Guidelines for Drafting Competition Compliance Programs

Although both the competition rules and the Commission for Protection of Competition (hereinafter, the Commission), as the principal enforcer of competition rules in Serbia, have been established for more than fifteen years, we can, nevertheless, say that the awareness of market participants - undertakings of the need for and ways to achieve compliance with competition law remains underdeveloped. The current practice of the Commission reveals that anti-competitive behaviours, in many cases, stem from insufficient knowledge or understanding of undertakings competition law.

The document is intended to guide undertakings, both large companies and small and medium-sized enterprises, in drafting their internal acts and rulebooks to ensure that their businesses comply with competition protection legislation. It also aims at reaching out to a wider circle of undertakings to stress the need for regulatory compliance of their operations with this specific area of law. To help undertakings in drafting competition compliance programs, in particular those without sufficient resources at their disposal, unlike large companies, in this document, the Commission provides, in brief, a description and clarifications of individual "steps" in adopting such programs.

This document contains practical guidelines which should help undertakings to draft and implement their respective competition compliance programs. Individual activities listed in the Guidelines should help in facilitating and accelerating the adoption of these programs, as well as avoiding omissions during the program conceptualization that could render them less efficient. The purpose of adopting competition compliance programs should not be a simple 'tick-the-box' exercise, but the reduction and neutralization of risks that companies face due to non-compliance with competition rules. The efficiency of implementation of these programs depends only to a lesser extent on the order and number of "steps" in their adoption but much more on the seriousness of intent, foremost of the management, not only to adopt but also consistently implement the program.

The Commission intends to facilitate the development of competition culture in this manner and raise the level of awareness among companies on the need for competition compliance.

What is competition, why is it needed and desirable?

Competition implies not only a process of mutual competition between undertakings but also a situation on the market where providers of goods or services, through mutual competition, independently strive to gain the favour of buyers in order to achieve their specific business goals (for example, profits, market share, higher sales numbers, etc.). The competitive rivalry between undertakings exists in prices, quality, ancillary services, or a combination thereof, including other factors that buyers might in some way value.

Competition strongly incentivizes undertakings to be more efficient than their competitors, reduce costs and invest in business innovation and offer. It serves the public interest of a country's economy, pursued through a policy and rules governing its protection. In industries characterized by strong competition a significantly higher degree of utilization of all resources exists; the undertakings are more efficient, innovative and able to produce more goods at lower costs.

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What is a compliance program, who is it for and what is its purpose?

A compliance program is a company's internal policy established to ensure its complete compliance with competition rules in all its business activities.

Corporative compliance programs include a set of activities, internal policies and documents that undertakings design as a voluntary exercise or as a part of commitments undertaken in proceedings before the Commission. These programs serve as an expression of the management's will to support and implement competition rules at all organizational levels of the company and by all employees. As part of company's internal regulatory framework, they also impose certain obligations on managers and employees in their work.

As one of the forms of risk management, these programs are directed at achieving the general and specific objectives set out by business policies of individual undertakings, while in the field of competition law, the programs pursue two main objectives:

- To maximally reduce the risk and prevent any potential occurrence of competition infringements envisaged by the Law on Protection of Competition and to provide mechanisms for their timely identification/detection;
- To set out and define a procedure to be followed and implemented when competition infringements are established, including procedures to potentially remedy such violations.

Competition regulations are applicable to all sectors of the economy and all undertakings (all entities involved in the trade of goods and services in the Republic of Serbia) and thus compliance programs are needed and intended for all entities doing business on the market of the Republic of Serbia.

Undertakings face serious risks if they fail to adhere to competition rules in conducting their business activities.

Business entities and their management, employees and all persons providing legal aid/attorneys at law should be aware of consequences that may arise from violations of competition regulations. In addition to administrative fines, many jurisdictions envisage civil penalties[1] and sometimes even criminal sanctions for violations of competition regulations[2]. Such sanctions may include fines, "operating bans" on prominent management body members and/or annulment of agreements found in breach of competition regulations in their entirety or in part. Apart from sanctions imposed by competition authorities or courts, undertakings may suffer: reputational damage, loss of trust of their business partners which will reflect on the whole of their business, increase in costs, not only from fines but potential damage claims by third parties due to the sanctioned illegal acts or market behaviour.

Business compliance should rule out the possibility for an undertaking to infringe competition rules and be imposed a measure for the protection of competition (up to 10% of aggregate turnover), and ensure long-term compliance with regulations in conducting business activities.

[1] For example, compensation for the damages incurred due to an infringement of competition law.

[2] See Article 229 of the Criminal Code ("Official Gazette of the RS", Nos. 85/2005, 88/2005 – corrigendum, 107/2005 – corrigendum, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019).

What are the benefits of drafting and implementing compliance programs?

All undertakings should take the necessary measures which will allow them to conduct their business activities in line with competition rules and prevent potential competition infringements defined by the Law on Protection of Competition.

The benefits of drafting and implementing competition compliance programs may, among other things, consist of the following:

- Reducing or removing risks for undertakings arising from participation or forming part of any form of restrictive – prohibited agreement or abuse of dominance;
- Avoiding sanctions and other measures that the Commission may impose, as well as potential damage claims brought by competitors, suppliers, buyers and/or end-consumers;
- Timely termination of competition infringements and potential (significant) reduction of sanctions (measures) that may be imposed (due to the shorter duration of the established infringement of competition law);
- Providing opportunities for a company to benefit from the leniency program when it participates in a restrictive agreement, in particular, a cartel;
- Avoiding lengthy administrative and judicial proceedings, including costs associated with such proceedings;
- Identification, assessment and addressing potential issues associated with competition law enforcement;
- Improvement of the company's management and structure, causing the company to face significantly lower risks when doing business once an investigation or a check of competition compliance occurs;
- Reducing risks of termination of cooperation with suppliers and/or buyers;
- Building trust of business partners (suppliers or buyers) in the company;
- Recognition of the company as an organization that runs corporate ethics programs by its competitors, suppliers, buyers, including potentially new employees – which contributes to increasing the company's reputation on the market and a greater chance of hiring highly qualified staff;
- Minimizing the risk of reputational damage to the company and negative media – whereas the adverse economic effects may be considerably greater than the risks of imposing sanctions in proceedings brought before the Commission;
- Improving effective competition on the market where the company operates – by approaching and cooperating with the Commission in cases when it identifies behaviours (acts or actions) of competitors on the said market that prevent, restrict or distort competition.

How to draft a compliance program?

The process of designing and adopting a competition compliance program may be defined through several main steps/phases. They are preceded by the so-called "**step zero**" – which implies defining clear business objectives of a specific undertaking. Compliance programs essentially help in identifying, preventing, detecting early signs of potential occurrence, ceasing, and efficiently eliminating risks that may prevent, or at least significantly reduce, the achievement of business goals of a company. It is for these reasons that this "step zero" is viewed as highly important and why it is needed as a stepping-stone to drafting a quality competition compliance program. The identical procedure and sequence are applicable to any

other programs put into place by companies to comply with any other regulation or set of rules that concern their business operations.

