

## Tax & Legal Weekly Alert

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The Guidelines is addressed to all type of undertakings (both multinational corporations and SMEs), regardless of their field of activity.



## **Competition Council Guidelines on competition compliance – Importance and benefits**

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The Guidelines is addressed to all type of undertakings (both multinational corporations and SMEs), regardless of their field of activity.

### **The importance and benefits of complying with competition legislation**

By publishing the Guidelines, the Competition Council urges the undertakings to give a greater importance to prevention, encouraging the implementation of competition compliance programs in order to prevent possible exposure to risks.

For these reasons, the purpose of compliance programs is intended to be primarily a preventive one, to create a climate of compliance with competition law, but also to develop own methods for identifying and remedying possible violations.

Compliance with competition law should be one of the most important aspects of a company's management, especially when deciding the long-term strategy.

**In essence, anticompetitive actions of an employee are attributable to the undertaking to which he/she belongs. It is not necessary for this behavior to have been encouraged or tolerated by management personnel to consider that the company itself has violated the law.**

The existence and effective implementation of a compliance program with the competition rules constitutes a mitigating circumstance leading to a reduction of the basic level of the fine by a percentage ranging between 5% and 10%.

## Impact of non – compliance with competition rules

### Blockages in day to day activity

Existence of an investigation from Competition Council, and subsequent court actions, may take years until finalisation becoming costly for the company and distracting the management from profitable business activities

### Civil damages

If the anticompetitive infringement caused harm to a third party, the victim may claim damages in court against the company

### Significant fines

The fine which Competition Council may apply for companies infringing competition rules is substantial and may go up to 10% of the total turnover

### Criminal liability for management

The natural person occupying a management position that intentionally design and organize anti-competitive practices run the risk of criminal liability and may receive a prison sentence of 6 months to 5 years or fine and prohibiting the exercise of certain rights

### Reputational risks

Investigations and findings from the Competition Council attract aggressive press articles affecting the corporate reputation



## What should an effective compliance program contain?

The first step in developing a compliance program is to identify and rigorously assess the risks of involvement in anticompetitive practices. According to the Guidelines, the following key elements should be considered in implementation process:

- a) management commitment to compliance with the competition rules;
- b) designation of one or more responsible persons;
- c) implementation of internal documents (compliance manual) dealing with existing relationships between the company and third parties and adequate training of employees on knowledge and necessity of complying with the competition rules;
- d) control, compliance audit and prompt notification of violations to competition rules.

## Immediate actions

To the extent that, currently, your company does not rule a competition compliance program, our recommendation is to also take into account the following steps that have been identified as best practices in the Guidelines.

On the other hand, if there is an compliance program, you should check to what extent it contains stages similar to those identified in the Guidelines as to eliminate the risk of not being considered as an effectively implemented program, and the company not to benefit from a possible reduction of the fine.

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### Identifying potential exposure areas for competition risks

- Review of the most important commercial contracts
- Analyzing the decision-making mechanism within the company based on a questionnaire
- Meetings with key employees to identify issues they face in daily activities

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### Risk assesment

- Establishing practical examples of sensitive situations as identified following the risk analysis and presenting recommendations in order to eliminate/mitigate the competition risk

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### Constant monitoring

- Disciplinary sanction of employees infringing the instructions received during competition law compliance program
- Permanenet assessment and improvement of strategies for mitigating the risk

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### Manage the risk

- Drafting internal policies
- Educating those categories of employees who are exposed to competition risks through competition trainings

For further questions, please contact us.



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