such rules to apply!</u></p>	<p>In case of investigations, it may take around 19 months to reach a decision if all the extensions are granted. The breakdown of the deadlines with possible extensions is as follows:</p> <p><i>Start of Investigation</i> (Investigation is to be concluded within 6 months at the latest. In cases where it is deemed necessary, the Competition Board may grant an additional period up to 6 months only once.)</p> <p><i>Second written defense</i> by the relevant parties following notification of the investigation report (30 days - In case the parties provide justifiable grounds, the period may be extended only once and by one fold at the most.)</p> <p><i>Additional written opinion</i> by the investigation team composed of the case handlers of the Competition Authority within 15 days against the second written defense to be submitted by the parties.</p> <p><i>Third written defense</i> by the parties (30 days - In case the parties provide justifiable grounds, the period may be extended only once and by one fold at the most.)</p> <p><i>Hearing</i> (held within at least 30 days and at most 60 days from the third written defense.)</p> <p>Hearings are completed in no longer than 5 consecutive sessions, and various meetings held within the same day are deemed as one session (5 days at the latest)</p> <p><i>The final decision</i> is made on the same day after the</p>

	<p>hearing, or if not possible, within 15 days. For further details, see especially the Articles 43, 45, 46, 47, 48 of the Competition Act.</p>
<p>C. What are the deadlines, statutory or otherwise (if any) to challenge the commencement or completion of an investigation or a decision regarding sanctions? (see also 15A)</p>	<p>Action for annulment of the Competition Board's final decisions, measure decisions, and decisions on administrative fines shall be brought before the competent administrative court within 60 days as of communicating the decision to the parties. With respect to the appeal of the decisions of the courts of first instance, the Council of State (the supreme administrative court) has jurisdiction to hear the action concerned.</p>

12. Types of decisions

<p>A. List which types of decisions on the merits of the case can be made in cartel cases under the laws listed under Section 1. [E.g.: finding of an infringement, ordering to bring the infringement to an end, imposition of fines, etc.]</p>	<p>The Competition Board may notify the undertaking or associations of undertakings concerned of a decision encompassing that behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement and it may impose fines.</p> <p>The Competition Board, prior to taking a decision encompassing those behavior to be fulfilled or avoided so as to establish competition and maintain the situation before infringement, shall inform in writing the undertaking or associations of undertakings concerned of its opinions concerning how to terminate the infringement.</p> <p>Where the occurrence of serious and irreparable damages is likely until the final decision, the Competition Board may take interim measures which have a nature of maintaining the situation before the infringement and which shall not exceed the scope of the final decision.</p> <p>The Competition Board may impose fines on undertakings, association of undertakings, or members of such associations, and employees and managers of undertakings and association of undertakings.</p> <p>In criminal investigations regarding bid-rigging in public tenders, prison sentences may also be imposed.</p>
<p>B. List any other types of decisions on the merits of the case relevant particularly in hardcore cartel cases under the laws listed under Section 1 (if different from those listed under 12/A).</p>	<p>Non Applicable.</p>
<p>C. Can interim measures¹⁰ be ordered during the</p>	<p>Where the occurrence of serious and irreparable damages is likely until the final decision, the Competition Board, the decision making organ of the Turkish Competition Authority,</p>

¹⁰ In some jurisdictions, in cases of urgency due to the risk of serious and irreparable damage to competition, either the investigator or the decision-making agency may order interim measures prior to taking a decision on the merits of the case [e.g.: by ordering the immediate termination of the infringement].

<p>proceedings in cartel cases? (if different measures for hardcore cartels please describe both¹¹.) Which institution (the investigatory / the decision-making one) is authorised to take such decisions? What are the conditions for taking such a decision?</p>	<p>may take interim measures which have a nature of maintaining the situation before the infringement and which shall not exceed the scope of the final decision.</p>
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13. Sanctions for procedural breaches (non-compliance with procedural obligations) in the course of investigations

<p>A. Grounds for the imposition of procedural sanctions / fines [e.g. late provision of requested information, false or incomplete provision of information, lack of notice, lack of disclosure, obstruction of justice, destruction of evidence, challenging the validity of documents authorizing investigative measures, etc.]:</p>	<p>Articles 16 and 17 of the Competition Act are relevant for this question which are as follows: Article 16 - "The Competition Board shall impose administrative fines on natural and legal persons having the nature of undertakings, and on associations of undertakings or the members of such associations where;</p> <ul style="list-style-type: none"> a) ... b) ... c) incomplete, incorrect or misleading information or document is provided or the information or document is not provided within the time specified or at all, during the application of Articles 14 and 15 of the Competition Act, d) on-the-spot inspection is prevented or made difficult, for those specified under subparagraphs (a), (b) and (c); equaling one thousandth of the annual gross revenue of the undertakings and associations of undertakings or the members of such associations which generated by the end of the fiscal year preceding the decision, or where it cannot be calculated, which generated by the end of the fiscal year closest to the date of decision, as calculated by the Competition Board, and for those specified under subparagraph (d); equaling five thousandth of their gross revenues to be determined in the same manner. <p>Article 17- "Provided the fines laid down in paragraph one of Article 16 are reserved, in cases of</p> <ul style="list-style-type: none"> a) Non-compliance with the obligations provided by or commitments given with a final decision or an interim injunction decision, b) Preventing or impeding on-the-spot investigation, c) Failure to submit the requested information or the document in time in respect of the application of Articles 14 and 15, the Competition Board shall impose administrative fines on undertakings and associations of undertakings per day which amounts to five per ten thousand of the annual gross revenue of the undertakings concerned, and of associations of undertakings and/or the members of such associations, which is generated by the end of the preceding financial year and
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¹¹ Only for agencies which answered "yes" to question 2.B. above

