

Calculation of fines

Guidelines on the calculation of fines pursuant to articles 25 and 25B of L. 3959/2011, as in force

I. INTRODUCTION

1. According to case d of par. 1 of article 25 of Law 3959/2011, as in force, the Hellenic Competition Commission (hereinafter "HCC" or "the Commission"), where it finds, following a relevant investigation carried out either ex officio or following a complaint, a violation of articles 1, 2 of Law 3959/2011 and/or articles 101 and 102 of the Treaty on the Functioning of the European Union, may impose a fine, by its decision, according to par. 1 of article 25B on undertakings or associations of undertakings that, intentionally or negligently, committed the infringement.

2. In exercising the above power, the HCC enjoys a wide discretion to decide the amount of the fine to be imposed. According to article 25B of Law 3959/2011, the fine for the above cases can reach up to ten percent (10%) of the undertaking's total worldwide turnover of the financial year preceding the issuance of the decision. For the calculation of the fine in case of a group of companies, the total worldwide turnover of the group is taken into account (see article 25B of Law 3959/2011, par. 1). When the party involved is an association of undertakings and the infringement committed by this association is related to the activities of its members, the fine may amount to ten percent (10%) of the total worldwide turnover of its active members in the market in which the infringement occurred in the financial year preceding the adoption of the decision (see article 25B of Law 3959/2011, par. 4).

3. In any event, the fine must be effective, proportionate and deterrent (see article 25B of Law 3959/2011, par. 1). In particular, the fine must, on the one hand, be imposed as a sanction for a specific infringement and, on the other hand, contribute to deter undertakings from repeating similar anti-competitive behavior in the future. Therefore, the amount of the fine must have the necessary deterrent effect, not only against the addressees of the decision issued by the HCC but also against any other undertaking which would have the intention to adopt or continue a similar behavior. It is also considered appropriate to include a certain amount in the fine, regardless of the duration of the infringement, in order to deter undertakings from engaging in illegal practices.

4. The sections that follow provide an analysis of the principles that the Commission will follow in calculating fines, which will be imposed pursuant to articles 25 par. 1 and 25B par. 1, 3, 4 and 5.

II. METHOD OF CALCULATING FINES AND FINANCIAL PENALTIES

5. In order to calculate the fine to be imposed on the undertakings or associations of undertakings which have committed the infringement, the Commission uses the following methodology:

- first, it sets the basic amount of the fine for each undertaking or association of undertakings involved by reference to the gravity, the duration, the geographical

- extent of the infringement, as well as the duration and type of participation in the infringement of each party involved therein;
- secondly, if it deems it appropriate, it adjusts (increases or decreases) the basic amount, depending on the existence of any aggravating or mitigating circumstances, respectively.

II.1 Basic amount of the fine

6. The basic amount of the fine is calculated as follows:

a) a percentage of up to 30% is set on the undertaking's annual gross revenue^[1] from products and services, in the markets affected by the infringement, directly or indirectly, based on the above criteria.

b) this percentage is calculated on the above annual revenues for each year of the infringement cumulatively.

7. To calculate the annual gross revenue of the undertaking, the Commission must use the best available figures of the undertaking concerned. When the information provided by an undertaking is incomplete or unreliable, the Commission will be able to calculate the gross revenue of the undertaking concerned based on the data it has obtained and/or any other information it deems relevant and appropriate.

II.1.1 Gravity of the infringement

8. In order to assess the gravity of the infringement, the Commission takes into account, in particular, the type of infringement, the anti-competitive effects occurred or threatened to occur on the market, the specific weight of each undertaking in the infringement, the economic benefit that the infringers gained or sought to gain, the economic power of the infringing undertaking(s) in the relevant market and the scope of the geographical market.

9. The most serious infringements of competition law, such as horizontal price-fixing restrictions, market allocation, limitation of production, as well as certain abuses of a dominant position, will be subject to severe and exemplary punishment. Therefore, when it comes to such infringements, the percentage of the undertaking's gross revenue related to the infringement will be set at the upper limits referred to above.

II.1.2 Duration of the infringement

10. To calculate the duration of the infringement, the period of time during which the anti-competitive behavior actually took place is considered. The percentage of the gross revenue of the undertaking as determined above is calculated for the entire duration of the infringement. In case the duration of the infringement is less than a year, this percentage is calculated on a monthly basis.

11. In the event that the HCC does not have reliable financial information in order to calculate the basic amount of the fine for the entire period of the infringement, the highest annual gross income realized during the infringement shall be taken into account for the remaining period.

12. In addition, in the event that the HCC does not have at its disposal the undertaking's annual gross revenue from products and services related to the relevant market where the infringement takes place, it will use the undertaking's gross revenue of the current or previous year of the infringement for the calculation of the fine.

13. In addition, regardless of the duration of an undertaking's participation in the infringement, the Commission will include in the basic amount an amount ranging between 15% and 25% of the enterprise's gross revenue, as defined above in Section II.1.A., in order to also deter undertakings from simply engaging in horizontal price-fixing, market-sharing and output-limiting agreements. The Commission will also be able to impose such an additional amount in cases of other infringements. In determining the percentage of gross revenue to be considered in a particular case, the Commission will take into account various factors, in particular those provided for in point 5.

