

Redefining EU antitrust fining policy in times of crisis

Introduction

Recent years have shown very high (cartel) fine levels

- 2006 fining guidelines resulted in higher fines
- Commission does not take into account “any specific economic context”

But crisis has not been without effect on fines

- Commissioner Almunia has stated that enforcement should not put companies out of business
- Various techniques have been used to reduce fines in individual cases
But: risk of discretionary and potentially conflicting decisions



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Recent fining practice

Inability to pay

- Increase of ITP claims & increase of reductions for ITP
- Information Note explains Commission's approach

Particularities of a given case

- Window mounting cartel (2012): reduction for all companies involved
- Calcium Carbide (2009): 20% fine reduction for one company
- Special rules for mono-product undertakings and SMEs?

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Recent fining practice

Statutory fine cap

- 10% of total turnover in preceding business year
⇒ lower turnover, lower fine cap
- Prestressing steel (2010): individual turnover of subsidiaries concerned
= because of the Commission's "margin of appreciation and discretion"

Payment modalities

- Payment by instalments
- Bank guarantee pending appeal



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Rethinking the policy

Objectives of fines & impact of crisis:

- Deterrence
 - more deterrence required because of higher temptation?
 - lower profits require lower fines to be deterrent?
 - reduced ability to pass on fine?
- Restitution?
 - rise of damage actions

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Rethinking the policy: alternative tracks

Taking into accounts profits

- More effective in terms of deterrence than turnover
- Better to take into account level in supply chain
- But more difficult to determine?

Use of alternative sanctions

- Sanctions on individuals
- Alternative sanctions for undertakings

Reflection of damage compensation

- Commitment of consumer compensation
- Reducing fines in case of proactive consumer compensation



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