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Competition Compliance Programmes – Summaries of contributions

8 June 2021

This document reproduces summaries of contributions submitted for Item 1 of the 133rd OECD Working Party 3 meeting on 8 June 2021.

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

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Austria

Companies whose market behaviour fails to comply with competition rules run the risk of incurring high cartel fines and facing other negative sanctions like damaged reputation and loss of confidence by the market and its participants. On that account, effective competition compliance programmes should ensure that cartel infringements ideally do not occur at all.

Compared to recent years, a change of spirit in some industries in Austria happened. The Austrian Federal Competition Authority (Bundeswettbewerbsbehörde, „BWB“) welcomes and supports all competition compliance efforts. In many cases Austrian companies have already implemented programmes to ensure compliance with Austrian and EU competition law.

While compliance programmes are not explicitly listed in the Austrian law as mitigating or aggravating factor in the calculation of fines, the Austrian Cartel Court has taken compliance efforts into account in a number of decisions. Companies in Austria have already benefited from reduction in fines so far. This concerned for example cases in which violations were ended as part of the company's compliance measures before the BWB discovered them during their investigation. If in addition the companies fully cooperated with the BWB, this finally led to a reduction of the fine. However, this should be handled narrowly and must be examined separately in each individual case. An overview of the respective decisions as well a list of aspects considered when deciding whether competition compliance programmes could lead to a reduction of fines are described in the contribution.

The BWB endeavours to constantly expand its preventive work to sensitize companies to the topic of antitrust law. For this reason, the BWB published a joint brochure with the Austrian Chamber of Commerce (Wirtschaftskammer Österreich - WKO), which offers a practical guide, especially for (small and medium) companies, that do not have a legal department.

BIAC

Competition compliance programmes have been discussed by the OECD Competition Committee in the past. *Business at OECD* presented a comprehensive analysis of the subject for the June 2011 roundtable. This submission builds on the points made in that document.

While the remarks made then are still valid, the present discussion is most timely, as the world has moved on significantly in the intervening period since the last roundtable on this topic. Over the past decade, compliance programmes have become more sophisticated and costly. They have had to evolve to cater for the proliferation of compliance requirements in other areas (anti-bribery and corruption, as well as trade, tax evasion, data protection and privacy compliance requirements, to name but a few), in addition to the often-heightened expectations of compliance programmes that come in their wake. Increasingly, antitrust authorities have introduced guidance for compliance programmes as well as policies that recognise robust corporate compliance programmes in calculating the fine or even at the charging stage. *Business at OECD* is keen to ensure that we collectively continue to build on that momentum.

This contribution highlights that enforcement agencies and in-house lawyers share an interest in ensuring compliance with competition law. Robust competition compliance programmes are key for preventing and ceasing competition violations. Due to their high costs, it is difficult for in-house lawyers to obtain sufficient resources needed for robust compliance programmes. Hence, policies that support their efforts to fund and design robust competition compliance programmes are key. These can and should include credit for compliance programmes at the charging and/or sentencing stage.

Genuine efforts by companies to promote compliance should be acknowledged as far as possible. Authorities should also acknowledge that, to assist companies in their compliance efforts, far more helpful ("user friendly") guidance, on both robust compliance programmes and on the substance of the law, is required. At the end of the day, both companies and agencies seek the same goal: to try to ensure there are no infringements. Both companies and agencies have a duty to do whatever they reasonably can to achieve this goal for the benefit of society.

The OECD can be hugely beneficial in developing policies and guidance that nurture and promote competition compliance programmes.

Brazil

The efforts made by antitrust authorities to develop and disseminate Compliance Programmes within the antitrust field can be observed in the Brazilian antitrust experience. The Brazilian competition authority, CADE, considers Compliance Programmes before Law 12529/2012 came into force, which shows the agency's openness to promoting the adoption of compliance programmes. CADE has been using the programmes as a mitigating factor for lighter sanctions whilst taking the opportunity to introduce a culture of compliance and have greater dissuasive effects.

Thus, we can assume this topic is no longer new to the Brazilian antitrust authority, which has over the years enhanced its policy. CADE's policy enhancement is observed at the publication of its Guidelines for Compliance Programs as well as the guides provided in the Guidelines for Cease and Desist Agreements for Cartel Cases. These Guidelines provide that a compliance programme is a sign of an infractor's good faith, thus being a mitigating factor that can reduce the fine applicable to signatories in cartel cases.

