

UK Competition Law Financing Policy

CLA Roundtable

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Question A

What are the most important factors that should determine the level of fines imposed for infringements of competition rules?

Should there be a binding framework determining the level of fines?

Who should decide?

Structure of Report

- **LEGAL FRAMEWORK (Positive Law)**
 - **Institutions**
 - **Nature of the Rules governing the assessment of fines**
 - **General Methodology used in determining the amount of the fine**
 - **Comparison of Methodology used in competition matters versus other serious economic crimes or infringements**
 - **Other Material Aspects of the Rules governing the assessment of fines**
- **STATISTICS**
- **NORMATIVE QUESTIONS / RECOMMENDATIONS**

Normative Questions (1): Institutions and Guidelines

- What body should determine the level of fines (judicial/administrative)? If administrative, should the decision-maker be separate from the team that investigated the infringement?
- To what extent should the methodology used/level of fines be determined by, or be subject to the approval of, the legislature or politically-accountable government ministers, or should the level of fines and methodology used be left to independent competition authorities or courts?
- What role should courts play in supervising the fining decisions of independent competition authorities? To what extent should they have regard to guidelines issued by competition authorities?

Normative Questions (2): Seriousness and Deterrence

- To what extent should the level of fines reflect the size of the undertaking concerned? If so, how should “size” be measured? If turnover is to be used, what measure of turnover is appropriate (relevant market/overall turnover; year of infringement/year of fining decision)?
- How should the seriousness of an infringement be judged? To what extent should the anti-competitive intentions of the undertaking or its employees be relevant?
- To what extent should the actual effects of the infringement be relevant? Should the amount of the fine exceed the harm caused (or likely to have been caused) by it, in order to provide suitable deterrence bearing in mind a low likelihood of detection?

Normative Questions (3): Consistency with other fines

- To what extent should the level of fines in competition cases be consistent with the level of fines imposed for other economic crimes/infringements (fraud / environmental law / consumer protection)?

Normative Questions (4): Mitigation

- To what extent should fines on an undertaking reflect its behaviour after the infringement, such as co-operation/non-co-operation with the investigation / introduction of compliance measures / disciplinary action against employees involved / payment of compensation to victims?

Thank You

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