



Promoting compliance with EU competition rules

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- <http://ec.europa.eu/competition/antitrust/compliance/>



the guardian

**Libor Manipulation
Perpetrated By Cartels,
EC Suspects**

**The
Economist**

**Google &
antitrust
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Compliance matters a great deal

- **How measure success of competition policy?**
 - Not the volume of fines for infringements, ...
 - but well-functioning markets
- **Compliance → challenging & costly:**
 - Increased complexity of rules
 - Increased number of competition regimes
- **Welcoming industry initiatives (ICC and other)**

Why invest in compliance?

- **Prime responsibility lies with subjects of law**
- **Avoid costs of non-compliance:**
 - Avoiding significant fines on companies (individuals)
 - Illegal agreements are void and may attract damages
 - Negative publicity for law breakers
- **Benefits:**
 - Moral satisfaction of doing business in ethical manner
 - Positive image + boost to morale of employees
 - Apply for immunity or leniency
 - Awareness of infringements by competitors

Effective compliance programmes

- **Company strategy:**
 - Identify risks + individual exposure
 - Dissemination → Internal guidance
 - Visible commitment of senior management
- **Staff involvement:**
 - Acknowledgement of receipt by staff
 - Positive incentives + penalties
 - Internal reporting mechanisms
 - Contact points for advice & training
- **Monitoring + Updating**
- **Strategy for dealing with failures**



Compliance programme as an exonerating/ mitigating factor?

- **Issues:**

- Assessment of what fits specific corporation/culture
- EU: treatment of individuals in terms of discipline?
- Assessment of evidence of actual adherence/resp. of company
- Likelihood of litigation
- Cost for society/tax payers
- Resources in SME's/discrimination?
- Nature of investigations: a shift?

Note: Advocate-General Kokott in *Schindler* (Case C-501/11, 18 April 2013, para's 90-100): what is a functioning compliance programme in view of long lasting/multiple infringements?

What can competition authorities do...

... apart from

- providing general guidance on compliance programmes and
- supporting initiatives of the business community (e.g. ICC)?





1. Establish clear & consistent rules

- Establish a clear framework at national level...
- But also ensure consistency & coherence at multilateral level
- Allow for appropriate leniency procedures

2. Communicate with stakeholders and the wider public: consultations, guidance, decisions, Court's case-law



Some Sources:

- EU: <http://ec.europa.eu/competition/antitrust/compliance/>
- ICC: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Competition/ICC-Antitrust-Compliance-Toolkit/>
- France: http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=421
- UK: http://www.offt.gov.uk/OFTwork/competition-act-and-cartels/competition-law-compliance/#.Ua8_8shmFM