Cartels in procurement proceedings within the scope of the Operation Car Wash, for instance, were the subject of cease and desist agreements signed between CADE and some firms involved in the conduct. It was only when firms started to be imposed heavy fines that the number of effective compliance programmes increased.

CADE offered a discount related to implementing or maintaining these programmes in Cease and Desist Agreements executed in the scope of cartel investigations of Operation Car Wash, as well as in cartel investigations in the market of fuel resale and distribution in the Federal District (this one being signed between CADE and Rede Cascol). However, as outlined in CADE's Guidelines for both Competition Compliance Programs and Cease and Desist Agreements, merely undertaking a compliance programme does not preclude the authority from punishing antitrust violations.

It is worth noting that one must prove the programme existed before the agreement. In addition, the decision to propose the agreement must be directly related to the decision to enter into it and to the information and documents provided.

Thus, the Brazilian antitrust authority understands effective compliance programmes may add to the cultural organisation within companies and the markets, as well as antitrust enforcement through financial contributions, which are calculated based on an expected proportional and dissuasive fine. The experience of CADE evidence that best practices and compliance with the Brazilian Competition Law may benefit both society and firms; additionally, both private and public sectors make efforts to enhance the adhesion to compliance programmes through advocacy or agreements alternative to sanctions.

Canada

The Canadian Competition Bureau ("CCB") has a long history of providing guidance to the legal and business communities about competition law compliance programmes. The most recent version of its guidance was published in 2015 and contains flexible, principles-based minimum requirements to demonstrate that a corporate compliance programme is credible and effective. These requirements are designed to inform the CCB's approach to the credit for compliance programmes that is available to cooperating parties further to Canada's Leniency Programme.

The CCB's guidance also underpins the authority's broad view of compliance. As digital transformation accelerates, businesses may face new or changing risks in relation to competition law. The principles contained in the CCB's guidance are flexible enough to provide meaningful direction to businesses, especially in respect of their risk assessment and programme evaluation processes.

Canadian small and medium sized enterprises ("SMEs") have relatively low awareness of competition law and their compliance obligations. This observation, coupled with the growth of virtual outreach and events during the COVID-19 pandemic, has shifted the CCB's compliance promotion strategy to focus on virtual educational resources specifically designed for SMEs and the organizations that support them, such as chambers of commerce and trade associations. In the past months, the CCB has developed successful on-demand virtual training, webinars, podcasts and web-based bootcamps to increase SMEs' awareness of their compliance obligations. Social media promotion and partnerships with government and other stakeholders have amplified the reach of these resources.

The CCB is supporting ongoing OECD research on the topic of gender inclusive competition policy, which includes compliance. The CCB has taken early steps to target certain outreach initiatives and educational resources with gender, diversity and inclusiveness principles in mind, and intends to build on these activities in the future.

Chile

This contribution addresses the following aspects regarding the inception of competition compliance programmes ("CCP" or "CCPs") as a tool for the prevention and detection of anticompetitive behavior by firms and other economic agents.

The report describes the regulatory framework applicable for CCPs, mainly based on the 2012 guidelines published by the competition agency ("FNE") and its policy to promote CCPs. Other agency interventions also are explained.

The report also presents the TDLC´s jurisprudence in relation to the implementation of CCPs. The TDLC has held that it is possible to sustain that a CCP implemented by company in accordance with certain standards, may be used as a mitigating factor. The CCP must comply in its execution and implementation with the minimum attributes recognized in its jurisprudence.

Finally, it examines rulings related to the consequences a CCP may imply for firms who adopt these programmes, particularly referred to its possible mitigating effects on the sanctions imposed in an infringement procedure.

Colombia

This document puts forward the Superintendence of Industry and Commerce's (henceforth, SIC) most recent developments regarding advocacy policies, including those aimed at promoting compliance programs. Our contribution to the present discussion is based on the SIC's experience supporting the designing and advising the development of the 2020 National Technical Standard for the establishment of best practices on the compliance of Colombian competition laws and policies, alongside the Colombian Institute of Technical Standards and Certification. Also, the document will provide an overview of some advocacy initiatives undertaken by the agency to raise awareness of competition compliance and promote a competition culture. Lately, the SIC's approach in this regard has been especially mindful of leveraging actual complementarities among the authority's workstream, advocating for a competition culture and compliance with a comprehensive and multi-stakeholder perspective will most certainly have an impact on its enforcement activities.

