

# CCC draft Guidelines (no 3/3): Penalties

**COMESA Competition Commission ('CCC') seeks input on draft guidelines for determination of administrative penalties**

12 November 2021

In this article in a [three-piece series](#), we discuss the [Determination of Administrative Penalties Guidelines draft](#), which has been published (in addition to the Hearing Procedure and Settlement Guidelines). The draft Guidelines comment period expired today, 12 November 2021.

The Guideline establishes a **two-step methodology** when determining a fine to be imposed on undertakings. The first step will see the Commission set a “base amount” for each undertaking or association of undertakings. The second step provides the Commission with the necessary discretion to adjust the base amount, either upwards or downwards, having consideration of any aggravating, mitigating or any other factors (Section 5(1)(a)-(b)).

The “base amount” will be set with reference to the undertaking’s turnover in the Common Market from the previous financial year and by applying the following methodology:

- The base amount will be a proportion of the turnover and will depend on the nature, degree and gravity of the infringement **and multiplied** by the number of years of the infringement (Section 5(8)).
- The Guideline deems the following as aggravating factors:
  - **Nature and gravity of the infringement** (Section 5(10)(a));
  - **Duration of infringement**(Section 5(10)(b));
  - **Extend of consumers affected in the Member States and any action**



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**taken by the company to mitigate or remedy the damage suffered by consumers** (Section 5(10)(c)).

- The Guidelines propose the following base proportion of turnover to be applied:
  - Cartel conduct: a base of 5% of turnover;
  - Other horizontal conduct: a base of 4% of turnover;
  - Abuse of dominance: a base of 3% of turnover;
  - Restraints: a base of 2% of turnover;
  - Consumer protection violations: a base of 1% of turnover;
  - Mergers implemented in contravention of the Regulations: a base of 2% of turnover;
  - Failure to cooperate with the Commission: a base of 0.5% of turnover; and
  - Other infringements: a base of 0.5% of turnover.
  
- The following aggravating circumstances may result in the increase of the base amount:
  - Continuation or repeat of the same or a similar infringement: basic amount will be **increased by 3% of the amount of the fine** for each infringement;
  - Refusal to cooperate with or obstruction of the Commission's investigation: basic amount will be **increased by 5% of the amount of the fine**;
  - Where an undertaking is a leader in, or instigator of the infringement: basic amount will be **increased by 4% of the amount of the fine**.
  
- The Commission may reduce the basic amount if the following mitigating factors exist:
  - Cooperation: **decrease in the basic amount by 5%** of the fine;
  - First offender: **decrease in the basic amount by 3%** of the fine;
  - Justifications on efficiency and consumer benefit: **decrease in the basic amount by 0.5%** of the fine;
  - Termination of the infringement: **decrease in the basic amount by 0.5%** of the fine;
  - Negligence: **decrease in the basic amount by 0.1%** of the fine; and
  - Extent of involvement in the infringement: **decrease in the basic amount by 0.5%** of the fine.

A reduction of a fine could be granted, upon request, solely on the basis of objective evidence that the imposition of the fine would **irretrievably jeopardize the economic viability of the undertaking concerned and cause its assets to lose all their value** (Section 5(21)).

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