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2016 ICN Cartel Workshop
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Compliance activities and priorities, including promoting compliance to prevent collusion

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1. **Introduction & brief report** on latest developments in compliance in Brazil, Japan and EU. UK new initiative.
2. **Specific Subjects**
 - (i) Written policies to implement compliance programs;
 - (ii) Internal training and priorities in large organizations;
 - (iii) The role of guidelines from antitrust authorities in compliance;
 - (iv) Potential impact of compliance programs in fine calculations;
 - (v) Corporate governance issues associated with compliance.
3. **Wrap-up** with a summary of key findings in the discussion.



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Introduction & Latest Developments



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Latest developments in Brazil...

- ❖ Growing importance of Antitrust Law (Law no. 12.529/11);
- ❖ Enactment of Anticorruption Law (2013) and of the Decree that regulates it (2015);
 - Provision for reduction of 1% to 4% of the applicable penalty if proven the existence of an effective compliance program.
- ❖ Recent publication of compliance guidelines from CADE and CGU (2015);
 - CADE's guidelines: compliance program may attenuate sanctions
- ❖ Interface between compliance with antitrust and anticorruption legislations because of recent corruption scandals and bid-rigging investigations;
- ❖ Increasing engagement of companies to (re)structure compliance programs.



Latest developments in EU...

- ❖ Guidance document: *“Compliance matters. What companies can do better to respect EU competition rules”*. EC Brochure (2011).
- ❖ In the past 20 years, compliance programs have not been taken into account (either as attenuating or as aggravating circumstance) when setting the fine.
 - *“We do not reduce fines for companies that operate a compliance program and get caught breaking antitrust rules”* – Alexander Italianer, Director-General for Competition (2013).
- ❖ The value of compliance programs as a mitigating factor varies substantially among EU Member States. For example:
 - For: France, Italy and Czech Republic.
 - Against: Germany, Spain and Romania.
 - No formal stance: Denmark and Bulgaria.



Latest developments in Japan...

- ❖ Popularization of compliance program (“CP”) for the Antimonopoly Act (“AMA”) after introduction of leniency program (in 2006. Amended in 2009)
- ❖ Vulnerability of Japanese companies’ CPs for foreign competition laws
 - Recent Huge fines on Japanese companies in EU & US (e.g. auto-parts cartels)
 - JFTC’s survey & report on compliance efforts by Japanese companies for foreign competition laws (2014-2016)
- ❖ Existing surcharge system under the AMA
 - No JFTC’s discretion in levying surcharge and surcharge calculation
 - No impact of a company’s CP in surcharge calculation
- ❖ Ongoing review of the existing surcharge system under the AMA:
 - Aiming to give: (i) JFTC more flexibility to levy and calculate surcharge; and (ii) businesses more incentives to cooperate with JFTC in its investigations.
 - Possibility of taking into account of an effective CP as one of mitigating factors in surcharge calculation: one of many issues to be considered.



Latest developments in UK...

- ❖ Making competition law relevant
 - A marketing perspective on promoting compliance with competition law



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Specific Subjects



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(i) Written policies



Written policies to implement compliance programs

- ❖ Why a written compliance policy is important within organizations?
- ❖ What are the first steps that a company should take to structure a written policy?
- ❖ What should be included in a written policy by companies both at a substantive level (material *guidance*) and at a procedural level (reporting channels, internal audits, etc.)?
- ❖ How to assure the effectiveness of a written policy?
- ❖ How to build a global effective antitrust compliance policy?



(ii) Internal Training and Priorities

Internal training and priorities in large organizations

- ❖ How to define priorities within a compliance program?
- ❖ How to identify the key risks to which a company is exposed?
- ❖ Best ways to address the risks identified in training sessions?
- ❖ Internal training: Why is it important? Who conducts? What kind and to whom? How often?
- ❖ What is the role of electronic training, certification, open communication channel for questions, and updating?
- ❖ What is the role of external counsel in conducting internal training?
- ❖ How to monitor if compliance programs are being observed?



(iii) Compliance guidelines from NCAs

The role of competition authorities in promoting compliance

- ❖ Role of competition authorities in promoting compliance?
- ❖ How to take into account guidelines by competition authorities when building compliance programmes?
- ❖ How authorities can “market” and promote its guidelines to the private sector?
- ❖ Role of NGAs in promoting compliance?

(iv) Impact in fine calculations

Potential impact of compliance programs in fine calculations

- ❖ Any impact in fine calculation?
- ❖ If so, how and to what extent? Under what circumstances?
- ❖ Should the impact on fines be completely discretionary or should it follow objective criteria?

(v) Corporate governance



Corporate governance issues associated with compliance

- ❖ How to structure effective governance mechanisms to implement compliance programs in large organizations?
- ❖ What should be the role of a compliance officer? How to assure the independence of the compliance officer? Should the compliance officer report only to the Board or to the CEO?
- ❖ How to embed incentives for compliance in the compensation structure of the company?
- ❖ Other Governance Solutions?



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Wrap-up



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Thank you!



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