

# Criminal Antitrust Fines and Penalties: Reductions Based on Ability to Pay

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Criminal antitrust fines and penalties obtained by the Department of Justice have risen substantially in recent years, from \$338 million in 2005 to over \$3.6 billion in 2015. One of the reasons for this increase in fines is the focus on investigating and prosecuting international cartels. The largest such investigation involves the automotive part manufacturing industry. Through November 2016, that investigation alone has resulted in over \$2.9 billion in fines from 47 companies that have pleaded guilty or agreed to plead guilty.

As large criminal antitrust fines have become common, more companies are finding themselves facing potential penalties that exceed their available resources. The U.S. Sentencing Guidelines allow for reduction of a fine under certain circumstances, one of which involves the company's ability to pay the fine imposed. In plea negotiations, the Antitrust Division traditionally follows the Guidelines and, accordingly, has recognized the legitimacy of ability to pay considerations in negotiated pleas.

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