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Will Your Antitrust Compliance Program Detect a Violation?

The Antitrust Division of the U.S. Department of Justice (DOJ) hosted a roundtable discussion on criminal antitrust compliance programs recently. Lawyers from corporate law departments and law firms, as well as from foreign competition authorities, offered their perspectives in a series of panels. The event underscored why it is critical for companies to adopt compliance programs that will detect any violations committed by their employees.

The DOJ's policy on compliance programs differs from the practices of other countries in a significant way. Except in extraordinary circumstances, the DOJ does not believe that a company pleading guilty to an antitrust crime should receive any credit (and therefore a lower fine) for having a pre-existing compliance program. In its view, only effective compliance programs should receive such credit. And effective compliance programs either: (1) prevent crimes from occurring at all; or (2) detect any violations so that companies can report them to the DOJ under its [Corporate Leniency Policy](#). Under that policy, the first company that reports the existence of an antitrust conspiracy to the DOJ, and agrees to cooperate in its investigation, is able to avoid all criminal charges.

Other countries—including Canada, the UK and Hong Kong (all of which were represented at the roundtable)—do offer fine discounts to companies who have compliance programs. In their view, detecting antitrust violations is very difficult. They believe that not offering any credit for pre-existing compliance programs deters companies from adopting them.

Some believe this roundtable might be a first step in the United States moving closer to the position of other countries on this issue. But for now, the U.S. DOJ's policy makes it critical for companies to implement antitrust compliance programs that will effectively prevent crimes from occurring and that will quickly detect any violations.

Antitrust Compliance Training Essentials

Our recommendations for effective antitrust compliance training, in light of the guidance provided at the roundtable, include the following:

- **Train globally.** Employees in your overseas offices must know about U.S. antitrust law because anticompetitive conduct that happens elsewhere can still affect U.S. commerce and therefore violate U.S. law;
- **Require compliance programs focused solely on antitrust issues.** Do not make antitrust compliance part of a larger corporate ethics program;
- **Train and retrain frequently.** U.S. antitrust law can and does change, so it is important for your employees to stay updated;
- **Align your company's interest in compliance with your employees' interests in advancement.** Make compliance with your corporate programs, including antitrust compliance, a requirement for salary increases and promotions;
- **Train employees to be "issue spotters."** Provide hotlines or other mechanisms by which they can report conduct that seems suspicious to them;
- **Bring the message home.** Use real examples of similarly situated companies and executives who have been caught and sentenced to large fines and prison terms;
- **Incorporate the [International Chamber of Commerce Antitrust Compliance Toolkit](#) into your training methodology;** and

- **Embed legal into your business.** Maximize the chances that your corporate legal department will detect any violations by embedding your lawyers into important parts of your business, such as pricing and any units that have any contact with competitors.

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