Croatia

Enforcement of competition law and its effective implementation would be difficult to achieve without constant competition advocacy efforts from competition authorities and without awareness of undertakings about benefits of competition. There are many competition advocacy activities of competition authorities that contribute to this goal (legal opinions, communication campaigns, market studies, publications, lectures etc.) and from the side of undertakings, competition compliance programs present a very good instrument which can help to prevent any competition law infringements by educating internally its staff (management and employees) about competition law.

Effective compliance programs can be seen as a path to effective competition but only if they are constantly applied by undertakings and not being just another formal internal document of the undertaking without its proper use. The assessment of competition compliance programs by competition authorities should limit itself to some advice or guidance but it should not be the task to approve or assess the quality of compliance programs due to the explained reason that they have to be company specific.

With the aim to support undertakings in their efforts to do business in line with competition rules, Croatian Competition Agency (CCA) published Guide for compliance programs called "*Practical Guide for undertakings to establish a Competition Compliance Programme*". In Croatia, compliance programs are applied as commitment measures mostly in cases of non-horizontal agreements where the problematic provisions in the agreements have already been changed and then the compliance programs with education in competition law for employees of the undertaking in question are determined as additional measure in the final decision of the CCA. Besides that, the CCA engages in many competition advocacy activities that promote competition including publication of brochures and cooperation with professional associations and universities.

New approach in competition compliance and new competition advocacy tools should among others include on-line webinars on platforms or topical podcasts. The impact of damages claims on promotion of competition and personal liability are valid points that deserve more consideration in the future.

EU

Compliance with competition law continues to be important for authorities and is still in the self-interest of every company. The most effective way to stop a violation is to ensure it never starts. Effective corporate compliance markedly contributes to this end. Indeed, it has a preventive dimension, which complements the investigative and sanctioning enforcement of agencies.

Enforcers rarely have the opportunity to stop antitrust violations before they start and rather rely on deterrence. Fines are fundamental in this respect: they are a powerful tool in drawing the attention of undertakings to the potentially significant consequences of illegal practices. However, the ultimate aim of cartel and antitrust policies is not to levy repeated and high level fines – the goal is rather to minimise the need for such sanctions because companies follow the rules. This is why compliance is of the utmost of importance.

In terms of promoting a compliance culture, the Commission faces a context, which is likely different compared to other jurisdictions given its exclusive reliance on fines to achieve deterrence, the large size of the companies it deals with and its long history of enforcement actions and high level of sanctions.

The Commission's approach to compliance programmes is based on a few guiding principles: compliance with competition law, as in any other field, is the responsibility of companies but the Commission welcomes and supports compliance efforts by companies. Moreover, compliance efforts bring their own rewards and rewarding companies for their compliance programmes is not necessary.

The Commission is committed to support compliance initiatives by increasing awareness and offering guidance, it published its "Compliance Matters" guidebook for companies in 2011. Moreover, the Commission supports compliance also by giving access to a significant amount of reference materials on compliance strategies from various business organisations and other competition authorities on its website.

The Commission's starting point is that there is no "one-size-fits-all" compliance programme that can be used as panacea to any possible competition concern. Compliance depends on a range of specific factors, which vary according to the company.

Finally, in an evolving world, particularly in the context of the pandemic, there is an obvious link between compliance and guidance. Consequently, in recent times, the Commission has been more openly engaging with businesses, for instance, by activating its existing tools for providing more formal guidance on particular arrangements and adopting a temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak.

France

Competition compliance programmes are tools for preventing and managing competition risks and the Autorité de la concurrence encourages their systematic implementation. Although the cost of implementation can be high, the resulting positive benefits should encourage companies to adopt such programmes. Compliance programmes can indeed prevent high financial risks but also significant risks of damage to the image and reputation.

Compliance programmes are also a risk management tool, in that they must enable companies to detect, report and remedy potential violations. When faced with a notice of breach revealed by a compliance programme, the company may decide to use the leniency procedure.

