

1 Method for determining the size of the administrative fine

1. The objective of this policy statement (Sw. *ställningstagande*) is to enhance predictability in how the Swedish Competition Authority interprets and applies the provisions regarding administrative fines in the Competition Act (2008:579) when the Authority issues such fines.¹
2. The Swedish Competition Authority may, pursuant to Chapter 3, Section 5, first paragraph, items 1–3 of the Competition Act, order an undertaking to pay a particular fee, a so-called administrative fine, if the undertaking or a person acting on behalf thereof, intentionally or negligently, has infringed
 - i a prohibition under Chapter 1, Article 1 or Article 7 of the Competition Act or Article 101 or Article 102 of the Treaty on the Functioning of the European Union (TFEU),
 - ii a decision imposing a remedy pursuant to Chapter 3, Section 1, first paragraph or Section 3 of the Competition Act, or
 - iii a decision to accept commitments pursuant to Chapter 3, Section 4, first paragraph of the Competition Act.
3. References to undertakings also apply to associations of undertakings.
4. Chapter 3, Sections 6 and 8–11 of the Competition Act contain provisions on how the size of the administrative fine is to be determined. Under these provisions, the administrative fine is to be established based on the sanction value of the infringement, which should take into account the gravity of the infringement and its duration (Chapter 3, Section 8). The sanction value can then be adjusted with regard to any aggravating or mitigating circumstances of significance (Chapter 3, Sections 9–11).

¹ Cf. government bill 2007/08:135 p. 122.

5. The provisions in the Competition Act describe a general method for determining the administrative fine, based on a division between objective circumstances related to the infringement (the sanction value; Chapter 3, Section 8), circumstances related to the undertaking's behaviour in connection with the infringement (Chapter 3, Sections 9–10) and circumstances related to the undertaking but unrelated to the infringement in question, such as the financial position of the undertaking (Chapter 3, Section 11). This means that a certain circumstance shall not be taken into account in multiple steps.²
6. The provisions on determination of the administrative fine are an adaptation to EU law.³ From a sanctioning perspective, it should not make any difference if an infringement is assessed under Swedish law or under EU law. The European Commission's Guidelines on calculation of fines for infringements of the prohibitions in Articles 101 or 102 of the TFEU⁴ and the case law arising therefrom should serve as guidance for enforcement pursuant to the Competition Act.⁵
7. The guiding principle when determining the size of an administrative fine is that the fine should be large enough to deter the undertaking in question and to prevent other undertakings from infringing the competition rules.⁶ If a decision on an administrative fine is addressed to several undertakings, the fine shall be set individually for each of them.
8. When the size of the administrative fine is determined, the Swedish Competition Authority uses a two-step method. In the first step, a sanction value for each undertaking is determined (see part 2 below). In the second step, the sanction value can be increased or reduced depending on the existence of aggravating or mitigating circumstances (see part 3 below).
9. The Swedish Competition Authority may, in exceptional cases, depart from this policy statement and decide on a symbolic administrative fine.⁷

² Government bill 2020/21:51 p. 112 and government bill 2007/08:135 p. 121 f.

³ Government bill 2007/08:135 p. 118 ff. and 126. See also Swedish Government Official Report 2006:99 p. 502 and 506.

⁴ The Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003.

⁵ Government bill 2007/08:135 p. 126.

⁶ Government bill 2020/21:51 p. 115 and 125.

⁷ The Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 36.

2 Step 1: Determination of the sanction value (Chapter 3, Section 8 of the Competition Act)

10. The sanction value is determined based on an assessment of circumstances attributable to the *gravity* and *duration* of the infringement. The sanction value reflects the administrative fine that the infringement in itself deserves.

2.1 The gravity of the infringement

11. The gravity of the infringement is assessed on a case-by-case basis, for each type of infringement, taking into account all the relevant circumstances in each individual case.

2.1.1 The affected turnover of the undertaking

12. As a general rule, the appropriate starting point for assessing the gravity of an infringement is the turnover of the undertaking or association of undertakings on the market affected by the infringement, the so-called relevant market.⁸ That market could potentially extend outside Sweden.⁹

13. If the infringement has been committed by an association of undertakings and relates to the activities of its members, the starting point for assessing the gravity of the infringement is instead the total combined turnover on the relevant market for all of those undertakings. If the decision imposing an administrative fine is addressed to both an association of undertakings and its members, the Swedish Competition Authority will not, when determining the administrative fine for the association, take into account the turnover of those undertakings that are fined separately.

