Compliance matters

What companies can do better to respect EU competition rules
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FOREWORD

by Joaquín Almunia
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The European Union is an open market economy, based on principles of free competition: It relies to a large extent on market mechanisms, on the play of supply and demand.

Competition maximises incentives to innovate, engage in new promising activities, offer better services and wider choice at lower prices. The continuous quest for efficiency and improvement is not merely a result of the competitive process, it is the competitive process. Where companies - small, medium-sized or large - concentrate on becoming as efficient as possible, rather than on surviving by other (illegal) means, their competitiveness will increase whether they operate in their domestic market, in the European market, or on the worldwide stage.

If competition is to be an open contest, why should there be strict competition rules? Precisely because the competitive process must be protected. If no rules existed, the uncontrolled play of the market could eventually result in the distortion or even elimination of competition. A set of laws preventing collusion between companies or excessive use of market power are therefore necessary and they need to be respected for the benefit of consumers.

The EU and its Member States have such rules. They apply to large and small companies alike that sell to consumers or to intermediate (business) customers. They also apply to buyers, for instance when they collude to exploit their joint market power.

Time is money you may well be thinking — and it surely is. But just ask yourself the following questions:

- Am I managing a company that is doing business in the EU?
- Am I working in a company that does business in the EU?

If your answer to either of these questions is yes, this brochure is directly relevant to your day-to-day work.
Although there are many obstacles on the path towards undistorted competition in the EU, companies (or ‘undertakings’ in the legal jargon) are key players in the drive to achieve genuine effective competition throughout the EU. This goes for larger companies operating on a European or worldwide scale, as well as for small and medium-sized companies operating in fewer Member States or within national boundaries.

This brochure focuses on helping companies to stay out of trouble and to ensure compliance with EU competition rules: it summarises the key rules companies need to respect, including the dangers involved in ignoring the law, and sets out practical steps that can be taken to ensure compliance with these rules. I hope this brochure will assist all companies, and in particular small and medium-sized companies, to understand better what the stakes are and how they can prevent their staff from crossing the line.

Look at this brochure as a road safety brochure ahead of the holiday period. You know that traffic rules are in your own best interest, you are well aware of the risk to which you expose yourself and others if you drive too fast or through a red light. Nevertheless the temptation is always there to ignore the speed limits or other traffic signs. This concise brochure is a sort of competition highway code which will help you comply with the applicable rules.

I wish you every success in your business endeavours. Drive safely!
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1. Complying with competition rules in Europe: a company’s responsibility

EU competition rules concern everyone who does business in the EU, as they apply directly to all undertakings which are active within the EU. This means not only managers, who have choices to make in the interest of their companies, but also employees, who require guidance on how to implement these choices. Companies whose market behaviour fails to comply with EU competition rules run the risk of incurring high fines and facing other negative consequences.

Although under EU competition rules individuals are not penalised, their careers and jobs can be negatively affected by the wrong choices and even a company’s existence may be threatened. In some Member States anti-competitive conduct may result in the individuals involved being penalised (including possible imprisonment), possibly in parallel to fines being imposed on companies.

1.1 General obligation to comply

The prime responsibility for complying with the law, as in any other field, lies with those who are subject to it. EU competition rules applying to undertakings are a fact of daily business life that has to be reckoned with, because ignorance of the law will not shield undertakings from the consequences of breaking it.

While it is clear that companies are under an obligation to comply with the rules, they are largely free to decide how to go about it. This is only natural, given that the size of companies, their resources for seeking advice, their field of activity and their exposure to the risk of becoming involved in infringements of EU competition rules vary considerably. It goes without saying that awareness of the rules is always a precondition for effective adherence to them.

1.2 Benefits of compliance

One important reason why a company should comply with competition rules, apart from being seen as doing business ethically, is the potentially high cost of non-compliance. But compliance can also — and indeed should — be approached positively.

