

Brussels, 28th June 2006

Competition: Commission revises Guidelines for setting fines in antitrust cases

(see also [MEMO/06/256](#))

The European Commission has adopted new Guidelines on the method of setting fines to be imposed on companies that infringe EC Treaty rules that outlaw cartels and other restrictive business practices (Article 81) and abuses of dominant position (Article 82). These Guidelines revise those adopted in 1998, with a view to increasing the deterrent effect of fines. Council Regulation 1/2003 (as with Council Regulation 17/62 before it) provides that companies may be fined up to 10% of their total annual turnover. Within this limit, the revised Guidelines provide that fines may be based on up to 30% of the company's annual sales to which the infringement relates, multiplied by the number of years of participation in the infringement. Moreover, a part of the fine – the so-called "entry fee" - may be imposed irrespective of the duration of the infringement. Finally, repeat offenders will also be fined more than in the past. These Guidelines will apply to every anti-trust fines decision for which a Statement of Objections was notified to companies after the publication of the Guidelines in the Official Journal, expected within the next two months.

Competition Commissioner Neelie Kroes commented: "These revised Guidelines will better reflect the overall economic significance of the infringement as well as the share of each company involved. The three main changes – the new entry fee, the link between the fine and the duration of the infringement, and the increase for repeat offenders - send three clear signals to companies. Don't break the anti-trust rules; if you do, stop it as quickly as possible, and once you've stopped, don't do it again. Of course, if the Commission's leniency policy applies, companies should also report the infringement without delay. If companies do not pay attention to these signals, they will pay a very high price."

Fines are one of the means to ensure that companies do not engage in anticompetitive behaviour. To that end, fines must be set at a level that ensures sufficient deterrence. This implies that fines should not only punish past behaviour, but also that their level will deter that particular company, or any other, from entering into illegal behaviour in the future.

In 1998, the Commission adopted Guidelines for the first time on the method of setting fines, in order to enhance transparency as to its fining policy. The validity and application of these Guidelines has been upheld in numerous cases before the Court of Justice. Nevertheless, after more than eight years of experience, it is useful to refine the rules in the light of experience.

Fines will now be based on a percentage of the yearly sales in the relevant sector for each company participating in the infringement. The Commission may impose a fine representing up to 30% of such sales. In order to fully reflect the duration of the infringement, this amount will be multiplied by the number of years of participation in the infringement.

Entry fee

Moreover, the Guidelines introduce a new mechanism. In order to deter companies from ever entering into seriously illegal conduct: the Commission may add to the amount as calculated above a sum equal to 15% to 25% of the yearly relevant sales, whatever the duration of the infringement. According to the Guidelines, such an “entry fee” will be applied in cartel cases and may be applied in other types of anti-trust infringements. In other words, the mere fact that a company enters into a cartel could “cost” it at least 15 to 25% of its yearly turnover in the relevant product.

Repeat offenders

The new Guidelines also reflect recent case law and the Commission’s current practice. This is particularly true with regard to aggravating and mitigating circumstances, for which there are also important changes, the most significant of which concerns repeat offenders. Up to now, the Commission’s practice is to increase a fine by 50% where the undertaking has been found to have been previously involved in one or more similar infringements. The new Guidelines change this approach in 3 ways:

- 1) the Commission will take into account not only its own previous decisions, but also those of National Competition Authorities applying Articles 81 or 82
- 2) the increase may be up to 100%
- 3) each prior infringement will justify an increase of the fine.

Multiple offenders will therefore be fined more heavily, in line with Commissioner’s Kroes’s repeated wish (see [IP/05/61](#), [IP/06/560](#), [IP/06/698](#)).

The Guidelines define the methodology to be used by the Commission when setting fines. They do not affect the existing rules on leniency, which continue to apply (see [IP/02/247](#) and [MEMO/02/23](#)).

The guidelines are available on Europa:

<http://ec.europa.eu/comm/competition/antitrust/legislation/fines.html>