



International Chamber of Commerce

The world business organization

Policy and Business Practices

PROMOTING ANTITRUST COMPLIANCE:

THE VARIOUS APPROACHES OF NATIONAL ANTITRUST AUTHORITIES

Antitrust authorities share a common desire for companies to comply with antitrust law but take a number of approaches to encouraging that compliance. A common emerging theme amongst a number of sophisticated antitrust jurisdictions is the use of a number of different tools to support enforcement, including using advocacy as a means of encouraging compliance programmes and to establish or reinforce compliant behaviour. This paper outlines some of the methods used by key antitrust jurisdictions for driving compliance with antitrust rules.

TRENDS AND OBSERVATIONS

- Authorities in a number of key antitrust jurisdictions provide guidance - often very detailed - on how companies can drive antitrust compliance. Several authorities go even further, providing a 'template' or framework for antitrust compliance programme - see for example **Australia** (which provides four differentiated templates), **Canada**, **Japan** as well as efforts undertaken in the **Netherlands**).
- The genuine commitment of certain authorities to compliance efforts is reflected by a willingness to 'endorse' or 'certify' a particular programme meeting (stringent) criteria (**Brazil**, **Korea**).
- Many countries specifically recognise that compliance guidance will differ according to size/sophistication/risk profile of the company. In particular, **Canada** provides guidance tailored to SMEs (and the detailed **UK** guidance acknowledges that SMEs face different issues).
- Some antitrust authorities spend significant effort and resources in engaging in advocacy and outreach to change societal and business norms to accept and expect a culture of compliance (**Brazil**).
- The significant role of an effective compliance programme is reflected by the fact that, in a number of jurisdictions, companies may be required to give an undertaking (at the enforcement stage) to implement a compliance programme (**Canada**, **South Africa**).
- Certain antitrust authorities have devoted significant resources to understanding which factors drive compliance (and non-compliance) with antitrust law:
 - the ACCC in **Australia** refers to a three phase evolution it has observed over time - and the fact that a company rarely reverts to non-compliance once it has progressed to the third phase.
 - detailed **UK** guidance (for both companies and individuals) follows a major review of compliance literature and company/adviser attitudes - reflecting a philosophical commitment to driving compliance through avoidance as well through high fines etc

- in **Japan**, the Fair Trade Institute (an affiliate of the antitrust authority) helps companies establish and implement compliance programmes and has also established a sample compliance programme
- some authorities specifically recognise that compliance programmes can be beneficial for antitrust authorities (in terms of reducing enforcement efforts etc):
 - in **Australia**, compliance is regarded as an "important component of the ACCC's integrated suite of compliance tools"
 - in **France**, the Autorite described compliance as an "asset" for antitrust authorities.

AUSTRALIA

The ACCC's 2005 guidance, "*Corporate trade practices and compliance programmes*"¹ recognises that traditional enforcement remedies, despite being a "big hit" on a company, have not always resulted in a lasting change to corporate behaviour. The ACCC guidance also sets out the ACCC's view on key components of an effective compliance programme. These are reproduced in Attachment 1 to this paper.

Against this background, the ACCC acknowledges that compliance programmes are an "important component of the ACCC's integrated suite of compliance tools", but recognises that there is no generic compliance programme as each organisation's circumstances are different. Whereas some organisations may require a simple programme, more complex organisations may require a much more sophisticated system. Indeed, cognisant of the different challenges faced by smaller companies, the ACCC has produced guidance tailored to SMEs.²

The ACCC Guidance also includes four compliance programme template undertakings³ which suggest a framework for companies to develop a tailored and effective compliance programme as well as providing an example of what the ACCC is likely to accept by way of formal administrative undertaking.⁴

The ACCC Guidance also explains that it is "increasingly the ACCC's experience" that organisations that institutionalise compliance culture move through the following three phases:

- *commitment to comply* - where the company develops a willingness or commitment to address compliance issues and allocate the resources to achieve it

¹<http://www.accc.gov.au/content/item.phtml?itemId=717078&nodeId=0de4ca0a69fe9dde037bf81391b2cdab&fn=Corporate%20trade%20practices%20compliance%20programs.pdf>

²<http://www.accc.gov.au/content/item.phtml?itemId=732930&nodeId=d7a0e48f2ef44408bdf8abe7acee1683&fn=Small%20business%20TPA%20compliance%20guide.pdf>

³ <http://www.accc.gov.au/content/index.phtml/itemId/716224>

⁴ Section 87B of the Australian Trade Practices Act 1974 empowers the ACCC to accept formal administrative undertakings, which may include compliance programme obligations

- *compliance know-how* - where specialist personnel (e.g. compliance officer or compliance advisor) are appointed and are made accountable for compliance program development.)
- *compliance as business practice* - where compliance becomes the way business is done and no longer external to it.

In the experience of the ACCC, once a company has progressed through the stages to the third phase, companies rarely revert back to the non-compliant state.

BRAZIL

Brazilian law (Ordinance No. 14/2004) provides guidance on how to design a compliance programme by setting out the requirements and conditions for the relevant Brazilian antitrust authority (SDE) to issue a Compliance Certificate. This is effectively a 'quality seal' that will be issued if the programme is in line with the legal directives described in the Ordinance.

The certificate attests that the company has an antitrust compliance programme in force, and that the senior management has set certain directives to promote an antitrust culture. To obtain a certificate (valid for two years), the company must provide a description of the programme, disclosing the standards and procedures which employees have to follow, and the designation of managers to coordinate and supervise the programme's proposed objectives.

Brazil's antitrust 'outreach' programme

SDE has also devoted significant efforts to antitrust advocacy. The various initiatives - described more fully in a submission by Brazil to the OCED of May 2010⁵ - include:

- an Anti-Cartel Enforcement Day attended by the Brazilian President and high profile antitrust enforcers from other countries
- a two-day event comprising advocacy in 8 Brazilian airports in which 500,000 brochures and materials were handed out to disseminate the antitrust culture
- a nationwide campaign on antitrust compliance launched via advertisements in the four major weekly magazines in Brazil and involving post cards being sent to key executives of 1000 companies in the country
- the commissioning of a comic book for children relating to anti-cartel enforcement

⁵ *Annual report on Competition Policy in Developments in Brazil*, as submitted by the Brazilian antitrust authorities to the OECD Competition Committee on 10 May 2010 DAF/COMP(OECD)14. See also this press article on SDE's 'outreach' efforts: http://www.mmk.com.br/arquivos/2009-10-07_Brazil_rolls_out_new_anticartel_programmes_UM.pdf

CANADA

In September 2010, the Canadian Competition Bureau issued a revised and updated enforcement Bulletin, "Corporate Compliance Programs" (the Bulletin) which describes the measures that businesses should consider in order to prevent or minimise their risk of contravening the Canadian antitrust rules.⁶ The Bulletin also provides tools that help businesses to develop their own compliance programmes and includes a framework which sets out, in the Competition Bureau's opinion, the essential components of a "credible and effective" compliance programme.⁷ Implementing a program is not required by the Acts, but can, in certain circumstances, be ordered by a court.