Beyond the two-fold objective of preventing and dealing with breaches, it is important that the compliance programme is designed by and for the company and includes all the elements necessary for its effectiveness.

To encourage the implementation of compliance programmes, in 2012 the Autorité introduced a system of penalty reductions if the company committed to implementing a compliance programme. This approach changed in 2017. While reaffirming the importance it attached to compliance programmes, the Autorité considered that the development and implementation of compliance programmes should become part of companies' day-to-day management.

In 2020, in response to a request from companies, the Autorité set up a dedicated compliance working group made up of company managers, lawyers and Autorité representatives. The group concluded, among other things, that an important action to take would be to draft a new framework document on competition compliance programmes to be published in 2021.

The Autorité also supports operators by developing a range of compliance tools. Since its inception, the Autorité has been proactive in promoting competition law and making it more accessible. By offering practical tools to companies, it contributes to the compliance process.

The Autorité assists economic stakeholders in their compliance efforts in several ways: it develops an extensive decision-making practice, it conducts an active policy of disseminating content (thematic studies, joint studies with other authorities, turnkey compliance tools such as the guide for SMEs).

The Autorité communicates widely on competition rules and their virtues, as well as on its decisions and opinions. It uses a variety of communication tools to facilitate compliance ("Compliance" boxes in its press releases, videos and infographics on the website, summaries in its opinions and decisions).

The period of the health crisis was also an opportunity for some competition authorities to provide informal consultations that helped support operators in their compliance efforts.

The Autorité is also involved in a global reflection on compliance at European and international levels. In addition to its involvement in the ECN, the ICN and the OECD, in 2019 for example, it took the unprecedented initiative during the French presidency of the G7 of piloting the drafting of a joint agreement by the authorities of the member countries on the theme of "Competition and the Digital Economy".

Germany

The contribution describes two major developments in Germany that reflect the growing importance of compliance measures in competition law over the last couple of years.

The first development comes along with the amendment to the German Competition Act in January 2021. A new provision establishes an explicit legal basis for the long-standing practice of considering compliance measures as mitigating factors in the setting of fines for antitrust law infringements. The provision introduces at the same time the possibility for competition authorities to take into account compliance measures implemented *prior* to the misconduct at stake (whereas so far only compliance measures implemented *after* the infringement were considered). This will serve as a strong incentive for undertakings to implement effective compliance measures independently of any violation of antitrust law previously committed.

The second development is the launch of the Competition Register in early 2021. The fully digitized register allows public contracting authorities to check whether an undertaking can or must be excluded from award procedures in Germany for having committed economic offences. The register – which is maintained by a special division at the Bundeskartellamt – is another very effective deterrence tool: firstly, because public authorities are obliged to consult it before conducting certain award procedures and secondly, because it provides a self-cleaning mechanism that requires, inter alia, effective compliance measures to be taken by the undertaking and that, provided the measures are deemed to be sufficient, results in the early deletion of entries in the register.

Hong Kong, China

The Hong Kong Competition Commission (HKCC) has placed significant emphasis on active promotion of competition compliance since its establishment in 2013. In building and sustaining a robust competition regime, the HKCC considers advocacy and enforcement to have a critical and mutually reinforcing role. Enforcement is crucial to deter anti-competitive conduct, and advocacy is necessary to create a culture of competition law compliance within the business community.

HKCC's advocacy efforts encompass:

- Guidance to businesses to understand how competition law applies to their industry;
- The use of multi-channel advertising campaigns targeted at the general public; and
- The development of a training program to enhance the capability of local law firms to advise on competition law and implement competition compliance programmes.

HKCC's policies designed to increase the adoption of competition compliance programmes encompass two key elements:

- Imposing a requirement to implement a compliance programme on leniency applicants, as well as those cooperating with a HKCC investigation; and
- The possibility that a company's compliance activities will be taken into account as a mitigating factor when the Commission considers the penalty to recommend to the Competition Tribunal.

HKCC has also had experience of enforcement cases where the implementation of a competition compliance programme was one of the outcomes. Of particular note is the acceptance of commitments which require parties to enhance competition compliance including the appointment of an "Independent Compliance Advisor".

