

## Competition - Turkey

### Court finds Competition Board calculation of fine lacking in justification

Contributed by **ELIG**

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A recent Competition Board decision demonstrated a lack of sufficient justification concerning the determination of the basic level of a fine and the effects of mitigating or aggravating factors on the calculation of such fine, an appellate court has ruled.

The introduction in 2009 of the Regulation on Monetary Fines for Restrictive Agreements, Concerted Practices, Decisions and Abuses of Dominance tightened the competition regime in Turkey. Under the regulation, once the Competition Board has established an infringement, it must determine the basic level of fine to be applied. This is calculated by taking into account factors such as the market power of the undertakings within the relevant market and the scale of actual or potential losses that have resulted from the antitrust infringement. Once this basic level has been determined, the board must decide whether to increase or decrease it by reference to mitigating or aggravating factors.

However, in a recent appeal court ruling, the board's decision to impose monetary fines on the investigated undertakings was found to lack the necessary justification. The court ruled that execution of the decision should therefore be suspended. This ruling offers a preliminary insight into the way in which the higher administrative courts will interpret the board's application of the regulation.

The Competition Board had concluded that the undertakings had violated the Law on the Protection of Competition (4054) and therefore imposed an administrative monetary fine against them. However, it failed to mention in its decision how the basic level of fines had been determined and which mitigating or aggravating factors had affected its calculation of such fines.

Subsequently, an action for annulment was brought before the Council of State's 13th Chamber requesting that execution of the decision be suspended. The court found in favour of annulment, ruling that no justification had been given as to either how the basic level had been determined or how the effects of the mitigating or aggravating factors on the monetary fine had been calculated.

An objection raised by the Competition Authority against the court's decision before the Plenary Session of Administrative Law Divisions was rejected on January 23 2013.

Although a more extensive evaluation cannot be made until the court's final decision has been revealed, due to the principle of *ex officio* examination, the case under review should be reconsidered in light of the fact that this ruling has also been approved by the Plenary Session of Administrative Law Divisions.

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