

# DOJ ANNOUNCEMENT UNDERSCORES IMPORTANCE OF ROBUST ANTITRUST COMPLIANCE POLICY

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Last week, the Department of Justice's Antitrust Division announced significant changes to the Division's antitrust leniency program, making this an ideal time to review and update your company's antitrust compliance program in light of this new Division guidance.

The Division's leniency program has historically followed an "all or nothing" approach in order to incentivize self-reporting: only the first member of a cartel to report illegal conduct could receive immunity from criminal prosecution. Any other cartel members who later cooperated with the Division's investigation could receive some penalty reduction, but would still be forced to plead guilty to criminal offenses and pay fines.

In a speech given on July 11, 2019, Makan Delrahim, the Assistant Attorney General in charge of the Division, announced that "the time has now come to improve the Antitrust Division's approach and recognize the efforts of companies that invest significantly in robust compliance programs." Previously, companies were credited for antitrust compliance programs only at the sentencing stage (i.e. after conviction of an antitrust crime). Under the new policy, a strong compliance program may prevent conviction through a deferred prosecution agreement, even where a company was not first to report the illegal conduct.

Significantly, the Division published written guidance for prosecutors to define whether a compliance policy is "robust," outlining nine elements for consideration, along with specific explanations for each:[1]

1. The design and comprehensiveness of the program;
2. The culture of compliance within the company;
3. Responsibility for, and resources dedicated to, antitrust compliance;
4. Antitrust risk assessment techniques;
5. Compliance training and communication to employees;
6. Monitoring and auditing techniques, including continued review, evaluation, and revision of the antitrust compliance program;

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7. Reporting mechanisms;
8. Compliance incentives and discipline; and
9. Remediation methods.

Delrahim pointed out that “even a good corporate citizen with a comprehensive compliance program may nevertheless find itself implicated in a cartel investigation.” The new written guidance provides a useful roadmap to structure an antitrust compliance program in a manner that may provide tangible benefits to the company in the event of a worst case antitrust enforcement scenario.

All companies, regardless of size, should have an antitrust compliance program, and should routinely update and revise that program based on changes in the company’s business and applicable law. The recent Division announcement marks a perfect opportunity to ensure your company’s policies and program are up to date and reflect best practices.

For questions about updating your company’s antitrust compliance program and policies, or any other antitrust matter, please contact:

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[1] United States Department of Justice Antitrust Division. *Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations*. July 2019. Available at: <https://www.justice.gov/atr/page/file/1182001/download>

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