

## Antitrust

### AGCM has published its Guidelines on the criteria for the calculation of antitrust fines?

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**Last Friday, 31 October, the *Autorità Garante della Concorrenza e del Mercato* (AGCM, i.e. the Italian Antitrust Authority) published the Guidelines on the criteria for the computation of monetary fines to be imposed to companies responsible of cartels and abuse of a dominant position (the Guidelines). Therefore, they will not be applied to matters relating to unfair commercial practices.**

The Guidelines, adopted as a result of the public consultation which started last May, have laid down, for the first time, AGCM's own procedure for the calculation of antitrust fines. Until now, the Italian Antitrust Authority had made reference to EU guidelines.

The new Guidelines shall also be applied to ongoing proceedings and they are definitely of interest to those companies which, due to their speci-

fic activities or to their position on the market, are under the constant scrutiny of the AGCM.

Outlined below is a summary of the key features of the Guidelines.

First of all, in order to determine the fine, it is necessary to calculate the so-called "base amount", which is a percentage of the value of sales (i.e. the turnover net of VAT) of products or services concerned by the infringement achieved over the last year of such infringement.

Such amount is then multiplied by the total number of years the infringement lasted, with a starting point of at least six months, regardless of whether the infringement actually lasted less.

The percentage of the value of sales, which shall be determined depending on the seriousness of the infringe-

ment, ranges from 0.1% to a maximum of 30%.

As a rule, for price fixing cartels such percentage may not be less than 15%, since the latter fall within the most hard core violations.

In case of particularly serious restrictions of competition, the AGCM may also evaluate whether to add to the base amount an additional amount (the so-called "entry fee"), ranging from 15% to 30% of the value of sales.

For infringements that take place within public tendering procedures, in principle, the value of sales shall correspond to the award price or to the upset price or the amount resulting from a private transaction. However, it is not to be excluded that the total value of sales of the products and/or services at hand may be taken into account if the relevant markets are wider

## Highlights

than the scope of the single tender.

The base amount may be further increased or decreased where aggravating or mitigating circumstances occur. If a number of circumstances occur, the AGCM shall proceed with an overall assessment and computation, keeping in mind that, as a rule, each circumstance may bring about an increase of maximum 15% from the base amount, up to a total of 50%.

Notwithstanding such percentages, the base amount may be increased further up to 100% if the company is a

repeat offender that has already committed similar infringements over the previous five years. On the contrary, the base amount may be reduced down to 50% if, throughout the investigation, the company provides information and documentation that turn out to be decisive for the establishment of a new infringement, different from the one under investigation.

Furthermore, the Guidelines envisage other adjustments aimed at ensuring the deterrent power of fines, e.g. by allowing for the increase of the

allowing for the increase of the base amount of the fine up to 50% if the company at hand is particularly big.

At this point, it will be interesting to see to what extent the Guidelines shall change AGCM's approach in the calculation of antitrust fines.

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