Hungary

The Hungarian Competition Authority (hereinafter: GVH, or the authority) has been promoting the application of compliance programmes since 2012. The Competition Act provides the legal framework for the imposition of sanctions, and legally non-binding notices issued by the authority provide guidance to undertakings on the features of an effective compliance programme.

The GVH takes both ex ante and ex post compliance efforts of undertakings into consideration; however, ex ante compliance efforts represent a higher reduction factor. An ex post compliance programme cannot be accepted on a stand-alone basis; it may only be considered together with participation in the leniency policy, the settlement procedure and/or with proactive reparation.

The authority evaluates the compliance programmes of undertakings in its decisions, the strengths and weaknesses of which are then reflected in the amount of the granted fine reduction.

From 2017 to date (April 2021) there were 16 cases of restrictive agreements. In 10 of these cases, the concerned companies implemented compliance programmes. Due to their efforts, the undertakings benefitted from a total fine reduction of HUF 368 755 469. It appears that these reductions have decreased the likelihood of competition law infringements; according to the GVH's best knowledge, since implementing the programmes the concerned undertakings have not been involved in any new competition law infringements.

As far as debarment from participation in public tenders is concerned, in accordance with EU law, active cooperation with the GVH can also lead to what is known as self-cleaning in a procedure before the Public Procurement Authority. The GVH has been welcoming of the compliance programmes of larger companies that provide their subcontractors with compliance trainings and/or codes of compliance.

India

Competition Compliance Programmes (CCPs) have been core to competition enforcement in India. CCPs have been contemplated as non-invasive competition advocacy tool governed largely on the administrative side of the Competition Commission of India. The broad mandate of Section 49 of the Competition Act, 2002 facilitates designing of innovative and non-invasive programmes to instil compliance confidence amongst various stakeholders in India. Competition Advocacy has been an innovative approach of the Commission aiming to reduce the enforcement and compliance cost of competition regime in India. A non-invasive competition compliance not only reduces regulatory costs but also develops trust with stakeholders. Such an approach has helped the Commission in fulfilling its statutory duty to promote and sustain competition, eliminate practices having adverse effect on competition, protect the interests of consumers and ensure freedom of trade in the markets of India. In the last over 10 years period, competition advocacy in India has strived to build a culture of competition in markets through implementation of CCPs. It combines 'independent advocacy initiatives' with 'advocacy through enforcement orders of the Commission' for a wider reach and impact. This area dwells upon consistent experiment and innovation oriented approach deployed by the Commission.

Italy

In 2014, the Italian Competition Authority (AGCM) decided to consider the adoption of competition compliance programmes as one of the mitigating factors in setting sanctions for antitrust violations. This policy choice was taken as part of a broader commitment of the AGCM to promote a widespread competition culture, especially among SMEs which have historically shown a low awareness of competition law and principles.

In 2018, the Authority refined its approach by publishing detailed guidance on how to structure an effective antitrust compliance programme and its treatment in the context of an antitrust investigation. Moreover, this guidance can used as an advocacy tool to reach out the business community, beyond its application in antitrust investigations. This guidance introduces a number of features that characterise the Italian approach to competition compliance programmes.

In particular, the introduction of a system of reward thresholds strives to find a balance between the agency discretion and legal certainty, sending a strong signal to the business community about the Authority's commitment to predictability which, after a few years of practice, appears to have contributed to the promotion of this tool. The other important feature of the AGCM policy approach is the flexibility granted to the business community in designing their own compliance programmes, in absence of a specific template or standard sponsored by the Authority. Furthermore, this guidance strikes a balance in terms of incentives for companies between compliance programmes and leniency programmes.

A review of the AGCM practice between 2014 and 2020 shows the application of a rigorous approach whereby, in order to be eligible for the reward, companies had to demonstrate the effectiveness and credibility of their compliance programme by producing evidence of an effective and concrete implementation of antitrust best practices.

While a quantitative assessment of the effectiveness of the Authority's approach with respect to compliance programmes is a challenging task, some qualitative considerations appear to support the conclusion that the 2018 Compliance Guidelines are achieving the objective of improving companies' design and implementation of effective compliance programmes and, more generally, of raising awareness of competition law principles and infringements.

