

Building and Maintaining an Effective Antitrust Compliance Programme in a multinational company

How to do it, How to make it effective and How to keep it fresh

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Why worry about compliance?



- The main purpose of an antitrust compliance programme is to educate and so to avoid infringements of and to ensure compliance with the law
- Which in turn helps us to protect our customers by ensuring ethical behaviour
- Which serves to protect the reputation of the Group by avoiding bad publicity and loss of shareholder value (and loss of customer respect)
- And compliance with the law also reduces the risk of fines and other penalties
- BUT to work, the Programme must be effective

But what is an “Effective” Compliance Programme?

US Federal Sentencing Guidelines (1)

Elements of an “effective” program:

- exercise due diligence to prevent and detect criminal conduct
- promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law



But what is an “Effective” Compliance Programme?

US Federal Sentencing Guidelines (2)



An “effective” program will involve:

1. Clear compliance standards and procedures to prevent and detect unlawful conduct
2. Effective compliance oversight by (senior) management
3. Careful delegation and due care in hiring/screening employees
4. Effective training and education for roles and responsibilities
5. Monitoring, auditing, including whistle blower “hot lines”
6. Consistent enforcement and disciplinary measures
7. Corrective action and modification of the program as required

May 2010:

New proposal (effective November 2010 if Congress support) Compliance Programme will still be “effective” even if senior management involved, provided the person responsible for the compliance programme reports direct to the Board AND the violation was detected and reported to the Government

What is an “Effective” Compliance Programme?

The Australian ACCC view

- Strategic vision – linked to the Company’s goals
- Risk assessment – identify and assess compliance risks
- Control points (behavioural and procedural controls)
- Adequate documentation
- Personal accountability
- Continuous improvement of the programme

<http://www.accc.gov.au/content/item/?itemId=717078&nodeId=0de4ca0a69fe9dde037bf81391b2cdab&fn=Corporate%20trade%20practices%20compliance%20programs.pdf>



Australian
Competition &
Consumer
Commission

What is an “Effective” Compliance Programme?

The OFT project: Drivers of Compliance

- What are the key drivers of competition law compliance and non-compliance ?
- What are the essential elements to creating an effective competition law compliance culture within a business?
- What is current best practice in competition law compliance?
- 22 in-depth interviews with in-house staff in larger companies, 3 Group sessions
- OFT report May 19th 2010
http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft1227.pdf



OFT Report – Compliance sticks and carrots

Sticks

- Reputational impact
- Financial Penalties
- Criminal Sanctions
- Director Disqualification

Carrots

- Management commitment
- Compliance as business tool
- Confident employees
- HR benefits linked to compliance

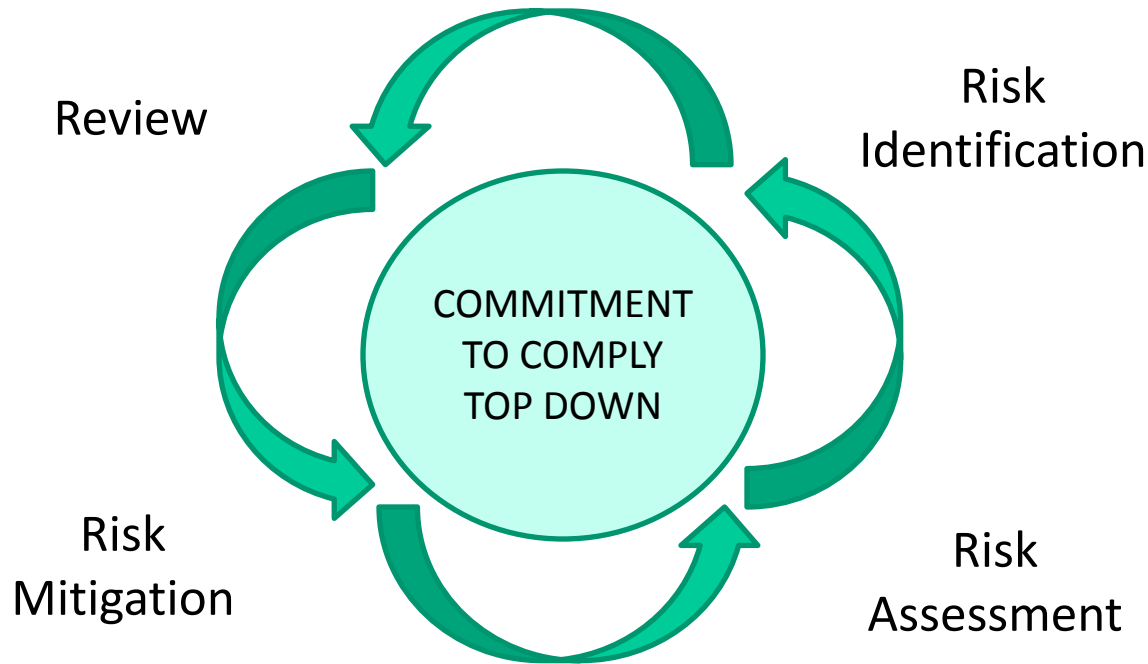
OFT Report – Some conclusions

- OFT recognises that most businesses want to comply with competition law
- Compliance Programmes should not (generally) be viewed as an aggravating factor to increase a fine
- OFT remains “neutral” on discounts for compliance – case by case but up to 10% discount may be available
- No (additional) discounts for infringements committed by a “rogue” employee

OFT Report: Best Practices in Antitrust Compliance

- One size does not fit all – must be risk based
- Examples of some activities undertaken
 - Formal competition law compliance programme
 - Bespoke competition law compliance training – online and/or face to face
 - Written materials/guidance available to business people e.g. on intranet
 - Help line run by in-house or external lawyers
 - Mock dawn raids?
 - Competition law compliance “audits”?
 - Internal whistle-blowing facility
 - Internal procedures designed to pick up and escalate possible risks

Effective compliance programme – OFT's virtuous circle



1. Risk Identification
2. Risk Assessment
3. Risk Mitigation
4. Review

What are the necessary elements of a compliance programme?