The Bulletin states that there are five elements fundamental to a credible and effective compliance programme, regardless of the particular model adopted, its level of complexity or the size of the business. These are

- senior management involvement and support
- corporate compliance policies and procedures
- training and education
- monitoring, auditing and reporting mechanisms, and
- consistent disciplinary procedures and incentives.

The Bulletin also recognises that a compliance programme plays a "crucial role" for trade associations which face "unique compliance issues".

CZECH REPUBLIC

In October 2004, the Czech Republic Office for the Protection of Competition expressly acknowledged that the existence of a compliance programme will be taken into account as a mitigating factor, allowing for reduction of a fine imposed for an infringement of antitrust law. It also published on its website a draft compliance programme, noting that to be effective a compliance programme should involve:

- management support;
- suitable procedures and policies, such as a manual setting out the company's approach to compliance;
- ongoing training of employees; and

⁶[http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CorporateCompliancePrograms-sept-2010-e.pdf/\\$FILE/CorporateCompliancePrograms-sept-2010-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CorporateCompliancePrograms-sept-2010-e.pdf/$FILE/CorporateCompliancePrograms-sept-2010-e.pdf)

⁷ See Attachment 2.

- a process for evaluation of the programme to ensure its efficiency.

There has been no change in the position of the Czech NCA (although the 2004 statement has not incorporated into any official rules or guidelines).

FRANCE

In 2008, a study on competition compliance programmes - prepared for the Conseil de la concurrence - was published.⁸ The French antitrust authority issued a press release "committing itself" in favour of compliance efforts by business.⁹ The press release indicated that the authority intended to "spread the culture of compliance" and quoted the Chairman as describing compliance as a "winning bet for undertakings and...also an asset for competition authorities".

More recently, the Autorite's press release relating to its consultation on antitrust fines states that compliance programmes "warrant specific guidance, the preparation of which features among the Authority's priorities".¹⁰

JAPAN

The significance of compliance programmes is reflected by the JFTC's enforcement practice. As far back as 1991, in a case against Alpine Electronics¹¹, the judgment required that "...employees must be made to fully know" about the violation.

Over the years, it has become more common to see similar decisions ordering infringing companies to keep their employees fully informed about antitrust law:

- in the recommendation against JFE Engineering Corporation and other 39 companies in 2005¹² the infringing companies were ordered to "prepare and amend the guidelines to comply with the Antimonopoly Act" including by establishing "the rules concerning the punishment of the directors and employees responsible for a violation of the Antimonopoly Act"
- in a recommendation addressed to Nisshin Steel Co. and other five companies in 2007¹³ the infringing companies were ordered to provide "training on the Antimonopoly Act for sales staff" and to conduct "periodic audits, etc. by legal affairs personnel."

⁸ Report prepared for the Competition Council of France (Conseil de la concurrence) by Europe Economics in conjunction with Norton Rose: 'Etat des lieux et perspectives des programmes de conformité' (in French with Executive Summary in English) (September 2008). Available at http://www.autoritedelaconcurrence.fr/doc/etudecompliance_oct08.pdf.

⁹ http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=256&id_article=970

¹⁰ http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=389&id_article=1532

¹¹ April 25, 1991 (1991 Recommendation No.5).

¹² (November 18, 2005 (2005 Recommendation No.13)).

¹³ (January 27, 2004 (2003 Recommendation No.33

The trend for recommendations to include similar compliance related orders has continued. The JFTC has recently undertaken a number of 'outreach' initiatives in relation to antitrust compliance programs including:

- active coordination with the Fair Trade Institute (an affiliate of the JFTC) which helps companies establish and implement compliance programmes and has also established a sample compliance programme.¹⁴
- annual surveys over the last five years on compliance systems and awareness (with the stated objective of helping companies to improve their compliance programmes) - plus follow-up lectures.

KOREA

The 2006 ICN document, "*Summary of International Competition Network (ICN) Business Outreach Workshop*"¹⁵ indicates that a representative from the Korea Fair Trade Commission emphasized its commitment to encouraging compliance programmes, recognizing that prevention is just as important as enforcement because it reduces public cost. The representative described the following as important criteria: the commitment of executives; a program manager; a manual; employee education; a report on results and enforceable rules and punishment.

The authority also provides incentives for companies to establish compliance programs such as reducing the severity of sanctions for antitrust law violations but also for the use of the compliance program in its promotional materials. According to that representative, this leads to higher public awareness of the antitrust authority since consumers can identify with the authority's logo on company websites.

NETHERLANDS

The NMa encourages compliance efforts. In 2004, the NMa was involved in drawing up the model 'Competition Compliance Programme' in cooperation with insurance companies and the branch association for the insurance sector, the Dutch Association of Insurers. The aim of the scheme was to create a sector which was visibly and verifiably free of restrictions on competition. During the first quarter of 2005, the programme was implemented by the 200 individual insurance companies affiliated to the Dutch Association of Insurers.

The NMa continued with this line of thinking when opting for alternatives to in-depth investigations in the pharmacy, real-estate agents and publishers sectors in 2006 and 2007. In the pharmacy's and real-estate agents cases the NMa initiated investigations upon complaints about possible anticompetitive behavior by industry associations and its members. Commitments by the industry associations and its members to implement compliance programs lead the NMa to

¹⁴ <http://www.koutori-kyokai.or.jp/guide/compliance.html>. This is only available in Japanese. However, a sample manual is contained in this case book: Japanese Antitrust Law Manual: Law, Cases and Interpretation of Japanese Antimonopoly Act by Akira Inoue (Kluwer, 2007).

¹⁵ <http://www.internationalcompetitionnetwork.org/uploads/library/doc513.pdf>

end its investigations. Three large Dutch publishers independently from each other decided to implement compliance programs after the media announced that the NMa had initiated an investigation into the advertising market. The NMa issued a press release welcoming the initiative taken by the publishers and indicating that its investigation had so far not come up with enough evidence to warrant the continuation of the investigation.¹⁶

In 2010 the NMa worked on setting up an alternative regulatory scheme for the home care industry which included the setting up of a collective compliance program by the home care companies involved. However, this scheme did not get the required support from the industry and therefore did not go through.¹⁷

SOUTH AFRICA

Companies are often required to give an undertaking to implement a compliance programme in the context of enforcement action (e.g. in the context of settlements, consent orders etc).¹⁸

An example of what is generally acceptable by way of a commitment to introduce a compliance programme in South Africa is set out in Attachment 3.

