



**COMPETITION LAW COMPLIANCE PROGRAMS IN EUROPE: DO THEY MATTER?**

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Anne Riley  
Joe Murphy, [jemurphy5730@gmail.com](mailto:jemurphy5730@gmail.com)

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**Are competition law compliance programs helpful, harmful or a waste of time?**

**Harmful???**

- They take resources better used elsewhere
- Will enforcers use it against you?
- Will it be harder to show you reformed?
- Is your program a sign that you are trying to break the law?
- Will it teach employees how to break the law?
- Do EU enforcers treat programs with contempt?
- Will your inhouse counsel's work be used for evidence to hurt you?

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## Are competition law compliance programs helpful, harmful or a waste of time?

A waste of time???

- Enforcers don't think much of them since they give them no credit
- No program can possibly prevent every violation
- They take resources that could be used in the business
- They take resources that could be used in compliance areas that do matter, e.g., corruption

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## Are competition law compliance programs helpful, harmful or a waste of time?

Helpful

- They matter in other jurisdictions, e.g., US, UK, Austria, Italy, Brazil, etc.
- Different violations may occur together, e.g., bribery & collusion, seen in Brazil
- They may matter in criminal cases, e.g., Germany, Czech Republic
- If an agency changes, you want to be the case they use as an example
- They may be required, e.g., part of fiduciary responsibility

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## Are competition law compliance programs helpful, harmful or a waste of time?

### Helpful

- Economies of scale – part of your overall program
- Programs overall help build a positive, law abiding culture – you can't carve out exceptions
- Help you prevent violations
- Help you discover violations for leniency
- Help you discover where you are a victim
- No matter what the official policy, it may influence individuals in enforcement

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## What happens when enforcers ignore antitrust compliance programs?

Marvin Price, Acting Deputy Assistant Attorney General for Criminal Enforcement, Antitrust Division:

“antitrust crimes often do not appear to garner the same compliance dollars as other types of white-collar crimes.

In our investigations we often see evidence of compliance training programs that contain just a brief mention of antitrust issues after a lengthy discussion of corruption and bribery.”

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## What if they are mandatory?

- May be part of required fiduciary responsibility for board
- An easy answer for government?
  - **E.g., the German response – they have to do it**
- Problems with this quick fix
  - **Incentive is for check-the-box programs**
  - **Rather than innovate, just do the minimum required**
  - **Just do what the lawyers say to do**
  - **Training - no one pays attention**

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## What if they are mandatory?

### Problems

- **Codes of conduct - no one reads or uses**
- **Discipline – only for the workers**
- **Employees resent it and know it doesn't matter**
- **It can backfire and breed contempt**
- **Burden of proof is on government to show you didn't meet the standard**
- **In incentive systems, burden is where it should be, on companies**

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## Competition Law compliance programs in Europe

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Questions?

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