II.2 Cases of basic fine amount adjustment

II.2.1 Aggravating circumstances

14. The basic amount of the fine may be increased if there are aggravating circumstances, such as:

a) when the undertaking involved has committed in the past an established infringement of competition rules. In the case of the same or a similar infringement committed, the increase amounts up to 100% of the basic amount of the fine.

b) where the undertaking involved refused to cooperate or attempted to obstruct an on-site inspection conducted by the Directorate General for Competition in the context of the specific case investigation,

c) when the undertaking concerned has taken a leading role in the unlawful conduct or has instigated other undertakings to adopt it. When assessing this criterion, the Commission places particular emphasis on any actions taken by the undertaking concerned seeking to force other companies to participate in the infringement or adopt retaliatory measures against other undertakings, with the aim of implementing illegal practices.

II.2.2 Mitigating circumstances

15. The basic amount of the fine may be reduced if there are mitigating circumstances, such as:

a) where the infringing undertaking provides evidence that it has ceased the infringement after the initial intervention of the Directorate General for Competition (e.g. conducting an on-site inspection),

b) where the infringing undertaking proves that it was led to the infringement by negligence,

c) where the infringing undertaking provides evidence that its involvement in the infringement was particularly limited, or that it has clearly and substantially opposed the implementation of the illegal conduct in practice.

d) where the infringing undertaking effectively cooperated with the Commission, beyond the scope of the HCC's Leniency Programme.

f) any damages that have been paid to those suffered by the examined anti-competitive practice, or to a significant number of them, in the context of a consensual settlement (see article 25B of Law 3959/2011, par. 3)^[2].

III. Closing remarks

16. When the Commission deals with several infringements, a separate fine must be calculated for each of them.

17. If there are both aggravating and mitigating circumstances, the basic amount of the fine is initially increased at the Commission's discretion depending on the aggravating circumstances and the resulting amount is subsequently reduced depending on the mitigating circumstances.

18. The Commission will also take into account the need to increase the fine so that it exceeds the amount of the benefit obtained by the undertakings as a result of the infringement, where a calculation of that amount is possible.

19. The Commission will pay particular attention to the need to ensure that fines have a sufficiently deterrent effect; to this end, it will be able to increase the fine imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates.

20. The final amount of the fine resulting from the above methodology cannot exceed the upper limits as listed in Section I herein.

21. The Commission may reduce the imposed final amount of a fine if it deems that there are exceptional circumstances that could justify such a reduction. The percentage of the reduction is at the discretion of the HCC.

22. In addition, the Commission may, in certain cases, impose a symbolic fine. The justification for such a fine should be set out in the grounds of the decision.

23. It is noted that these Guidelines present the general methodology for calculating a fine. However, they do not call into question the HCC's discretion to deviate from this methodology in cases where the particularities of a certain case or the need to ensure the deterrent effect of a fine justify such a deviation.

IV. SPECIAL PROCEDURES

IV.1 Settlement Procedure

24. In the event of an undertaking being subject to the Settlement Procedure as provided for in HCC's Decision no. 790/2022^[3] and the relevant provisions of article 29A of Law 3959/2011, the amount of the final fine may be reduced by up to 15% in relation to the fine that would be imposed on the same undertaking in case of a non-settlement procedure in accordance with the provisions of article 29E of Law 3959/2011.

IV.2 Leniency Programme

25. By its decision, the HCC may reduce the imposed final amount of the fine and/or exempt the parties involved from the fine, as long as they have been subject to the Leniency Programme as provided for in the HCC's relevant Decision no. 791/2022^[4] and the relevant provisions of articles 29B, 29C, 29D and 29E of Law 3959/2011.

IV.3 Inability to pay

26. In exceptional cases, the Commission may, upon request, consider the undertaking's inability to pay the fine in a specific social and economic context. The Commission will not base any reduction granted for this reason in the fine on the mere finding of an adverse or loss-making financial situation. A reduction could be granted solely on the basis of objective evidence that the imposition of the fine as provided for in these Guidelines would irretrievably jeopardise the economic viability of the undertaking concerned and cause its assets to lose all their value^[5].

Brief description:

Basic fine	Percentage of the undertaking's gross revenue in the relevant markets (0-30%), per year of infringement
Additional deterrent amount	15% and 25% of the undertaking's gross revenue
Increased in case of	Aggravating circumstances , e.g. infringer's leading role, recidivism, or obstruction of the investigation
Reduced in case of	Mitigating circumstances , e.g. limited role
Subject to an overall cap	10% of the turnover (per infringement)
Possible further reduction in the context of	Leniency Programme: 100% [TYPES 1A AND 1B], capped at 50% [TYPE 2] Settlement Procedure: 15% Inability to pay

^[1] It is noted that the gross revenue value shall be determined before VAT and other taxes directly related to them.

^[2] According to the relevant provisions: "Where the consensual settlement is pending, the Competition Commission may suspend the issuance of its decision on the imposition of the fine for a period not exceeding three (3) months".

^[3] See <https://www.epant.gr/en/legislation/settlement-procedure.html>.

^[4] See <https://www.epant.gr/en/legislation/leniency-programme.html>.

^[5] Also see in this regard par. 35 of European Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, (2006/C 210/02).