

**Intergovernmental Group of Experts on Competition Law and
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Round Table on:

***"Strengthening private sector capacity for competition
compliance"***

Contribution

By

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The views expressed are those of the author(s) and do not necessarily reflect the views of UNCTAD

STRENGTHENING PRIVATE SECTOR CAPACITIES FOR COMPETITION COMPLIANCE

UNCTAD

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Introduction

There is general consensus that the role of competition authorities is not confined to the enforcement of competition law but also encompasses advocating compliance

However, competition agencies have different approaches and a range of different tools to promote compliance

Many agencies around the world disseminate information to the business community and engage in regular contacts and events with firms and business associations

The recognition of compliance programs – especially with respect to fines – is more controversial

Recent initiatives of the International Competition Network

The ICN Advocacy Working Group has finalised several projects aimed at promoting compliance to competition law

The “**Competition Culture**” Report

analyzes the degree of awareness of the competition principles by the different stakeholders around the world

<http://www.internationalcompetitionnetwork.org/uploads/library/doc1035.pdf>

“**Explaining the Benefits of Competition to Business**”

provides suggestions to achieve effective communication with businesses and suggests key messages that agencies may find useful when pursuing this objective

Approaches in strengthening business compliance

- How far should competition agencies' pro-active role reach?

There is a wide range of different approaches adopted by competition agencies:

- Guidelines on procedural and substantive issues
- Activities and projects aimed at increasing awareness;
- Specific guidance on how to design an effective compliance programs;
- Assessment of compliance programs;
- Recognition of compliance programs as a mitigating factor.

Italy: Compliance programs as a mitigating factor

Italian Competition Authority's Guidelines on Fines (October 2014): possibility to obtain a reduction up to 15% of the fine in case of *"the adoption and observance of a specific compliance program, in line with European and international best practices"*.

Attempt to provide an incentive to increase compliance efforts through a reasonable degree of certainty of recognition of rigorous compliance programs as a mitigating factor (but no automatic recognition)

Some factors specific to the Italian situation played a role in the decision. In particular, the Italian industrial structure is composed of a wide majority of micro-enterprise

Application of the Guidelines

There is a **case by case assessment** and the approach of the Authority has been extremely rigorous, particularly in the assessment of the efforts actually made by the firms to comply with competition principles

The main issue in the application of the provision remains to distinguish a real compliance program from a merely “cosmetic” one

The Guidelines require “actual and concrete commitment to respect what envisaged in the program”

Application of the Guidelines to some cases

In the cases assessed by the Authority over the last two years, the reduction has been granted in four out of six cases, and only to some of the parties that claimed for the reduction in fines

Important elements in the assessment:

- Adoption before the Statement of Objections
- Evidence of effective implementation
- Seriousness of the Program

Criteria in the assessment of CPs

- Effective implementation of the program has to be proved and documented
- Clear and continuous involvement of the top management
- Appointment of a compliance unit/officer
- Risk assessment on the basis of the business sector and the context of operations
- Training for managers and employees proportionate to the size of the undertaking
- Appropriate monitoring, auditing and reporting mechanisms
- Consistent disciplinary procedures and incentives for compliance

Recent developments

In April 2016 Confindustria, the main national association of businesses in Italy, that represents the majority of Italian manufacturing and service companies, adopted Compliance Guidelines

The guidelines include indications on how to draft and put in place an effective compliance program

The Guidelines were disseminated among its members

Conclusions

- Agencies can strengthen business compliance capacity through dialogue
- Deterrence and prevention should reinforce each other
- There is room for different approaches in promoting compliance that take into account the specificity of the economic situation and agency's experience