Japan

The Japan Fair Trade Commission (hereinafter referred to as the "JFTC") has strengthened its enforcement power against violations of the Antimonopoly Act (hereinafter referred to as the "AMA") in the amendments of the AMA to date, by increasing the surcharge calculation rate and by other means, aiming to enhance its deterrent power against violations of the AMA. In addition, the introduction of the leniency program in the amendments of the AMA in 2005 has allowed enterprises to be granted reduction of or immunity from surcharges in case they voluntarily report the facts of the AMA violations to the JFTC. The leniency program has enabled enterprises to cooperate with the JFTC in fact-findings and contributed to the efficient removal of violations.

Enterprises and trade associations (hereinafter referred to as "Enterprises") that commit a violation of the AMA can also be subject to sanctions based on laws and regulations other than the AMA. For example, Enterprises that engage in bid rigging and found to have committed violations of the AMA can be charged penalties by the public procurement bodies that have been harmed by the bid rigging. In addition, there is an increasing risk that the executives of enterprises involved in a violation of the AMA are pursued their liability in a shareholder lawsuit.

Against the backdrop of the above mentioned situation, the need for Enterprises to establish an effective AMA compliance system to prevent and withdraw from the AMA violations is increasing.

Furthermore, the recent introduction of the commitment procedure and the reduction system for cooperation in investigation, one of which key elements is the AMA compliance, encourages enterprises to establish an effective system for the AMA compliance including internal control system.

This contribution paper, focusing on the AMA compliance based on the institutional developments concerning the AMA, (1) outlines the sanctions against violations of the AMA that have led to the improvement of the AMA compliance awareness of Enterprises, (2) introduces the efforts of Enterprises regarding the AMA compliance, and (3) refers to the meaning and the significance of the AMA compliance in the commitment procedure and the revised leniency program introduced in the recent amendments of the AMA.

Korea

The Korea Fair Trade Commission has been operating the Fair Trade Compliance Program (CP) since 2001 to promote voluntary compliance with the Monopoly Regulation and Fair Trade Act (MRFTA) by companies.

Considering that CPs can make companies lower the risk of violations of the law and reduce the administrative costs of investigations, the KFTC has encouraged companies to introduce CPs by giving incentives such as reduction in administrative fines.

Afterwards, some companies have introduced CPs in a perfunctory manner just for the incentives. In order to address such a problem, the CP rating system was introduced in 2006, and different incentives were offered based on companies' evaluation results of CPs. From 2014, granting a reduction in administrative fines was discontinued in response to the criticism that it is inappropriate to offer this kind of incentive without a legal basis to companies.

This year marks the 20th anniversary of the introduction of CPs in Korea. In the early days, the KFTC's policy focused on introduction and promotion of CPs, but now its focus is on the establishment of best practices and effective operation of CPs.

Recognizing that there have been limitations to a stable operation and spread of the CP due to absence of applicable provisions under the Monopoly Regulation and Fair Trade Act, the KFTC is pushing ahead with measures to set out provisions for policy, the CP rating system, and incentives for companies with high ratings within the MRFTA.

Latvia

The Competition Compliance Programme developed by the Competition Council aims to increase the knowledge of the company's employees about competition law and thus protect the company from the implementation of possible infringements. The Competition Compliance Programme is a tool to prevent the risk of a company violating competition law, especially the widespread prohibited agreements.

For companies that have been fined and banned by the Competition Council – by fulfilling specific requirements, incl. Implementation of the Competition Compliance Programme, a company can receive Competition Council's positive opinion and restore its lost credibility after infringement. In its turn, after Competition Council's positive opinion, the procuring entity may decide whether to allow the company to participate in the procurements organized by it. Restoration of credibility is provided for in Article 43 of the Public Procurement Law.

The Competition Council promotes compliance with competition law not only through the Competition Compliance Programme, but also indirectly raises the issue in other ways. In 2020, the Competition Council prepared a self-assessment tool for entrepreneurs, so that they could verify in an easy manner, whether they have not engaged in a prohibited agreement with competitors or so-called cartels due to their negligence or lack of knowledge. The self-assessment tool for mitigation of cartel risks is available both in printed format to be distributed to entrepreneurs in seminars and electronically: https://ej.uz/parbaudiuznemumu.