TURKEY

A letter from the President of the Turkish Competition Authority stresses the benefits of antitrust compliance programmes.¹⁹ The letter highlights that compliance programmes serve two important purposes: to enable companies to avoid infringements and to enable companies to detect and terminate otherwise undiscovered anti-competitive conduct.

Acknowledging that there is no 'one size fits all' compliance programme, the letter lists the following five elements which the antitrust authority believes "indicate the success of a compliance programme":

- determination and support of the top management
- presence of proper policy and procedures
- continuous training
- systematic assessment
- consistent discipline and incentive practices

¹⁶ More information can be found (in Dutch) on <http://www.nmanet.nl>.

¹⁷ http://www.nmanet.nl/engels/home/News_and_Publications/News_and_press_releases/News_2010/10-19_NMa_rejection_of_collective_scheme_is_a_missed_opportunity_for_the_home_care_industry.asp

¹⁸ See for example the Tribunal's recent order confirming the Commission's consent order with Pioneer Foods, <http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/CC-Pioneer-Foods30Nov2010.pdf>

¹⁹ See Attachment 4.

The letter also sets out a checklist of questions designed to help a company assess its exposure to antitrust law focussing on the following areas:

- knowledge of antitrust rules and awareness of antitrust authority's activities
- relations with customers and dealers
- dominance/market power
- associations of undertakings

UNITED KINGDOM

In early 2010, the OFT conducted detailed research into the drivers of compliance and non-compliance with antitrust law. The results were published in May 2010.²⁰ During the research process, respondents asked the OFT to provide further guidance on risk-based steps businesses could take to comply with antitrust law. Specifically, the OFT was asked to update and expand its current guide "How Your Business Can Achieve Compliance). The OFT published a draft updated guide in October 2010.²¹

The draft guidance sets out the OFT's proposed four-step process for creating a culture of antitrust law compliance in a business. It also includes a quick guide for owners and directors of small businesses.

First, the guidance explains that the core of a compliance culture is an unambiguous commitment to compliance by the business. Senior management commitment essential and the commitment should be demonstrated at all levels of the management chain. The guidance makes a number of suggestions for communicating the commitment to compliance to a business. These suggestions (plus the proposed four-step risk-based process for achieving compliance) are set out in Attachment 5.

UNITED STATES

The US Federal Sentencing Guidelines (the Sentencing Guidelines) are generally used by the US Federal Courts when imposing sentences, including for criminal violations of section 1 of the Sherman Act. The Sentencing Guidelines indicate that an "effective compliance and ethics programme" might reduce the fine that will be imposed.

According to the Sentencing Guidelines, in order to be considered as having an 'effective compliance and ethics programme', an organisation must:

- exercise due diligence to prevent and detect criminal conduct and

²⁰ http://www.oft.gov.uk/shared_of/reports/comp_policy/oft1227.pdf

²¹ http://www.oft.gov.uk/shared_of/consultations/OFT1278.pdf



- otherwise promote an organisational culture that encourages ethical conduct and a commitment to compliance with the law.

The Sentencing Guidelines make it clear that the compliance and ethics programme must be reasonably designed, implemented and enforced so that the programme is generally effective in preventing and detecting criminal conduct. They also provide that any failure to prevent or detect the offence before the court 'does not necessarily mean that the programme is not generally effective in detecting and preventing criminal conduct'. A summary of the Sentencing Guidelines is included in Attachment 6.

APRIL 2011

ATTACHMENT 1

AUSTRALIA: KEY ELEMENTS OF AN EFFECTIVE COMPLIANCE PROGRAMME²²

- **Strategic vision**—compliance activities are linked to the company's strategic goals. The method the company uses to achieve those goals is communicated, as are benchmarks for implementation
- **Risk assessment**—the company actively identifies its compliance risks and reassesses those risks at regular intervals as part of entering into new business areas or activities. Specific compliance risks that may arise within each business unit or sphere of operations are considered
- **Control points**—each of the risks are managed at specified control points. Control points are reinforced by establishing behavioural and procedural controls. Procedural mechanisms address and mitigate high risk areas in a business' operating environment, while the behavioural mechanisms emphasise the company's policies for those risks
- **Adequate documentation**—compliance endeavours are adequately documented to ensure they can be substantiated in the event of a breach
- **Accountability**—for managing each element of the compliance system
- **Continuous improvement**—the company self-evaluates its performance and its approach to ensure they are appropriate to its operations.

²²<http://www.accc.gov.au/content/item.phtml?itemId=717078&nodeId=0de4ca0a69fe9dde037bf81391b2cdab&fn=Corporate%20trade%20practices%20compliance%20programs.pdf>



ATTACHMENT 2

CANADA: CORPORATE COMPLIANCE PROGRAM FRAMEWORK²³

PREFACE

This Corporate Compliance Program Framework (“Framework”) was designed to help Canadian businesses design their own corporate compliance program in relation to one or more of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act*, and the *Precious Metals Marking Act* (“Acts”). It should be used in conjunction with the Competition Bureau’s (“Bureau”) *Bulletin on Corporate Compliance Programs*. The Framework refers to Appendices (such as a Training and Education Program, Procedures for Monitoring, Auditing and Reporting and a Disciplinary Code) to be drafted by businesses to suit their specific needs and the competition risks they may face.

The Framework is a flexible tool that should be adapted to the specific activities and resources of a particular business. The Framework is a general guide only and the Bureau will not deem a compliance program deficient or non-credible if a company deviates from the Framework, where the deviation is reasonable in the circumstances. The Framework is not binding on the Commissioner of Competition (“Commissioner”). It is offered for the purpose of providing guidance. This Framework is not to be taken as a substantial corporate compliance program and needs to be tailored to a business’ needs. Furthermore, the content of the Framework and accompanying Appendices are not intended to serve as legal advice. Readers should obtain independent legal advice when developing a corporate compliance program.

[] To be completed by the subject Company.

