

Commercial

Competition law II – compliance

The main purpose of competition law is to protect consumers and businesses from anti-competitive behavior by promoting competition. It prohibits anti-competitive agreements between companies such as agreements to divide markets or fix prices, and it bans companies from abusing a dominant market position. In our previous competition law update, we covered anti-competitive agreements and this update sets out steps you should take to prevent breaching competition law.

The penalties for infringing competition law can be severe and can include fines of up to 10% of annual turnover, third party damages claims, agreements being unenforceable, and damage to your reputation. Individuals can even face personal fines and prison if they engage in cartel activity. The best way to minimise the risk of infringement is to put in place effective compliance measures. Having appropriate measures in place can also mean that, if a fine is imposed as a result of an infringement, it may be reduced by the authorities.

To evaluate and manage the risk of infringement, the Competition and Markets Authority ('CMA') suggest following a four-step approach:

1. Identify the risks. This basically involves undertaking an audit of your business activities to work out which ones could be problematic.
2. Review the risks. The review should assess how serious the risks are – this may be done, for example, by categorising the risks as high, medium or low.
3. Risk management. This step involves putting measures in place to deal with the risks you have identified and the nature and extent of the measures will depend both on the risks identified and the categorisation of the risk in steps 1 and 2.
4. Review. Regular compliance reviews should be undertaken to make sure that the measures put in place are effective. The frequency of reviews will depend on your level of exposure to infringement.



As part of putting measures in place to manage the risks, the CMA has provided the following examples of measures used by businesses:

- providing competition law training for employees;
- implementing internal procedures that require employees to tell management if they intend to attend an event where competitors may be present or to join a trade association and to keep records of contact with competitors;
- preparing internal policies that staff must comply with;
- setting up a system to allow employees to confidentially report concerns;
- ensuring competition law infringements are adequately covered both in employment contracts and in an internal disciplinary policy; and
- putting systems in place for employees, such as a checklist that can be used to assist with decision making and a system for seeking advice (such as before an employee signs a contract on behalf of the organisation).

Competition law infringement can happen at all levels of a business and not just at senior management level and so effective compliance is important. If you would like further advice in relation to this issue or further information about our compliance services please contact the Commercial team at 3HR.

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