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Why do you need to ensure compliance with the competition rules?

Introduction

It's known that the management of each company must exercise effective supervision over the implementation of the compliance program with the competition laws. Competition violations can take various forms, and they can be made in very different circumstances. Not only written agreements may be illegal, but also verbal agreements or concerted practices. Surprising is the fact that even the mere presence in a context in which exchanges of information, discussions or anticompetitive offers take place can expose the company to the risk of applying a penalty by the Competition Council.

Thus, in the interest of both consumers and businesses, national authority, the Competition Council and The European Union (EU) have rules to outlaw cartels that fix prices or carve up markets between competitors. Those rules prevent firms from abusing their dominant position in a market, for example by charging unfair prices or limiting production.

Risk situations for an economic operator

Therefore, vulnerabilities to compliance with the rules of the competition may have different sources and may vary within the same enterprise from one department to another. Thus, at the exemplary level, the following situations may generate risks for an economic operator:

- not knowing how the competition law is applied;
- approaching compliance formally and lack of orientation towards the specific activity of the company;
- the lack of a culture of respecting the competition rules within the company or even the market, which can be pointed out by previous violations of the competition law;
- the perception that due to the low probability of detection, the gains from violations are greater than the costs of non-compliance;
- frequent contacts between employees of competing operators.

How to avoid risky situations?

One of the conditions would be to train staff to comply with the competition rules. The efficiency will be determined by how the employees have assumed the conduct in the performance of the tasks.

Thus, the employees should be encouraged to use the authorized consultancy – whether it is an internal or outsourced service – in situations where they have doubts regarding the possible anti-competitive implications of the facts/acts by which the company engages.

When there are contracts that can have effects on the free competition, the company must ensure that the legal department / external consultants will have the opportunity to review their compliance with the provisions of the law.

Verifying the legality of the interaction with third parties can vary from a simple self-assessment to specialized counselling, complex economic analysis or even forensic searches.

The scope is a great one and it considers the prevention or detection of violations that can be generated by the company's activity and, in the situation in which they have occurred, establishing their scope and severity. Legal advisers can help structure the exchange of information not be considered illegal.

Other forms of interaction, less spontaneous and involving systematic contacts with other competitors, will require more attention. For example, before joining a business association, an economic operator is advised to consider the following elements:

- the existence, in the statute of the association, of some provisions that restrict the competition, a fact that will be considered as a threat to the compliance program of the company;
- obtaining a copy of the agenda of each meeting before it takes place and verifying the reports elaborated subsequently, following those discussed;
- carefully dealing with discussions that may involve liability for non-compliance with competition law and distancing them if they occur;
- examining the legality of any proposals of the association for cooperation on research, setting standards, collecting information from members or jointly organizing the acquisition, production, marketing.

Case investigation

The causes of investigation of anti-competitive agreements (for example, cartels) are triggered by:

– a complaint (for example, from a competitor);

– the initiative of the competition authority (national authority or European Commission);

– a request under a leniency program (whereby a cartel participant may avoid a fine or obtain a reduction if they provide cartel information).

In the case of investigations launched by the European Commission, it has broad powers. These include the right to request information from businesses, but also to enter the premises of companies, to confiscate their documents and to question their representatives.

The first key step in using abuse of a dominant position is to assess whether the company is "dominant". The assessment involves defining its market, both for the product (s) they supply and for the geographical area in which these products are marketed. As a rule, the company is unlikely to be dominant if its market share is less than 40%.

Other factors are taken into consideration, such as whether there are obstacles to the entry of new companies into the market or the extent to which the investigated company is involved at different levels of the supply chain (a situation called "vertical integration").

The next step is to find out if this dominant position is misused as a result of practices such as aggressive prices (prices that undercut those of competitors), the insistence that the company is an exclusive supplier, etc.

The failure of an enterprise to comply with the competition law results in severe sanctions and fines, to which is added negative publicity and the focus of public opinion attention on the actions of the company.

The basic level of the fine for violating the procedural rules of the competition law is determined according to the gravity and the duration of the act.

The severity of the acts

Depending on the severity, the facts are divided into 3 categories:

- acts of minor gravity: the basic level is established in the amount of up to 0.15% of the total turnover;
- facts of average gravity: the basic level is established in the amount from 0.15% to 0.25% of the total turnover;
- facts of high gravity: the basic level is established in the amount from 0.25% to 0.45% of the total turnover.
- The damage caused as a result of the actions found to be unfair competition is repaired by the company that caused it.

Please note that prescription terms for applying sanctions are from 1 to 5 years depending on the violations.

Conclusion

It's relevant for any company to know about the risks of engaging in anti-competitive acts and how to ensure compliance with the competition rules.

To prevent involvement in the violation of the competition rules, don't hesitate to consult specialists with vast experience in national and international competition law.

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