When framing and implementing a competition compliance program, the company management and heads of organizational units should be included in the process.
The program should define the manners of identifying business risks, training plans and programs for employees so that the awareness of potential risks could be increased within the company, including ways in which the observed risks in business operations can be addressed.

The adoption of competition compliance programs may be observed through the following steps/phases:
STEP 1 - Risk self-assessment
STEP 2 - Taking clear and explicit management commitments
STEP 3 - Creating a clear organizational structure for reporting (notifying) on detected (occurred) issues
STEP 4 - Establishing an internal mechanism allowing for cooperation with the Commission
STEP 5 - Training of company staff (employees)
STEP 6 - Monitoring and evaluation of program results and follow-up actions

Step 1 – Risk self-assessment

When assessing the possible risks, the main factors[3] which should be analyzed include the following:
- Size, legal and organizational form of the undertaking, type of management, corporative culture, resources. The analysis helps to identify optimal human resources for the introduction and implementation of compliance programs, adequate training procedures, dissemination of information, etc.;
- Scope of activities of the undertaking, characteristic of the sector and market where it operates, including other factors that concern the competitive environment. The undertaking should be able to identify some of the potential risks to real or potential competition infringements, which is of great importance to the drafting of compliance programs;
- Characteristics of the competitive environment in which the undertaking operates – characteristics of the potential relevant product market and relevant geographic market; the presence of competitors; legal framework; regulations; barriers to entry; market share of the company and its main competitors on the relevant market; relations with suppliers, buyers or competitors, etc.;
- Presence of trade and/or other business associations in which the company is a member;
- Other potential risk factors, the details of which are further elaborated below.

Step 2 – Taking clear and explicit management commitments

Following the initial risk assessment, when drafting and implementing an efficient system and building a culture of competition compliance within the company, the company management must undertake clear and unambiguous commitments and be devoted to implementing the compliance program, the basic steps to that end being the following:

[3] The list is not exhaustive.

- Clear position of the company management that competition compliance constitutes a part of the company's business policy, in addition to taking necessary measures to inform all employees on the commitment;
- Firm position and a clear message of the company management that each employee is expected to adhere to the full observance of the Law on Protection of Competition;
- For the commitment of the company management to be effective, it must be followed up and supported by actual actions and measures for the introduction and implementation of compliance programs, which necessitates the allocation of human, financial and technical resources.

Step 3 – Creating an organizational structure for reporting on detected issues

The introduction and effective implementation of compliance programs would not be feasible without an active and efficient reporting mechanism put in place, enabling employees to report on potential issues as to the application of competition rules. Such a mechanism must be a part of compliance programs while taking into account the organizational structure of companies and the different responsibilities of individual organizational units and their employees.

The reporting mechanism structure should meet the following requirements:
- Appointment of a compliance officer(s) responsible for the compliance program – a focal person to be contacted by employees in case of potential issues. This person may be a manager, including any other employee, a department of the company (for example, legal), or even the entire compliance team. The contact person must have the necessary authority to effectively implement the compliance program;
- Identification of an organizational unit, including its obligations, to monitor all amendments to competition legislation (primarily, the Law and regulations), including the case law and the Commission's practice, with the basic purpose of securing an adequate training of employees and swift reaction in case of the occurrence of the "issues";
- As a good practice, the identification of other methods for communication on the issues that have incurred or are likely to incur can be recommended (introduction of "anonymous" reporting hotline; "confidential" notification system; "open door" policy, etc.);
- In parallel to the establishment of a suitable notification system, the companies should adopt and provide "internal procedures for minimizing risks of involvement in competition law infringements" as part of their regular practice, which would form an integral part of compliance programs.

Step 4 – Establishing an internal mechanism allowing for cooperation with the Commission

When an activity of an undertaking becomes the subject of an investigation procedure before the Commission, the undertaking and all its employees need to provide the requested assistance – in accordance with the Law on Protection of Competition – so that an objective, comprehensive investigation procedure could be achieved so as to conduct a prompt and efficient probe while minimizing risks of imposing statutory sanctions against the undertaking for failure to provide accurate and timely assistance to the Commission or act on request/order of the Commission.

To ensure the above, it is recommended that a developed internal mechanism of cooperation with the Commission during potential investigation procedures be included in the mandatory content of a compliance program. Furthermore, it is recommended that undertakings be

informed of their duty to provide the requested information, including of their rights and obligations during dawn raids and conditions for imposing procedural penalties under the Law in order to avoid risks that could potentially arise owing to a lack of awareness of procedural rules governing procedures brought before the Commission.

Step 5 – Training of company staff

To achieve compliance with competition rules, it is necessary that a compliance program in its mandatory content also includes guidelines on communication and implementation of training programs for company staff.

The company management should select an adequate and efficient training method intended for employees who in their day-to-day work run business.

Irrespective of the selected training method, it should ensure the attainment of the following objectives:

- Employees must acquire sufficient knowledge of the main provisions of the Law on Protection of Competition in order to identify prohibited behaviours – acts and actions qualified as competition law infringements;
- Employees must be knowledgeable about activities that need to be avoided in their line of work – so that full compliance with competition rules could be secured and any violation of compliance programs be avoided;
- Employees must be privy to all the details of a compliance program – and particularly informed about how the established system of internal reporting can be used;
- When designing training modules, particular attention must be paid to specific risks posed by business operations of each specific undertaking (specific company);
- Staff training should be "targeted" – depending on responsibilities and specific risks posed by business activities of an employee or group of employees;
- Intensity, content and form of training modules should be designed depending on the degree of risk to which individual employees/group of employees are exposed during their day-to-day work;
- Staff should be given regular training updates, advanced by new knowledge and recent developments, with mandatory information about the Commission's activities and practice.

Step 6 – Monitoring and evaluation of program results and follow-up actions

The success of any compliance program cannot be measured merely through the activities for the adoption of said program, in relation to its content, extent, quality and frequency of staff training, but above all through the results achieved in its implementation – avoided and/or terminated competition infringements.

The adoption of compliance programs, as a form of commitment of undertakings to ensure that their operational practices adhere to competition laws, will not be enough if the program fails to create a "culture" of competition law compliance in regular daily operations of each employee and the company as a whole.

To achieve all the benefits of compliance programs, regular monitoring and evaluation of implementation outcomes of these programs (their different aspects) in the company's business activities are required.

The monitoring and evaluation should also help companies to identify new risks that a business may encounter, brought about by the development of business activities and/or potential entry into the new relevant markets, or to innovate and improve their current compliance programs.

What are the core requirements of a compliance program?

Compliance programs should identify potential risks to operational practices of undertakings, stipulate and prescribe measures to mitigate or eliminate such risks and prescribe internal procedures to address potential issues businesses face in their operations, where it is established that undertakings are exposed to risks.

