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EU competition rules applying to undertakings are a fact of daily business life to be reckoned with. Claiming ignorance of the law, or best efforts trying to respect it, is as usual no defence.

The prime responsibility for compliance with the law lies with those subject to it. This goes for large companies operating on a European or world-wide scale, as well as for small- and medium-sized companies operating in fewer Member States or within national boundaries.

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 their compliance efforts. This is only natural, given that the size of companies, their resources for seeking advice, their fields of activity, their business cultures, and their exposure to the risk of becoming involved in infringements of EU competition rules vary considerably. In any case, however, awareness of the rules is a precondition for effective adherence to them.

Certainly, the major reason to comply with the law is the potentially high costs of non-compliance. However, compliance can also—and indeed should—be approached positively. An active and supportive strategy of compliance can serve to distinguish a firm for promotional and recruitment purposes, very much like an explicit environmental or family-friendly agenda would do. It can help to raise staff job satisfaction and contribute to a constructive sense of belonging, even pride, within a firm. Staff who are aware of what is illegal will also be more alert to infringements committed by competitors or other commercial partners. They can then help more actively to bring such market failures to the attention of the competition authorities in order to have the level playing field restored. Firms need only to think of themselves as customers of goods or services to realise that they also want their suppliers to comply with the rules of the competitive process, i.e. to offer them the best choice against a competitive price.

Any effort by a company to ensure compliance with EU competition rules is important. But what is critical is the fact that the rules are actually complied with. When it comes to taking practical steps to ensure compliance, firms should keep in mind that their efforts will be assessed by competition authorities on the basis of results or, in other words, by their success in avoiding infringements.

It has been the Commission's long-standing policy to welcome compliance efforts by undertakings. The Commission has supported compliance efforts in different ways:

- dissemination of comprehensive information on EU competition rules²;

¹ All views are personal and do not necessarily represent the views of the European Commission. The authors are grateful to Kevin Coates and Ewoud Sakkers for their input in preparing this article.

² http://ec.europa.eu/competition/antitrust/compliance/index_en.html

- a constant dialogue with business people and other stakeholders to refine guidelines, notes, and other information material; and
- encouragement of compliance and training programs.

Recently, the Commission has gone a step further and advocated a more proactive approach that tries to nip infringements of EU competition rules in the bud. It published a brochure called *Compliance Matters*,³ which focuses on helping companies stay out of trouble and ensuring compliance with EU competition rules. It summarizes the key rules companies need to respect and also highlights the dangers involved in breaching the law.

The European Commission imposes fines on companies that breach competition rules that can be very substantial—as high as 10 percent of a company's annual worldwide turnover. If any company belonging to the group is caught again in an infringement, the fine on the group may be upped considerably. In recent years, the Commission has increased the number of its decisions prohibiting and fining cartels; imposing several billions of euros as fines. Claims by companies for a reduction in the amount of fines due to the existence of a compliance program have been repeatedly rejected by the Courts. As long ago as 1991, in *Hercules Chemicals v Commission*,⁴ the General Court underlined that "whilst it is indeed important that the applicant took steps to prevent fresh infringements of Community competition law from being committed by members of its staff in the future, that circumstance does not alter the fact that an infringement has been found to have been committed in the present case."

In addition to imposing fines on companies, a number of Member States provide for sanctions on individuals (e.g. fines and director disqualification). The laws of some Member States even allow prison sentences to be imposed on individuals involved in general competition law infringements. Such sanctions can be separate or cumulatively applied on top of fines. Company managers who behave unlawfully therefore run the risk of jail in certain Member States. Hence, all in all, the stakes are high.

Furthermore, the brochure sets out practical steps that can be taken to ensure compliance with the rules. For example, guidance is provided on some of the hallmarks of a good compliance program. First, in order to put in place a good compliance program, a company must ensure that it has a clear compliance strategy. Moreover, the strategy should be based on a comprehensive analysis of the areas in which the company is most likely to run a risk of infringement of competition rules. Further, it is very important to disseminate the strategy throughout the entire organisation. Last but not least, clear and committed management support is critical for the success of a compliance program. Any credible compliance program must be built on a firm foundation of management commitment and supported by a "top-down" compliance culture.

To sum up, the information provided is aimed at assisting 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. The Commission underlines that companies are under an obligation to abide by the law and comply with competition rules. This means that in calculating fines, the Commission does not reward companies by reducing fines if they have compliance programs in place. Note that, importantly, companies that discover and report

³ http://ec.europa.eu/competition/antitrust/compliance/compliance_matters_en.pdf

⁴ See Case T-7/89 *Hercules Chemicals v Commission* {1991} ECR II-1711, ¶ 357.

(cartel) violations as a result of compliance efforts can obtain full immunity from fines: a strong incentive in itself. It must also be underlined that neither does the Commission deem the existence of compliance programs as an aggravating factor when a company has not followed its own program.

The Commission supports initiatives, public discussion, and the exchange of best business practices that aim at fostering compliance. Likewise, the Commission lauds all initiatives by companies to ensure compliance with EU competition rules. However, the Commission emphasizes that what ultimately matters is whether the rules are complied with.

Under EU competition law, there is no convergence requirement regarding compliance programs. Some EU Member States (e.g. the United Kingdom) have considered the existence of compliance programs to be a mitigating factor when calculating the amount of fines to be imposed on infringing companies, in certain cases. Although a policy of rewarding companies for putting in place compliance programs may have the benefit of generally encouraging the establishment of compliance programs, such a policy has several drawbacks too. Some basic questions that naturally arise are: Should the mere existence of a compliance program warrant reward from competition authorities? If not, which criteria would be used to evaluate which compliance programs do deserve to be rewarded? Would such a policy be a static one or a dynamic one that would require some monitoring effort? Is it the role of public authorities to evaluate what works and what doesn't within individual firms and if best efforts have been made? In sum, just as there is no one perfect compliance program for companies, there is no one model of how competition authorities should take compliance programs into account when calculating fines.

The objective of the Commission's *Compliance Matters* brochure is to raise awareness among businesses about their obligation to comply with EU competition rules. The brochure also provides general guidance on compliance issues. By and large, it adds value to other advocacy efforts by the Commission aimed at maintaining effective competition in our markets. It is hoped that the brochure will indeed help companies to drive safely through the competition landscape, so that violations and sanctions can be avoided.