

New DOJ Policies Encourage Antitrust Compliance Programs

Legal Alert
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Programs are an "ounce of prevention" that may help companies avoid prosecution for criminal violations

Companies that want to reduce their risk to criminal antitrust prosecution should put in place, or review and update their compliance programs in response to new guidelines issued by the U.S. Department of Justice. DOJ's Antitrust Division will now give credit for such programs in considering a deferred prosecution agreement from a criminal antitrust allegation.

In remarks about the new policy, the Antitrust Division said it "is committed to rewarding corporate efforts to invest in and instill a culture of compliance." It noted "an ounce of prevention is worth a pound of cure." Click [here](#) to read Assistant Attorney General Makan Delrahim's remarks at the New York University School of Law Program on Corporate Compliance and Enforcement.

Of course, the primary goal of an antitrust compliance program is to prevent or detect conduct that can expose the company to criminal liability and private class action lawsuits. The Antitrust Division's new policy includes guidance for an effective program, which it will consider in deciding whether the corporate program is "well designed," being applied "earnestly and in good faith," and if it works.

Click [here](#) to review the DOJ's Guidance on the issue.

The DOJ believes an effective compliance program should include:

- (a) a well-designed and comprehensive program;
- (b) a culture of compliance throughout the company with support from top management;
- (c) responsibility for, and resources dedicated to, antitrust compliance;
- (d) antitrust risk assessment techniques to detect violations;

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- (e) compliance training and communication to employees;
- (f) monitoring and auditing techniques;
- (g) reporting mechanisms;
- (h) compliance incentives and discipline; and
- (i) remediation methods, including whether the program detected violations and how they were addressed.

If you have questions about the new DOJ guidelines, please contact [Mike Vaska](#) at 206.447.8895 or mike.vaska@foster.com.