Irrespective of what method is used to adopt such programs, how they will be designed, the extent to which they will elaborate on some particular elements, the company (undertaking), and the size of a company that has proceeded to adopt a compliance program, etc., all programs should meet several basic requirements, without which they cannot be considered complete and with prospects for effective implementation, able to bring the company all of the expected benefits.

The main content of compliance programs should ensure the following:

- All potential risks of competition infringements have been considered when drafting compliance programs and conducting staff training;
- All employees are familiar with the person(s) responsible for the implementation of compliance programs in the company;
- All employees have direct access to the company's compliance program;
- All employees are informed about the company's compliance program – have declared themselves informed about the program and familiar with their duties and responsibilities arising from the program;
- Adequate legal aid (advice) must be secured at all times when there is a suspected infringement of competition law or even just a concern or uncertainty as to whether an infringement exists;
- Each infringement or suspected infringement must be notified without delay to the legal team in charge of the competition program or other person(s) responsible for the implementation of this program;
- The Commission for Protection of Competition must be notified of instances of concern or information on competition infringements committed by competing undertakings.[4]

[4] Application forms to notify of potential infringements of competition law can be found on the Commission's website, available at: https://www.kzk.gov.rs/obrasci (note: forms are available in Serbian only)

Competition regulatory framework of the Republic of Serbia

Competition rules consist of the Law on Protection of Competition ("Official Gazette of the RS", Nos. 51/2009 and 95/2013) and regulations or bylaws – regulations, instructions, guidelines.

Regulations currently in force are the following:

"General" regulations:
- Regulation on criteria for defining the relevant market ("Official Gazette of the RS", No. 89/2009);
- Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures ("Official Gazette of the RS", No. 50/2010).
- Regulation on the conditions for relief from commitment payment from measure for protection of competition ("Official Gazette of the RS", No. 50/2010).

Regulations that concern restrictive agreements:
- Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on agreements on specialization between undertakings operating on the same level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on R&D agreements between undertakings operating on the same level of production or distribution exempted from prohibition ("Official Gazette of the RS", No. 11/2010);
- Regulation on the content of request for individual exemption of restrictive agreements from prohibition ("Official Gazette of the RS", No. 107/2009).

Regulation that concerns merger control:
- Regulation on the content and manner of filing merger notifications ("Official Gazette of the RS", No. 5/2016).

For some requests and procedures brought before the Commission, awareness and adequate information of the Tariff for the exercise of competencies conferred on the Commission for Protection of Competition ("Official Gazette of the RS", No. 49/2011) can be useful.

In addition to the Law on Protection of Competition, the Law on General Administrative Procedure ("Official Gazette of the RS", Nos. 18/2016 and 95/2018 – authentic interpretation) is also applied to procedures brought before the Commission.

Concrete risks to operations and how to identify them

There are several forms of competition infringements that constitute the main risk elements in conducting business. After getting familiar with the main concepts of competition infringements (restrictive agreements[5] and abuses of dominance[6], including implementing mergers without clearance), undertakings need to recognize situations in which they could find themselves as well as segments of their business operations where individual forms of competition infringements could occur.

Competition infringements are acts or actions of undertakings that have or may have as their object or effect the significant restriction, distortion, or prevention of competition.[7]

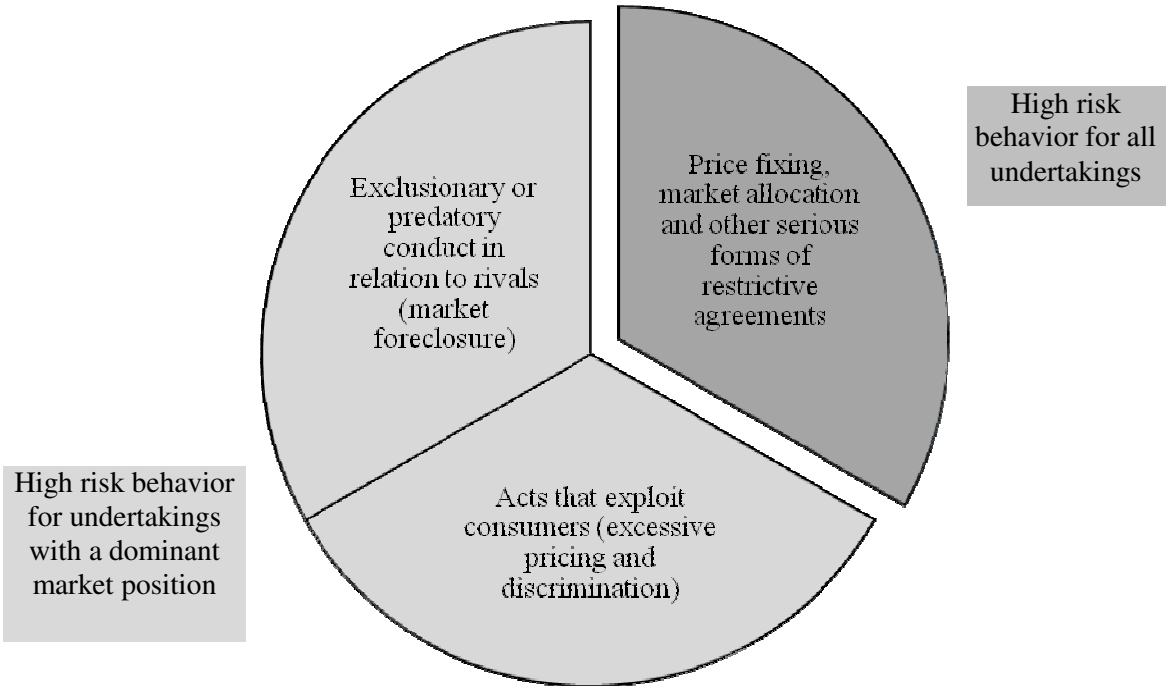
Risks can be categorized in the following three groups:

1) Regular risks – which may exist with all undertakings, irrespective of their size or market share (restrictive agreements),
2) Risks that concern undertakings with significant market share (potentially holding a dominant position),
3) Transaction-related risks – when a change of control, merger or acquisition by one company over another occurs, there is a possibility that such transaction needs to be notified to the Commission for Protection of Competition for prior approval.

The Law on Protection of Competition stipulates that an undertaking shall be the subject of a **measure for the protection of competition**, set in the form of an obligation to pay a monetary sum in the amount up to **10% of the total annual revenue generated in the territory of the Republic of Serbia** in the case where the said undertaking:
1) **abuses its dominant** position on the relevant market;
2) concludes or implements a **restrictive agreement**;
3) **fails to** perform or **implement measures to eliminate competition infringements** or measures of deconcentration;
4) **implements a concentration** in breach of the standstill obligation or without receiving merger clearance.

