



EU & UK Competition Compliance



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COMPETITION LAW COMPLIANCE – ESSENTIAL FOR ALL BUSINESSES

Competition law compliance is an essential requirement for all businesses, regardless of size. Individuals and companies can be subject to severe penalties for breaches of competition law such as engaging in price fixing, customer sharing, bid rigging, or sharing commercially sensitive information. The same is true for abuses of market power or distribution practices such as resale price maintenance or banning parallel trade in the EU.

For companies, the potential penalties are fines from regulatory authorities and damages claims from aggrieved third parties, as well as the cost and reputational issues arising from defending investigations. Individuals can be subject to criminal penalties in the UK and in many other countries, and also run the risk of extradition. In addition, they may be sued by their employers for loss suffered by the company arising out of a competition law breach.

Most regulators, including the European Commission at EU level and the Office of Fair Trading (OFT) at UK level, encourage parties to “blow the whistle” on cartels by operating leniency programmes that provide for full immunity from fines or a reduction in the level of fines for companies that come forward. In the UK, individuals can obtain cash rewards from the OFT for a tip-off. These measures have increased the likelihood of cartels being uncovered.

IT’S NOT JUST LARGE COMPANIES AND INTERNATIONAL CARTELS

There are regular press reports of arrests of individuals and the imposition of large fines on companies by the European Commission and other regulators. The largest cartel fine imposed on an individual company by the Commission to date was the EUR896 million imposed on Saint-Gobain in November 2008 for illegal market sharing and exchange of commercially sensitive information regarding deliveries of car glass in the EU. In June 2008, three executives involved in an international cartel relating to marine hose were sentenced by a UK court to between two and a half and three years in jail, were disqualified from serving as company directors for between five and seven years and were required to account for their personal financial gains from the cartel.

However, competition law is by no means only an issue for large companies and their employees involved in international price-fixing cartels. The following are recent fines imposed by the OFT for infringements of competition law in the UK:

- Fines totalling £129.2 million on 103 construction firms in England for colluding with competitors while bidding for building contracts.
- Fines totalling £39.27 million on six recruitment agencies for price fixing and the collective boycott of another company in the supply of candidates to the construction industry.
- Fines on various suppliers of stock check pads for fixing the prices of and sharing the market in the UK, including £128,000 on Achilles Paper Group and £40,000 on 4imprint Group.
- Fines on various roofing contractors for colluding in relation to the making of tender bids in mastic asphalt flat roofing contracts in Scotland, including £52,000 on Pirie, £16,000 on Walker and £19,000 on Lenaghan.

Outside the UK, other EU member state regulators are equally active, and the following are recent examples:

- In Sweden, eight Volvo car dealers were fined a total of SEK21.2 million (around EUR2.2 million) for a price-fixing and market-partitioning cartel.
- In Portugal, total fines of EUR14.7 million were imposed on five mass catering companies for operating a bid-rigging cartel in the markets for meals and refectory, canteen and restaurant management/operating services. Individuals were also fined.
- In Spain, the Catalonia regional competition authority fined the driving schools of Sabadell for price fixing and the ski resort of Baqueira Beret for granting discriminatory rebates to different skiing instructors.
- In the Slovak Republic, total fines of EUR13,000 were imposed on FM Group World and its exclusive distributor for entering into a franchise agreement for cosmetics that included a resale price maintenance provision.

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COMPLIANCE PROGRAMMES

Competition compliance is increasingly seen as a key part of a corporate risk management strategy. Compliance programmes and training help companies rapidly to identify historic and current competition law infringements and to guard against future infringements. All but the smallest companies are now expected to have a compliance programme, while even the smallest remain subject to the law.

We tailor our programmes to the company and the individuals in question, always covering cartel risk, and as required, issues such as distribution, dominance (which may also be relevant if a supplier to your company is dominant), document retention/destruction and dawn raid procedures. Fairly simple programmes can be highly effective.

We find that face-to-face and repeated training works best. We do not try to make people become lawyers – the aim is to teach them to call for help at the correct time.

AUDITS

There is an increasing use in the EU of external audits. These are reviews of internal documents and records with a view to identifying past competition law infringements. We carry these out on an ad hoc basis, and also in the context of compliance programmes and “mock” dawn raids. They are tailored to the company and the concerns in question.