	where it is not possible to calculate such revenue, of the revenue which is generated by the end of the closest financial year and which shall be determined by the Competition Board."
B. Type and nature of the sanction (civil, administrative, criminal, combined; pecuniary or other):	Administrative.
C. On whom can procedural sanctions be imposed?	See point 13.A.
D. Criteria for determining the sanction / fine:	See point 13.A.
E. Are there maximum and / or minimum sanctions / fines?	See point 13.A.

14. Sanctions on the merits of the case

<p>A. Type and nature of sanctions in cartel cases (civil, administrative, criminal, combined):</p> <p>On whom can sanctions be imposed? [E.g.: representatives of businesses, (imprisonment for individuals), businesses, in the case of associations of companies the associations or the individual companies?]</p>	<p>Bid-rigging in public tenders is an administrative offence under the Competition Act and a criminal offence under the Criminal Code. Other types of cartels are administrative offence.</p> <p>Furthermore, as it is stated at the point 2.E., claimants aggrieved from prevention, distortion or restriction of competition may bring an action before civil courts for compensation.</p> <p>According to the Competition Act, fines can be imposed on undertakings and associations of undertakings or the members of such associations and managers or employees of the undertaking or association of undertakings.</p> <p>According to the Criminal Code, prison sentences may be imposed on cartel participants in criminal investigations involving bid-riggings in public tenders.</p>
<p>B. Criteria for determining the sanction / fine: [e.g.: gravity, duration of the violation,</p>	<p>In deciding substantive fines, the Competition Board takes into account of factors such as the repetition and duration of the violation, the market power of the undertakings or associations of undertakings, their determining impact on the occurrence of the violation, whether they conform to the commitments made, whether they assist with the inspection, the gravity of the damage which has occurred or is likely to occur.</p> <p>See also Regulation on Fines.</p>

benefit gained from the violation]	
C. Are there maximum and / or minimum sanctions / fines?	<p>Revenue of the undertakings and associations of undertakings to be punished or the members of such associations which generated by the end of the fiscal year preceding the final decision, or where that cannot be calculated, which generated by the end of the fiscal year that is closest to the date of final decision, as calculated by the Competition Board.</p> <p>Where undertakings or associations of undertakings are imposed substantive fine mentioned in the previous paragraph, managers or employees of the undertaking or association of undertakings which is detected to have had a determining impact on the violation are imposed administrative fines up to five percent of the fine imposed on the undertaking or association of undertakings.</p> <p>To those associations or associations of undertakings or their managers and employees making an active cooperation with the Competition Authority for purposes of revealing contrariness to the Competition Act, penalties mentioned above may not be imposed or reductions may be made in penalties taking into consideration the quality, efficiency and timing of cooperation and by means of demonstrating its grounds explicitly.</p>
D. Guideline(s) on calculation of fines: [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]	<p>Regulation on Fines. Published in the Official Gazette dated 15.2.2009 and numbered 27142.</p> <p>http://rekabet.gov.tr/Dosya/regulations/2-pdf (English version)</p> <p>http://rekabet.gov.tr/Dosya/tebligler/2021-2-sayili-teblig-20210316111119346-pdf (Turkish version)</p>
E. Does a challenge to a decision imposing a sanction / fine have an automatic suspensory effect on that sanction / fine? If it is necessary to apply for suspension, what are the criteria?	<p>Appealing against decisions of the Competition Board does not cease the implementation of decisions, and the follow-up and collection of fines.</p> <p>If the implementation of the decision should result in damages which are difficult or impossible to compensate for, and if this decision is clearly unlawful, the competent administrative court may decide to stay the execution of the decision, stating the reasons thereof</p>

15. Possibilities of appeal

<p>A. Does your law provide for an appeal against a decision that there has been a violation of a prohibition of cartels? If yes, what are the grounds of appeal, such as questions of law or fact or breaches of procedural requirements?</p>	<p>In the first instance, actions for annulment of the Competition Board's final decisions, measure decisions and decisions on administrative fines shall be brought before the competent administrative court within 60 days, as of communicating the decision to the parties. Actions for appeal against the decisions of courts of first instance are heard by the Council of State (the supreme administrative court). Grounds of appeal may be substantive and/or procedural.</p>
<p>B. Before which court or agency should such a challenge be made? [if the answer to question 15/A is affirmative]</p>	<p>Competent administrative courts have jurisdiction in the first instance. Actions for appeal against the decisions of courts of first instance are challenged before the Council of State.</p>