The amount of the measure for protection of competition depends on the gravity of the infringement, duration of the infringement, the existence of mitigating and aggravating circumstances, including other circumstances laid down by the Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures ("Official Gazette of the RS", No. 50/2010)[8] and guidelines for the application of this regulation.[9]

[5] See Article 10 of the Law
[6] See Article 16 of the Law
[7] Article 9 of the Law
[8] Available at: http://www.kzk.gov.rs/kzk/wp-content/uploads/2016/11/02-Regulation-on-criteria-for-setting-the-amount-payable-on-the-basis-of-measure-for-protection-of-competition-and-sanctions.pdf
[9] See the Guidelines on the application of the Regulation on criteria for setting the amount payable based on measures for protection of competition and sanctions for procedural breaches, manner and terms for payment thereof and conditions for determining the respective measures, available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/GUIDELINES-for-implementation-of-the-Regulation-on-criteria-for-setting.pdf



By gravity, the risks or competition infringements under the Commission's guidelines for establishing measures for protection of competition[10] can be classified as follows:

Most serious types of competition law infringements
1. restrictive agreements that directly or indirectly set the purchase or selling prices or other trading conditions; 2. restrictive agreements on collective boycott of competitors; 3. restrictive agreements that allocate markets or sources of supply, including restrictive agreements between bidders – competitors in public procurement procedures; 4. forms of the abuse of dominance which as their object or effect directly or indirectly fix unfair purchase or selling prices or other unfair trading conditions and/or drive out competition from the market; 5. forms of the abuse of market dominance that restrict production, markets or technical development.
Serious types of competition law infringements
1. restrictive horizontal agreements that do not qualify as the most serious types of competition law infringements, and 2. forms of abuses of dominance, such as applying dissimilar conditions to equivalent transactions or bundling or tying practices that do not qualify as the most serious types of competition law infringements.
Minor competition law infringements
1. restrictive vertical agreements that directly do not concern prices or conditions of sale, 2. implemented concentrations before regulatory clearance within the meaning of Article 65 of the Law, including 3. concentrations implemented in breach of suspension obligation within the meaning of Article 64 of the Law.

[10] Guidelines are available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/GUIDELINES-for-implementation-of-the-Regulation-on-criteria-for-setting.pdf

Restrictive agreements

Regular risks primarily concern **restrictive agreements,** classified into horizontal (agreements between competitors) and vertical (agreements with companies at a different level of supply chains, up- or downstream).

Definition and prohibition on restrictive agreements
Article 10

Restrictive agreements are agreements between undertakings which have as their object or effect the significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.
Restrictive agreements may include contracts, certain contract provisions, express or tacit agreements, concerted practices, including decisions of associations of undertakings, which in particular:
1) directly or indirectly fix purchase or selling prices or any other trading conditions;
2) limit or control output, markets, technical development, or investment;
3) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
4) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts;
5) allocate markets or sources of supply.
Restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to this law.

Requirements for exemption from the prohibition
Article 11

Restrictive agreements may be exempted from the prohibition if they contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives, and do not afford such undertakings the possibility of eliminating competition on the relevant market or its substantial part.

Individual exemption from the prohibition
Article 12

At the request of a restrictive agreement participant, the Commission may exempt certain restrictive agreements from the prohibition (hereinafter, individual exemption).
The applicant authority making the request for individual exemption shall bear the burden of proof to demonstrate that the requirements referred to in Article 11 of this Law are met.
The period of individual exemption referred to in Paragraph 1 of this Article shall not exceed eight years.
The Government shall specify in more detail the requirements referred to in Paragraph 1 of this Article.

Exemption from the prohibition by category of agreements
Article 13

The exemption from the prohibition on restrictive agreements may refer to certain categories of agreements in so far as the requirements referred to in Article 11 of this Law are met, including other particular requirements that concern the type and content of agreements or their duration.
Restrictive agreements that meet the conditions referred to in Paragraph 1 of this Article shall not be submitted to the Commission for the exemption.
The Government shall specify the categories of agreements and lay down special requirements referred to in Paragraph 1 of this Article.

Agreements of minor importance
Article 14

Agreements of minor importance are agreements between undertakings whose aggregate market share on the relevant market for products and services in the territory of the Republic of Serbia does not exceed:

1) 10% of market share, if the parties operate at the same level of production and distribution chain (horizontal agreements);
2) 15% of market share, if the parties operate at the different level of production and distribution chain (vertical agreements);
3) 10% of market share, if the agreement has characteristics of both horizontal and vertical agreements or where it is difficult to classify the agreement as either vertical or horizontal;
4) 30% of market share, if the agreements concluded between various parties have similar effects on the market, and if the individual market share of each of the party does not exceed the 5% market share threshold on each individual market affected by the agreement.
Agreements of minor importance shall be allowed unless the object of horizontal agreements is the fixing of prices, limitation of output or sales and allocation of markets or customers, and unless the object of vertical agreements is the fixing of prices or allocation of markets.

1. Horizontal agreements

Horizontal agreement is an agreement between direct competitors, that is parties that operate at the same level of production or distribution chain.

Competitor is an undertaking that operates on the same relevant market (actual competitor) or an undertaking that in a short period of time could undertake the necessary additional investments or other necessary costs to enter the relevant market in response to a small but permanent increase in prices (potential competitor).

Hardcore restrictions contained in horizontal agreements:

1. Price fixing with competitors[11]
   - 1.1. fixed prices, minimum prices, maximum prices[12]
   - 1.2. price ranges
   - 1.3. exchange of price lists
   - 1.4. price recommendations
   - 1.5. agreements fixing the distribution margin
   - 1.6. agreements on price increases or price decreases
   - 1.7. unilateral disclosure of future company operations

2. Agreements on production or sales volume
   - 2.1. agreements not to produce or sell unless agreed-on volume
   - 2.2. agreements to restrict output
   - 2.3. agreements so that individual competitors would exit the marketplace
   - 2.4. necessity of obtaining consent between competitors to increase output
   - 2.5. industrial standard-setting agreements

3. Allocation of markets or customers between competitors
   - 3.1. agreements to divide sales territories
   - 3.2. agreements to assign customers
   - 3.3. participation in public procurements assigning contract winners[13]

[11] Any direct or indirect collusive agreement to fix prices between competitors is prohibited. Prohibited agreements may concern agreements on uniform pricing, minimum resale prices or price floors, fixing resale prices, recommended retail prices, future price increases. Price fixing as a prohibited practice concerns not only prices but also certain price elements such as rebates, input prices, price premiums, etc.

[12] For example, the Commission's decision on prices of motor vehicle inspections in Čačak: http://www.kzk.gov.rs/kzk/wp-content/uploads/2020/12/56-30-11-2020-Resenje-tehnicki-pregledi.pdf (full decision in Serbian)

[13] For example, the Commission's decision on public procurements in the defence sector: http://www.kzk.gov.rs/kzk/wp-content/uploads/2018/12/26-resenje-B2M-i-dr.-za-sajt.pdf (full decision in Serbian)

3.4. agreeing not to compete in certain territories or for consumers or particular categories of consumers
3.5. collective boycott[14]

4. Exchange of commercially sensitive information (sharing of business strategies),[15] in particular on the following:
   4.1. sales value or volume
   4.2. market shares
   4.3. prices, in particular future conduct regarding prices
   4.4. planned business strategies

When does the exchange of information give rise to the competition concerns?[16]

The exchange of commercially sensitive information (that concern the nature of the business, i.e., current or future sales prices, cost of goods sold, production volume, credit terms or trading conditions, promotional expenses, customer discounts and rebates, information on consumers, and business or strategic and marketing plans, etc., in particular when such information cannot be considered historical) allows companies to better and more timely adapt their commercial policy to their competitors' strategy and increases the probability of creating anticompetitive effects on the relevant market or concern about increased coordination in the future market scenario.

