Global Antitrust & Competition Law Risk: Real Challenges Facing Organizations & Strategies For Effective Management

Joe Murphy, CCEP
jemurphy5730@gmail.com
October 5, 2015

Some challenges in antitrust/competition law compliance

- What standards cover my compliance program?
- Dealing with leniency – globally
- Overshadowed by anti-corruption compliance?
- Risk assessment for antitrust
- Governments don’t care about whether we have a program
Some challenges in antitrust/competition law compliance

- It’s late evening at the trade association: where are my CEO and sales VP?
- How do I know if my antitrust compliance program is working?
- How do I know when and where to conduct antitrust compliance audits?
- Where can I get more guidance?

What standards cover my compliance program?

- USSGs – But will you be sentenced under the USSGs?
- Brent Snyder’s statements – the USSGs count
- FTC guidance
- Around the world – important developments
What standards cover my compliance program?

- UK
- France
- Canada
- Singapore, Chile, Brazil
- EU, “Compliance Matters”

Emerging messages from the standards

Dealing with leniency globally

50+ jurisdictions
Compliance programs can & do surface these cases
Be sure you don’t have other exposures
Coordinated: your own dawn raid to the enforcers
Overshadowed by anti-corruption compliance?

- FCPA, UK Bribery Act, Brazil’s Clean Companies Act
- Is bribery more immoral?
- One lesson of Petrobras: corruption and cartels can go hand in hand
- Integrating your compliance efforts

Integration – wisdom from Brazil

“greater effectiveness must be guaranteed as far as competition compliance is developed and implemented not on its own, but as part of a wider and broader program of corporate integrity and ethics.”
Governments don’t care about whether we have a program?

- DOJ, DG Comp & “failed programs”
- Is the tide turning?
- Obvious inconsistencies – anti-bribery vs antitrust
- Shifting landscape – the Canadian example
- Brazil’s new draft standards
- DOJ: a shift to prevention
- DG Comp: still no interest in prevention?

Risk assessment for antitrust

Advice from Canada: Consider -

- whether staff participate in trade associations in conjunction with their competitors;
- whether the business regularly recruits employees from competitors (particularly managers, marketing executives and salespeople);
- whether markets are characterized by a small number of competitors (for example, whether there are frequent occurrences where the same bidders compete on tenders);
Risk assessment for antitrust

- whether it is common practice to have, or it is easy to gain, competitor intelligence within the sector;
- whether it is common practice for competitors to form joint ventures with each other;
- whether the business makes representations to the public to promote its products or business interests; and
- whether it is common for competitors of the business to also be its customers or suppliers.

Its late evening at the trade association: where are my CEO and sales VP?

- Where is your greatest antitrust risk?
- Look at the major cases
- “Rogue” executives and CEOs?
- The difficult truth: the C suite needs to be a top target of your program
How do I know if my antitrust compliance program is working?
Evaluating your compliance program?
Evaluating your antitrust compliance program
Audits, monitoring, helplines, field visits, interviews, focus groups
Advice from Canada:
“conduct surveys, informal post-training follow-up meetings, focus groups and exit interviews with key individuals”

How do I know if my antitrust compliance program is working?
• “Plan and conduct verification exercises, either by appointment or unannounced, to confirm whether a business, or area of a business, or staff, is or are fully complying with the Acts; these exercises may include a review of paper and computer files (especially emails and other electronic message systems) of staff who are in a position to engage in, or be exposed to, conduct in potential breach of the Acts.”
How do I know when and where to conduct antitrust compliance audits?

Risk assessment

The role of “big data”

Screening:

Abrantes-Metz, Bajari & Murphy, “Antitrust Screening: Making Compliance Programs Robust,”

Where can I get more guidance?

- Promoting Compliance with Competition Law: Do Compliance and Ethics Programs Have a Role to Play? (June 2011), prepared for the OECD Competition Committee