²³[http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CorporateCompliancePrograms-sept-2010-e.pdf/\\$FILE/CorporateCompliancePrograms-sept-2010-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/CorporateCompliancePrograms-sept-2010-e.pdf/$FILE/CorporateCompliancePrograms-sept-2010-e.pdf)



[COMPANY X] CORPORATE COMPLIANCE PROGRAM

1. INTRODUCTION

1.1 Purpose

This Corporate Compliance Program (including Policies and Procedures) (“Program”) has been established so that our business complies with the [*Competition Act / Consumer Packaging and Labelling Act / Textile Labelling Act / Precious Metals Marking Act* (as appropriate)] while providing value to our customers and competing effectively in the Canadian and global economies. It includes practical advice concerning rules of conduct that will help our business anticipate and prevent contraventions before they occur, and detect and report contraventions if they do occur. This Program is for use in our daily business by all employees.

Commitment to Compliance

- 1.2.1 [Company X] is committed to complying with the law in letter and in spirit. There may be instances where this Program sets standards that are higher than those required by the [*Competition Act / Consumer Packaging and Labelling Act / Textile Labelling Act / Precious Metals Marking Act* (as appropriate)]. Nevertheless it is imperative that its requirements be complied with strictly. [A personal statement by the chief executive officer or his/her equivalent stressing his/ her commitment to the policies and procedures contained in the Program, and his/her uncompromising adherence to the Acts may be incorporated.]
- 1.2.2 Our business has designated a person responsible for the development, implementation and maintenance of the Program. The [Compliance Officer or other appropriately titled position] may be contacted at: [Contact Information].

Employees’ Responsibility for Compliance

- 1.3.1 Responsibility for compliance with the Acts also rests with each and every employee of the business. Compliance with the Acts protects not only our business, but also our employees.
- 1.3.2 In addition, our business has developed Policies and Procedures, attached at Appendix [], in order to assist employees in recognizing improper conduct and knowing when to seek advice.

Canadian Competition Law

The purpose of Canadian competition law is to maintain and encourage effective competition in Canada. The Acts maintain a competitive marketplace by prohibiting certain activities that might reduce or prevent competition or harm consumers. The Commissioner and the Competition Bureau (the “Bureau”) administer and enforce these Acts.



Overview of the Acts

What is the *Competition Act*?

Canadian competition law is contained in the Competition Act, a federal law governing most business conduct in Canada. It contains both criminal and civil provisions aimed at preventing certain advertising practices and sets out certain prohibitions on how competitors may deal with each other, as well as how businesses treat their suppliers and customers. Specifically, the Competition Act addresses, among other things, conspiracy (such as price fixing, market allocation and output restriction), bid-rigging, false or misleading representations, double ticketing, multi-level marketing and pyramid schemes, bait and switch selling, sale above advertised price, mergers, refusal to deal, price maintenance, exclusive dealing, tied selling, market restrictions and abuse of dominance.

What is the *Consumer Packaging and Labelling Act*?

The Consumer Packaging and Labelling Act is a regulatory statute relating to the packaging, labelling, sale, importation and advertising of pre-packaged products. It requires that pre-packaged consumer products bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The Consumer Packaging and Labelling Act prohibits false or misleading representations and sets out specifications for mandatory label information such as the product's name, net quantity and dealer identity.

What is the *Textile Labelling Act*?

The Textile Labelling Act is a regulatory statute relating to the labelling, sale, importation and advertising of consumer textile articles. It requires that textile articles bear accurate and meaningful labelling information to help consumers make informed purchasing decisions. The Textile Labelling Act prohibits false or misleading representations and sets out specifications for mandatory label information such as the generic name of each fibre present and the dealer's full name and postal address or a CA identification number.

What is the *Precious Metals Marking Act*?

The Precious Metals Marking Act is a regulatory statute relating to the marking of articles containing precious metals. It provides for the uniform description and quality markings of articles made with gold, silver, platinum or palladium to help consumers make informed purchasing decisions. The Precious Metals Marking Act prohibits the making of false or misleading representations related to precious metal articles. It also requires that dealers who choose to mark their articles with representations related to the precious metal quality, do so as described by the Act and Regulations.

Enforcement of the Acts

The Commissioner investigates complaints by business people and consumers. Under the *Competition Act*, the Commissioner's investigative powers include, among others, the ability to search offices, seize records and interview individual employees under oath. Under the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*, inspectors can enter and



inspect business premises of a dealer of pre-packaged products, textile fibre products or precious metal articles, and seize such products and articles.

Penalties and Remedies under the Acts

1.6.1 A contravention of the Acts, whether civil or criminal, can result in serious legal consequences for our business and our employees. For example, contraventions can:

- expose the business to significant criminal fines or civil administrative monetary penalties, restitution, prohibition orders and recovery of damages by private parties; and
- expose employees convicted of criminal offences to criminal fines and imprisonment or to civil administrative monetary penalties.

1.6.2 Discuss the penalties and remedies for both the company and employees that are associated with the provisions of the Acts that are the most likely to apply to the business' activities based on the risks you may face.]

Subject Personnel

1.7.1 The Program applies to all employees, at all levels, who are in a position to potentially engage in, or be exposed to, illegal conduct (hereinafter referred to as "employees").

1.7.2 It is the personal responsibility of all employees to conduct their activities on behalf of our business in compliance with both the letter and the spirit of the Acts. No one who is employed by our company has the authority to engage in any conduct, or knowingly permit a subordinate to engage in any conduct, that contravenes the Acts or this

1.7.3 Anyone who engages in such conduct or who otherwise contravenes the Program or the Acts may be subject to appropriate disciplinary or corrective measures, up to and including dismissal.

Employee Acknowledgment

1.8.1 Each employee is required to acknowledge that he/she has read and understands this Program and that he/she understands his/her obligations under it. Such an acknowledgement will also be sought in the event that significant changes to the Program take place.

SENIOR MANAGEMENT INVOLVEMENT AND SUPPORT

2.1 "Senior management" is defined as [list the positions].

Our business recognizes that senior management's clear and unequivocal support is the foundation of a credible and effective program.



Senior management, in the performance of their fiduciary duties, must always exercise care, skill and diligence and act in the best interests of our business.

It is senior management's duty to promote and ensure compliance with the Acts. Senior management is accountable for promoting and complying with the Acts.

While senior management is accountable for compliance, the responsibility to promote and ensure compliance may be delegated to a specific individual or group.

CORPORATE COMPLIANCE POLICIES AND PROCEDURES

The business recognizes that strong compliance policies and procedures are critical to the success of the Program.

