

## CLIENT ALERT

### European Commission Revises Guidelines for Setting Fines in Antitrust Cases

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On June 28, 2006, the European Commission has adopted new guidelines on the method of setting fines imposed on companies for infringements of Articles 81 and 82. The new guidelines represent a substantial change in the Commission's fine setting procedure. They are expected to lead to higher fines for cartels of a long duration and should have a significant impact on repeat offenders.

Following the entry into force of the new guidelines, fines will be based on a percentage of the yearly sales in the relevant sector for each company participating in the infringement. The Commission will be able to impose fines representing up to 30% of such sales (not limited to the EEA). 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.

This constitutes a major step away from the current 1998 guidelines, under which the base fine is a lump sum which varies depending on the gravity of the infringement and is increased 10% per year of infringement. This lump-sum system has been under constant criticism for violating the principle of proportionality and being discriminatory to smaller companies. The Commission's new combination of the value of sales to which the infringement relates and the duration of the infringement is intended to provide a more appropriate reflection of the economic importance of the infringement as well as the relative weight of each participant.

The new guidelines will furthermore introduce a mechanism of a so-called "entry fee". According to this mechanism, the simple fact that a company enters into a cartel will cost the company 15 to 25% of the yearly relevant sales, whatever the duration of the infringement.

Finally, the new guidelines foresee a significant increase in the level of fines for repeat offenders. Up to now, the Commission's practice was to increase a fine by 50% where the undertaking had been previously involved in one or more similar infringements. The new guidelines change this approach in three ways: (i) the Commission will take into account not only its own previous decisions, but also those decisions by national competition authorities applying EC competition law, (ii) the increase may be up to 100%, and (iii) each prior infringement will justify an increase of the fine.

The new guidelines will apply to every anti-trust fine decision for which a Statement of Objections is notified to the parties after their publication in the Official Journal (probably within the next two months). The text of the new guidelines is available in English, French and German on the [website of DG Competition](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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