

Competition Law Compliance for the Small(er) Business

“Smaller businesses must not ignore competition law and should take compliance measures that are proportionate to their degree of risk.”
UK Office of Fair Trading (OFT) Guidance, June 2011

Introduction

All businesses must comply with competition law. Individuals and companies can be subject to severe penalties for breaches, including fines, disqualification from acting as a director and jail terms. Small businesses are not exempt. The OFT recently imposed fines on a number of construction companies, including many small firms, for colluding with competitors while bidding for contracts. The OFT is always on the look out for more cases, and companies regularly blow the whistle on their own and competitors' illegal activities.

What is Competition Law Compliance?

Competition law compliance procedures help to protect the company and individuals against breaches of competition law and may reduce the level of sanctions if breaches do take place. However, as in other areas of compliance, one size does not fit all. Competition law compliance takes a number of forms and must be tailored to the business in question. Small(er) businesses cannot be and are not expected to have the same formal and structured approach which large businesses commonly use.

Management Commitment Is Key

Regardless of the size of the company, the key, as in any compliance area, is to have the necessary commitment to compliance right at the top. Successful compliance programmes all share this ingredient.

Why Bother?

There are a range of “sticks” which drive compliance. These include the negative reputational impact of breaches, financial penalties, individual criminal penalties and director disqualification orders. Indeed, as the OFT has pointed out, since they can incur personal liability, directors have a direct individual incentive to be committed to ensuring that their companies have an effective competition law compliance culture. There are also a range of “carrots” which well-run companies recognize as the benefits of competition compliance. These include that compliance (with competition and other laws) can help you to win business by being able to position yourself as an “ethical business.” In addition, proper compliance training creates confident employees who know the rules of the game and can compete for business without fear of breaching competition law.

What Should a Small(er) Business Do?

Once senior management, particularly board, commitment is established, a small(er) company can then consider the practical measures that it should take. The first step is to identify the real-life risks that are faced. Top of the list is usually cartel risk; contacts with competitors will always attract suspicion. Most businesses will face other risks, such as trying to enforce terms of trade on a distributor.

Once the risks have been identified, appropriate steps should be taken to mitigate risk. Competition compliance should be focused on the employees most at risk of infringing the law, such as sales people. One size does not fit all, and small(er) companies can address this differently from multinationals. Training sessions, regularly updated, plus a simple code of conduct may be enough. Proactive measures such as active review of travel expenses can often easily be taken. The key is to tailor the programme to the business and to have management buy-in from the top.

Contact

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