An active and supportive strategy of compliance with the law and business ethics can certainly enhance a company’s reputation and attractiveness for promotional and recruitment purposes, in much the same way as an explicit environmental or family-friendly agenda would do. It can help to raise job satisfaction of staff and contribute to a constructive sense of belonging, even pride, within the company. Staff who are aware of what constitutes illegal behaviour will also be more alert to wrongdoing by competitors or other commercial partners.
Your company can do more to help ensure that a level playing field is maintained by bringing potential malpractice to the attention of the competition authorities. First, it may inform the Commission\(^1\) or a national competition authority\(^2\) of any suspected infringement which comes to its attention. Second, it may apply for immunity from and/or reduction of fines if it has been involved in an infringement. Finally, it may lodge a complaint if it is the victim of an infringement by other companies\(^3\).

### 1.3 Effectiveness: the sole benchmark of success

Any effort by a company to ensure compliance with EU competition rules is laudable. But what matters ultimately is that the rules are actually complied with. When it comes to taking practical steps to ensure compliance, companies should keep in mind that their efforts will be assessed on the basis of results, in other words they will be judged by their success in avoiding infringements. Merely paying lip-service to an abstract or formalistic commitment to comply will get them nowhere. Any credible compliance programme must be built on a firm foundation of management commitment and supported by a ‘top-down’ compliance culture.
2. The costs of non-compliance for a company

2.1 Fines on companies

The fines which the European Commission imposes on companies that infringe EU competition rules can be very substantial, even as high as 10% of a company’s annual worldwide turnover. It should be noted that fines may be imposed even where the illegal purpose of an infringement was not actually achieved.

For example, members of a cartel that are found to have fixed prices will face high fines irrespective of whether or not the price levels rose as intended.

Several years ago the Commission set out its fining policy in writing⁴, so as to make companies fully aware of the financial risk which they run if they do not comply with EU competition rules.

The risk of engaging in anti-competitive behaviour is thus considerable for a company, as evidenced particularly by the number of anti-cartel decisions in recent years, causing substantial fines to be imposed.

**Cartels**

Despite the Commission’s and national competition authorities’ determined fight against them, cartels still appear in many sectors, from basic industries to service markets, and companies of all sizes are involved in these infringements, from big multinational groups to small businesses.

In most of the cases investigated, unlawful behaviour had been encouraged and often directly perpetrated at the highest levels of responsibility. This shows that in certain circles, infringing the most essential rules of a market economy is still considered a rational way of doing business and maximising revenue.

In recent years, and in particular since 2001, the Commission has increased the frequency of its decisions prohibiting and fining cartels, imposing several billions of euros in fines overall. Most of these decisions have been upheld on appeal.

**The international removals cartel**

In 2008, the Commission fined international removal companies a total of more than €31 million for having participated in a cartel in Belgium.

Between 1984 and 2003 the companies fixed prices, shared the market and manipulated the procedures for submission of tenders, in particular by issuing false quotes (‘cover quotes’) to customers and through a compensation system for rejected offers.

The Commission started the investigation on its own initiative with surprise inspections which proved particularly successful and abundant evidence of cartel activities was obtained.
One company received a reduction of 50% of its fine under the Commission’s Leniency Notice for providing the Commission with evidence of significant added value.

**The industrial sewing thread cartel**

In 2005, the Commission fined thread producers from Germany, Belgium, the Netherlands, France, Switzerland and the United Kingdom over €43 million for their participation in different cartels.

Industrial thread is used in a variety of industries to sew or embroider various products such as clothes, home furnishings, motor vehicle seats and seat-belts, leather products, mattresses, footwear and ropes.

Between 1990 and 2001, these companies took part in regular meetings and had bilateral contacts to agree on price increases and/or target prices, to exchange sensitive information on price lists or prices charged to various consumers, to avoid undercutting the incumbent supplier’s prices, and to arrange customer allocation.

Abusive behaviour by dominant companies is also of great — and indeed growing — concern for the Commission. This has led to a number of decisions imposing fines in the last few years relating to the ICT sector and to recently liberalised or partially liberalised markets, such as the energy, telecommunication and postal sectors. However, other sectors are not devoid of abusive practices by dominant companies.

**2.2 Sanctions on individuals**

In addition to imposing fines on undertakings, a number of Member States provide for sanctions on individuals (e.g. fines, director disqualification). The laws of some countries even allow custodial sanctions for individuals involved in general competition law infringements and/or in certain pre-defined types of infringements (e.g. bid-rigging). Such sanctions can be separate or cumulatively applied on top of pecuniary sanctions. Company managers who behave in an unlawful way therefore run the risk of jail in certain Member States.