In addition, the Competition Council promotes the observation of competition law informally, for example, through the strategic and educational role game "Cartel", in which participants can play the role of honest and dishonest entrepreneurs, simulating cartel negotiations, understand the consequences of cartels. Participants get informed about both the Leniency programme and the opportunity for entrepreneurs to develop a Compliance Programme in time to avoid being on the list of offenders.

The Competition Council's experts also educate entrepreneurs in the institution's podcast "Podcast about competition" about the application of the competition law practice and topicalities.

Mexico

The Federal Economic Competition Law (LFCE) does not expressly recognize or mention compliance programs as a factor that may be considered in any of its enforcement proceedings. Therefore, this contribution focuses on the Commission's advocacy efforts regarding LFCE compliance. Through its advocacy powers, the Federal Economic Competition Commission (COFECE) actively promotes the design and implementation of compliance programs, with the aim of generating awareness and observance of the LFCE. This contribution describes COFECE's advocacy efforts to disseminate its Recommendations for complying with the LFCE, to participate in and organize online training and outreach activities on compliance and to implement institutional collaboration with other actors or authorities in this area. Finally, the contribution briefly explores the topic of debarment and its possible role as an incentive for companies to comply with the LFCE if it were to be included as a sanction for individuals who engage in bid rigging.

Peru

The National Institute for the Defense of the Competition and the Protection of the Intellectual Property (Indecopi), as the Peruvian Competition Agency, has invested important efforts in promoting a culture of compliance with competition rules in the market.

Within the enforcement of the Peruvian Competition Law, the Commission for the Defense of Free Competition of Indecopi does not only focus on sanctioning those anticompetitive conducts that take place in the market, but also plays an important role in preventing their occurrence in the future. To do so, in many cases Indecopi has ordered the infringing companies to implement competition compliance programs for a specific period.

Likewise, if a party wishes to achieve the early termination of an administrative proceeding in which it is being investigated through a settlement, the Peruvian Competition Law allows to do so by offering commitments to implement effective remedies to offset the effects of the infringing conduct in the market, such as the implementation or improvement of its competition compliance program, amid others.

In line with the aforementioned, Indecopi has not only sought to promote competition compliance through sanctioning procedures within the enforcement of the Peruvian Competition Law but has also advocated for self-regulation policies in the market, encouraging companies to implement best practices to successfully comply with competition rules. In fact, in 2020, Indecopi published the "Guidelines on Competition Compliance Programs", which serves as a guiding document that contains recommendations to undertakings interested in implementing or improving an effective competition compliance program.

However, one of the most important and innovative aspects that Indecopi addressed in the "Guidelines on Competition Compliance Programs" has been the possibility to grant a reduction of the applicable fine if an infringing party demonstrates it has an effective competition compliance program, as a means to incentivize companies to comply with competition rules.

Romania

This presentation will lead you through the legislative framework in Romania concerning compliance matters in competition law, ranging from a short history of the first provisions introduced in 2011 to further practice developments, for an insight of the developments in this field. Then, the focus will be on the Romanian Competition Council's efforts to promote a compliance approach in the business environment starting from the three guides drafted and published by the authority – an action meant to make compliance familiar to the undertakings and the general public, stressing the importance of prevention and making the competition rules known. Afterwards, we will inquire whether there is any link between compliance and rehabilitation, by means of some examples and in the end, we will get straight to a short conclusion.

Russian Federation

The State is interested in reducing violations of antimonopoly legislation, since the negative consequences of such violations may be so significant that it may be impossible to restore competitive conditions in certain commodity markets.

One of the most effective ways to prevent violations of antimonopoly legislation is the application by authorities and business entities of antimonopoly compliance – a system of internal compliance with the requirements of antimonopoly legislation.

The Decree of the President of the Russian Federation of December 21, 2017 No. 618 "On the main directions of state policy for the development of competition"1 provides for the need to stimulate business entities that introduce a system of internal compliance with the requirements of antimonopoly legislation.

It should be noted that antimonopoly compliance certainly contributes to increasing the level of lawfulness of the activities of business entities in the commodity markets, creates additional incentives for business entities to take measures to prevent violations of antimonopoly legislation, and is necessary to reduce the risks of negative consequences for the business entities itself.

Spain

CNMC's efforts to promote a culture of competition compliance are multifaceted.

