
Competition Authority methodology for imposing fines

The Portuguese Competition Authority has published guidelines on the methodology to be used for imposing fines, in accordance with Law 17/2022

Portugal - Legal Update

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Key aspects

- > The Portuguese Competition Authority has revisited the guidelines on the methodology to be used for imposing fines under article 69 of Law 19/2012 of May 8, as amended by Law 17/2022, which transposed Directive (EU) 2019/1.
- > The methodology for determining the fine comprises three stages: determining the base amount for each infringing company, the adjusted base amount, and the fine itself.
- > The waiver or reduction of the fine in the specific cases envisaged in Law 19/2022 has also been established, as well as the possibility of settlement procedures.



Last July, the Portuguese Competition Authority (“AdC”) published the [guidelines on the methodology to be used for imposing fines](#) under article 69 of Law 19/2012 of May 8 (“NRJC”), reviewed by the AdC in accordance with the amendments introduced by Law 17/2022, which transposed Directive (EU) 2019/1.

The guidelines apply to administrative offense proceedings in which the investigation began after the guidelines’ entry into force, but may be reviewed by the AdC, if justified, based on acquired experience and case law.

Given the similarity between the new guidelines and those [published in 2012](#), we will recall the main aspects of the methodology applied by the AdC.

The methodology for determining the fine to be imposed comprises three stages:

- determining the basic amount for each infringing company in the proceedings. This amount depends on the basis for the fine, and the seriousness and duration of the offense;
- determining the adjusted base amount, which can be increased or reduced based on aggravating or mitigating circumstances; and
- determining the fine itself, which may also be adjusted based on other factors, such as the maximum limit, the economic situation of the infringing company, or the fact that the bulk of the infringing company’s activity takes place in the market affected by the offense.

Basis for the fine

- As a rule, the basis for the fine is the infringing company’s turnover from the goods and services directly or indirectly related to the offense, but it may be the infringing company’s total turnover when the available elements do not allow the former to be determined or when there is a clear disproportion between the two.
- A percentage of that turnover is then determined that reflects the seriousness of the offense and its duration.

Seriousness of the offense

- The seriousness of the offense is determined on a case-by-case basis, considering a general component, based on the general characteristics of the offense.
- This means that it is common to all participants in the offense. It also has an individual component based on the conduct and specific context of the infringing company.



Duration of the offense

- > The duration of the offense is calculated by considering periods of less or more than one semester and applying a decreasing weighting from the 5th to the 10th year, while disregarding duration from the 10th year onward.

Circumstances

- > Aggravating or mitigating circumstances are assessed together, considering all the relevant factors, and may entail an increase in or reduction of the basic amount of up to 50%, except when there are mitigating factors that may justify a change in this limit.
- > Aggravating circumstances include recidivism, leadership, instigation, imposition of retaliatory measures, or concealment of the offense.
- > Mitigating circumstances include actions and behavior aimed at eliminating the prohibited practices or repairing the damage caused to competition; cooperation with the AdC; substantially reduced participation in the offense; or encouraging public entities to commit the offense.

Maximum fine

- > The maximum fine is 10% of the total worldwide turnover of the economic group to which each of the infringing companies belong, or of the associated companies in the case of associations of undertakings, or 10% of the annual remuneration in the case of individuals.
- > This limit can be increased by up to 13.33% if it is possible to quantify and conclude that the economic benefit obtained from the offense was higher than the maximum limit of the abstractly applicable fine.

Infringing company's economic situation

- > The infringing company's economic situation may justify a reduction of the fine if it objectively demonstrates that the fine would jeopardize the infringing company's economic viability and would cause its assets to lose value.
- > The AdC will mainly analyze liquidity and solvency indicators, as well as indicators for analyzing the infringing company's financial balance.



Bulk of the infringing company's activity

- > The fact that the bulk of the infringing company's activity is carried out in the market affected by the offense may also justify a reduction of the fine that has been calculated based on the turnover related to the offense.

Waiver or reduction of the fine

- > The fine may also be waived or reduced in the cases established in Chapter VIII of Law 19/2012, and settlement procedures may be used in which the AdC stipulates the applicable fine reduction percentage.
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The guidelines thus constitute an important instrument for guiding and informing all economic agents about the criteria and factors that the AdC considers when determining fines for offenses against the competition protection rules established in the NRJC and the Treaty on the Functioning of the European Union. The objective is to ensure transparency, objectivity, and legal certainty of the fines imposed by the AdC for each offense, as well as their deterrent and preventive effect.

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