16. Private enforcement

<p>A. Are private enforcement of competition law and private damage claims possible in your jurisdiction? If there is no legal provision for private enforcement and damage claims, what are the reasons for it?</p>	<p>According to the Art 57 of Law No 4054:</p> <p>“Anyone who prevents, distorts or restricts competition via practices, decisions, contracts or agreements contrary to this Act, or abuses his dominant position in a particular market for goods or services, is obliged to compensate for any damages of the injured. If the damage has resulted from the behavior of more than one people, they are responsible for the damage jointly.”</p> <p>Additionally, Art 58 of the Law provides that</p> <p>“Those who suffer as a result of the prevention, distortion or restriction of competition, may claim as a damage the difference between the cost they paid and the cost they would have paid if competition had not been limited. Competing undertakings affected by the limitation of competition may request that all of their damages are compensated by the undertaking or undertakings which limited competition. In determining the damage, all profits expected to be gained by the injured undertakings are calculated by taking into account the balance sheets of the previous years as well.</p> <p>If the damage arises from an agreement or decision or gross negligence of the parties, the judge may, upon the request of the injured, award compensation by three fold of the material damage incurred or of the profits gained or likely to be gained by those who caused the damage.”</p>
<p>B. Laws regulating private enforcement of competition law in your jurisdiction [indication of the provisions and languages in which these materials are available; availability (homepage address)]</p>	<p>Non Applicable</p>

<p>C. Implementing regulation(s) on private enforcement (if any): [name and reference number, availability (homepage address) and indication of the languages in which these materials are available]</p>	<p>Non Applicable</p>
<p>D. On what grounds can a private antitrust cause of action arise? / In what types of antitrust matters are private actions available?</p>	<p>Private actions due to any anticompetitive act is possible according to the wording of the Art 58 of the Law No 4054.</p>
<p>E. What pleading standards must the plaintiff meet to file a stand-alone or follow-on claim?</p> <ul style="list-style-type: none"> • is a finding of infringement by a competition agency required to initiate a private antitrust action in your jurisdiction? What is the effect of a finding of infringement by a competition agency on national courts/tribunals? • if a finding of infringement by competition authority is required, is it also required that decision to be judicially finalised? 	<p>Although there is no clear provision regarding the procedure in the Law No 4054, private actions arising from the prevention, distortion or restriction of competition are brought to the courts after the finding of an infringement by the Authority as the it is the exclusively authorized body to make such a finding. However, in the past several cases, the courts did not require the infringement decision to be finalised.judicially.</p>
<p>F. Are private actions available where there has been a criminal conviction in respect of the same matter?</p>	<p>Yes.</p>
<p>G. Do immunity or leniency applicants in competition investigations receive any beneficial treatment in follow-on private damages cases?</p>	<p>Non Applicable.</p>
<p>H. Name and address of specialised court (if any) where private enforcement claims may be submitted to</p>	<p>Non Applicable.</p>
<p>I. Information about class action opportunities</p>	<p>Non Applicable.</p>
<p>J. Role of your competition agency in private enforcement actions (if at all)</p>	<p>The Authority may be consulted during private actions to give guidance on the matters such as the calculation of the losses or evidences submitted to the court by the plaintiffs or</p>

	defendants.
<p>K. What is the evidentiary burden on plaintiff to quantify the damages? What evidence is admissible?</p> <ul style="list-style-type: none"> • Role of your competition agency in the damage calculation (if at all) 	<p>The injured should submit to judicial bodies proofs such as, particularly, the actual allocation of markets, stability observed in the market price for quite a long time, price increases within close intervals by undertakings operating in the market, which give the impression of the existence of an agreement, or the distortion of competition in the market, then the burden of proof is on the defendants that the undertakings are not engaged in concerted practice.</p> <p>The existence of agreements, decisions and practices limiting competition may be proved by any kind of evidence.</p>
<p>L. Discovery / disclosure issues:</p> <ul style="list-style-type: none"> • can plaintiff obtain access to competition authority or prosecutors' files or documents collected during investigations? • is your competition agency obliged to disclose to the court the file of the case (in follow-on cases)? • summary of the rules regulating the disclosure of confidential information by the competition agency to the court • summary of the rules regulating the disclosure of leniency-based information by the competition agency to the court 	<p>The Authority handles the procedure under the Communiqué No. 2010/3 on the Regulation of the Right of Access to the File and Protection of Trade Secrets.</p>
<p>M. Passing-on issues:</p> <ul style="list-style-type: none"> • how is passing-on regulated / treated in your jurisdiction? • is standing to bring a claim limited to those directly affected or may indirect purchasers bring claims? 	<p>Non Applicable.</p>