Disclaimer: this is an unofficial courtesy translation provided by the AGCM for information purposes only. It does not necessarily reflect subsequent amendments, including those introduced by separate legal provisions, nor does it constitute a legal or official interpretation. Only the original text in Italian shall prevail as a source of reference.

Last updated in December 2025.

GUIDELINES ON THE APPLICATION OF THE CRITERIA FOR SETTING ADMINISTRATIVE FINES IMPOSED BY THE AUTHORITY PURSUANT TO ARTICLE 15(1-*BIS*) OF LAW 287/1990

I. PREABLE

1. Where the Authority finds an infringement of Articles 2 and 3 of Law 287/1990 or Articles 101 and 102 TFEU, it shall, having regard to the seriousness and duration of the infringement, "*impose an administrative fine not exceeding 10 percent of the total worldwide turnover recorded by each undertaking or association of undertakings in the business year preceding the notification of the cease and desist order*", pursuant to Article 15(1-*bis*) of Law 287/1990. Article 31 of the same law further provides that administrative fines relating to competition laws infringements "*shall be governed by the provisions contained in Chapter I, Parts I and II of Law 689 of 24 November 1981, where applicable*". In particular, Article 11 of Law 689/1981 provides that, when setting a fine "*account must be taken of the seriousness of the infringement, the actions taken by the offender to remove or mitigate its effects, as well as their personal circumstances and financial situation*". These Guidelines also take into account the legislative changes introduced by Legislative Decree 185/2021, entitled "*Transposition of Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market*" (ECN+ Directive) and by Law 118/2022, the "*2021 Annual Law on Pro-competitive Reforms*". They also reflect relevant case law and the Italian Competition Authority's decision-making practice over the past decade.

2. In imposing administrative fines, the Authority enjoys wide discretion[1], subject to the limits set out the aforementioned provisions. In particular, the fine may not exceed 10% of the total worldwide turnover[2] recorded by each undertaking or association of undertakings in the business year preceding the notification of the cease and desist order. Within these limits, and to ensure effective deterrence, the fine must not be higher than necessary to induce undertakings to comply with antitrust rules.

---

[1] [*Council of State, Sixth Division, among others, judgments 3900 and 3901 of 20 May 2021, Ecoambiente.*]

[2] [*Case law has confirmed the Authority's practice of considering the total worldwide turnover – including VAT and other taxes – as the maximum legal threshold (Council of State, Sixth Division, judgments 695 and 697 of 27 February 2008, Associazione Nazionale Esercenti Cinematografi Lombarda).*]

3. The Authority's fining policy is designed both to punish undertakings that have engaged in unlawful conduct and to prevent future infringements, while also discouraging other undertakings from engaging in prohibited behaviour. In exercising its fining powers, the Authority pursues two objectives:

a) specific deterrence aimed at undertakings or associations of undertakings that have infringed rules on restrictive agreements and abuse of dominance (*so-called specific deterrence*);

b) general deterrence aimed at discouraging other market players from engaging in or continuing conduct contrary to competition rules (*so-called general deterrence*).

4. The purpose of these Guidelines is to set out the principles the Authority shall apply when setting fines for infringements of national or EU rules on restrictive agreements and abuse of dominance. The aim is to ensure transparency and predictability in the Authority's decision-making process. Although the methodology described for setting fines is not an exact calculation, it is intended to make parties aware of the reasons and logic underlying the Authority's decision to impose a particular fine, while also enabling full judicial review of its actions[3]. Greater transparency and predictability in the level of fines for antitrust infringements can also effectively help deter antitrust law infringements.

5. The Authority intends to exercise its fining powers with particular severity in cases involving secret cartels, as defined in Article 15-*bis*(2) of Law 287/1990[4], and in other cases likely to cause serious harm to the functioning of the market and to consumers.

6. The methodology described below provides general guidance. It should not, however, be regarded as an automatic and purely arithmetical calculation method[5].

II. SETTING OF FINES: BASIC AMOUNT

7. The basic amount of the fine is calculated by multiplying a percentage of the value of sales – set based on the seriousness of the infringement – by the duration of each undertaking's participation in the infringement. In certain circumstances, as set out below, the Authority may add an additional sum (hereinafter, the "entry fee") to the basic amount. The Authority shall use rounded figures when setting the basic amount.

