



Stibbe

Antitrust Compliance Group



Stibbe in association with
Herbert Smith and Gleiss Lutz

“I want the future for cartelists to continue to look as bleak as possible”

(Neelie Kroes, European Commissioner for Competition)

Antitrust infringements: a true ‘climate change’

The European Commission and other antitrust authorities have shown a strong commitment to enforcing competition laws. In particular, the fight against ‘hard-core cartels’ has become a high priority worldwide. This is illustrated by the fact that since 2004, the total amount of fines imposed by the European Commission for cartel conduct has increased by approximately 750%, peaking at € 3.3 billion in 2007.

Following the example of the USA, an increasing number of countries have criminalized or are in the process of criminalizing participation in hardcore cartels. In particular, the United Kingdom and Ireland are actively pursuing ‘jail time’ for employees who participated in cartel conduct.

Furthermore, the European Commission has launched a political campaign to facilitate antitrust damage claims. In the Commission’s view, ‘private enforcement’ should help deter anti-competitive conduct. In its 2008 White Paper, the Commission proposed a framework of measures to remedy perceived ‘obstacles to effective antitrust damages actions’.

The combined effects of these developments have prompted many companies to strengthen their competition compliance programs and increase awareness of the scope and the importance of antitrust laws around the world. The measures some of our clients have taken include

- putting a strong competition law compliance program in place that includes training, internal audits and annual compliance declarations;
- implementing a comprehensive document creation and retention policy;

- introducing a contingency plan detailing the various steps that must be taken in the event of a ‘dawn raid’ and other forms of competition law investigation; and
- creating a protocol to protect confidentiality and - where applicable - attorney-client privilege.

Amnesty applications: an important source of cartel investigations

The European Commission’s recent successes in fighting cartels are largely due to its ‘whistle-blowing’ or amnesty policy. Today, the majority of cartel cases under investigation are the result of whistle-blowing by a member of the cartel. Whistle-blowers apply for amnesty in an effort to minimize their financial exposure. A successful amnesty application can result in a 100% reduction on multi-million euro fines. However, in practice, it has become more difficult to qualify for amnesty. Furthermore, amnesty applications in different jurisdictions have become complicated, as amnesty programs differ and information assessment varies amongst antitrust authorities.

Stibbe’s Antitrust Compliance Group

At Stibbe, we are convinced that a sound, state-of-the-art compliance program must be tailored to the individual needs of our clients. To design a compliance program that meets all relevant requirements, one must have expertise in both competition law and corporate law, civil law, labor law and criminal law. Therefore, expert attorneys from all relevant areas of our legal practice have teamed up to form one integrated group that specializes in advising our clients on the implementation of a ‘tailor-made’ compliance program (and modernization of existing compliance structures). The combined experience of the members of Stibbe’s Antitrust Compliance Group is unique and has been ‘tested and trusted’ by several of our large corporate clients.

If and when antitrust issues emerge

Of course, the purpose of a state-of-the-art compliance program is not only to prevent non-compliance with antitrust laws, but also to uncover any existing

antitrust issues. Sometimes, these issues are sufficiently serious to attract the attention of the antitrust authorities. Our Antitrust Compliance Group has represented clients in a large number of investigations and proceedings in many jurisdictions and has firsthand experience in dealing with antitrust authorities in the European Union and its Member States, the United States, Canada, Australia and various countries in Asia, Africa and Latin America. The members of our Group draw upon their extensive experience to provide our clients with sophisticated, reliable advice aimed at limiting the adverse effects of existing antitrust issues. Currently, members of our Antitrust Compliance Group represent clients who are active in a range of sectors including chemicals, transport, energy, tobacco, financial services, construction, food, media and entertainment and pharmaceuticals.

Some ‘lessons learnt’

- A surprisingly large number of companies are not equipped with a sound, state-of-the-art compliance program. In our experience, it pays to invest in a compliance program that includes regular employee training, annual compliance declarations and a complaints procedure. Antitrust authorities expect professional companies to have compliance programs in place;
- Managers underestimate both the low threshold for a finding of an antitrust infringement and the possible implications of investigations and proceedings in terms of financial repercussions, reputational damage, disruption of day-to-day business and possible criminal consequences for the company and employees involved in the conduct;
- A globalizing economy can lead to global problems. Our experience is that relatively few companies realize that international teams of both in-house and outside legal counsels are best placed to assist and advise in case of investigations or proceedings;
- Practice demonstrates that when significant antitrust issues are uncovered, pro-active steps are the best form of damage control for companies subject to an investigation.

Contact



Christof Swaak heads Stibbe's Competition Law & Regulation practice. His extensive experience in dealing with worldwide cartel infringements in a number of jurisdictions including the EU and the US, led Chambers Global 2007 to refer to him as a 'master of cartel work'. Christof is adjunct-professor of law at Fordham Law School, New York, USA.

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Marc van der Woude has practised EC and national competition law since 1984. He is actively involved in merger control and cartel proceedings before European and national authorities and courts. Marc is also a professor at the University of Rotterdam, where he teaches economic law.

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Daan Doorenbos specializes in corporate and white collar crime including compliance with securities, financial, tax and environmental legislation, and representation and assistance for companies facing criminal investigations or prosecutions. Daan is also a professor at the University of Nijmegen, where he teaches Corporate Criminal law.

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Rein Wesseling, partner in Stibbe's Competition Law & Regulation practice, advises and assists our clients in cases involving cartels, abuse of dominant position, concentration control and state aid.

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