Policies and Procedures pertaining to our business activities are attached at Appendix []. Appendix [] will be updated to reflect material changes in the business, the law, the Bureau's enforcement policies, or the industry. Reasonable measures will be taken to promptly notify all employees of such changes. [Policies and Procedures shall:

- be written in plain language and made available to all employees;
- identify activities that are illegal or questionable and the consequences for contravention under the Acts;
- provide clear examples to illustrate the specific practices that are prohibited, so that employees can easily understand how the application of the Acts may impact on their own duties and responsibilities;
- provide guidelines on document retention, creation and management; define the notion of obstruction under the Acts;
- inform employees of the consequences of obstruction under the Acts;
- outline the possible consequences of breaching the Program and the Acts;
- inform employees regarding the provisions of the *Competition Act* that protect whistleblowers and the consequences of retaliation;
- inform employees about the Bureau's *Immunity Program under the Competition Act*; provide a code of conduct giving clear instructions on how to respond when a search warrant is executed or when an inspection is being conducted by the Bureau;
- provide a code of conduct giving clear instructions on how to respond when a court order compelling the production of records or oral testimony is served; and



- provide a code of conduct regarding the participation of its employees to any trade association activities.]

TRAINING AND EDUCATION

4.1 Our business recognizes that to be effective, the Program must include an ongoing training component that addresses compliance issues for all employees.

A Training and Education Program is attached at Appendix [].

[The Training and Education Program shall:

- require each employee to participate in ongoing training provided by our business;
- require all new employees to participate in training as soon as practicable after the commencement of their employment;
- cover all compliance issues the business may face;
- highlight the general legal principles under the Acts;
- provide employees that face particular exposure to the Acts with more in-depth training;
- provide guidance on specific business conduct that should be avoided;
- ensure that all relevant training materials are available;
- allow sufficient opportunity for questions and discussion during training sessions;
- ensure that training is delivered by experts and that it is consistently given throughout the company to avoid conflicting information;
- provide a method of evaluation as well as its frequency; and
- be evaluated regularly to make sure it reflects the business activities and the state of the law.]

A copy of this Program will be distributed to all employees upon commencement of their employment.

The Program can be found on [list: Intranet, Internet Web site, etc.].

5. MONITORING, AUDITING AND REPORTING MECHANISMS

Monitoring

5.1.1 The [compliance officer or other appropriately titled position] shall monitor all business activities continuously or periodically, as appropriate, to ensure compliance;



- 5.1.2 The compliance officer [or other appropriately titled position] shall review and update this Program when issues are detected; and
- 5.1.3 Procedures for Monitoring are attached at Appendix [].

Auditing

- 5.2.1 The [compliance officer or other appropriately titled position] shall conduct periodic, *ad hoc* or event-triggered audits, as appropriate, to confirm whether our business is fully complying with the Acts;
- 5.2.2 The [compliance officer or other appropriately titled position] shall review and update this Program when issues are detected; and
- 5.2.3 Procedures for Auditing are attached at Appendix [].

Reporting

- 5.3.1 All instances of non-compliance with the Program or the Acts shall be reported and communicated to the [compliance officer or other appropriately titled position] who shall regularly report to Senior Management;
- 5.3.2 The Program is intended to help employees comply with the requirements of the Acts, recognize improper conduct and know when to seek advice;
- 5.3.3 If employees have any questions concerning the Program or the Acts, they are strongly encouraged to contact the [compliance officer or other appropriately titled position];
- 5.3.4 If employees become aware of a breach or possible breach of the Program or the Acts, they must report it to the [compliance officer or other appropriately titled position] immediately;
- 5.3.5 No employees shall suffer any adverse employment consequences for reporting a possible contravention of the Program or the Acts; and
- 5.3.6 Procedures for Reporting are attached at Appendix [].

DISCIPLINARY PROCEDURES AND INCENTIVES

The business is strongly committed to compliance with this Program and the Acts. We take non-compliance very seriously.

Any breach of this Program and/or the Acts will result in disciplinary action.

A Disciplinary Code, including incentives, is attached at Appendix [].



Policy and Business Practices

[Signature of senior management]

ATTACHMENT 3

SOUTH AFRICA: INDICATIVE EXAMPLE OF WHAT MIGHT BE ACCEPTABLE TO SOUTH AFRICAN AUTHORITIES IN RELATION TO COMPLIANCE PROGRAMMES

1. Introduction

As part of its responsibilities as an ethical, corporate citizen of South Africa, X is committed to adhering strictly with competition laws. All divisions within the company are obliged to ensure that their operational practices and day-to-day activities do not contravene competition laws. This is necessary to protect not only the company's reputation, but also to safeguard the interests of individual employees. The competition law compliance programme will enable it to prevent and detect any future contraventions of the Competition Act.

2. The key elements of an effective competition law compliance programme

2.1 The following elements are considered essential to the creation of an effective programme:

2.1.1 Involvement and support of senior management;

2.1.2 Development of relevant policies and procedures;

2.1.3 Education of management and relevant employees;

2.1.4 Monitoring, auditing and reporting mechanisms; and

2.1.5 Disciplinary Procedures

2.2 X has considered these key elements in the development of a holistic and robust competition law compliance programme.

3. Competition law compliance programme



- 3.1 In keeping with the key elements for designing and implementing an effective compliance programme, X'S competition law compliance programme is set out below:

KEY ELEMENTS	COMPLETION DATES
A) Compliance education and training	
<ul style="list-style-type: none"> • Initial workshop with senior management and key employees • The purpose of the half-day workshops is to raise awareness, to deal with key competition law risk areas which were highlighted in advance and to identify additional potential competition law risk areas relevant to X • The key topics covered at the workshop included the following: <ul style="list-style-type: none"> – The provisions of the Competition Act (including the recent amendments providing for complex monopolies, criminal sanctions and market enquiries) – The powers of the competition authorities (including an overview of the implications for X of the recent amendments, including subpoenas, summonses and search and seizures) – Dealing with competitors (including permissible and non-permissible interactions at trade associations) – Dealing with customers and suppliers (including the relevance of franchising agreements) – The dominance provisions and its relevance to X, particularly in relation to the setting of pricing policies – Pricing practices that are regulated by the Competition Act and when they apply, such as price discrimination, predatory pricing, discount and rebate policies, growth incentives etc – Interactions with suppliers, including a 	

