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ANTITRUST NEWSLETTER

Italian Competition Authority adopts new guidelines on calculation of antitrust fines

On 22 October 2014 the Italian Competition Authority (*Autorità Garante della Concorrenza e del Mercato*, the ICA) adopted new *"Guidelines on the application of the criteria for the quantification of administrative fines pursuant to Article 15, paragraph 1, law N. 287/90"* (the **Guidelines**).

The Guidelines set out specific methodology for the calculation of fines imposed by the ICA for breach of EU or national competition law (in particular the ban on anticompetitive agreements and on abuse of a dominant position provided for in Articles 101 and 102 TFEU and by corresponding national provisions). The intention behind their adoption is to enhance the deterrent effect of the ICA's policy on fines, while at the same time providing greater transparency in the decisional process, thereby facilitating a full and effective court review of the criteria followed by the ICA to quantify fines.

The European Commission issued its own guidelines on the quantification of antitrust fines in 1998 and revised them in 2006. The ICA has commonly referred to the Commission guidelines in setting fines, although the ICA is not bound by them and has in fact diverged from the Commission's guidelines on a number of occasions. In contrast, the new Guidelines are binding on the ICA, other than where exceptional circumstances justify a derogation, and the ICA will now have to provide thorough and sound legal reasoning to justify a departure from its own criteria as set out in the Guidelines.

While the Guidelines do not contain significant new elements as compared to the current practice of the ICA and the Commission guidelines, they do represent a significant contribution in terms of clarity and predictability of future fines. The main elements of the new Guidelines are, in summary:

- the introduction of a minimum "floor" amount for the calculation of fines, i.e. 15% of the value of the annual turnover of the relevant undertaking in the relevant market (multiplied for the duration of the infringement) to be applied in the case of "hardcore" infringements such as price fixing, market sharing and production limitation (a lower percentage may be used for less serious restrictions);
- the ability to increase the amount of the fines by up to 50% where the company's global sales are particularly significant in comparison to the value of the sales in the relevant market, or if the company belongs to a group with a significant overall turnover (with increases up to 100% of the "floor" amount if the company was previously sanctioned for further infractions of the same type);
- specific clarification of the criteria for calculating the value of sales in cases of collusion related to public procurement tenders; and
- the inclusion of (i) the implementation of an appropriate antitrust compliance programme and (ii) the disclosure of valuable information on new and separate antitrust infringements (so called "amnesty plus") amongst the mitigating circumstances which may justify a reduction in any fines imposed.

In our view, the inclusion of **the implementation of an appropriate antitrust compliance programme as mitigating circumstances** is the most significant news in the ICA Guidelines. To date, EU and national courts and authorities have consistently rejected requests for mitigation based on compliance programmes, although this stance has been criticised by a number of stakeholders and some national authorities have adopted fining policies intended to incentivise the adoption by firms of structured compliance programmes The ICA has, therefore, placed itself in the vanguard of EU national competition authorities by adopting a fining policy which incentivises virtuous conduct and the enhancement of a "competiton culture".

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Full text of the Guidelines available at www.agcm.it.