**2.3 Illegal agreements are void and may attract damages**

Restrictive agreements which are incompatible with EU competition rules are automatically void and therefore cannot be enforced in court by the parties involved.
This means that a party cannot be obliged to honour an agreement which is illegal. Negative consequences for business can be considerable.

If an infringement of EU competition rules causes or has caused harm to a third party, the victim may bring a claim for damages before a national court against the perpetrator. For example, in the airfreight cartel case⁵, damages claims were filed even before the Commission had fined 11 air cargo carriers for fixing prices.

2.4 Bad press for law-breakers and other collateral consequences

The Commission issues a press release whenever it has made a finding of illegal conduct and has fined the companies involved.

The resulting media coverage, both general and specialised, could have a detrimental impact on the reputation of those companies. Moreover, they may face hostility from clients and consumers who feel cheated.

Investigations by competition authorities can be time-consuming and costly for companies. Managers may become embroiled in lengthy legal discussions, thereby distracting attention from the core business activity.
3. Compliance with EU competition rules — Are you certain you have covered the risk?

Two main provisions of the Treaty on the Functioning of the European Union (TFEU) deal with the market behaviour of companies. Article 101 prohibits agreements between companies which restrict competition, unless they produce substantial benefits to customers and consumers, while Article 102 outlaws abuses by dominant companies.

These fundamental rules and prohibitions are further clarified by legal texts adopted by the Council or the European Commission, as the case may be, spelling out how the basic principles are applied to particular sectors or to particular types of agreements or behaviour by companies. Note that at national level behaviour purely affecting competition within a Member State is similarly prohibited.

**3.1 EU competition rules are directly applicable to your company**

EU rules are about the competitive behaviour of companies and they apply directly in all EU Member States. No transposition into national law is required. This makes it all the more important for companies to be aware of them, as they are directly enforceable by both the European Commission and national competition authorities and courts.

It is worth noting that EU competition rules apply to ‘undertakings’, a term which encompasses any entity engaged in an economic activity. Groupings of undertakings, such as trade associations and other industry groupings, while generally pursuing legitimate purposes and operating as a useful business forum, also have an obligation to comply with EU competition rules.

As indicated above, there are two basic types of behaviour in which companies may feel tempted to engage in the marketplace, but which are prohibited by EU competition law:

**Illegal contacts and agreements between companies**

Anti-competitive contacts between companies which, irrespective of their form, may distort the normal play of competitive forces are prohibited. Such contacts can take many forms and do not require the formal acceptance by the companies involved through an agreement. Even informal arrangements among business representatives can be considered illegal.

The most striking examples of anti-competitive contacts between companies include price fixing, sharing markets or customer allocation, production or output limitation, whether through bid rigging or otherwise. Such practices are often kept secret and generally referred to as ‘cartels’. They are qualified as ‘hardcore’ restrictions of competition in legal jargon as they are by their very nature most likely to restrict competition. These hardcore
infringements are vigorously pursued by the Commission and can result in companies being heavily fined.

Private exchanges between competing companies of individualised information concerning their intended future prices or quantities can also amount to a hardcore infringement. More generally all exchanges of confidential, strategic information between competitors can give rise to competition concerns.

This concerns all types of information that reduces strategic uncertainty in the market, for example relating to production costs, customer lists, turnover, sales, capacities, qualities, marketing plans, etc.

Furthermore, even the unilateral disclosure of strategic information by one company via mail, email, phone calls or meetings to its competitor(s) can be considered problematic.

Agreements between companies at different levels of the supply chain, typically distribution agreements between suppliers and re-sellers, which aim at fixing prices or artificially partitioning the internal market, are also illegal.

For instance, a supplier may not oblige its distributors to refuse to sell goods to customers residing outside of a given territory. In addition, it may not impose on its distributors a resale price for a given product.

In short, the following basic ‘DON’Ts’ should always be kept in mind by managers and employees of companies when they deal with competitors:

DON’T fix purchase or selling prices or other trading conditions;
DON’T limit production, markets, technical development or investment;
DON’T share markets or sources of supply;
DON’T exchange individualised information on intended future prices or quantities or other strategic information.