KEY ELEMENTS	COMPLETION DATES
discussion of exclusive arrangements and the duration of supply arrangements	
<ul style="list-style-type: none"> • Development of awareness raising material and guidelines: <ul style="list-style-type: none"> – Checklist or quick reference guide of competition law do's and don'ts – Guidelines on marketing practices – Specific guidelines on dealing with competitors – Specific guidelines relating to dominant firms – Quick reference guide for dawn raids 	
B) Compliance audit	
<ul style="list-style-type: none"> • Review of the key agreements and correspondence from a competition law perspective, including all supply agreements and agreements with third parties and assess compliance following preliminary interactions during August and September 	
<ul style="list-style-type: none"> • Review of the applicable pricing practices. This will include interviews with the relevant X management 	
C) Compliance report	
<ul style="list-style-type: none"> • Preliminary report prepared by external legal counsel highlighting key risk areas based on the compliance audit referred to above 	
D) Compliance policies and procedures	



KEY ELEMENTS	COMPLETION DATES
<ul style="list-style-type: none">• Development of primary compliance policy for use in X• Development of a manual dealing with policies and procedures (including pricing policies) based on report• Recommendations on an internal reporting mechanism for suspected violations of the Competition Act	

ATTACHMENT 4

TURKEY: TEXT FROM THE LETTER OF THE PRESIDENT OF TURKISH COMPETITION AUTHORITY

Compliance with Law is the Path to Increase Competitive Power in a Competitive Environment!

As a principle, considering competition as a race in the framework of rules, by a legal approach, competitive power is a “**mutual must**” for the competitive environment where the competitive power may be acquired on. Accordingly, undertakings should structure themselves in compliance with the needs of competition law and “**rules of the game**”; hence they should be sensitive and “**prepared**”. **Game with no rules is not a game!** A “**sensitive and prepared**” undertaking or management means not only being qualified enough with cost and performance, technology and investment power, but also with legal competition understanding, legal practices and transactions.

Undertakings and managers should assess themselves in terms of competition and competition compliance. It is important for undertakings being compliant with competition law and competitive environment. Undertakings may try to understand their current situation and management rules in terms of sufficiency, information, sensitiveness, structure and behavior! Accordingly, undertakings or managers may detect their insufficiencies by assessments, and then they may take required precautions in order to prepare themselves for the future. At this point, it is considered to point out that undertakings are making a great effort to be in compliance with competition rules, in more developed countries in the area of competition law and policy. Developing compliance programs in question will be great use for undertakings, independently from their scales or size.

Let us remind the importance of developing competition compliance programs for undertakings:

A noticeable issue during 14 years of experience of the Competition Authority is that the undertakings or managers and employees are not aware of their competition infringements at the very substantial parts of examinations and investigations! We have greatly witnessed defenses such as “**We didn’t realize that this practice constituted an infringement**” or “**if we had known it, we would immediately terminate**”. Unfortunately, this kind of late confession and determinations do not protect undertakings from heavy administrative fines in most cases. Yet, subsequent problems may be terminated when undertakings foresee their competition infringements. It is clear that understanding of a responsible and professional management and business requires anticipation. An informed and aware manager would take necessary precautions not only for financial aspects but also for reputation, in order to avoid sanctions that may cause trouble for the undertaking. For this reason, one of the primary precautions to be taken by our undertakings is to prepare “competition compliance programs” and put these into effect. Unfortunately, such actions that are seen in many small or large enterprises of developed countries, is not widespread in our country yet.

Compliance programs serve two important purposes: First of all, it enables undertaking’s managers and employees to be informed about competition rules. By this way, managers will be able

to avoid decisions and actions that may infringe competition. Secondly, it enables to detect uncompetitive actions or practices and to terminate such actions.

Primarily, the expansion of compliance programs based on *ex ante* assessment will reduce the risk of administrative fines and also contribute to the competitive economy in our country. Besides the Competition Authority's works in the framework of the legislation, the extension of this sensitivity and practice will probably be more efficient to constitute competitive environment and institutionalization.

There Are Some Basic Factors that Affect the Success of a Competition Compliance Program!

It does not seem possible to define a standard compliance program that suits any undertaking in any occasion. On the contrary, designing a compliance program according to the structure and conditions of the sectors in which undertakings operate and to the sui generis needs of businesses is much more preferable. Yet, in order to help and guide undertakings, we would like to point out some particular respects which indicate the success of a compliance program.

We can summarize these respects under five headings:

1- Determination and support of the top management

2- Presence of proper policy and procedures

3- Continuous training

4- A systematic assessment process

5- A consistent discipline and incentive practices

The most noteworthy respect above all is **determination of top management** and its leading position towards the personnel through this way. Top management's noticeable support and constantly emphasizing its sensitivity are quite strong indications for the success of the program. If possible, top manager and executives should announce their devotion to the program to all employees. By mentioning this sensitivity clearly in the undertaking's mission or in its code of conduct, or by assigning some particular person from top management particularly for this responsibility, or again by assigning that person to report regularly regarding this matter, support of top management can be embodied clearly. This respect will be a warning sign to the interior and exterior environments, as well as will be strengthening existing and new comer employees' attention and contribution to the program.

An effective program requires more than an oral commitment regarding competition compliance. Thus, it is necessary to involve closely to relevant **policies and procedures**. In order to ensure that the program will be taken serious, it is important to ask a written commitment from all employees, if possible, regarding their determination on their duties and responsibilities and to notify the uncompromising implementation of disciplinary customs to employees who may infringe competition law. It is important to be careful not to allocate responsibilities to employees who have tendency to act illegal or against competition law. Obviously, undertaking should ensure that its employees benefit

from consultancy services in defining whether the transactions are in compliance with the competition law and how to react on certain situations. “**Hand Manuals**” and “**booklets**” prepared on this purpose containing commensurately amount of competition legislation and other details will also be useful.

Training is a vital part of an efficient competition compliance program. Effective training programs should be applied to all employees, if not necessary, at least to the managers and employees that are responsible with undertaking’s strategic and commercial decisions and practices. There are no strict or standard manners and methods to follow for the success. A way can be found by taking into consideration characteristics of the undertaking and its employees who will participate to training. Trainings made by conference, seminar, video presentation and animations should be recorded to be recalled if necessary. Program should explicitly reflect the determination of the undertaking to comply and contain a simple and straightforward “**do’s & don’ts list**” that every employee can easily understand. Furthermore, the undertaking should also acquire a personalized training program which is performed by an experienced consultant.

Periodically held **assessments** of the recent developments is a key element to success. It would be necessary to examine the employees’ level of acknowledgement from time to time regarding the related legislation, policies of the undertaking and other procedures with or without a prior notice. In addition, inspections without earlier notice regarding relations with other undertakings, and the processes of sales, price and supplies would be beneficiary in controlling current and future potential infringements. Informing senior managers of such infringements and establishing mechanisms endowed with the aim of their eradication, creates the necessity to found a highly-developed assessment system. This evaluation process should be uphold as explicit as possible, and should assist the employees’ awareness about their follow-ups.

