



## REQUEST FOR PUBLIC COMMENT

### Criminal Remedies

(Comments Requested by September 30, 2005)

1. In setting corporate fines for criminal Sherman Act violations, should there be a means for differentiation based on differences in the severity or culpability of the behavior?
  - A. Do the Sentencing Guidelines provide an adequate method of distinguishing between violations with differing degrees of culpability? For example, should the Sentencing Guidelines provide distinctions between different types of antitrust crimes (*e.g.*, price fixing versus monopolization)?
  - B. The Sentencing Guidelines use 20% of the volume of commerce affected as the starting point for computation of corporate antitrust fines. *See* United States Sentencing Commission, *Guidelines Manual* § 2R1.1 (2004). Does the volume of commerce provide an adequate measure for setting fines? If not, what other measure(s) or methods would provide a more appropriate way for the Guidelines to establish fine levels?
2. The Sherman Act provides for a maximum fine of \$100 million (or, previously, \$10 million). The government may seek criminal fines in excess of that maximum pursuant to 18 U.S.C. § 3571(d).
  - A. Should “twice the gross gain or twice the gross loss” as provided in Section 3571(d) be calculated based on the gain or loss from all coconspirator sales or on only the defendant’s sales?
  - B. Should fines above the statutory maximum, and thus limited by Section 3571(d), be based on 20% of gross sales as provided for in the Sentencing Guidelines, as they are for fines below the statutory maximum, or should they be calculated differently? If differently, how should they be calculated?

Source: 70 Fed. Reg. 46,474 (August 10, 2005)