From the point of view of competition enforcement, one of the tools authorities can use to increase overall compliance is to credit specific efforts in this area on the part of the companies. Incentives may entail, for example, reductions of possible fines if an infringement finally occurs despite all the controls and efforts displayed or even avoid the public procurement prohibition or debarment measures which may eventually be imposed. However, it is important to recognise only the effectiveness of compliance efforts that show a true commitment, as opposed to the so called "cosmetic compliance programmes". From the CNMC's point of view, such true commitment implies adopting good reactive measures when faced with an antitrust infringement, for example, reporting the infringement, collaborating with the CNMC, acknowledging the facts, adopting disciplinary measures towards non-collaborative managers, etc.

As regards competition advocacy, different initiatives are enacted. Firstly, the general communication policy on CNMC's work through traditional and innovative media in order to increase awareness of the benefits of competition and compliance (and the costs of non-compliance). Secondly, general advocacy to disseminate the culture of competition among relevant stakeholders and the general public. Thirdly, specific efforts in the area of public procurement, which are key to detect potential misbehaviour (with implications beyond competition, touching public finance and transparency), increasing deterrence. Fourthly, targeted advocacy efforts (mostly through market studies and regulatory reports) in specific sectors where competition concerns may appear. Finally, through other initiatives to increase awareness and knowledge, e.g., in the quantification of damages of anticompetitive conducts.

This contribution by the Spain's National Commission for Markets and Competition1 (CNMC) addresses the subject of the roundtable on the "Competition Compliance Programmes", to be held in the June 2021 meeting of the Working Party No.3 (WP3).

It is structured as follows. The first section deals with the relation between competition enforcement and compliance, assessing the role of compliance programmes and policies. The second section addresses the role of advocacy in promoting a culture of competition and compliance. The third section concludes with the main takeaways.

Chinese Taipei

To increase businesses' general knowledge of antitrust laws, and prevent domestic firms from unknowingly infringing foreign competition laws, since 2010 the Chinese Taipei Fair Trade Commission (hereinafter referred to as the "CTFTC") has taken a more proactive approach to foster businesses to develop their own internal competition compliance regimes, such as publishing the "Guidance for Enterprises' Drafting of Antitrust Compliance Programmes" and the "Code of Conduct for Antitrust Compliance of Enterprises", or consider competition compliance as part of their legal compliance systems. In addition to responding to inquires from private businesses, the CTFTC's initiatives on competition compliance aim to equip domestic firms with adequate knowledge of competition laws in Chinese Taipei and other jurisdictions in order to avoid any infringements and their potential losses. A "by-product" of the CTFTC's initiatives is that these programmes are conducive to the overall reputation of Chinese Taipei-based firms with a global presence as they are able to compete with their rivals in a legally compliant manner. The 2018 survey results showed that most companies have gained a good understanding of the said Compliance Guidance and the Code of Conduct. Only less than 10% of companies responded that they did not understand the content regarding competition compliance.

United States

The U.S. Supreme Court recognizes that antitrust cartels are "the supreme evil of antitrust." They work to enrich cartelists at the expense of consumers, who are often left with higher prices or fewer choices. The United States has long worked to deter corporate cartels through criminal enforcement of the antitrust laws: holding corporations and individuals accountable for their hardcore agreements. The United States' Leniency Policy also creates a race for companies to self-report wrongdoing by providing non-prosecution protections to the first qualifying company that self-reports, provided that the company meets certain other criteria, including cooperating fully with the investigation and prosecution of co-conspirators. This policy incentivizes companies to detect and report wrongdoing.

In 2019, the Antitrust Division announced a change in its policy to provide further incentives for companies to create robust, effective compliance policies and to foster a corporate culture of compliance. Under this new policy, the Antitrust Division will consider a company's pre-existing compliance policy when determining whether to bring a criminal charge, and the appropriate form for the resolution. This new policy recognizes that a company's participation in a cartel does not necessarily mean that its compliance program was ineffective. Under this policy, a company with a strong culture of compliance and a robust antitrust compliance program may resolve its criminal antitrust cartel participation through a Deferred Prosecution Agreement, which avoids a criminal conviction. The Antitrust Division believes that this new policy will further incentivize companies to invest in antitrust compliance and to cultivate a corporate culture of compliance and complying with the law.