

## **Antitrust: reduction of fines for cooperation**

The European Commission has found that the clothing company Guess (Guess?, Inc., Guess? Europe, B.V. and Guess Europe Sagi) has infringed EU antitrust rules by restricting cross-border sales within the EU Single Market. The Commission has reduced the fines for Guess? Inc. in order to reward its cooperation. This is the third time that the Commission rewards such cooperation in its antitrust procedures.<sup>1</sup>

This document explains the framework for this type of cooperation and how it can be applied in other antitrust cases. The purpose is to provide more clarity to companies on the main parameters, although each cooperation would need to be assessed on a case by case basis.

## **Background: rewarding cooperation in antitrust cases**

There is already a well-established and successful framework for rewarding cooperation by investigated companies in the area of cartels, which includes reducing the fines if a company has provided (self-incriminating) evidence (leniency)<sup>2</sup> and/or if a company admits the infringement and agrees to follow a more streamlined and shorter procedure (cartel settlement)<sup>3</sup>. The same rationale, allowing for simpler procedures and a reduction in fines, can be applied to cases outside cartels. The cooperation framework set out in this document concerns situations where companies are willing to acknowledge their liability for an infringement (including the facts and their legal qualification). Companies can in addition choose to cooperate by voluntarily providing or clarifying evidence or by helping in the design and implementation of remedies.

The Commission will assess on a case-by-case basis whether a case would be suitable for this form of cooperation, taking into account the probability of reaching a common understanding with the company within a reasonable time-frame. There is neither a right nor an obligation for companies to pursue the cooperation path. Moreover, the Commission, as the investigative authority and the guardian of the Treaty empowered to adopt enforcement decisions subject to judicial control by the Union Courts, does not negotiate the question of the existence of an infringement of Union law and the appropriate sanction.

## **Determining the level of the reduction for cooperation**

The level of fines reduction for companies that acknowledge their liability for an antitrust infringement will be based on an overall assessment of the extent and timing of the cooperation given and the procedural efficiencies gained in each individual case.

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<sup>1</sup> The Commission previously rewarded the cooperation in the ARA case [http://europa.eu/rapid/press-release\\_IP-16-3116\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3116_en.htm) [as well as in the four Consumer Electronics cases (Asus, Denon & Marantz, Philips and Pioneer: [http://europa.eu/rapid/press-release\\_IP-18-4601\\_en.htm](http://europa.eu/rapid/press-release_IP-18-4601_en.htm))].

<sup>2</sup> Commission Notice on Immunity from fines and reduction of fines in cartel cases.

<sup>3</sup> Commission Notice on the conduct of settlement procedures in cartel cases.

In the Guess case, the company acknowledged the infringement before the issuing of a statement of objections. Guess revealed a restriction of competition which was not known to the Commission until then and provided additional evidence representing significant added value compared with the evidence already in the Commission's possession and strengthening the Commission's ability to prove the infringement as a result. In addition, Guess waived certain procedural rights, resulting in administrative efficiencies. The reduction granted reflected the timing of the cooperation (both in terms of the acknowledgement of liability and the evidence) as well as the extent to which the evidence strengthened the Commission's ability to prove the infringement.

The ARA case shows that the Commission may within this framework also reward cooperation on remedies, provided that the company submits a remedy proposal and acknowledges that the proposed remedy is suitable and proportionate to effectively terminate the infringement.

The reduction was granted under point 37 of the Fining Guidelines.<sup>4</sup> Such reductions are granted at the end of fine calculation. This ensures that companies who potentially reach the legal maximum amount for a fine (10% of total turnover) can benefit from the reduction for cooperation.

Outside the framework of this cooperation process, involving an acknowledgment of the infringement, the Commission remains open to rewarding disclosure of evidence. Reductions in such cases are however likely to generate a lower level of reduction.

### **Procedural milestones**

The procedural steps followed in the Guess case are inspired by the cartels settlement notice<sup>5</sup>.

Guess clearly expressed its willingness to cooperate on a basis that could lead to acknowledging the infringement received targeted access to the file of the evidence on which the Commission intended to rely for its decision. Guess was also given the opportunity to make its views known in writing and/or orally.

Once a common understanding was reached and the company confirmed its intention to acknowledge the infringement as set out by the Commission, Guess was informed by the Commission of its estimation of the range of likely fines. On this basis, Guess indicated its willingness to acknowledge the infringement subject to the imposition of a maximum fine. This submission also contained a confirmation that its rights of defence were sufficiently safeguarded. On this basis, the Commission adopted a statement of objections and a decision that were more streamlined than what would have been the case outside this cooperation framework.

During the whole process, the Commission remained committed to ensuring due process and rights of defence.

Cooperation may also take place after the statement of objections has already been notified.<sup>6</sup> It is however to be expected that such cooperation would generate less

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<sup>4</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2) of Regulation No1/2003.

<sup>5</sup> Commission Notice on the conduct of settlement procedures in cartel cases.

<sup>6</sup> ARA, see footnote 1 above.

efficiency gains and less added value compared to similar cooperation given before a statement of objection has been issued.