

DRAFT SHADOW ANTITRUST GUIDELINE

§2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

- (a) Base Offense Level: ~~12~~ 15
- (b) Specific Offense Characteristics

Role in the Offense Adjustments (3B1.1 Aggravating/Mitigating role) do not apply to antitrust violations, but

(1) If the individual was the most senior person in an organization involved in the illegal conduct in an organization, increase level by 2.

(1) If the individual supervised one or more subordinates in the illegal conduct, increase level by 2.

(2) If the individual's participation was at the direction of a superior within the organization, decrease the offense level by 2.

(3) If the illegal conduct including submitting bids to a governmental organization:

Volume of Commerce	Adjustment Level
(A) Up to \$5 million	+1
(B) More than \$5 million	+2
(C) More than \$25 million	+3
(D) More than \$50 million	+4
(E) More than \$100 million	+5

Volume of Commerce	Adjustment Level
(a) More than \$50 million	+1
(b) More than \$100 million	+2
(C) More than \$250 million	+3
(D) More then \$500 million	+4
(E) More than \$1 billion	+5

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy, if that individual was the person(s) who committed the organization to the conspiracy, is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(4) Extraordinary Culpability

If an individual merits extraordinary culpability for their role in the offense, the guidelines may be adjustment upward to the maximum allowable sentence of 10 years in prison. Such extraordinary circumstances may include, but are not limited to a) economic coercion of a rival to join the conspiracy; b) coercion such as the threat of dismissal of a subordinate to participate in the conspiracy c) recidivism (whether charges or not) in a prior antitrust conspiracy

~~(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by 1 level.~~

~~(2) If the volume of commerce attributable to the defendant was more than \$1,000,000, adjust the offense level as follows:~~

~~Volume of
Commerce (Apply the Greatest) — Adjustment to
Offense Level~~

- ~~(A) More than \$1,000,000 — add 2~~
- ~~(B) More than \$10,000,000 — add 4~~
- ~~(C) More than \$40,000,000 — add 6~~
- ~~(D) More than \$100,000,000 — add 8~~
- ~~(E) More than \$250,000,000 — add 10~~
- ~~(F) More than \$500,000,000 — add 12~~
- ~~(G) More than \$1,000,000,000 — add 14~~
- ~~(H) More than \$1,500,000,000 — add 16.~~

(c) Special Instruction for Fines

(1) For an individual, the guideline fine range shall be from one to five percent of the volume of commerce, but not less than \$20,000.

(d) Special Instructions for Fines - Organizations

(1) In lieu of the pecuniary loss under subsection (a)(3) of §8C2.4 (Base Fine), use 20 percent of the volume of affected commerce.

(2) When applying §8C2.6 (Minimum and Maximum Multipliers), neither the minimum nor maximum multiplier shall be less than 0.75.

(3) In a bid-rigging case in which the organization submitted one or more complementary bids, use as the organization's volume of commerce the greater of (A) the volume of commerce done by the organization in the goods or services that were affected by the violation, or (B) the largest contract on which the organization submitted a complementary bid in connection with the bid-rigging conspiracy.