---

[3] [*As recognised by case law, the parties must be put "in a position to verify that the calculation method used and the steps followed [by the Commission] are free of errors and compatible with the applicable provisions and principles governing fines, in particular the prohibition of discrimination" (Council of State, Sixth Division, judgments 695 and 697 of 27 February 2008, Associazione Nazionale Esercenti Cinematografi Lombarda; see also Council of State, Sixth Division, judgment 6469 of 17 December 2007, Lottomatica-Sisal; and Council of State, Sixth Division, judgment 3013 of 20 May 2011, Recycling of Used Batteries).*]

[4] [*This article defines a secret cartel as "an agreement or concerted practice, whose existence is concealed in whole or in part, between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors".*]

[5] [*Council of State, Sixth Division, judgments 3900 and 3901 of 20 May 2021, EcoAmbiente.*]

II.1 Value of the sales of goods or services to which the infringement relates

8. For the fine to act as an effective deterrent, it must not fall below the gains the undertaking expects to derive from the infringement. These gains, which depend on the nature of the infringement, are linked to the overall value of the sales affected by the unlawful conduct. For this reason, the Authority deems that fines for antitrust infringements must be calculated on the basis of the value of sales of the goods or services to which the infringement directly or indirectly relates, generated by the undertaking in the relevant market(s) in the last full business year of its participation in the infringement (hereinafter, the "value of sales").

9. The value of sales is calculated net of VAT and other taxes directly related to sales. Where turnover data for the last full business year of participation in the infringement is not provided by the undertaking, or is unreliable, insufficiently representative or cannot be determined otherwise, the Authority shall rely on any other relevant and appropriate information. This may include: the average value of sales over the entire duration of the infringement, the value of sales in another year within that period, or a percentage of the total turnover generated in Italy.

10. Where an infringement by an association of undertakings relates to the activities of its members, the value of sales generally corresponds to the sum of the value of sales directly or indirectly achieved by those members. Where a fine is imposed not only on the association but also on its members, the turnover of the members subject to the fine is not taken into account when setting the fine imposed on the association.

II.2 Percentage of the value of sales based on the seriousness of the infringement

11. The percentage applied to the value of sales to which the infringement relates is determined based on the seriousness of the infringement. This percentage shall not exceed 30% of the value of sales.

12. In assessing the seriousness of the infringement, the Authority shall first and foremost have regard to the nature of such infringement. The Authority considers secret horizontal price-fixing, market-sharing and output-limitation agreements among the most harmful restrictions of competition. In this context, the secrecy of the unlawful practice is directly linked to the likelihood of it being detected and, therefore, to the expected fine. For this type of infringement, the percentage of the value of sales taken into account shall generally be at least 15%.

13. In the case of multi-party infringements, the Authority may take into account the combined market share held by all the undertakings involved when assessing the seriousness of the infringement.

14. Other factors that the Authority shall consider when setting the percentage of the value of sales include: i) the competitive conditions in the affected market (such as the level of market concentration and barriers to entry); ii) the nature of the products or services, with particular regard to harm to innovation; iii) whether or not the unlawful practice was actually implemented; and iv) the significance of the actual economic impact or, more broadly, the

harmful effects on the market and/or consumers – where the Authority has sufficient evidence to make a reliable estimate.

II.3 Duration of the infringement

15. The duration of the infringement, expressly provided for in Article 15(1-*bis*) of Law 287/1990, affects the harmful consequences of the infringement. It therefore deserves to be considered when setting the appropriate amount of the fine. The amount obtained by applying a given percentage to the value of sales is multiplied by the number of years the undertaking participated in the infringement.

16. For fractions of a year, the duration is calculated based on the actual months and days of participation in the infringement.

II.4 Additional amount (entry fee)

17. To ensure that the Authority's fining powers act as an effective deterrent, particularly in relation to the most serious restrictions of competition – regardless of their duration or actual implementation – the Authority may add to the basic amount an additional sum between 15% and 25% of the value of sales of the goods or services to which the infringement relates.

II.5 Bid-rigging in public procurement

18. In cases of bid-rigging in public procurement, the Authority shall generally take into account the value of sales directly or indirectly affected by the unlawful conduct[6]. For each undertaking participating in the collusive practice, this value normally corresponds to the amounts awarded[7]. Where no award has taken place, it shall correspond to the tender base price or the amounts assigned through private negotiations[8]. In these cases, there is no need to apply any adjustments to account for the duration of the infringement as set out in the preceding paragraphs. Where one or more of the tenders subject to collusion are awarded to undertakings outside the agreement, the value of sales shall correspond to the bid submitted by the participant set to win the contract under the collusive arrangement[9]. However, if that figure is unreliable or insufficiently representative, the Authority shall instead use any other information it deems relevant or appropriate, as specified in point 9. Where the relevant market extends beyond the tender(s) in question[10], the Authority may consider the total value of sales in the entire product