The information exchanges with no direct or indirect impact on the future commercial strategies of undertakings provided they are: anonymous and pooled, publicly disclosed or available to competitors that have not taken part in the information exchanges, including to consumers, give no rise to the competition concerns.

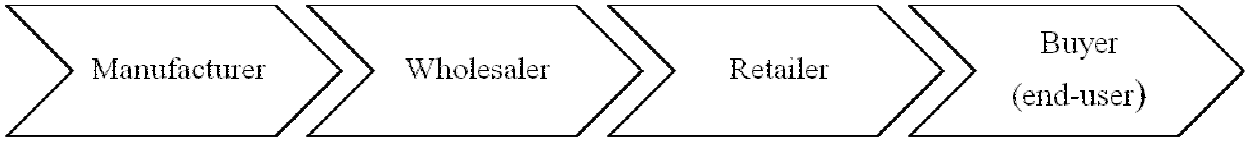
Collusive tendering or bid rigging is a business practice where competitors mutually agree about the way they submit tenders.

As to the public procurement market and participation in public procurements, the Commission has published several instructions, guidelines and opinions:
- opinion on certain forms of cooperation in public procurement procedures,[17]
- opinion on affiliated undertakings in public procurement procedures,[18]
- instructions for detecting bid rigging in public procurement procedures,[19] providing more detail on potential common forms of bid rigging in public procurements.

[14] Agreement between competitors on joint refusal to deal with a particular supplier(s) with no reasonable justification, including a joint conspiracy formed to impose conditions on the procurement of goods from a particular supplier(s).
[15] For example, the Commission's decision on the edible oil production market: http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/04/Victoria-Vital16_3_20171.pdf (full decision in Serbian)
[16] From the 2014 Annual Report, available at: http://www.kzk.gov.rs/kzk/wp-content/uploads/2015/04/godisnji_izvestaj_kzk_2014.pdf (report available in Serbian)
[17] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2022/01/Opinion-Public-Procurements-25th-March-2021.pdf
[18] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2016/12/Primena-%C4%8Dlana-10.-Zakona-o-za%C5%A1titi-konkurencije-kod-povezanih-lica-u-postupcima-javnih-nabavki1.pdf (available in Serbian)
[19] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2016/12/INSTRUCTIONS-for-detecting-bid-rigging-in-public-procurement-procedures.pdf

2. Vertical agreements

Vertical agreements are agreements between non-competing undertakings or agreements concluded between undertakings each operating, for the purposes of the agreement, at a different level of the production or distribution chain. They relate to the conditions under which the parties to the agreement may purchase, sell or resell certain goods or services (for example, manufacturer – wholesaler – retailer).



The most common models of distribution are selective distribution, exclusive distribution, and regular (open) distribution.

Selective distribution system is a distribution system where the supplier undertakes to sell the contract goods or services, either directly or indirectly, only to distributors selected on the basis of specified criteria and where these distributors undertake not to sell (at the wholesale level) such goods or services to unauthorized distributors within the territory reserved by the supplier to operate that system.

Agreements on exclusive distribution are agreements where the distributor undertakes to sell the contract goods or services only to one distributor in a particular geographic area or the customer group exclusively allocated to the distributors. **Exclusive purchasing agreements** are agreements where the buyer, either directly or indirectly, undertakes to purchase the contract goods or services exclusively from one supplier.

It is important to make a distinction between active and passive sales, whereas restrictions of passive sales are usually considered more problematic under competition law.

Active sales	Passive sales
Seeking and actively approaching individual customers or a specific customer group and undertaking the activities to sell products or services to said customers by visits, sending of unsolicited mail or e-mails, advertisement in media actively targeting a specific customer group or customers.	Sales on the basis of orders made by the buyer, including orders resulting from advertising in the media and Internet, available in the territory broader than territory exclusively intended for single distributor or specified group of buyers, being the result of a free and unlimited access to advertising message by every buyer or group of buyers.

Typical restrictions in vertical agreements are set out in the Regulation on agreements between undertakings operating at the different level of production or distribution chain exempted from prohibition ("Official Gazette of the RS", No. 11/2010), applicable to vertical agreements.

In the Commission's practice, the most common restrictions are resale price maintenance,[20] exclusive supply or distribution, selective distribution, and non-compete obligations.[21]

[20] For example, the Commission's decision on the distribution of athletic footwear and sporting goods: http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/12/R-40-02-892017-312.pdf or the Commission's decision on maximum discounts on car services and repair: http://www.kzk.gov.rs/kzk/wp-content/uploads/2018/10/Resenje-Auto-Cacak-i-dr.-converted.pdf (full decisions in Serbian)

[21] See Article 6 of the Regulation on vertical agreements

Rule	Exception (allowed)
Direct or indirect limitations on the buyer/distributor's ability to set the resale price of products or services, are prohibited.	Supplier may impose a maximum sale price or recommended a sale price,[22] provided that they do not amount to a fixed or minimum resale price as a result of pressure from, or incentives offered by, any of the parties.
Limitations on the territory in which the buyer/distributor may sell the contract goods or services or limitations on a specific customer group to whom the buyer/distributor may sell the contract goods or services, are prohibited.	1) restriction of **active sales** by a buyer party to the agreement to a territory or a customer group which has been allocated exclusively to another buyer or which the supplier has reserved to itself, where such a restriction does not limit sales by the customers of the buyer; 2) restriction of active and passive sales of the contract goods or services to end users by a buyer operating at the wholesale level of trade; 3) restriction of active and passive sales of the contract goods or services to unauthorized distributors by the members of a selective distribution system; 4) restriction of the buyer's ability to sell components, supplied for the purposes of incorporation, to customers who would use them to manufacture of competing goods.
The restriction of **active or passive sales** of the contract goods or services to end users by members of a selective distribution system operating at the retail level of trade, is prohibited.	The possibility of prohibiting a member of the selective distribution system from operating out of an unauthorized place of establishment, is allowed.
The restriction of cross-supplies between distributors within a selective distribution system, including between distributors operating at different levels of trade, is prohibited.	
The restriction agreed between a supplier of components and a buyer who incorporates those components, which limits the supplier's ability to sell the components as spare parts to end-users or to repairers or other service providers not entrusted by the buyer with the repair or servicing of its goods, is prohibited.	

What kinds of agreements always create competition concerns?

