

Kluwer Competition Law Blog

“A strong and active antimonopoly authority is an incentive for undertakings to engage in prevention” – the President of the Polish Competition Authority presents his views on competition law compliance.

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“A strong and active antimonopoly authority is an incentive for undertakings to engage in prevention” – the President of the Polish Competition Authority presents his views on competition law compliance.

Adam Jasser, the President of the Polish Competition Authority (UOKiK) has recently spoke to Bartosz Jagura of Viadrina Compliance Center about competition law compliance. It is worth to cite some of his comments, as they offer a valuable summary of the Authority’s current views on this – very important – subject.

On whether compliance should be mandated by the legislation or obligatory:

I feel competition compliance initiatives should not be subject to statutory regulation. An effective compliance programme does not mean merely having one but rather building a long-term competition compliance culture. The compliance function should therefore be clearly defined and actually pursued while the management should monitor its performance. This is the only way to promote a compliance culture.

On whether the Authority should reward compliance efforts:

(...) if it is UOKiK that detects an infringement by a company that operates a compliance system, should the company be in any way rewarded for having such an ineffective CMS? I doubt it. An effective CMS should prevent infringements and, if any occurs, ensure detection and reporting. A compliance system may not be treated as a “cover-up” or a “fig leaf”. If it is, it does not deserve to be rewarded.

On impact on the level of fines:

CMS can play a role where UOKiK conducts an investigation. If the undertaking co-operates with us and engages in remedial action, introduces a CMS or modifies its ineffective CMS so that it offers a real chance to prevent infringements in future, then this can be taken into account by us when deciding on the penalty. It will operate as a sort of credit for the future but not the other way round: you cannot reward an undertaking for having a CMS that proved ineffective.

On what makes the compliance program effective:

For a CMS to be effective, it must meet a five-prong test. Firstly, the management is responsible

for the formulation, implementation and long-term maintenance of a competition and consumer compliance programme. Secondly, the company must hold regular and effective compliance training. Thirdly, opportunities must be created to report infringements (whistleblowing). Fourthly, CMS should be regularly monitored and periodically audited. Fifthly, there must be a disciplinary policy for those who commit infringements.

On what the Authorities can do to promote compliance among businesses:

It appears from the experience of antitrust authorities that cartel detection cannot be based only on voluntary compliance schemes on the business side and leniency programmes on the public side. Cartel elimination crucially depends not only on promoting compliance but also on antitrust authorities' activity in detecting collusions. And a strong and active antimonopoly authority is an incentive for undertakings to engage in prevention. If they know that the authority is proactive and will detect infringements quickly and effectively, businesses are more inclined to take self-regulatory measures and implement CMS. Thus, the authority must itself be effective in its job of detecting anticompetitive practices, including especially cartel investigation. To this end, UOKiK has undergone organisational changes designed to increase our effectiveness in this area.

What can we learn from this? For sure, the fact that there will be no reward for just “having” a compliance program is not a surprise. In the same time a declaration that – if there is an infringement – an attempt to implement compliance program or to improve the existing one may be a mitigating factor and result in a lower fine maybe be promising. Finally, it looks like the Authority is ready to promote compliance by increased enforcement activity, especially in cartel arena.

Full text of the interview is available (in Polish) at: https://uokik.gov.pl/komentarze_wyjasnienia_i_stanowiska.php?news_id=12005

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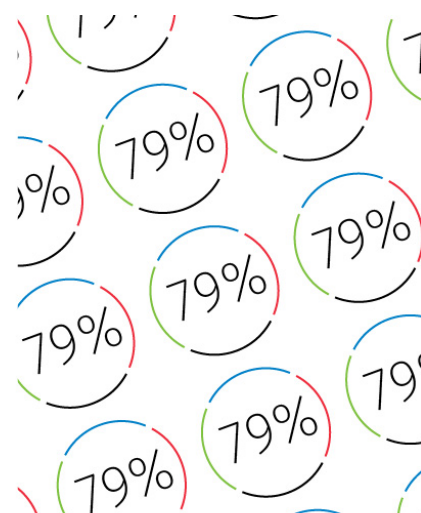
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