In order to maintain a mechanism in accordance with competition law, it is a must to **supervene** the employees and the proceedings related to competition law, to provide **reports** of such supervening and to take **disciplinary** measures if necessary. For rendering the system successful, managers and employees should be aware of the consequences of penalties and other negative sanctions, and especially of the fact that sanctions get more severe when managers infringe the laws and that they could be individually penalized accordingly. In view of a successful program, it is immensely important for the employees to acknowledge that those who ignore the adjustment program or do not report the wrong conducts of others could be held responsible and be imposed by the relative penalties.

Some advices for the Practice!

To ensure that a compliance program works effectively, the program should be designed with respect to the undertaking’s operation, organization, personnel and culture. Provided that its scale allows doing so, the undertaking should hire a **proactive** legal service or a **competition law consultant**. Lawyers and consultants of the undertaking should participate in the management meetings and should visit the premises frequently to ensure that the personnel is aware of whom to get in contact whenever they have a question regarding the legislation. In addition, a reporting system, which would provide employees a systematic framework to report the wrongful actions they have come across, should be created. While some companies employ a **consultant** or place a **consultancy line** within the organization, some others appoint their legal departments for this duty. Regardless of the method exercised, confidentiality of the employee who informs the wrongful action must be preserved. Lastly,

the employee in charge should execute regular competition audits - preferably without earlier notice – and observe the process in compliance attempts of the company. Either pre-informed or else, these audits should include investigation of the computers (especially e-mails) and written documents of the employees who are entitled to make competition-related decisions, as well as employees in sales/marketing departments. Furthermore, discussions may be organized with employees regarding their relations with their competitors.

The undertaking or the management should take action when an infringement of competition is spotted, put an end to the infringement right away, start investigating the incident and, if necessary, should notify the Competition Authority. It should be borne in mind that, especially in cartel agreements, benefiting from the leniency programs may become a race between the parties since the first-comer is the most advantageous.

Associations of undertakings, too, have a significant role during the execution of the compliance program. Related association should prevent the possible infringements of competition law within its own operations while providing its members necessary information and awareness on competition law and policies.

In addition to the undertakings themselves, it would be appropriate that the association of undertaking publishes **guidelines/remarks/policy documents** which could be defined as “**competition compliance policy**”. These policy documents should be announced as a part of the undertaking’s and association’s policy of acting in compliance with the ethical principles and rules and they should be presented to the public. Put in another way, the undertakings - and the associations which they are a member of - should consider compliance with competition law both as a moral and judiciary matter.

Undertakings should review and assess their current situation regarding the compliance with competition law. Below, we have put together a “**check list**” in order to assist our undertakings and associations. It should be noted that this list does *not* cover each and every circumstance but rather includes the basic principles which should be emphasized regarding the legislation. In our view, it would be of great use that undertakings and their managers make assessments of their present conditions according to this questionnaire. Provided answers will largely identify what kind of an approach and practice is necessary in order to be successful.

Competition Compliance Program Check List

A. Competition Legislation and Information Regarding Competition Authority

Having sufficient information regarding competition law and Competition Authority is of vital importance in terms of foreseeing many problems that will not be overcome later. Sensitivity and information level of undertaking managers and authorized people who could adopt decisions which may lead competition infringements, about whether an action or a decision is lawful or not, constitutes the essence of the success or failure of the management in this field.

- ✓ Do you have sufficient information regarding competition legislation?



- ✓ Do you have any information regarding regulations, activities and decisions of the Competition Authority?
- ✓ Do you follow up the Competition Authority's web site regularly?
- ✓ Do you have any in-house special unit or authorized person dealing with competition legislation and applications?
- ✓ Do you have any compliance rules, hand books or procedure documents which show necessary applications and help informing employees and relevant persons?
- ✓ Do you outsource consultancy service concerning competition legislation and applications?
- ✓ Did top managers or employees of the company have any education concerning competition legislation and applications?

B. Relationships with Competitors

The most leading bottleneck while building fair competition environment is agreements among businesses which limit competition. These agreements which can be defined as “cartel” are intensely prohibited. These kinds of decisions, actions and transactions which could mean as “stealing from the welfare of the society” are infringements that damage the reputation and require serious fines.

- ✓ Do you determine price or cost elements and sale conditions which constitute the price, along with your competitors?
- ✓ Do you exchange opinions regarding price and cost elements which constitutes price with your competitors?
- ✓ Do you share the market geographically or based on customers?
- ✓ Are you in cooperation with your competitors regarding restriction of supply and other sources of input?
- ✓ Do you have any written or oral agreement with your competitors in order to avoid competition?
- ✓ Do you cooperate with your competitors in order to ensure the elimination of a specific competitor and/or customers?

- ✓ Do you negotiate elements that might affect competition such as, price or cost elements before or while entering tenders with competitors? Do you cooperate in such issues?

C. Relationships with Customers and Dealers

Undertakings that generally distribute or sale goods and services by making vertical agreements, should stay away from behaviors that might be described as infringement of competition. Such undertakings should be sensitive and strive about the conformity of their marketing systems with competition law.

- ✓ Do you determine your dealer's or customer's resale price?
- ✓ Do you intervene to your dealer's or customer's sales conditions, such as discount rates and payment terms?
- ✓ Do you put constraints on the sales of your dealers' to their customers in agreements signed with your dealer?
- ✓ Do you prohibit sales realized by your authorized dealers to each other's regions?

D. Undertakings in Dominant Position/with Significant Market Power

It is possible for one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers. In principal, such undertakings should act so as to not infringe competition.

- ✓ Do you apply different terms of prices and sales to customers who are in the same conditions?
- ✓ Do you oblige your customers to buy another good or service with the one they already buy?
- ✓ Do you have a pricing policy which is below or way above your costs?
- ✓ Do you reduce the supply of goods without any justification?
- ✓ Do you have a pricing policy that might complicate your competitors' business?
- ✓ Are you using your financial and technologic superiority in one of the markets in order to complicate your competitors' business in other markets?

E. Association of Undertakings

The undertakings operating in an industry generally gather for various reasons under the organizations established under the names of chambers, associations, unions or etc. The fact that members of these organizations, whether they have a legal personality or not, strive to be successful is very natural. However at the same time, in certain cases, these associations of undertakings deliberately or not deliberately, may lead to a decision that infringe competition rules, and cause the implementation of such behavior.