Irrespective of market share, prohibited agreements are those which have as their object:

horizontal agreement	vertical agreement
- the fixing of prices, or - the limitation of output or sales, - the allocation of supply markets	- the fixing of prices, - the allocation of markets

[22] Opinion on recommended prices, available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2017/09/Opinion-on-the-implementation-of-competition-policy-regulations-in-reference-to-price-recommendation-policy-in-vertical-agreements.pdf

Dominant position and abuse

Risks relating to undertakings with significant market share primarily concern the potential abuse of a dominant position, and to that effect, the Commission's past practice on competition law infringements in the form of abuse of dominance should be closely examined.

Dominant market position
Article 15

An undertaking holds a dominant market position if it is, due to its market power, able to operate to a large extent independently from the other actual or potential competitors, buyers, suppliers or consumers.
The market power of undertakings shall be established by reference to the relevant economic and other indicators, in particular:
1) structure of the relevant market;
2) market share of an undertaking whose dominance is established, especially if it exceeds 40% on the established relevant market;
3) actual and potential competitors;
4) economic and financial strength;
5) degree of vertical integration;
6) privileged access to supply and distribution markets;
7) legal or factual barriers to market entry by other undertakings;
8) buyer power;
9) technological advantage, intellectual property rights.
Two or more legally independent undertakings may hold a dominant position if, united by economic links, they are able to jointly perform or act as a single undertaking on the relevant market (collective dominance).
The burden of proving a dominant position on the established relevant market shall be borne by the Commission.

Abuse of dominance
Article 16

Any abuse of a dominant market position shall be prohibited.
Such abuse may, in particular, consist in:
1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2) limiting production, markets or technical development;
3) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
4) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Holding a dominant position on any given market is not in itself illegal. However, a dominant company has a special responsibility to ensure that its conduct does not distort competition.

To this end, undertakings that could have a dominant position in a particular market should carefully examine the potential effects of their business practices when making business decisions and assess how those decisions might affect competitors or the state of competition on the market.

Potential abuses may concern prices or other behaviour of a dominant undertaking and may be directed towards driving out competition from the market or exploiting consumers.

Potential infringements of competition law can be defined as follows:

Acts directed at driving out competition from the market – exclusionary abuses	Acts to exploit buyers – exploitative abuses
- Exclusive dealing, tying arrangements[23] - Predatory pricing - Loyalty rebates, conditioning customers[24] - Tying and bundling - Full-line forcing - Margin squeeze (price squeeze) - Refusal to deal/supply	- Excessive pricing (prices not based on cost considerations)[25] - Discrimination between different buyers (including unjustified price discrimination) - Applying dissimilar trading conditions to equivalent transactions with other trading parties[26]

As a general rule, suppliers have the right to choose who they wish to deal with; however, in certain cases, the **refusal to deal/supply** may be considered to be an abuse of dominance.
For such competition infringement to occur, aside from having a dominant position, the following elements must be identified:

1. the refusal relates to a product or service that is objectively indispensable input, essential for the customers to be able to compete effectively in a downstream market;
2. the refusal is likely to lead to the elimination of effective competition in the downstream market;
3. the refusal is likely to lead to consumer harm;
4. the conduct concerned is not objectively justifiable.

In terms of abusive pricing practices, competition law prohibits predatory pricing (setting prices extremely low) and at the other end of the spectrum, imposing excessive prices (setting prices to high).

Predatory pricing	Excessive pricing
Predatory pricing may be a part of broader business strategies to drive out the current competitors from the market or deter the entry of potential competitors, causing the dominant undertaking to strengthen its market power. Predatory pricing is a method in which a dominant undertaking sets the price below its incremental costs of producing the output, deliberately incurring losses, to drive out the competitors unable to compete from the market in order to raise the barriers to entry.	Excessive pricing implies imposing unfairly high prices, not set on the "cost principle" or aligned to costs, or excess prices set significantly above competitive levels, objectively justifiable by the cost structure with the expected return.

[23] For example, the Commission's decision on money transfer practices: https://www.kzk.gov.rs/kzk/wp-content/uploads/2012/03/Resenje-EKI-Transfers-12.01.2010.pdf (full decision in Serbian)

[24] For example, the Commission's decision on funeral services: http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Resenje-JKP.pdf (full decision in Serbian)

[25] For example, the Commission's decision on intercity bus dispatch services: http://www.kzk.gov.rs/kzk/wp-content/uploads/2020/01/Resenje-InterTursPlus1.pdf (full decision in Serbian)

[26] For example, the Commission's decision on the ice-cream market: http://www.kzk.gov.rs/kzk/wp-content/uploads/2014/03/povreda-konkurencije-frikom.pdf or the Commission's decision on the raw milk purchase: http://www.kzk.gov.rs/kzk/wp-content/uploads/2012/03/Resenje-Imlek-25.01.2008.pdf (full decisions in Serbian)

Merger control and mandatory notification

Transaction-based risks most often occur when one or more companies acquire control over another company/-ies or a part(s) thereof, and when the parties need to consider whether a merger filing with the Commission is mandatory to obtain the clearance necessary to implement the transaction.

A concentration between undertakings arises in cases of:
1) mergers and other status changes where a change of control in the undertakings concerned occurs;
2) acquisition of direct or indirect control over another undertaking or a part thereof that may constitute an independent economic entity;
3) joint venture between two or more undertakings to create a new undertaking or acquire joint control over the existing undertaking, performing on a lasting basis all the functions of an autonomous economic entity.

The notification obligation does not concern each transaction where a change of control in the undertakings occurs and each company that implements such a change. Instead, it only exists when the statutory requirements are met.

Concentrations are to be notified to the Commission if:
1) the aggregate **worldwide annual turnover** of all the parties to the concentration in the preceding financial year **exceeds €100mn**, provided that the **turnover of at least one party to the concentration on the market of the Republic of Serbia exceeds €10mn**; or
2) the aggregate domestic annual turnover of **at least two parties** to the concentration in the preceding financial year **exceeds €20mn**, **provided that the turnover of each of at least two parties to the concentration** on the market of the Republic of Serbia **exceeds €1mn** in the same period.
Concentrations implemented through a takeover bid within the meaning of the **Law on Takeovers of Joint Stock Companies**[27] must be notified even if the turnover threshold requirements are not met.

In addition to the notification obligation[28] within the time limit laid down by law,[29] there is a standstill obligation that prohibits the implementation of a concentration before its clearance. The Commission may impose a measure for the protection of competition (up to 10% of the aggregate annual turnover) for violation of the standstill obligation through early implementation of a transaction, including a procedural penalty measure.[30]

Concentrations and negotiations on the implementation of concentrations may pose a high risk of potential competition infringements as undertakings in those circumstances may gain an insight into confidential business information about competitors. Therefore, it should be ensured that employees involved in the process:
- comply with the provisions of data confidentiality agreements, including competition regulations;
- do not share information they learn about competitors with other employees of companies involved in transactions that constitute a concentration.

