MANAGING
COMPETITION LAW RISK
EFFECTIVE COMPLIANCE AND REGULATORY ENGAGEMENT

Akira Inoue
Craig Lee
Nicola Northway
Francesca Richmond
Bob Tarun
The challenge

Managing competition law risk

*The term 'dawn raid' refers to the legal ability of competent authorities within the noted jurisdictions to show up at company premises unannounced to collect evidence as part of an antitrust investigation. The process and requirements for executing a 'dawn raid' may differ between jurisdictions.


This chart does not constitute legal advice and cannot be relied upon.
Regulatory enforcement and compliance

Where is compliance credit available?

Appropriately implemented antitrust compliance programme may be a mitigating factor.
Compliance: structure and content

The Five Essential Elements of Corporate Compliance

1. Leadership
2. Risk Assessment
3. Standards and Controls
4. Training and Communication
5. Monitoring, Auditing and Response
Implementing an effective policy (1)

Institute or reassess the antitrust/competition compliance program including:

- Auditing and monitoring;
- Training including mandatory training of senior management;
- Compliance messaging;
- Antitrust and/or competition policies;
- Annual Antitrust Risk Assessments;
- Internal controls that could or might have prevented cartel behavior; and
- Discipline those who engaged in misconduct and those who failed to adequately supervise wrongdoers.
Implementing an effective policy (2)

- Take an integrated and tailored approach; one size does not fit all
- Have regard to wider compliance and ethics approach of corporation
- SWAT approach to roll on out
  - Train the legal team, risk, audit and (if you have them) other compliance people first so they are issue spotters,
  - Select the “at risk” areas for the first face to face training and then roll out to other
    - Transit of “rotten apples”
    - Areas known to be part of regulatory authority work plans
    - Considering hot spots of infringing conduct, products and jurisdictions as drawn from published decisions
Key considerations

Addressing a breach

Sources and triggers:
- How has the issue come to your attention?
- What does this mean for the degree of control that you have?
- Which other considerations does it mean have to be taken into account (e.g., employment procedures, whistle-blower protections etc)

Reporting incentives:
- What reporting incentives exist in respect of the legal risks and jurisdictions in scope?
- How do these fit with regulatory and financial crime reporting obligations?

Regulator / prosecutor expectations / powers:
- What expectations do relevant regulators and prosecutors have regarding the manner in which the matter will be investigated?
- What powers do they have and when might they use them?

Coordination of global strategy:
- Consider impact of strategic decisions in one jurisdiction on position in others / other legal risk areas.
- Avoid making decisions in isolation; ensure all strategic decisions are well informed.
Applying lessons learned (1)

- A robust antitrust-competition compliance program in place at the time of the cartel conduct.
- Absent that:
  - respond to and immediately re-evaluate as a team and under legal privilege the compliance program in the wake of a trigger event (a credible whistleblower allegation, a dawn raid, subpoena, a search warrant, discovery that an industry competitor is under investigation).
Applying lessons learned (2)

- Compliance and training
- Managing a case
- Engagement with the regulator
  - Set the tone from the outset
  - Consistent and professional behaviour from the business and the external advisers will make your views credible and serve you well in the long run
  - Communicate to manage expectations: do not over promise
- Issues to consider:
  - Privilege
  - Whistleblowing
  - Risks for the in-house teams in some jurisdictions
  - Tracking advice
  - Case management tools
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