- ✓ Does the act regarding articles of association include any articles which restrict competition?
- ✓ Does the authority of the association of undertaking practiced over its members affect competition among thereof?
- ✓ Does the association of undertaking have decisions on their members' sales prices and other terms of sale?
- ✓ Does the association of undertaking reach decisions that restrict their members' area of activity?
- ✓ During the meetings, are the members encouraged to debate on sales prices, terms of sales and market/customer sharing?
- ✓ Do the determined technical standards regarding the members' activities restrict the members' area of commercial activities?

In case the answer “no” constitutes majority to the questions presented in section A, this would show the high probability that decisions and practices of the undertaking concerned or association of undertaking infringe competition legislation. Therefore, implementing compliance programs or at least receiving consultancy/training services in the field of competition law would highly be beneficial for such undertakings and association of undertakings. **On the other hand, in case the answer “yes” is forwarded to any one of the questions in sections B, C, D, E, this would signify the probability of infringing competition by the undertaking concerned or association of undertaking.** It would be a suitable decision that undertaking concerned or association of undertaking reassesses its practices in terms of competition legislation, and to end its related implementations if necessary. In short, in order to prevent a competition infringement, implementing compliance programs would be the most convenient solution.

ATTACHMENT 5

UK: INSTILLING A COMPLIANCE CULTURE²⁴

- Expressly including competition compliance in the business's code of conduct and making it clear that activity that risks causing an infringement of competition law attracts disciplinary sanctions.
- Ensuring that one board member or other senior manager has the role of driving compliance within the business. They should report regularly to the board on compliance efforts.
- Other directors should challenge the effectiveness of compliance measures by asking questions about the current competition law risks, which risks are high, which are medium and which are low risks, the measures that are being taken to mitigate the risks, and the timescale for next reviewing the risks to see whether they have changed.
- Regular e-mail and other direct communications by the chief executive, or other very senior manager, that underline the importance of competition law compliance. The communications should set out the business's competition law compliance policy and what individuals should do if they have compliance concerns.
- Establishing a confidential system that individuals can use anonymously to alert the business to compliance concerns.
- Implementing business policies under which managers of all levels must demonstrate their commitment to competition law compliance, such as linking bonuses to compliance activities.

The guidance suggests that middle or junior managers can demonstrate their commitment to competition law compliance by taking compliance training, and making sure that their staff also receive training. They could appoint "compliance champions" within their teams who have the role of making sure that all of the team complies with relevant laws and regulations, including competition law.

The OFT's suggested four-step risk-based process for achieving compliance.

²⁴ http://www.offt.gov.uk/shared_offt/consultations/OFT1278.pdf

- Step one - Risk identification. The guidance sets out that, as a first step, the business should identify its key antitrust law compliance risks. The risks will depend on the nature and size of the business. The guidance identifies different types of antitrust law risk, listing a wide variety of commercial practices that could restrict competition.
- Step two - Risk assessment. Once the antitrust law risks have been identified by a business, it needs to assess the level of those risks. For example, a business might decide that its risk of cartel activity is high where sales staff have frequent contact with competitors at trade association meetings. A business with a high market share in a market with high barriers to entry and limited or no buyer power may decide that the risks of abusing a dominant position are high. The guidance suggests that businesses could carry out a staff-based risk assessment. This would entail identifying their employees' degree of exposure to the identified risks.
- Step three - Risk mitigation. The third step in the process is for the business to mitigate the risks identified in a way appropriate to the level of risk assessed at step two. This will, generally, involve implementing training and policies and procedures. In addition to training, the guidance sets out that it will be necessary for businesses to have policies and procedures in place to minimise the risk of antitrust law breaches occurring. Again, these will have to be appropriately structured for the business in question. The guidance contains some examples of procedural measures that a business could consider. These include:
 - a) Making it clear that involvement in an antitrust infringement is a serious disciplinary matter.
 - b) Allowing lawyers to review and advise on standard form commercial contracts (and any variations to the standard terms) and significant contracts.
 - c) Requiring employees to obtain approval before joining trade associations, and to alert managers before attending meetings.
 - d) A system for reporting contacts with competitors.
 - e) Linking bonus payments to achievement of antitrust law targets.
 - f) Appointing "compliance champions" within business units who take responsibility for promoting antitrust law compliance within the unit.
 - g) Rewarding employees who proactively take steps to raise antitrust law compliance concerns.



- h) Allowing for anonymous reporting of antitrust law concerns.
- i) Active management review of business travel and expenses incurred by employees in respect of meetings or other business contacts to the extent that expense claims may indicate meetings that could raise antitrust concerns.
- j) Imposing an obligation on employees to report antitrust law concerns to senior staff.
- Step 4 - Review. The guidance sets out that businesses should review all stages of the process to make sure that an unambiguous commitment to antitrust law compliance persists in the business, that the risks identified and the assessment of them have not changed, and that the risk mitigation activities remain appropriate and effective.

ATTACHMENT 6

UNITED STATES: SUMMARY OF SENTENCING GUIDELINES

The Sentencing Guidelines set out the minimum standards that must be met in order for the business to be regarded as having exercised due diligence and promoted an organisational culture that encourages ethical conduct and a commitment to compliance, as follows:

- the organisation must establish standards and procedures to prevent and detect criminal conduct, and
- 'high-level personnel' (which means the board or, if the organisation does not have a board, the highest-level governing body of the association) must ensure that the organisation has an effective compliance and ethics programme, be knowledgeable about the content and operation of the programme and must exercise reasonable oversight with regard to the implementation and effectiveness of the programme. Specific high-level personnel must be assigned overall responsibility for the compliance and ethics programme.

In addition, specific individuals within the organisation must be delegated day to day operational responsibility for the compliance and ethics programme. They must report periodically to high-level personnel on the effectiveness of the programme and be given adequate resources, appropriate authority and direct access to senior management.

The organisation is required to take reasonable steps not to include within its senior management (or positions involving substantial commercial discretion) anyone who it knows, or ought to have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics programme.

The organisation must take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance programme to its management and employees, by conducting effective training and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

The organisation must take reasonable steps to:

- ensure that the organisation's compliance and ethics programme is followed. The programme must include monitoring and auditing mechanisms to detect criminal conduct
- evaluate periodically the effectiveness of the organisation's compliance and ethics programme, and
- have and publicise a system, which might include mechanisms that allow for anonymity or confidentiality, whereby the organisation's employees and agents might report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.



The organisation's compliance and ethics programme must be promoted and enforced consistently through:

- appropriate incentives to perform in accordance with the compliance and ethics programme, and
- appropriate disciplinary measures for engaging in criminal conduct and for failing to take reasonable steps to prevent or detect criminal conduct.