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HOW TO COMPLY WITH COMPETITION LAW

DEVELOPING EFFECTIVE COMPETITION LAW COMPLIANCE PROGRAMMES

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Support to China's Sustainable Trade and Investment System

支持中国可持续贸易和投资体系

Summary

- Why do we need a competition law compliance programme?
- What companies do to comply
- Creation of an effective compliance programme
- Conclusions

Need for an effective Compliance Programme

- Increased legal requirements and focus on ethical behaviour
- Global companies need a comprehensive and well resourced compliance programme – their reputation depends on daily decisions of thousands of employees across the world
- If something goes wrong, stakes are high
 - Substantial fines up to 10% of worldwide turnover
 - Penalties for individuals (including directors' disqualification, imprisonment for cartels in UK and USA and travel restrictions)
 - Private litigation and damages
 - Unenforceability of agreements
 - Reputation of the company damaged
 - Loss of shareholder value or customer respect
 - Management time and distraction

What should a compliance programme achieve?

- Purpose of a compliance programme
 - prevent infringements in countries where company does business (prevention is better than the cure)
 - facilitate early detection of violation if it occurs
 - By educating employees and raising awareness
- Cost of implementing is high (people, time, lost opportunities) but

“We consider the cost of compliance a worthwhile investment, By building a culture of compliance based on integrity and performance, we are reinforcing our reputation with the public and the investment community. As a compliant company, we gain the respect of our customers, And being a company with high integrity is a source of pride and motivation for our employees.”

Competition authorities and compliance

- Competition authorities and compliance
 - Different approaches by different authorities
 - Competition authorities should do more
 - Fines and compliance programmes
- UK Competition Authority – OFT
 - Study on drivers of compliance
 - Updated compliance guidance published on 27 June 2011
 - Chart and videos – of great value for the business

Four-step competition law compliance process

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STEP 1: Risk Identification

Identify the key competition law compliance risks faced by your business. These will depend upon the nature and size of your business.

STEP 2: Risk assessment

Work out how serious the identified risks are. Often it is simplest to rate them as low, medium or high. Businesses in particular should consider assessing which employees are in high risk areas. These may include employees who are likely to have contact with competitors and employees in sales and marketing roles.

STEP 4: Review

Review steps 1 to 3 and your commitment to compliance regularly, to ensure that your business has an effective compliance culture. Some businesses review their compliance efforts on an annual basis, others review less frequently. There may be occasions when you should consider a review outside the regular cycle, such as when taking over another business or if you are subject to a competition law investigation.

STEP 3: Risk mitigation

Set up policies, procedures and training to ensure that the risks you have identified do not occur, and how to detect and deal with them if they do. What is most appropriate to do will depend on the risks identified and the likelihood of the risk occurring.



Core: Commitment to compliance (from the top down)

Senior management, especially the board, must demonstrate an unequivocal commitment to competition law compliance. Without this commitment, any competition law compliance efforts are unlikely to be successful.

The 5 'C's of an effective programme

1. Commitment
2. Culture of compliance
3. Compliance know-how (Implementation and training)
4. Controls (Regular evaluations)
5. Constant monitoring and improvements

1) Commitment to compliance

- Tone from the top : attitude at the (very) top essential for buy-out by middle and lower levels
- How to show commitment:
 - Strong commitment by Board of Directors which must be visible, active and regularly reinforced
 - Senior managers or Board members appointed Compliance Champions to drive compliance, take responsibility, and report regularly
 - Regular statements from management backing the programme
 - Business code of conduct
 - Enough budget and adequate resources

2) Culture of compliance

- Each company has its own culture.
- Promote a culture of compliance: so people understand the rules and the need to follow them
 - Adopt and communicate standards of ethical behavioural at Group level (e.g. a Code of Conduct/ General Business Principles) and ensure that people comply
 - Management needs to be aware of the risks of non compliance
 - Develop appropriate disciplinary policies – zero tolerance
 - Start from day one – new employee induction
- Without a strong corporate culture, the understanding of what's ethical and what's acceptable business practice could vary depending on the individual's cultural viewpoint