It is important to keep in mind that agreements between competitors and companies at different levels of the supply chain can also have anticompetitive effects even if they do not contain any of the above-mentioned hardcore restrictions.

For example, the agreement might have a negative impact on one of the parameters of competition, namely price, output, innovation, or the quality or variety of goods and services.

Such restrictive effects also need to be assessed by companies. A detailed framework for analysing the competitive impact of such agreements is provided by the Commission in specific guidelines.

**Abuse of a dominant position**

If companies have a large proportion of the business in a particular market, they are likely to hold a dominant position in that market. Such companies have a special responsibility not to engage in behaviour which is considered abusive. They should not act in a way that prevents competitors from competing effectively or drives them out of the market.
Examples of abusive conduct on the part of dominant companies are: charging unreasonably high prices which may exploit customers; charging unrealistically low prices which may be used to drive competitors out of the market; unjustified discrimination between customers; and forcing unjustified trading conditions on trading partners.

**What about Small & Medium Enterprises?**

All companies are subject to competition rules, with no differentiation according to their size. Being small is no excuse for not complying with the applicable EU or national competition rules.

### 3.2 Activities by public authorities

It falls to both European and national competition authorities and courts to ensure that EU competition rules are complied with.

**Enforcement against illegal practices**

The European Commission ensures effective application of these rules throughout the EU. It investigates suspected infringements and addresses binding decisions to companies in order to bring established infringements to an end. The Commission also has the power to impose fines on companies which have been found to infringe EU competition law.

The enforcement activity by national competition authorities, which are equally empowered to apply EU competition rules, needs to be added to that of the Commission.

National courts also play an important role. They may declare an agreement void if it is in breach of EU competition rules. They may also hear claims for damages resulting from a company’s infringement of EU competition rules and award compensation to plaintiffs.

**Further explaining the rules**

The Commission endeavours to make it easier for companies to acquaint themselves with and know the rules which they must respect.

Certain types of agreements are exempted from general prohibition if their restrictive nature can be justified by benefits for consumers and the economy as a whole. The hardcore practices mentioned above are very unlikely to bring such benefits.

Companies have to assess for themselves whether their behaviour complies with competition rules and in doing so they might consider seeking legal advice.

General guidance as to whether an agreement is deemed exempted or not is provided by the Commission in particular by way of so-called Block Exemption Regulations. Mostly, such Regulations exempt restrictions in certain categories of agreements (e.g. Research & Development, Specialisation or Distribution agreements) up to a certain level of market power, defined in terms of market share, providing there are no ‘hardcore’ restrictions and certain conditions are met.
Outside the ‘safe harbour’ of the block exemption, guidelines such as those on horizontal cooperation agreements\(^6\) or on vertical restraints\(^7\) also set out the Commission’s policy and decision-making practice on a variety of competition issues.

As regards abusive behaviour, the Commission has published guidance on its enforcement priorities in applying Article 102 TFEU\(^8\).

Furthermore, formal Commission decisions\(^9\) and Court judgments are publicly available, and the Commission publishes the formal opening and closing of proceedings on its website and/or by issuing a press release\(^10\).

Finally, the Commission also publishes an annual report on competition policy and a number of informative brochures\(^11\).
4. How can your company ensure compliance?

4.1 A clear strategy

In order to ensure effective compliance with EU competition rules, companies should think ahead, develop an approach tailor-made for their particular situation and set it out in writing, rather than react to problems only when they occur.

The ultimate goal of such a strategy is to raise awareness of potential conflicts with EU competition law and disseminate adequate knowledge of how to avoid them at all levels of the company, from employees to middle and top management.

**Identifying the overall risk and individual exposure**

A successful company’s compliance strategy would be based on a comprehensive analysis of the areas in which it is most likely to run a risk of infringing EU competition rules.

These areas will depend on factors such as:

- the sector of activity; for example a history of previous infringements in the sector indicates a need for particular attention.
- (frequency/level of) the company’s interaction with competitors; for example in the course of industry meetings or within trade associations, but also in day-to-day commercial dealings.
- the characteristics of the market:
  - position of the company and its competitors, barriers to entry... If a company holds a dominant position in a market, the preventive measures to be taken will differ from those where the risk factor is more in the nature of ‘cartelisation’.
  - But the exposure to that risk may vary greatly according to the position held by each member of staff. Employees whose specific areas of responsibility cause them to be particularly exposed (for example, employees who frequently interact with competitors as part of their job or through trade associations) would be made aware of what is at stake and of the basic principles to keep in mind.