14. As a general principle, the Swedish Competition Authority considers the undertaking's turnover on the relevant market during the last full financial year during which it participated in the infringement.¹⁰ If this financial year is not representative for the undertaking's sales on the relevant market at the time of the infringement, the Swedish Competition Authority will instead consider the undertaking's turnover in another financial year or an average turnover from several financial years.

15. As a general principle, the Swedish Competition Authority will consider the undertaking's total turnover on the relevant market also in cases where the infringement relates to only part of its turnover on that market. However, there may be situations where the infringement in question concerns a clearly delimited part of the relevant market. This might occur,

⁸ Government bill 2007/08:135 p. 125 and 256.

⁹ Government bill 1999/2000:140 p. 185–187

¹⁰ Cf. the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 13.

for instance, in case of infringements related to specific procurement proceedings. The Swedish Competition Authority may, in such cases, estimate the affected turnover based on other information than the undertaking's total sales on the relevant market.

16. In the case where the undertaking does not have any turnover on the relevant market, the Swedish Competition Authority makes an overall assessment of what constitutes a suitable starting point for assessing the gravity of the infringement. The same applies when an administrative fine is determined for an association of undertakings that does not have any turnover on the relevant market and the infringement is not connected to the activities of the members of the association.¹¹

2.1.2 Assessment of the gravity of the infringement

17. The Swedish Competition Authority generally sets the gravity of the infringement as a proportion, up to at most 30 percent, of the undertaking's affected turnover.
18. In determining the proportion of the turnover to be considered, particular account is taken of the following circumstances:
- i the nature of the infringement,
 - ii the size and significance of the market, and
 - iii the infringement's actual or potential impact on competition in the market.
19. The circumstances above do not all carry the same weight within the framework of the total assessment. The nature of the infringement has a significant role. Some types of infringement are, by their very nature, so harmful to competition that the administrative fines should, based solely on this, be set to a high total, in order to have a deterrent effect on the undertaking in question, as well as on other undertakings.
20. Examples of prohibited restrictions of competition between competing undertakings that are, by their very nature, particularly harmful, include horizontal price-fixing, market sharing, output-limitation agreements and bid-rigging. Such types of infringements will generally have a gravity at the higher end of the scale.¹²

¹¹ Government bill 2007/08:135 p. 125.

¹² Government bill 2007/08:135 p. 123.

21. Infringements of the prohibition on abuse of a dominant position can be of such a nature that the administrative fines should be set to a high level. Generally, when a prohibited practice is the result of market power on the part of an undertaking with a dominant position, it is particularly relevant that the administrative fine is considerable.¹³ Furthermore, some forms of abuse are particularly harmful, for instance when an undertaking with a quasi-monopoly abuses this position by engaging in practices that prevent other undertakings from entering the market. Such practices would generally be considered serious abuses of a dominant position which, by their nature, will indicate gravity at the higher end of the scale.¹⁴
22. The size of the market is also of significance for the assessing the gravity of an infringement. An infringement that encompasses a larger geographical area is considered more serious than one that is limited to a smaller geographical area. Other circumstances that pertain to the market and thus also to the gravity of the infringement include the importance of the goods or services to which the infringement relates and the market share of the infringing undertaking or undertakings.¹⁵
23. Depending on the nature of the infringement, the impact that a certain practice actually or typically has on the market should also be taken into account. When the Swedish Competition Authority assesses the impact an infringement has on competition, the Authority will take into consideration if the infringement will be very harmful to consumers or if many consumers are impacted.¹⁶

2.2 The duration of the infringement

24. In determining the sanction value, the duration of the infringement must also be taken into account.
25. The duration of the infringement is generally taken into account through multiplying the gravity total, determined in accordance with items 11–23 above, with the number of years during which the undertaking has participated in the infringement.¹⁷ In determining the duration, periods shorter than six months will generally be counted as half a year, while periods longer than six months but shorter than one year will be counted as a full year.¹⁸

¹³ Government bill 1992/93:56 p. 90 and government bill 2007/08:135 p. 124.

¹⁴ Government bill 2007/08:135 p. 124.

¹⁵ Government bill 2007/08:135 p. 124.

¹⁶ Government bill 2007/08:135 p. 128.

¹⁷ Government bill 2007/08:135 p. 125.

¹⁸ Cf. government bill 2007/08:135 p. 125 and the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 24.

