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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**Executive Summary of the roundtable on Competition Compliance Programmes**

**Annex to the Summary Record of the 133rd Meeting of Working Party 3, held virtually on 8 June 2021**

8 June 2021

This executive summary by the OECD Secretariat contains the key findings from the discussion on Competition Compliance Programmes held during the 133rd meeting of Working Party 3.

More documents related to this discussion can be found at:  
<https://www.oecd.org/daf/competition/competition-compliance-programmes.htm>

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## *Executive Summary of the Roundtable on Competition Compliance Programmes*

By the Secretariat\*

The OECD Competition Committee's Working Party 3 held a Roundtable on competition compliance programmes in June 2021. Based on the background paper prepared by the Secretariat, written submissions from delegates, and the contributions by expert panellists and delegates to the discussion, the following key points emerged:

**1. Focus on the adoption of competition compliance programmes by firms has become a standard feature in competition agencies' toolboxes and advocacy efforts and an important part of competition agencies' work.**

Compared to the situation in 2011, when the Committee last discussed compliance programmes, a major change in policy can be noted. At the time, competition agencies were primarily passive observers of developments in the corporate sphere. Nowadays, corporate compliance programmes have become an important component of competition agencies' efforts to promote compliance. Furthermore, agencies now use many different ways and instruments to provide incentives to businesses to adopt such programmes. These include innovative advocacy approaches, compliance considerations in leniency, settlement and fining policies, or the promotion of public procurement related policies such as debarment and self-cleaning measures in public procurement cases.

**2. Advocacy plays a very important role in competition agencies' efforts to promote corporate compliance programmes, and next to the proliferation of detailed compliance guidance, targeted outreach and innovative media initiatives characterise the wide range of measures taken.**

In 2011, only a few agencies had published compliance guidance. In contrast, at least 20 guidance documents were published by different agencies within the last five years alone. These guidelines often include basic explanations of the competition law requirements and lists of compliance measures that should be taken into account in order to establish a credible compliance programme. The latter are often differentiated according to business size, which is also reflected in more targeted agency approaches. More and more agencies issue specific guidance to small and medium sized enterprises, to trade associations, or on bid rigging in public procurement.

**3. Agency policies to reward compliance programmes have changed over time, but there is no uniform approach. While some consider that rewards in the form of fine reductions can provide an important incentive for more and better compliance, others are agnostic. However, all consider effective corporate compliance programmes to be very important and promote them in different ways.**

Some agencies consider that recognising existing compliance programmes is an effective strategy to foster prevention of competition law violations. However, for the moment, the success of these strategies is based on anecdotal rather than quantifiable evidence due to the short time frame they have been implemented. Others will also grant rewards for prospective compliance programmes. Agencies that do not grant rewards pointed out that

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\* This Executive Summary does not necessarily represent the consensus view of the Working Party. It does, however, encapsulate key points from the discussion, the delegates' written submissions, and the panellists' presentations.

in mature regimes with knowledgeable enterprises, compliance can be expected and bears its own rewards. Differences in policy approaches cut across jurisdictions and regions, and the maturity of the regime, or its criminal or administrative nature do not seem to be a discerning factor. However, all jurisdictions seem to agree that promoting compliance is important and engage in various initiatives to do so.

**4. Next to soft advocacy tools and tangible fine reductions, agencies increasingly incorporate compliance requirements in their decisions and impose obligations to introduce or strengthen corporate compliance.**

Agencies no longer limit themselves to passively incentivising compliance programmes and measures. They increasingly impose obligations on businesses that were found to have violated the law, or apply for leniency or enter into settlements to introduce or improve compliance programmes. Some will impose compliance programme requirements in merger decisions, or as a prerequisite for participating in public tender procedures. Compliance requirements usually go along with monitoring and reporting requirements, and external monitors are often chosen by agencies to carry out this task and report back to the agency.

**5. It is difficult to demonstrate empirically the effectiveness of specific agency compliance advocacy or corporate efforts. Nevertheless, certain elements of compliance programmes and observed corporate behaviour can be indicative of the credibility of a compliance regime.**

The empirical evidence of the success of compliance programmes and agency measures to promote compliance is thin and does not allow for reliable conclusions. The observed decrease in leniency applications, dawn raids and ex-officio investigations in cartel cases in recent years may probably be best explained by an increased exposure of businesses to private damages actions than by increased compliance. The literature, agency policies and business compliance communication point out the most relevant factors for a credible and therefore effective compliance programme:

- Strong measures for internal detection and subsequent reporting of competition offences to competition agencies, including effective training
- Lack of senior management involvement in violations
- Alignment of compliance and remuneration structures and incentives
- Effective and risk based internal auditing and monitoring of business processes, including the use of digital screening tools, and a requirement for “compliance by design” for AI
- Compliance responsibility extending to business partners

Two points related to these measures seem noteworthy. One is that an increased focus on gender balance in senior corporate management may improve overall compliance; however, the research is nascent and ongoing. The second is that the more data and analytical tools become available, the more competition agencies will expect that businesses apply these to monitor business processes and communications proactively for early detection of violations.

**6. Developments in the public procurement sphere can help boost compliance incentives and awareness, by linking tender participation to credible compliance.**

Participation in public tenders can be an important part of companies’ business strategies. At the same time, it is well known that public tender processes are particularly vulnerable to bid rigging and corruption. Many procurement frameworks foresee the exclusion of

bidders from future tenders when they are found guilty of certain offences, including competition. They often offer an opportunity for an early release from the exclusion if a bidder can prove the implementation of a credible compliance programme, together with other measures such as compensation of harm and severance of links with individual perpetrators. In several jurisdictions, competition authorities will be involved in the review process and the “clearance” of an offender. Some jurisdictions also require the existence of a compliance programme as a mandatory requirement for participation in public tenders. In addition, agencies will expect companies active in bidding market to focus their prevention and monitoring efforts on these business units, when they are discussing the credibility of a compliance programme.