3) Implementation and Training (I)

- Being compliant is everyone's job, but administering the compliance programme itself takes knowledgeable people who are focused on compliance. Have right people in place with adequate resources
- Programme must be practical, relevant to the business, readily understood and form an integral part of the company's training plans
- Tailored to the company
 - Assess particular issues faced by the company in the markets and jurisdictions in which it operates (horizontal conduct (cartels), vertical restraints, dominance)
 - Design guidelines tailored to the specific needs of the different business units
- Simplicity – competition law is considered difficult by non-lawyers
 - Clear and simple rules that people can understand and follow
 - Use plain language – not legalistic or too lengthy
 - Make it as painless as possible to get the information

3) Implementation and Training (II)

- Increasingly sophisticated compliance programmes
 - Training on-line / face to face
 - Seminars
 - Manuals
 - Do's and don'ts
 - Guidance on the intranet
 - Quiz, videos, presentations, interactive role play situations, workshop
- The purpose is not to create an army of competition lawyers but to make staff aware and spot issues so that they can seek advice when appropriate
- Not just a 'tick the box' approach

Using this programme



An introduction to the compliance programme and how to use it.



5 mins

What's in it for you?

Understand how competition law affects your role at Vodafone.



5 mins

Know it already?



Perhaps you already know a little about competition law. Why not take our quick quiz to find out just how much.



5 mins

Learning modules

Contact with competitors

Find out how the rules against price fixing and confidential information exchange apply to you.



15 mins



Contact with competitors

More prohibited agreements: market sharing, collusive tendering and collective boycotts.



15 mins

Dealings with customers (continued)

What to avoid in your dealings with service providers, resellers and customers.



15 mins

Market power

Learn about the rules applicable to 'dominant' companies and telecoms operators.



10 mins

Investigations and inspections

How to deal with information requests and 'dawn raids'.



10 mins

Overview

Read or print off the programme's key points.



5 mins

Final assessment: take the test

Answer 10 questions to test your new knowledge of competition law.



10 mins

Further reference



Vodafone guidelines



Real life case studies



Contact the legal team



Glossary

4) Controls (process)

- Without regular evaluation it is not possible to determine whether the programme is achieving its objectives
- Institute regular controls
 - Records of training
 - Testing of knowledge
 - Link compliance training and compliance initiatives to performance review or objectives
 - Consider specific controls for higher risk staff (e.g. sales)
 - Control competitor contacts: register of Trade associations and conference attendance
 - Screening of new hires or prior to promoting existing employees

5) Constant improvements and monitoring

- Constant improvements
 - Changes to applicable rules
 - Include lessons learned
 - Adapt to changes in the business
- Monitoring:
 - Establishment of a system that facilitates reporting of wrong doings: Hot line where concerns can be reported anonymously
 - No fear of reprisal
 - It may need workers' union approval in some countries

Other compliance issues

- International challenges
- Legal issues
- What if something goes wrong?

International challenges for multinationals

- Fundamental principles (no price fixing, no customer or market allocation, no bid rigging) provide a common denominator
- However many differences:
 - Different competition rules in different jurisdictions
 - Languages
 - Cultural differences
 - Countries with no competition law
- Key aspects
 - As a minimum prohibit behaviour that violates the most stringent regime
 - Reflect how competition law applies in practice locally
 - Participation of local senior managers and use of local language

Legal issues

- Uncertainty of the rules makes compliance difficult
- Different approach of different national competition authorities
- Mr No attitude of the legal department
- Use of careless business communications
- Merger filings

What if something goes wrong

- Even good compliance programmes cannot protect against “rogues”: breaches may occur (human nature) and compliance programme might be a mitigating factor
- Need to be ready - Internal and external communications
- Get to the facts : internal investigations
- Preserving the evidence : identify custodians and location

Conclusions

- Importance of a compliance programme
- Prevention is better than the cure
- Key elements of an effective compliance programme
- Questions?