[27] "Official Gazette of the RS", Nos. 46/2006, 107/2009, 99/2011 and 108/2016)
[28] In the manner and under the conditions laid down by the Law on Protection of Competition and the Regulation on the content and manner of filing merger notifications ("Official Gazette of the RS", No. 5/16). The forms for making notifications are available at: https://www.kzk.gov.rs/obrasci
[29] Under Article 63 of the Law, merger notification must be filed with the Commission within 15 days from (1) the date being that on which the agreement or contract was signed, (2) announcement of a public bid or bid closing, or (3) acquisition of control.
[30] See Article 70 of the Law.

Which business segments require attention?

Depending on the market and levels of a supply chain where some company operates, various business segments can be distinguished that require attention when drafting compliance programs. These programs must **match the needs of each company**. For example, various business conditions exist in different industries and sectors, including conditions of competition. Similarly, the business practices of a company that operates at the production level are different from those adopted by a company that only operates at the wholesale or retail level.

If a company participates in **public procurement** procedures, it is important to be mindful that this area is subject to specific competition rules. Accordingly, this business area requires special analyses and identification of particular risks.

How to approach the identified risks?

If some of the risks that could potentially lead to competition infringements are identified during operational assessments, it is necessary to consider potential ways to mitigate such risks (for example, exemption of restrictive agreements from prohibition, leniency program, termination of certain business conduct).

Following the identification of risks, the company should consider the best and quickest ways to reduce or eliminate such risks.

If the risk consists of a restrictive agreement, an assessment of the following should be made:

1. Are there any grounds for exemption of an agreement from the prohibition (agreements of minor importance, exemption applicable to a specific category of agreements, or if a request for individual exemption needs to be filed);[31]
2. If an agreement cannot be exempt from the prohibition, and if it represents a serious type of competition law infringement, potential applying for the Leniency program should be considered;[32]
3. To avoid any further issues, all prohibited practices should be immediately stopped and alternative ways of achieving the same goal should be considered, without or with a minimal restriction of competition (while taking into account the requirements under which restrictive agreements can be exempt from the prohibition).

In any event, for compliance programs to be efficient, the system of checks and balances should be introduced, including education and training in order to avoid any subsequent issues.

Under the so-called "Leniency Program", a party to a restrictive agreement that is the first to inform the Commission of the existence of such an agreement or provide evidence upon which the Commission can adopt a decision on competition law infringements, may receive full immunity from fines. Furthermore, the Commission may in certain cases grant partial immunity from fines (reduction of fines).[33]

[31] See "Instructions for filing requests for individual exemption of restrictive agreements from prohibition", available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/UPUTSTVO-Podnosenje-zahteva-za-pojedinacno-izuzece-restriktivnih-sporazuma-od-zabrane.pdf (available in Serbian)

[32] More information is available on the Commission's website: https://www.kzk.gov.rs/kzk/wp-content/uploads/2017/11/liflet-leniency.pdf (available in Serbian)

[33] More information on the program is available at: https://www.kzk.gov.rs/en/leniency-program

Availability of materials on competition protection

In addition to the Commission's practice available on its official website,[34] the Commission has also developed several guidelines, promotional leaflets, video clips and issued numerous opinions in its work that should help undertakings harmonize their operations with competition regulations.

Instructions and guidelines

Various instructions on procedures before the Commission can be found on the Commission's official website, including instructions on filing requests in individual proceedings.[35] Furthermore, guidelines governing conduct in certain situations could also be useful for companies looking to harmonize their operations with competition regulations.[36]

The Commission also drew up several practical instructions and guidelines that concern different procedural issues, such as guidance to facilitate access to file,[37] suspension of proceedings,[38] and filing of competition complaints.[39]

Furthermore, detailed guidelines on individual proceedings before the Commission are also publicly available, namely on merger notification procedure, [40] individual exemption of restrictive agreements from the prohibition, [41] and data protection.[42]

Opinions

Opinions on the application of competition rules can be found on the Commission's official website.[43] Individual opinions are also included in the Commission's annual activity reports.[44]

Video clips

The Commission's YouTube channel[45] features several short educational video presentations that could be useful for in-house training programs, introduction to competition, or used as a brief refresher on basic competition concepts.

The following thematic units are elaborated in video presentations[46]:

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[34] Available at: https://www.kzk.gov.rs/odluke (substantive parts of decisions are translated to English, full versions are available in Serbian)
[35] Instructions available at: https://www.kzk.gov.rs/uputstva
[36] Guidelines available at: https://www.kzk.gov.rs/smernice
[37] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2021/12/Uputstvo-za-uvid-u-spise.docx
[38] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/Primena-clana-58.pdf
[39] Available at: https://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/UputstvO-o-sadr%C5%BEini-inicijative-za-ispit-povred-l-10-Zakona.pdf, and at: http://www.kzk.gov.rs/kzk/wp-content/uploads/2011/08/uputstvo-sa-obrascem1.doc
[40] Available at: https://rap.euprava.gov.rs/privreda/postupak-pregled/828
[41] Available at: https://rap.euprava.gov.rs/privreda/postupak-pregled/826
[42] Available at: https://rap.euprava.gov.rs/privreda/postupak-pregled/829
[43] Opinions available at: https://www.kzk.gov.rs/misljenja-u-vezi-primene-propisa-u-oblasti-zastite-konkurencije
[44] Annual activity reports are available at: https://www.kzk.gov.rs/izvestaji (all reports in Serbian) and https://www.kzk.gov.rs/en/izvestaji (several reports in English)
[45] Available at: https://www.youtube.com/channel/UC4r4DQ1UM8t339activity x9EaGCl_w/videos
[46] Video presentations are made in cooperation with the UK Competition and Markets Authority (CMA) and customized with prior approval.

- Why is competition good for business?[47]
- What you can do to comply with competition law?[48]
- What happens if you break competition law?[49]
- Price fixing explained[50]
- Information you shouldn't share with other businesses[51]
- Dividing up and sharing markets[52]
- Resale price maintenance[53]
- Bid rigging[54]
- How you can help in fighting cartels?[55]
- Leniency program[56]
- What if someone abuses its dominant market position?[57]
- Dawn raids of the Commission[58]
- What are concentrations and why we review them?[59]

Brochures and leaflets

Certain subject matters are presented in more detail in leaflets and brochures, made available free of charge to all interested parties at the reception desk of the Commission for Protection of Competition.

[47] Available at: https://www.youtube.com/watch?v=s6IX65TsO6o
[48] Available at: https://www.youtube.com/watch?v=ijYKk8zf9kg
[49] Available at: https://www.youtube.com/watch?v=HuRRh0Iv4wA
[50] Available at: https://www.youtube.com/watch?v=Ld0-tn2AN9A
[51] Available at: https://www.youtube.com/watch?v=PZn9ZBhfaK0
[52] Available at: https://www.youtube.com/watch?v=6aaqyV8x3Dk
[53] Available at: https://www.youtube.com/watch?v=1uTeSnSv3oI
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[56] Available at: https://www.youtube.com/watch?v=LAF2u8rHIyo
[57] Available at: https://www.youtube.com/watch?v=qzx6wduCnC4
[58] Available at: https://www.youtube.com/watch?v=VuZTLZbTWaA
[59] Available at: https://www.youtube.com/watch?v=dTWY7Y79OXM

Prevention

To minimize the potential for breaches of competition rules in their operations, companies must ensure that every employee, and in particular those exposed to regulatory risks, is familiar with the basic rules governing competition or is able to recognize situations that could expose them and the company to risks of competition infringements.