**Making the strategy explicit**

In the interest of genuine compliance it is also important to disseminate the company’s compliance strategy throughout its entire organisational structure. For the sake of internal clarity the strategy would preferably be laid down in writing, plainly worded and in all the working languages of the company, so that it is understood by everyone. It could for example take the form of a manual.

Such internal guidance would ideally contain a general description of EU competition law and its purpose, explain the way it is enforced and highlight the potential costs of non-compliance for the company. In this way,
employees will better understand the reason behind the compliance strategy and its importance.

In addition, guidance in particular risk areas would be provided. For instance, a company which mainly deals in homogeneous products or has management or employee level contacts with competitors on a regular basis could stress the ban on cartels.

A practical set of ‘DON’Ts’ and ‘RED FLAGS’ can be a useful tool:

- A list of ‘DON’Ts’ could include clearly illegal conduct such as price-fixing agreements, the exchange of future pricing intentions, allocation of production quotas and the fixing of market shares;
- ‘RED FLAGS’ are warning signs which serve to identify situations in which infringements of competition rules can be suspected. They would encourage managers and employees to exercise particular caution in seeking to avoid any infringement on the part of their own company.

**Visible and lasting commitment to the compliance strategy by senior management**

Apart from choosing the right strategy and making it accessible to all staff, unequivocal senior management support is vital. The message that compliance with the law is a fundamental policy of a company needs to be clearly endorsed. This is an essential element of creating a culture of respect for the law within the company.

Designating an individual member of the senior management to take overall responsibility for compliance is considered advisable to ensure lasting commitment to and visibility for this objective.

Small and medium-sized companies have the advantage that the ‘tone from the top’ can more easily be disseminated to the employees, who are fewer in number.

Whilst the Commission does not wish to be prescriptive, a company should devote sufficient resources – appropriate to its size and the risks it faces – to ensure it has a credible programme.

### 4.2 Formal acts of acknowledgement by staff and consideration of compliance efforts in staff evaluation

Backup measures taken by companies as regards adherence of their staff to the adopted compliance strategy might include:

- asking staff for written acknowledgement of receipt of relevant information on compliance with EU competition law, for example when providing them with a manual or after dedicated training sessions. This form of explicit recognition helps to make individual staff members more aware that compliance concerns each and every one of them;
- putting in place positive incentives for employees to consider this ob-
jective with utmost seriousness. Compliance duties could for instance be part of job descriptions. A particularly vigilant attitude in that respect may also form part of the staff evaluation criteria.

• penalties for breach of the internal compliance rules. Such penalties would however have to be consistent with national employment law and double-checked with legal advisers first.

**Proper internal reporting mechanisms**

A further essential feature of a successful compliance strategy is the inclusion of clear reporting mechanisms. Staff must not only be aware of potential conflicts with EU competition law, but also need to know whom to contact and in what form when concrete situations of conflict arise.

A company may for example consider appointing a compliance officer who directly reports to the company’s management. The communication channels should in any event allow management to take swift action. Time is usually of the essence, irrespective of whether or not competition authorities are already aware of the particular problem.

If an employee or manager discovers or even suspects an infringement, the compliance strategy should provide her/him with concrete guidance on how to proceed.

An environment that encourages employees to speak up when they are confronted with questionable situations can be decisive for the effectiveness of the compliance strategy.

### 4.3 Constant update, contact points for advice and training

Obviously it is not enough just to put down a strategy on paper. Where a manual is made available to staff, it should be reviewed regularly. There should also be a clearly identified contact point where advice can be sought by staff in case of doubts about the compatibility of certain types of behaviour or agreements with EU competition law.

Training on applicable EU competition rules also plays an important role. Many companies already offer their staff, in particular newcomers, an ambitious training programme. In such cases the development of a module on competitive behaviour would be advisable. Where a company’s analysis has indicated particular risk areas, training should be provided to those staff members who are most likely to be confronted with situations that could lead to the company becoming involved in infringements, for example sales personnel and sales managers as regards price agreements between competitors and anyone attending trade associations or industry events.

