

Preface

This ICC Antitrust Compliance Toolkit (the Toolkit) comes at a critical time. Over the past years, legal and compliance requirements affecting companies (both small and large) have shown a steep increase across the globe. This phenomenon reflects the rapid development of the normative values underlying the regulation and governance of business conduct, and the increasing ethical expectations of society at large. This has become apparent in a wide variety of areas: from anti-bribery and corruption, to environmental, health and safety, to data privacy and competition (in this Toolkit referred to as “antitrust”) law. Managing the steady growth of these legal compliance requirements creates increasing challenges to business. By promoting open international trade and investment across frontiers and helping all businesses (whether small or larger) meet the demands and opportunities of globalisation, the International Chamber of Commerce (ICC) seeks to play a key role in assisting a growing understanding between business and antitrust agencies in relation to antitrust compliance, and is uniquely positioned to do so.

Compliance with the law has become particularly important in the field of antitrust law, where the proliferation of laws across the globe has been unprecedented. Existing antitrust laws are constantly evolving and new laws are being adopted. Sanctions for antitrust violations are often substantial and reputational damage to companies as a result of an adverse antitrust finding is massive.

The issue of antitrust compliance is particularly fraught at the moment, since (to date) there is no international consensus among antitrust enforcement agencies on how best to support (or even encourage) business in their genuine antitrust compliance efforts. Moreover, while many companies already have antitrust compliance programmes in place to help protect themselves (and their shareholders) by reducing the scope for future infringements through suitable training and uncovering potential infringements early, ICC feels strongly that it is now appropriate to develop practical tips, guidance and advice to assist companies in building and reinforcing credible antitrust compliance programmes, taking into account both the risks these companies face and the resources available to them.

This is precisely what the ICC Antitrust Compliance Toolkit does.

The strongest driver for compliance with antitrust law is the desire to conduct business ethically and to be recognized as doing so. While the penalties for non-compliance can be very significant, a company’s reputation is seriously damaged by the adverse publicity attracted by a decision that it has violated the law.

Therefore, the point of any antitrust compliance programme is (ultimately) to reduce the risk of an antitrust violation occurring at all. However, as a fear of violating the law (particularly where individual criminal penalties are in play) can frighten employees and sometimes unwittingly chill perfectly legitimate competition, a well-designed programme will empower employees to act confidently within the scope of the law.

The elements in the ICC Antitrust Compliance Toolkit are not intended to represent a comprehensive or prescriptive list of what an antitrust compliance programme must include, but seek to reflect what is commonly regarded as good practice in the field. Indeed, antitrust agencies themselves recognize that there can be no “one-size-fits-all” approach, and that each compliance programme has to be designed to meet the specific antitrust risks faced by the company in question.

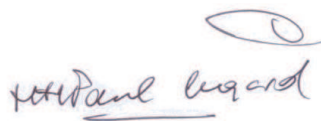
Given that antitrust compliance is relevant to all players on the market, small and large, the ICC Antitrust Compliance Toolkit endeavours in particular to recognize the challenges and resource constraints felt by small and medium-sized enterprises (SMEs), and gives practical tips throughout on

how SMEs can have an antitrust compliance “programme” within their organizations.

One key feature of this Toolkit is that it is designed by business for business. It draws on considerable expertise from in-house antitrust lawyers in larger companies, and from the expertise of the private Bar experienced in advising both SMEs and larger companies. ICC recognizes the work done by the ICC Commission on Competition and, in particular, the ICC Task Force on Antitrust Compliance and Advocacy, chaired by Anne Riley of Royal Dutch Shell plc, and co-chaired by Anny Tubbs of Unilever and Boris Kasten of Schindler. Particular thanks go to the diligence of the ICC Secretariat, especially Caroline Inthavisay, Zoé Smoke and Claire Labergerie. Further thanks and acknowledgements go to all members of the working group, as listed at the end of the Toolkit.



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