The 5 "C"s (and 4 R's) in Compliance

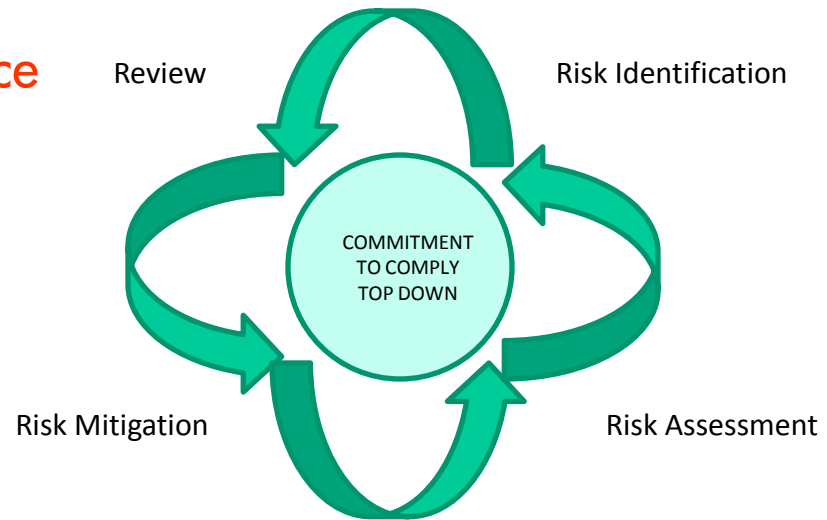
Commitment

Culture

Compliance Know-how

Controls

Constant Monitoring/Improvement



There should be no question of "why comply?"

complying with the law is an integral part of the ethical basis on which

good corporate citizens do business

Commitment to compliance (1)

- Senior management support, accountability and real commitment
- Tone at the (very) Top is essential: this needs visible Management support – but it cannot stop there ...
- You also need tone in the middle and at lower levels
- The commitment to compliance needs to permeate the organisation and become part of the way you do business
- If this is seen to be “just a Legal initiative” rather than a business driven and management supported initiative IT WILL FAIL

Commitment to compliance (2)

- Management support is essential to ensure the right resources (people and IT tools) are in place to enable the planned compliance programme to operate efficiently
- (Really) Senior people - above suspicion - need to be appointed as Business Compliance Officers to drive compliance from within and to ensure it is embedded
- Ensure your Group Audit Committee (or similar) is on board
- Compliance activities should be linked into to the company's strategic goals – this also helps establish and embed a Compliance Culture ...

Culture of Compliance

- Promote a culture of compliance: so people understand the need, understand the rules and follow them. How do you do this?
- Ensure that very senior people are the “champions” of compliance – in what they say AND what they do:
 - Management at all levels needs to be knowledgeable about the risks of non-compliance
 - Management needs to understand and support resources to support the compliance programme (“put their money where their mouth is”)
 - Encourage management to incorporate antitrust compliance messages in management meetings and talks to staff
- Adopt and communicate standards of ethical behaviour at Group level (e.g., a Code of Conduct / General Business Principles)
- Develop appropriate disciplinary policies and whistle blowing lines

Compliance know-how

- First assess your specific antitrust risks so your materials can be as relevant as possible to your company's specific risk profile
- Develop clear and simple rules
- Use plain language - not legalistic and not too lengthy: make it easy for people to understand the rules and so to follow them
- Design guidelines tailored to the specific needs of different business units and in different situations
- On-line training or Face to Face (FTF) training – or both?
 - On-line good for global reach and some providers offer multiple languages
 - On-line alone is not adequate for higher risk staff, who need to be able to ask questions and get on the spot answers
- For FTF training: identify appropriate trainers – and train them if necessary

Compliance Programme Controls

- Institute controls (establish mandatory training requirements; record training attendance; control / monitor competitor contact; audit of the programme)
 - Records: of training and controls
 - Link compliance training and compliance initiatives to performance reviews (make it personal – make it matter)
- Consider specific controls for higher risk staff (e.g. register of and approval for Trade Association and Conference attendance)
- Individual compliance assurances?
- Business / Country compliance assurances?

Constant Compliance Programme Monitoring

- Institute a mechanism for raising concerns (e.g., a help-desk facility, a Hot Line where concerns can be reported anonymously – may need Staff Council approval in some countries) that allows employees to report misconduct confidentially and without fear of retaliation
- Monitoring and improving must be regular and ongoing – this is a lifetime commitment
- Regular reports to the Board / Group Audit Committee / Group Risks Committee or similar
- Regular Audits of the programme (audit process and controls not substantive compliance)

Designing an antitrust compliance programme from scratch

- Support of senior management – and resources
- Consider the needs of your own business
 - Geographic spread and languages
 - Size of the population to be trained
 - Risks inherent in the business: are you a recidivist?
 - Do you need to train in horizontal risks (cartels), vertical restraints or dominance or all of them?
- Putting the infrastructure in place:
 - Compliance “champions” / Compliance Officers
 - Processes to monitor training and training needs
 - Training materials: on-line / face to face or a combination?

Why Comply?

Because complying with the law
is an integral part of the ethical basis
on which good corporate citizens do
business

Thank you