The specific details will vary from one business to another, depending on available resources and expertise. In any case, a compliance strategy will be more effective if it incorporates a clear mechanism for ensuring that updates of the written policy can be obtained by staff at any time and that all employees and managers are kept informed about new developments.
4.4 Monitoring / Auditing

Monitoring and auditing can serve as effective tools to prevent and detect anti-competitive behaviour inside the company. Monitoring, for instance by verifying the company’s own behaviour in the competitive process in bidding markets, would mean a more preventive approach.

Auditing would tend to discover anti-competitive behaviour only after it had already occurred.

Both mechanisms can also be combined. The appropriate procedure depends on the specific needs of the undertaking, but some form of control is surely important to underpin the internal credibility of a compliance strategy.

4.5 The strategy has failed to ensure full compliance? It may still serve to limit exposure!

An effective compliance strategy will be expected to simply prevent any infringement from happening. Yet it may prove insufficient to ensure compliance, and there may nevertheless be instances of wrongdoing.

**Stopping the infringement at the earliest possible stage**

In such a case, the existence of a compliance strategy – on condition that it incorporates appropriate reporting mechanisms – will allow mishaps to be nipped in the bud.

It will enable the company to take appropriate measures without delay, so that any potential infringement is swiftly brought to an end. This will contribute to limiting damage to competition and minimising the company’s exposure.

**Cooperating under the leniency programme and the settlement procedure: limiting the damage of cartel behaviour**

The detection mechanisms provided by an effective compliance strategy can also help to get the best out of the Commission’s leniency programme. Aimed at enabling the detection of secret agreements between competitors – some of the most egregious infringements of competition law – it offers a unique opportunity, for companies willing to cooperate with the Commission (or with the national competition authorities), to receive immunity from fines or to get a fine reduced.

Full immunity can be granted to the company that is the first to denounce a secret cartel to the Commission or to provide the Commission with sufficient corroborative evidence. Companies which, despite their willingness to cooperate, file their leniency application after another competitor has qualified for immunity, can only hope to obtain a reduction of up to 50% of any fine imposed on them.

However, remember that competition authorities are also on constant lookout for markets showing signs of distorted competition. When such signs appear, they may launch investigations themselves.
The exact conditions under which immunity from or reduction of fines in cartel cases is granted are explained in the corresponding Commission Notice\textsuperscript{12}.

Therefore, if you believe your company is or has been involved in a cartel, you might consider filing an application under the Commission’s leniency programme and seeking legal advice in that respect.

Initial contact with the Commission should be made through the following dedicated fax number:

\[+ 32\ 2\ 299\ 45\ 85\]

Or through the following dedicated telephone numbers:

\[+ 32\ 2\ 298\ 41\ 90\]
\[+32\ 2\ 298\ 41\ 91\]

Further information on the Commission’s leniency programme is available on the Internet at

http://ec.europa.eu/competition/cartels/leniency/leniency.html\textsuperscript{13}

Finally, if companies are prepared to acknowledge their participation in a cartel, the Commission may invite them to participate in a swifter conclusion of the procedure. The companies’ cooperation in this “settlement” procedure is rewarded with a 10% reduction of the fine in addition to any reductions for leniency.

4.6 The Commission welcomes compliance efforts by companies

The Commission welcomes and supports all compliance efforts by companies as they contribute to the firm rooting of a truly competitive culture in all sectors of the European economy.

Companies, supported by the legal profession, have already contemplated and indeed implemented schemes to ensure compliance with EU competition law. These schemes are usually referred to as ‘business compliance programmes’ or just ‘compliance programmes’.

In practice, they are often developed in reaction to past infringements or even after fines have been imposed. Increasingly such programmes are seen as an essential element of good corporate governance.

The Commission would advocate a more proactive approach that avoids infringements of EU competition rules from the outset. It cannot be overemphasised that a compliance programme worthy of the name must ensure that companies do not infringe competition law.