26. The method, described in item 25, for taking account of the duration of an infringement is appropriate for infringements that cause ongoing damage to competition throughout their duration. The consequences of such an infringement, if it has existed for a long period of time, are typically expected to be more serious than if such an infringement has existed for a shorter period of time.
27. In some cases, infringements committed during a relatively short period may still have lasting effects, for instance in the case of bid-rigging and various forms of exclusionary abuse of a dominant position.¹⁹ A typical feature of such types of infringement, is that the more effective the practice is, the shorter the duration of the infringement. In such situations, an assessment of the duration in accordance with item 25 might underestimate the sanction value of the infringement. There might also be situations where application of item 25 could overestimate the sanction value. This may be the case in situations where the damage to competition is closely connected to the duration of the infringement, and where the actual duration is much shorter than six months. In all these situations, the Swedish Competition Authority will depart from the method described in item 25 when assessing duration. There may also be cases where it is not possible or appropriate to differentiate between the gravity and the duration of the infringement when determining the sanction value.²⁰
28. The assessment of whether multiple events constitute one or more infringements can have an effect on the size of the fine. When multiple infringements are at hand, separate administrative fines may be issued, each of which will be determined using the method presented in this policy statement.

2.3 Increase of the sanction value

29. The Swedish Competition Authority may increase the sanction value if the sum determined pursuant to items 11–28 above does not sufficiently reflect the gravity of the infringement. This ensures that infringements always lead to deterring and restraining administrative fines, even when the infringement is of short duration or the undertaking's turnover on the relevant market is small.²¹

¹⁹ Swedish Government Official Report 2006:99 p. 502.

²⁰ Swedish Government Official Report 2006:99 p. 502.

²¹ Cf. the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 25 and 37.

3 Step 2: Adjustment of the sanction value (Chapter 3, Sections 9–11 of the Competition Act)

30. The sanction value can be increased or reduced depending on the existence of aggravating or mitigating circumstances attributable to the infringement (Chapter 3, Sections 9–10 of the Competition Act) or aggravating or mitigating circumstances not attributable to the infringement (Chapter 3, Section 11 of the Competition Act).

3.1 Aggravating circumstances attributable to the infringement (Chapter 3, Section 9)

31. There may be aggravating circumstances attributable to the undertaking's behaviour in connection with the infringement. In particular, the Swedish Competition Authority will take into account whether the undertaking

- i has coerced another undertaking to participate in the infringement,
- ii has had a leading role in the infringement.

32. In addition, the Swedish Competition Authority may consider if the undertaking has been more active in the infringement than other participating undertakings, without having a role as leader,²² or has taken retaliatory measures against other undertakings with a view to enforce the practices constituting the infringement.²³

33. The Swedish Competition Authority is not prevented from regarding the fact that an infringement has been committed intentionally as an aggravating circumstance.²⁴

3.2 Mitigating circumstances attributable to the infringement (Chapter 3, Section 10)

34. The sanction value may be reduced if there are mitigating circumstances attributable to the infringement. In particular, the Swedish Competition Authority will take into account whether the undertaking's involvement in the infringement has been limited.

35. The Swedish Competition Authority may also regard obvious cases of unintentional negligence as a mitigating circumstance.²⁵

²² Government bill 2007/08:135 p. 128.

²³ Cf. the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 28.

²⁴ Government bill 2007/08:135 p. 128.

²⁵ Government bill 2007/08:135 p. 128 f.

36. The fact that an undertaking has been coerced by another undertaking to participate in the infringement is not regarded as a mitigating circumstance. Nor is the fact that the undertaking itself has suffered damage from the infringement.²⁶

3.3 Circumstances not attributable to the infringement (Chapter 3, Section 11)

37. Lastly, the Swedish Competition Authority takes account of any aggravating or mitigating circumstances that are not attributable to the infringement. In particular, the Swedish Competition Authority will take into account whether the undertaking

- i in the past has infringed the prohibitions in Chapter 1, Sections 1 or 7 of the Competition Act or Articles 101 or 102 TFEU,
- ii quickly desisted with the infringement shortly after the Swedish Competition Authority intervened, or
- iii is in a financial position that makes adjustment necessary.