---

[6] [*On the basis of this criterion, the relevant amount is the awarded value, including any subcontracted amounts (Council of State, Sixth Division, judgment 50 of 3 January 2020, Oxygen Therapy Tenders).*]
[7] [*Council of State, Sixth Division, judgment 3572 of 9 May 2022, Consip FM4 Tender.*]
[8] [*For example, amounts awarded as a result of private negotiations where the practice was implemented through the boycott of the tender(s).*]
[9] [*Council of State, Sixth Division, judgments 5900, 5898, 5897, 5899 of 6 October 2020, Support and Technical Assistance Services for Public Administration.*]
[10] [*For example, where the restrictive agreement involves the participation in multiple tenders likely to affect the price of the affected products across the entire market, or where it is aimed at refraining from participation in tenders in order to influence the market price.*]

or service market affected by the infringement. This includes all sales made by the undertaking in the relevant market, not only those covered by the tender. The value is calculated on the basis of the last full business year of participation in the infringement and, where appropriate, adjusted to account for its duration as set out in the preceding paragraphs.

III. ADJUSTMENTS TO THE BASIC AMOUNT: AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES

19. The basic amount of the fine, set in accordance with the preceding paragraphs, may be adjusted to reflect specific circumstances that either aggravate (*aggravating circumstances*) or mitigate (*mitigating circumstances*) the responsibility of the infringing party. The Authority shall place particular emphasis on the role played by the undertaking in the infringement, its conduct during the investigation, the steps it has taken to remove or mitigate the effects of the infringement and its personal circumstances, also in light of the provisions set out in Article 11 of Law 689/1981.

20. Where there is a combination of circumstances, the Authority shall assess and quantify their overall impact. As a rule, each circumstance considered by the Authority under the following paragraphs shall account for no more than 10% of the basic amount[11], and the total adjustment – whether upwards or downwards – shall not exceed 30% of the basic amount.

21. **Aggravating circumstances** include, by way of example:

- playing a decisive role in the promotion, organisation or monitoring of a multi-party infringement, or inducing or coercing – including through retaliatory measures – other undertakings to take part and/or continue their involvement in the infringement;
- engaging in conduct intended to prevent, obstruct or otherwise delay the Authority's investigation.

22. By way of derogation from point 20, the basic amount may be further increased by up to 100% where the same undertaking previously committed one or more similar infringements, or infringements of the same type[12], in terms of subject matter or effects, established by the Authority or the European Commission within the five years preceding the start of the infringement under investigation. In setting the appropriate increase in cases of repeat offences, the Authority shall consider the nature of the earlier infringements and their substantive similarity to the one under review.

23. **Mitigating circumstances** include, by way of example:

- the prompt adoption of appropriate measures to mitigate the effects of the infringement, in particular by restoring the competitive conditions that existed prior to the infringement and/or by providing and implementing compensatory measures for those harmed by the unlawful conduct, whether on a voluntary basis or as part of a consensual settlement reached before the

[11] [*Council of State, Sixth Division, judgment 5257 of 27 August 2020, Concrete Market in Veneto.*]
[12] [*Council of State, Sixth Division, judgment 2479 of 15 May 2015, Wind-Fastweb/Telecom Italia Conduct.*]

infringement decision. The mere termination of the unlawful conduct after the opening of the investigation is not a mitigating circumstance;
- effective cooperation with the Authority during the investigation, beyond what is required by law. In cases falling within the scope of Article 15-*bis* of Law 287/1990, cooperation by undertakings is assessed exclusively in accordance with the provisions of the "*Notice on the non-imposition and reduction of fines*";
- proof that the undertaking played only a marginal role in the infringement, and that it did not in fact put the unlawful conduct into effect;
- the existence of regulatory measures and/or public authority decisions that encouraged, facilitated or authorised the infringement;
- the adoption and effective implementation of a specific compliance programme, adequate and aligned with European and national best practices, as set out in the "*Guidelines on Antitrust Compliance*". The mere existence of a compliance programme is not, on its own, a mitigating circumstance. There must be evidence of a real and concrete commitment to compliance (for example, active involvement of senior management; appointment of staff responsible for the programme; identification and assessment of antitrust risks based on the business sector and operational context; training activities proportionate to the size of the undertaking; incentives for compliance and disincentives for non-compliance; implementation of monitoring and auditing systems).

24. By way of derogation from point 20, the fine may be further reduced by up to 50% of the basic amount where, during the investigation, the undertaking provides information and documentation – including through a targeted inspection – considered decisive in establishing an infringement other than the one under investigation, falling within the scope of Article 15-*bis* of Law 287/1990. This reduction applies where the undertaking is granted conditional immunity from fines for that separate infringement, in accordance with the provisions of the "*Notice on the non-imposition and reduction of fines*".

