

Effective Management of Global Competition and Antitrust Risks



Global Competition

ANTITRUST COMPLIANCE - A CRUCIAL AREA OF RISK MANAGEMENT

The increasing criminalization of cartels – along with the specter of imprisonment – is a clear game-changer for the individuals concerned, affecting career, marriage, family and friendships. But this is only one manifestation of the importance that antitrust regulators place on cartel enforcement. It is a top priority of all the major antitrust enforcers.

The high priority given to cartel enforcement is evidenced by ever rising fines, particularly EU fines. In the EU, fines are capped at 10% of global group sales, but increasingly, calculated fines are exceeding this cap. The record was set in the 2008 Car Glass decision, in which one company was fined €896 million.

If the cartel is global or involves a number of countries, the stakes are considerably higher: participating companies face not only multiple fines, but also multiple “follow on” class actions. In the U.S., treble damages are available against cartelists.

When the costs to the company in terms of lost management time, legal fees and damage to reputation are factored in, it is clear that a company may suffer substantially or even irreparably for its involvement in a cartel.

SAI Global has found that companies are recognizing the increasing need for global antitrust risk management. In fact, in a 2010 published analysis¹ of actual course-completion records of the fifteen million employees who have taken SAI Global’s online ethics and compliance training from January 2000 through October 2009 – with a close and concentrated look at the 2006-2009 period - competition law has been consistently ranked in the top four risk areas.

I strongly encourage companies to build their own compliance programmes and training. . . It is a worthwhile investment--preventing participation in just one cartel leading to high fines upon discovery would more than cover the cost of compliance... prevention is always better than the cure.

EU Competition Commissioner, Joaquin Almunia

¹Integrity Interactive, an SAI Global Company, 2010 Report: Top Compliance Concerns of Global Companies, February 2010

HOW DID THIS HAPPEN?

Despite the risks involved, many companies take the reckless decision of not implementing any antitrust compliance measures at all. The usual excuses for doing nothing are not very convincing:

“It costs too much”

The notion that compliance measures are too costly must be weighed against the potential cost of doing nothing. In fact, compliance measures cost a minute fraction of the total potential costs flowing from liability. There is also no logical basis for treating antitrust less seriously than other forms of risk management relating, for example, to environmental damage, bribery and securities fraud.

“We’ve never done anything wrong”

This is a commonly asserted argument of companies that have never been investigated for cartel activity. It suggests that the company is impervious to antitrust liability only because it has never been investigated. However, every company found liable for a cartel was, at some point in its past, able to assert this truism.

“We don’t need specialists to tell us what to do”

Cartel law is both complex and rapidly evolving as is evidenced by the substantial number of books and articles in this field. For example, increasingly, competition regulators are investigating so-called ‘information exchanges’ between competitors. Whether such contacts give rise to potential antitrust risks is not a simple matter of internal policing by company managers or generalist in-house lawyers but rather, should involve the input of an antitrust specialist.

In short, it is usually because management failed to recognize the risks or failed to take sufficient precautions that they end up asking the rhetorical question, “how did this happen?”

I was pretty angry to be in an American prison, so far from home...I remember standing by my bed thinking ‘how did this happen?’.

Keith Packer, the former Cargo Manager for British Airways, who served eight months in a U.S. prison for fixing air cargo rates

“[C]artels...typically involve the most senior executives at the firms involved...[T]he true benefit of compliance programs is to prevent the commission of antitrust crimes, not to enable organizations that commit such violations to escape punishment for them.”

William Kolasky, former Deputy Assistant Attorney General, DOJ Antitrust Division

THE SAI GLOBAL INTEGRATED APPROACH TO ANTITRUST RISK MANAGEMENT

SAI Global's integrated approach to managing compliance and ethics risk includes the full range of products and services that are required for effective programs and workplace culture change.

The partnership between SAI Global and Frank Fine, a recognized antitrust law expert and Director of EC Competition Law Advocates, offers compliance professionals a thorough and effective means to address competition and antitrust concerns.

