

COMPLY OR DIE?
—
**THE ECONOMICS OF
ANTITRUST COMPLIANCE PROGRAMS**

Kai Hüschelrath
Centre for European Economic Research (ZEW)
Department of Industrial Economics
and International Management
L 7, 1 - 68161 Mannheim - Germany
Phone: +49/621/1235-384
Fax: +49/621/1235-170
E-mail: hueschelrath@zew.de

Abstract The last decades have not only seen a remarkable increase in the fining possibilities of firms found guilty of antitrust offences but also showed a substantial increase in the actual fines imposed by the respective authorities in various countries around the world. The later observation might at least partly be influenced by an increase in the probability of detection realized by better enforcement strategies of the antitrust authorities.

From a firm perspective, the described background immediately suggests that (additional) investments in the avoidance of violations of antitrust laws become profitable. The key implementation tool in this respect is so-called antitrust compliance programs which basically aim at avoiding antitrust violations of employees by decision enhancing or decision restructuring actions. However, given the principal-agent problems present in modern corporations, the choice of an optimal antitrust compliance strategy is a non-trivial exercise which has to balance the respective costs and benefits.

From a social perspective, effective antitrust compliance programs are desirable as long as the costs of running them are reasonable and the programs do not restrict manager's decisions to an inefficiently large extent. However, recently firms have started to demand fine reductions or even fine exemptions in the event of an antitrust violation despite a fully implemented state-of-the-art antitrust compliance program. This observation – together with the recent initiatives in Europe to criminalize antitrust offences – raises the question for an economic analysis of antitrust compliance programs.

Against this background, the paper aims at identifying the key economic drivers of an individually and socially optimal antitrust compliance program. In order to reach this aim, the paper is organized into four sections. After a short introductory section, the second section focuses on the business economics of antitrust compliance programs by developing a best-practice framework. The analysis is based on theoretical arguments as well as the results of a survey conducted among competition lawyers and firms. The third section discusses the complement question of what role antitrust compliance programs should play from a social welfare perspective, especially with respect to fining policy and recent demands in Europe to criminalize antitrust offences. The fourth section concludes the paper.

Keywords Antitrust, Competition Policy, Enforcement, Compliance, Fines

JEL Class L40, K21