

ANTITRUST ALERT

EUROPEAN COMMISSION ADOPTS NEW GUIDELINES FOR SETTING FINES IN ANTITRUST CASES



On June 28, 2006, the European Commission adopted new guidelines for setting fines in antitrust cases. The guidelines will take effect once they are published in the *Official Journal*, which is expected to occur in July or August 2006. The guidelines are relevant for any company doing business in the European Union (EU).

The main points of the new guidelines are as follows:

- The starting point for the fine calculation, or the basic amount of the fine, has become easier to calculate. It will usually not exceed 30 percent of the value of the company's sales with respect to the relevant product and geographic market in the European Economic Area (EEA, consisting of the 25 Member States of the EU and Liechtenstein, Norway and Iceland). For the purposes of deterrence, the Commission can choose a basic amount that exceeds 30 percent of the value of the company's sales.
- The Commission will then multiply this basic amount by the number of years of the infringement.
- The Commission can now add to the basic amount a figure between 15 percent and 25 percent of the value of the company's sales with respect to the relevant product and geographic market in the EEA. This will be applied in cases involving horizontal price-fixing, market-sharing and output limitation agreements (cartels). It may also be applied in other cases.
- The Commission can increase the basic amount by up to 100 percent, compared with current practice of up to 50 percent, if the company is a repeat offender under EC antitrust law. The earlier infringement decisions that can now be taken into consideration include the infringement decisions of any national competition authority in the EU. The basic amount can now be increased up to 100 percent for each past infringement. Under current practice, two past infringements may result in an increase of up to 50 percent, whereas under the new guidelines, two past infringements could result in an increase of up to 200 percent.

- The statutory maximum fine has not changed. It remains 10 percent of the company's worldwide turnover in the year preceding the decision.

The Good News: It is now easier to predict the quantum of the fine that a company would have to pay.

The Bad News: The Commission is now more likely to impose fines that are very close to the statutory 10 percent maximum.

CONTACT INFORMATION

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