Effective risk management programs include several key elements:

- **A dedicated bespoke compliance manual**
The backbone of an antitrust compliance program, a compliance manual effectively announces to the world that the company has adopted a serious antitrust policy or code of conduct. It should be the platform from which the company operates in the commercial workplace.
- **Special attention for high risk employees**
Particularly valuable for the company's core at-risk group, personal interactive training enables the antitrust professional to identify the antitrust weaknesses in the company's organization. These sessions provide a forum for company management and sales executives to discuss, in a relaxed and non-confrontational environment, how they handle antitrust-sensitive situations and to learn constructive means of avoiding such risks in the future. This direct interaction between an antitrust expert and company employees reinforces the general online training and is optimum for identifying and modifying problematic behaviour while providing tools for employees to use in the workplace with confidence.

"[T]he OFT and Regulators expect that all company directors should appreciate the importance of competition law compliance."

2010 OFT Revised Guidance on competition disqualification orders

"Sasol views this matter in a serious light and has intensified its competition and antitrust compliance programs in all of its businesses."

Sasol press release responding to a cartel fine of €318.2 million in 2008

- **Raising awareness of all employees**
Training in the fundamentals of global competition law and antitrust is designed to raise general employee awareness of antitrust law and policy. Web-based training is cost-effective, easy to deploy and covers the issues that all employees are required to know. CD training supplements this need for those for whom online training isn't practical. SAI Global, the worldwide leader in providing business ethics and compliance training, has a complete library, translated in up to 50 languages, that can be customized for your industry, business or target population.
- **An antitrust audit**
Designed to root out prior and existing anticompetitive practices which may not come to light during the on-site training, antitrust audits are particularly vital depending on the risk profile of the organization. Audits may include, for example, a review of the company's agreements with competitors, suppliers and customers, sales promotion programs and even emails of sales staff.

Contact us for more information about our integrated approach to your antitrust compliance program

ABOUT FRANK FINE

Mr. Fine is the Director of EC Competition Law Advocates in Brussels, Belgium, where he has been practicing EC competition law since 1986. SAI Global is delighted to introduce Mr. Fine as an on-site provider of bespoke training solutions to complete an integrated approach to mitigating the risks presented by global competition law and antitrust regulations. Mr. Fine has been SAI Global's Law & Ethics Advisor since 2005 and has advised SAI Global on the legal content contained in its Global and EU Competition Law Courses.

Mr. Fine has a long history of advising multinational companies on antitrust compliance issues and programs across a variety of industry sectors, such as airlines, automotive, chemicals, energy, food and beverage, information technologies and media.

He has also published a number of books and treatises on competition law. He is currently the General Editor of the three-volume Lexis Nexis treatise entitled, "European Competition Laws," which provides a detailed analysis of the competition laws of the EU and all 27 of its Member States. He has also authored books on EU merger control and technology licensing.

Mr. Fine obtained his J.D. from Loyola Law School, Los Angeles in 1982, where he was Editor-in-Chief of the Loyola International & Comparative Law Journal. He has an LL.M. (with honors, 1986) and Ph.D. (1995) in EC Competition Law from Cambridge University. He is currently a member of the California and District of Columbia Bars, as well as the Law Society of England and Wales.

Since 1997, Mr. Fine has been active in the leadership of the ABA Antitrust Section, where he is currently Vice-Chair of the Cartel and Criminal Practice Committee and a member of the Section's Publications Advisory Board.

In 2009, Mr. Fine was recognized for his career achievements in the field of competition law by being appointed a Fellow of the American Bar Foundation.

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About SAI Global and Integrity

Our organizations joined together in September, 2010, to create the worldwide leader in providing expertise, guidance and tools that integrate ethics and compliance into everyday business practices. Our compliance and ethics learning products have been successfully deployed on six continents and in up to 50 languages, driving a focus on success with integrity throughout each organization. With offices in 25 countries, well over a thousand organizations as clients, and tens of millions of satisfied users, we're ready to work with you to integrate a flexible suite of solutions and services specifically tailored for your business and industry. For more information, please call us at the full service location nearest you or visit www.saiglobal.com/compliance.