As has already been pointed out, it is not so much the effort made, but the result achieved, which counts once competition authorities become involved and launch an investigation. The quality of a compliance programme stands or falls by its effectiveness.
The Commission’s attitude towards compliance programmes can, therefore, be summarised as follows:

- **Compliance programmes need to be tailor-made to the company concerned.** The range of situations that a compliance programme may need to address is wide. Equally the type, size and resources of companies which may find it useful to adopt a compliance programme vary considerably. Consequently, there is **no ‘one size fits all’ model:** an exhaustive all-encompassing model would not be adequate. It is for each company to reflect on its needs to ensure compliance and develop its own strategy. Further legal advice can be sought if considered appropriate.

- **Access to useful information can be provided by the Commission but there will be no endorsement of any individual compliance programme.** While the Commission constantly seeks to improve the accessibility of relevant legislation and information on EU competition rules, it considers it not to be the task of competition authorities to formally advise on or approve individual compliance programmes.

  Indeed, companies know best what is required for their own compliance strategy. This brochure provides companies with food for thought about the nature of their own compliance strategy. This includes for example creating the necessary positive and negative incentives to ensure compliance.

- Although all compliance efforts are welcomed, **the mere existence of a compliance programme is not enough to counter the finding of an infringement of competition rules** — companies and their employees must, in fact, comply. If a company which has put a compliance programme in place is nevertheless found to have committed an infringement of EU competition rules, the question of whether there is any positive impact on the level of fines frequently arises. The answer is: No. Compliance programmes should not be perceived by companies as an abstract and formalistic tool for supporting the argument that any fine to be imposed should be reduced if the company is ‘caught’. The purpose of a compliance programme should be to avoid an infringement in the first place.

  For the purpose of setting the level of fines, the specific situation of a company is duly taken into account. But **the mere existence of a compliance programme will not be considered as an attenuating circumstance.** Nor will the setting-up of a compliance programme be considered as a valid argument justifying a reduction of the fine in the wake of investigation of an infringement. It would nevertheless be encouraged by competition authorities as a preventive means to avoid the occurrence and possible repetition of illegal behaviour in the first place.
It goes without saying that the existence of a compliance programme will not be considered an aggravating circumstance if an infringement is found by the enforcement authorities: if the programme has failed to deliver results, the sanction will come in the form of the fine imposed. In other words: a credible competition compliance programme can only deliver benefits to a company.

5. Where to find further relevant information

Competition website on ‘Europa’, the Internet site of the European Commission:

http://ec.europa.eu/competition

On this site, easy access to relevant legislative texts, Commission decisions, Press Releases, Annual Reports, sector-specific and other background information is provided. Links to other important sources of information, like the website of the Court of Justice of the European Union and the General Court, are equally available.

Publications on competition matters published by the European Commission:

http://ec.europa.eu/competition/publications/

Contact details of European Competition Authorities/members of the European Competition Network, available via:

http://ec.europa.eu/competition/ecn/competition_authorities.html
Endnotes

1 Concerns can be reported to the Commission by email to comp-market-information@ec.europa.eu. Please indicate your name and address, identify the companies and products concerned and describe the practice you have observed. This will help the European Commission to detect problems in the market and can be the starting point for an investigation.

2 The link to contact details of the national competition authorities of the EU Member States, members of the European Competition Network, is provided at the end of this brochure.

3 Citizens and/or companies may want to lodge a formal complaint if they are directly affected by a practice which they suspect restricts competition and are able to provide specific information. Certain requirements which must be fulfilled are explained in detail in the Commission Notice on the handling of complaints (OJ C101/65 of 27.04.2004), a summary of which can be found at http://europa.eu/legislation_summaries/competition/companies/l26111_en.htm. You can also send an email to comp-market-information@ec.europa.eu if you want more information on how to lodge a formal complaint.


10 The same applies in cases where proceedings have not been formally opened but DG Competition has already made public the fact that it is investigating a case (e.g. by having publicly confirmed certain inspections). See Commission Notice on Best Practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308 of 20.10.2011, p. 6.

11 See last section of this brochure « Where to find further relevant information ».


13 See also Commission Press Release IP/06/1705 and Memo MEMO/06/469 of 7.12.2006.

14 See, for example, Case C-189/02 P Dansk Rørindustri, paragraph 373.

15 See, for example, Joined Cases T-101/05 and T-111/05, BASF and UCB, paragraph 52, and Case T-138/07, Schindler Holding, paragraph 282.