



Competition Matters

Pros/Cons of a Structured Sentencing Regime

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Calculating Corporate Fines Under USSG

- **Step 1: Calculate the Volume of Affected Commerce (VOC)**
 - E.g. \$100,000,000 of affected widget sales
- **Step 2: Calculate Base Fine (20% of VOC – Proxy for Gain/Loss)**
 - E.g. \$20,000,000 based on \$100M of affected widget sales
- **Step 3: Calculate Culpability Score**
 - Number score based on various factors: size, senior management involvement, obstruction, recidivism, acceptance of responsibility
- **Step 4: Determine & Apply Minimum/Maximum Multipliers**
 - Min & Max Multiplier applies to each possible culpability score
 - E.g. Culpability score of 8 has min/max multipliers of 1.60-3.20
 - Multiply Base Fine by Min & Max Multipliers to determine fine range
 - E.g. \$20M x 1.60 = \$32M ; \$20M x 3.20 = \$64M
 - Various factors considered in determining where in the range to place fine
- **Step 5: Apply Any Cooperation Discount**



Pros/Cons of a Structured Regime

- **Advantages**

- Transparency/Fair Notice
- Consistency
- Proportionality
- Ease of Use/Predictability

- **Disadvantages**

- May limit judicial discretion
 - Solution in U.S.: USSG are advisory for judges (departures must be justified)
- May not accommodate unusual scenarios
- May not always result in general deterrence