Employees must know that certain types of agreements almost always represent competition infringements and that they should never discuss or exchange information with their competitors on the following:

- price fixing – including the setting of minimum or maximum prices or price "stabilization";
- setting conditions that concern wholesale or retail prices, adopting standard formulas for the calculation of selling prices, profits, sales promotions, financing conditions, etc.;
- allocation of markets, customers, or territories;
- output restriction;
- bid rigging, including cover bidding;
- collective boycott of competitors, suppliers, customers, or distributors;
- strategic commercial information such as recent individual data on sales value and volume or market shares and prices, whereas the recent data usually means data not older than one year.[60]

The permissibility of information exchanges among competitors primarily depends on the characteristics of information being exchanged, including the characteristics of markets to which they relate.

In principle, the exchange of information is allowed when it concerns:

- exchanges of non-strategic information,
- information exchanges among undertakings to create statistics of a market, depending on the market characteristics, provided the data is older than one year and is in aggregated form,
- recent commercial information to draw up statistics of individual markets for the purposes of associations of undertakings, provided that individual undertakings can only access aggregated market data.

Compiling information about competitors

In principle, allowed[61] sources of information include:

- Newspapers, media and other publicly available information (but not as a consequence of prior agreements between competitors to exchange information and market signalization);
- Communication with customers (but not aimed at acquiring confidential information);
- Trade fairs and exhibitions (but not through discussions and prohibited information exchanges with competitors);

[60] This characteristic of prices will depend to a large extent on the market characteristics such as the usual duration of agreements in certain industries, homogeneity of products or services, price transparency, including whether the market is deemed oligopolistic.

[61] As in the case of information exchanges, the permissibility to compile information about competitors primarily depends on the characteristics of information being compiled, including the characteristics of markets to which they relate. If the compiled information facilitates the reduction of uncertainty regarding the present or future market behaviour of competitors, such information may be risky within the meaning of competition rules.

- Analyses of market conditions by independent firms (if such analyses do not give an insight into future commercial actions or strategies of competitors).

Prohibited sources of information about competitors include:
- Confidential business or "insider" information about competitors and similar information belonging to persons outside the company. If a company or its employees obtain confidential business or "insider" information from sources outside the company – even by accident – it is necessary to immediately seek legal advice from lawyers or in-house legal counsels;
- Confidential business or "insider" information that new employees have learned in any way during their employment with previous employers;
- Information on bids offered by competitors (prior to bid opening) in public procurement procedures. If employees, even by accident, learn such information, he/she needs to contact lawyers or in-house legal counsels;
- Confidential business information about competitors offered for sale by an entity.

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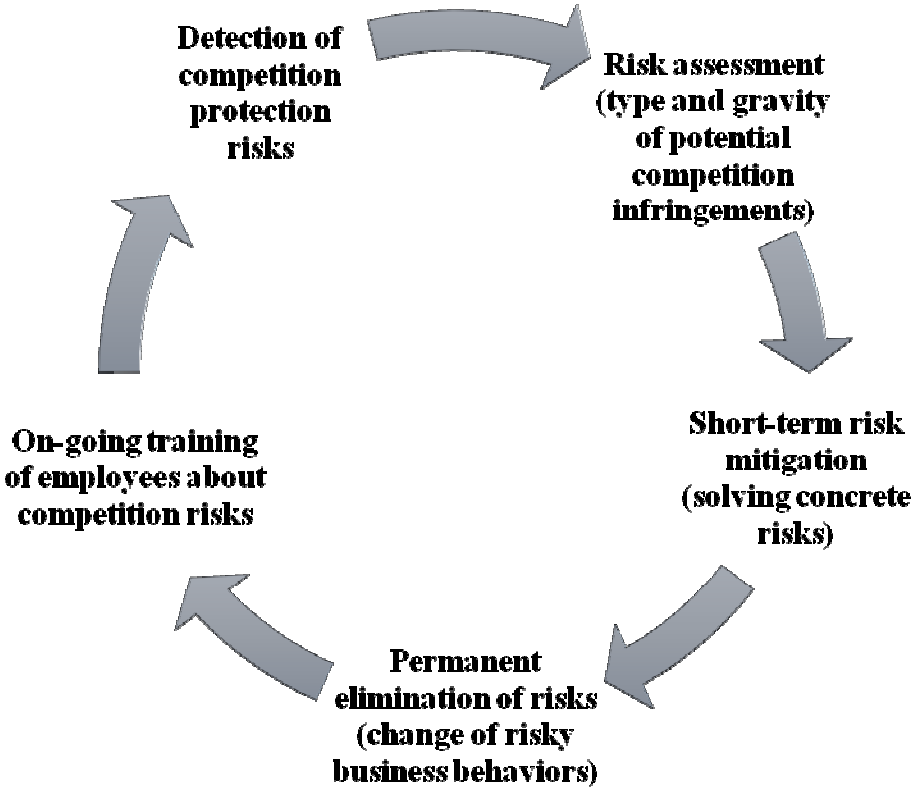
In order for compliance programs to meet their objectives and genuinely operate in a preventive capacity or mitigate the risks of competition violations, a certain type of cyclical nature and established risk management procedure must exist, on the one part, and on-going training of employees about competition risks, on the other part.



Practical recommendations

1. Dealings with competitors, in particular agreements about prices, market allocation, or participation in public procurements, pose competitive problems.

2. Sharing information about prices, future prices, pricing policy and other commercially sensitive information during meetings attended by competitors, including within trade associations, pose competitive problems.

3. If you attend a meeting where competitors agree on pricing or other commercially sensitive information or exchange views on these issues, it is necessary to immediately disassociate (distance) yourself unequivocally from the discussion and recuse yourself from the conversation, i.e., leave the meeting in which they continue, by making abundantly clear to others that you do not want to take part in any such agreement. Only under such conditions and in those circumstances can you avoid responsibility for the resulting competition violations. Adopting a passive approach during the meeting or subsequent non-application of an agreement following the meeting does not absolve you of responsibility.

4. It is prohibited to incite, reward, or in any way discipline distributors to maintain resale prices of goods or services, both at the wholesale and retail level.

5. It is necessary for each undertaking to independently fix the prices of goods or services that it offers to its buyers.

6. If a company holds a dominant market position or could be considered to hold a dominant position on any given market, the company should pay particular attention to its operations to avoid any abuse.

7. It is desirable to review business contracts and amend them if found to contain restrictive provisions, in particular hardcore restrictions of competition or prohibited provisions under block exemption regulations. Behaviours that may represent such restrictions of competition pose competitive problems, even when not explicitly agreed upon.

8. It is desirable to consult with experienced competition lawyers when faced with a dilemma on the application of competition rules or when some of the risks to company operations are detected.