THE EUROPEAN COMMISSION ADOPTS A NEW METHOD FOR CALCULATING MONETARY SANCTIONS

September 2006

Based on eight years' experience in the implementation of the 1998 guidelines on the method of setting fines, the European Commission adopted, on 26 June 2006, a new method for calculating fines levied on undertakings violating the antitrust provisions of the Treaty (Article 81) and abuses of a dominant position (Article 82). This has taken the form of new guidelines,[1] with the announced purpose of making the fines levied more dissuasive so as to increase compliance with competition rules.

In determining the amount of the fine, the Commission maintains the principle of a basic amount that will be increased or reduced to take account of aggravating or mitigating circumstances.

Basic Amount

Since 1998, the basic amount was set based on a flat amount depending on the type of infringement. Henceforth, the basic amount of the fine is calculated by reference to the sales of the company participating in the infringement, determined according to the degree of gravity of the infringement, and multiplied by the number of years of infringement.

The value of the sales to be taken into consideration is that of the goods sold or services rendered by the undertaking, in direct or indirect relation with the infringement, in the geographic sector concerned within the European Economic Area ("EEA").[2] As a general rule, the sales achieved during the last full year of commission of the infringement should be taken into account.

The Commission specifies that as a general rule, the sales taken into consideration will be a percentage of the value of such sales, which can reach up to 30%, based for example on criteria such as the nature of the infringement, the total market share of all of the parties concerned, the geographic scope of the infringement and the gravity.

Additionally, for more serious infringements (horizontal restrictions such as price cartels, market sharing and limitation of production understandings, the Commission will add, when calculating the basic amount, an additional amount of between 15% and 25% of the value of the sales of the undertakings concerned, even in the event of infringement of short duration.

Adjustments

In case of a repeat infringement ascertained by a national authority, the Commission may double the basic fine per event of infringement ascertained. This amount may also be increased in case of refusal to cooperate or of obstruction during the course of the investigation or when an undertaking has acted as the leader in or instigator of the infringement (specifically if retaliation measures have been implemented).

The Commission may reduce the basic amount of the fine, notably when the undertaking concerned proves that it has put an end to the infringement (except in the case of a secret cartel), acted negligently or did not apply unlawful agreements.

Specific increase in a dissuasive aim

To ensure that the fines are sufficiently dissuasive, the Commission may increase the fine to be imposed on undertakings whose turnover, aside from the goods and services to which the infringement relates, is particularly high. Additionally the Commission can increase the fine to bring it above the amount of the unlawful gains (surplus profits) made thanks to the offence, whenever an estimate is possible.

It is recalled that the total fine imposed by the Commission can in no event exceed 10% of the total turnover made by each undertaking participating in the infringement over the course of the last financial year.[3]

[1] Guidelines on the method of setting fines imposed pursuant to Article 23, (2) (a) of Regulation no. 1/2003, OJEC C 210/2 of 1 September 2006.

[2] In the event of an infringement going beyond the territory of the EEA, the Commission may apply that part of each undertaking on the market (beyond the EEA) and apply it to the total sales of the undertakings participating in the infringement inside the EEA. The result will serve as the value of the sales in assessing the basic amount of the fine.

[3] Article 23 of Regulation no. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

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- **MERGERS & ACQUISITIONS**

Engineering of takeovers and deal structuring, legal due diligence, restructuring operations, joint ventures, obtaining necessary administrative permits and licenses, drafting and negotiation of documentation (letters of intent, sale & purchase agreements, warranties that assets and liabilities are as stated, bank guarantees, shareholders' agreements, etc.), merger deals, takeovers of companies in difficulty or in the framework of collective procedures.

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Representation of investment funds, issuers, targets and company officers, during the due diligence, advisory and negotiation processes.

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- **COMMERCIAL CONTRACTS / ECONOMIC LAW**

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- **COLLECTIVE PROCEDURES**

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