



G06 – Antitrust Compliance

Part 1: Cornerstones for effective compliance programmes

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First edition: June 2017

Disclaimer

DICO guidelines are directed to Compliance Practitioners. They are designed to provide an introduction and overview on the subject. Therefore the guidelines deliberately avoid highlighting special cases and identifying legal exceptions.

DICO guidelines provide the reader practical and actionable recommendations on Compliance issues. On this basis, publishing a guideline aims for initiating a discussion regarding the subject matter but is not meant to constitute any kind of binding standard.

DICO guidelines constitute practical considerations by Compliance Practitioners and are not intended to give legal advice. No one reading or utilizing these guidelines should rely on this document for legal advice, but instead should seek such advice from competent legal counsel.

Send your suggestions and contributions to info@dico-ev.de. We look forward to a lively discussion and thank you for your constructive support.

Please also note: Convenience translation - only the German version (dated May 2016) is authentic

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1. INTRODUCTION AND OBJECTIVES	4
2. THE CORNERSTONE CONCEPT	5
3. INDIVIDUAL CORNERSTONES	6
3.1 Management Culture	
3.2 Responsibility and Organisation	
3.3 Risk Analysis	
3.4 Set of Rules	
3.5 Training	
4. FURTHER ELEMENTS	11

1. Introduction and Objectives

Due to the risks accompanying cartel infringements, antitrust compliance programmes are, today, common practice for many undertakings. However, there is still considerable debate as to the necessary content and scope of such programmes. These guidelines aim to give greater clarity on the requirements of such programmes, and to support DICO Members and interested third parties during the establishment, improvement and assessment of antitrust compliance programmes.

The present guidelines explicitly leave open the question of whether undertakings are legally obliged to introduce or maintain antitrust compliance programmes. Irrespective of this, certain cornerstones for effective programmes have emerged during the past few years in theory and practice. These cornerstones will, after a short description of the cornerstone concept, be introduced and described in detail in the following (under 2. and 3.).

Many undertakings include measures in their antitrust compliance programmes which serve to protect the undertaking against cartel infringements by their suppliers (so-called anti-trust damage prevention). For example, one measure could be to require cartel offenders participating in procurement processes to prove a successful “self-cleaning” – including the existence of an effective antitrust compliance programme. For procurement procedures by public clients in Europe, such self-cleaning is already required by public procurement (and cartel) law. Some undertakings have gone even further; and as part of their antitrust damage prevention, have contractually obliged suppliers who are active on “cartel-prone” markets to introduce and maintain antitrust compliance programmes.

Against this background, the aim of these guidelines is not only to assist undertakings during the establishment of their own compliance programmes, but also to serve to provide assistance to DICO members and interested third parties – including awarding public entities – with regard to the assessment of the effectiveness of suppliers’ (or bidders’) compliance programmes. The guidelines can also serve undertakings (in particular with respect to the stringent case-law on the liability for commercial agents) as a valuable instrument for sensitizing their commercial agents.

The guidelines also have a third aim: while competition authorities in many other jurisdictions (e.g., United Kingdom, Italy, France, Australia and Canada) may take into account the introduction or existence of effective antitrust compliance programmes by mitigating a fine in cases of antitrust infringements, this is not the case in Germany (and some other countries). The reason for this might be that up until now there were no recognized (or sufficiently precise) cornerstones for effective antitrust compliance programmes. The present guidelines introduce such cornerstones. They can therefore also be understood as a contribution to the debate on the acknowledgement of antitrust compliance programmes as a mitigating factor for fines issued by competition authorities. »

About DICO:

DICO – Deutsches Institut für Compliance e.V. was founded in November 2012 in Berlin at the urging of leading compliance practitioners and experts. As a nonprofit organization DICO has members from all industries in Germany, including wellknown DAX companies, auditing and law firms, and from the science industry.

DICO considers itself to be an independent interdisciplinary network for exchange between economy, science, politics, and administration and considers itself to be a central forum for the consistent and practical promotion and further development of compliance in Germany. DICO promotes compliance in Germany, defines minimum standards in this area, assists with proposed legislation, and simultaneously promotes practical compliance work in private and public companies, promotes training, and develops quality and procedural standards.

About BME:

The Association for Supply Chain Management, Procurement and Logistics (BME), founded in 1954, is the leading professional association for supply chain managers, buyers and logisticians in Germany and Central Europe. The BME looks back on a 60-year-old history in which its member number has grown to 9,500 individual and corporate members (31.12.2016) - from small businesses to large enterprises. The annual purchasing volume of our members averages 1.25 trillion euros. We see ourselves as a service for our members who belong to all industrial and service sectors, including distributive trade, banking, insurance and public institutions. Our aspiration includes the know-how transfer in the fields of supply chain management, procurement and logistics. It is achieved through a continuous exchange of experience, education and training services as well as the scientific work on new methods, procedures and techniques.



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