38. In the assessment of previous infringements, account will also be taken of infringements of Articles 101 or 102 TFEU established by the European Commission or another national competition authority within the EU, in a decision addressed to the same undertaking or association of undertakings.²⁷ Previous infringements generally justify an increase of the sanction value if there are similarities between the current and the past infringements or if there is a short time-span between the infringements.²⁸

39. The fact that an undertaking has terminated the infringement quickly is generally not considered a mitigating circumstance for very serious infringements.²⁹

40. As regards the undertaking's financial position, the administrative fine might need to be increased for a financially strong undertaking to ensure that the fine will have a deterring and restraining effect, or reduced for an undertaking that is in severe financial crisis.³⁰

²⁶ Government bill 2007/08:135 p. 128 and MD 2009:11 (NCC and others) p. 115.

²⁷ ECN plus directive recital 47.

²⁸ Government bill 2007/08:135 p. 129.

²⁹ Government bill 2007/08:135 p. 129 f.

³⁰ Government bill 2007/08:135 p. 130. See also the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 30.

41. When the size of the administrative fine is determined, any compensation that an undertaking has paid as a result of a consensual settlement may be considered as a mitigating circumstance. However, the potential risk of future damages claims is generally not considered a mitigating circumstance.³¹
42. Even if an undertaking's cooperation with the investigation is outside the scope of the Competition Act's provisions on leniency and reduction of the administrative fine (see part 5 below), the undertaking's cooperation with the investigation can still be taken into account when determining the amount of the fine. This will be relevant mainly in cases of abuse of a dominant position.³²
43. The fact that an undertaking has adopted a compliance programme will not be considered a mitigating circumstance.³³

4 Legal maximum of the administrative fine (Chapter 3, Section 6 of the Competition Act)

44. An administrative fine may not exceed ten percent of the turnover in the preceding financial year for the undertaking or association of undertaking involved in the infringement.
45. If a decision imposing an administrative fine is issued against an association of undertakings for an infringement that relates to the activities of its members, the fine may not exceed ten percent of the sum of the total turnover in the preceding financial year for its members active on the market affected by the infringement.³⁴
46. If the Swedish Competition Authority, pursuant to Chapter 3, Section 23 b of the Competition Act, decides that a member of an association of undertakings is to pay part of the administrative fine imposed on the association, the payment of the fine by said member may not exceed the maximum amount stated in item 44 above.³⁵
47. If the administrative fine for a certain undertaking would exceed the maximum amount in items 44 or 45 above, the fine will be reduced to this maximum amount.

³¹ Government bill 2007/08:135 p. 130 and MD 2009:11 (NCC and others) p. 115.

³² Government bill. 2007/08:135 p. 130.

³³ MD 2009:11 (NCC and others) p. 115.

³⁴ Government bill 2020/21:51 p. 115 f and 127.

³⁵ Government bill 2020/21:51 p. 118.

48. The preceding financial year refers to the financial year preceding the Swedish Competition Authority's decision on an administrative fine. Turnover here refers to the total global turnover of the undertaking, without being limited to the product or market that the infringement concerned.³⁶

5 Rules on leniency and reduction of administrative fines (Chapter 3, Sections 12–15 b of the Competition Act)

49. An administrative fine based on Chapter 3, Section 4, first paragraph, item 1 of the Competition Act for an infringement of the prohibition in Chapter 2, Section 1 of the Competition Act or Article 101 TFEU may be fully or partly reduced for a certain undertaking, if the conditions for leniency or reduction are met.³⁷ Information on how the Swedish Competition Authority applies the rules on leniency and reduction of administrative fines can be found on the Authority's website.

6 Applicability and transitional rules

50. The method described in this policy statement will, subject to item 52 below, be applied in all cases where the Swedish Competition Authority issues an undertaking with a draft decision on an administrative fine pursuant to Chapter 3, Section 5, first paragraph, item 1 of the Competition Act, after the publication of this statement on the Authority's website.³⁸
51. For administrative fines determined under Chapter 3, Section 5, first paragraph, items 2 and 3 of the Competition Act, the method described in this policy statement will be applied only to infringements committed after 1 March 2021.
52. The possibility, in certain cases, to take into account the turnover of members of an association of undertakings in determining the sanction value of an infringement by the association, and the possibility to take into account the total turnover of the members when determining the legal maximum for an administrative fine imposed on an association of undertakings (items 13 and 45 above), will be applied only to infringements committed after 1 March 2021. The same applies to the possibility to order members of an association to pay or contribute to an administrative fine that the association of undertakings cannot pay (item 46 above).

³⁶ Government bill 2020/21:51 p. 116.

³⁷ Government bill 2020/21:51 p. 129 and 136.

³⁸ Cf. the Commission's Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 p. 38.