IV. OTHER ADJUSTMENTS TO ENSURE PROPORTIONALITY AND EFFECTIVE DETERRENCE

25. The Authority may increase the fine by up to 50% where, in the business year preceding the notification of the cease and desist order, the undertaking responsible for the infringement generated a total worldwide turnover that is particularly high compared to the value of the sales of the goods or services affected by the infringement, or where it belongs to a group of significant size[13].

[13] [*Council of State, Sixth Division, judgment 2967 of 29 March 2024, Leadiant Biosciences / Medicinal Product for the Treatment of Cerebrotendinous Xanthomatosis, holding that "[...] the overall fining outcome cannot be regarded as disproportionate, given that the final amount was determined through the proper application of the relevant legislation and that account was taken of other decisions adopted by the national competition authorities in relation to the same matter."*]

26. The Authority may increase the fine in light of the unlawful profits made by the undertaking responsible for the infringement, where it has sufficient evidence to make a reliable estimate.

V. CONCURRENCE OF INFRINGEMENTS

27. Where the same conduct infringes both Articles 2 and 3 of Law 287/1990 or of both Articles 101 and 102 TFEU, or where the same conduct gives rise to multiple infringements of the same provisions, the Authority shall impose the fine for the most serious infringement established in its decision. This fine may be increased up to threefold, in accordance with Article 8(1) of Law 689/1981[14] (*formal concurrence*).

28. Where several distinct actions give rise to multiple infringements of one or more of the above provisions, the undertaking shall be subject to as many fines as there are infringements established (*material concurrence*).

VI. STATUTORY MAXIMUM

29. Where the final amount of the fine, set in accordance with the preceding paragraphs, exceeds the statutory maximum set out in Article 15(1-*bis*) of Law 287/1990, it shall be reduced accordingly. In line with national case law, the basis for calculating the statutory maximum is the total worldwide turnover recorded by each undertaking party to the infringement in the business year preceding the notification of the cease and desist order. Where the infringement committed by an association of undertakings relates to the activities of its members, the fine may not exceed 10% of the combined total worldwide turnover recorded in the business year preceding the notification of the cease and desist order, by each member operating in the market affected by the infringement committed by the association of undertakings.

VII. NOTICE ON THE NON-IMPOSITION AND REDUCTION OF FINES AND SETTLEMENT PROCEDURE

30. Where Article 15-*bis* of Law 287/1990 applies, the Authority may waive or reduce the fine in accordance with the conditions set out in the "*Notice on the non-imposition and reduction of fines*".

Where the settlement procedure applies, the Authority may, pursuant to Article 14-*quater* of Law 287/1990, reduce the fine in accordance with the conditions set out in the "*Notice on the enforcement of Article 14*-quater *of Law 287 of 10 October 1990*".

VIII. ABILITY TO PAY

[14] [*Council of State, Sixth Division, judgment 9306 of 20 December 2010, ENI–Trans Tunisian Pipeline. The provision does not cover cases involving a continued and complex restrictive agreement and/or an abuse of dominance based on a complex overarching strategy.*]

31. The Authority takes into account the economic conditions of the undertaking responsible for the infringement, as provided in Article 11 of Law 689/1981. Where the undertaking submits a reasoned and substantiated request before the close of the evidence-gathering stage of the investigation, as set out in Article 14(2) of Presidential Decree 217/1998, the Authority may reduce the fine to reflect the undertaking's limited ability to pay. An undertaking wishing to submit such a request must provide complete, reliable and objective evidence showing that the imposition of a fine – set in accordance with these Guidelines – would irreparably jeopardise its economic viability and possibly result in its exit from the market. The Authority shall not consider requests based solely on losses recorded in recent financial years or on a general downturn in the sector.

Where a fine is imposed on an association of undertakings based on the turnover of its members, and the association is not solvent, Article 15(1-*ter*) of Law 287/1990 shall apply.

IX. JOINT AND SEVERAL LIABILITY FOR FINES

32. Where an infringement involves more than one company belonging to the same group, the Authority may impose the fine jointly and severally on those companies.

X. SYMBOLIC FINE

33. In certain specific circumstances, expressly set out in the decision establishing the infringement, the Authority may impose a symbolic fine.

XI. FINAL AND INTERIM PROVISIONS

34. The Authority may depart from these Guidelines where justified by specific circumstances or by the need to achieve a particular deterrent effect. Any such departure shall be reasoned and expressly set out in the decision establishing the infringement.

35. These Guidelines replace the Guidelines on the application of the criteria for setting administrative fines imposed by the Authority pursuant to Article 15(1) of Law 287/1990, adopted by Decision 25152 of 22 October 2014 (Bulletin 42 of 3 November 2014).

36. These Guidelines apply to proceedings already in progress, provided that the statement of objections under Article 14(1) of Presidential Decree 217/1998 has not yet been notified to the parties.