

Global Compliance

Competition Compliance

Risk Assessment Roadmap – Preview



For more information on this roadmap, and any of the others in our Global Compliance Roadmap series, please get in touch with the Osborne Clarke team [here](#).



Introduction

EU and UK competition law prohibits anti-competitive agreements and abuse of position by dominant companies. It also enables scrutiny of certain mergers, joint ventures and acquisitions to ensure they are not anti-competitive or harmful to consumers.

Breaches of competition law can have serious consequences for the business concerned, including financial penalties, reputation damage, personal liability and/or disqualification for directors and rendering contracts unenforceable.

Businesses need to understand their exposure to competition law, and the extent to which their systems, policies and procedures are sufficient to address that exposure, taking into account, amongst other things, the extent to which they are active in sensitive economic sectors, have high market share, are acquisitive and/or otherwise are at higher risk of scrutiny and enforcement.

The starting point for any entity wishing to ensure that it has adequate competition compliance procedures in place is to conduct an objective and comprehensive risk assessment to identify and quantify the competition risks it faces. This risk assessment should not be viewed as a one-off exercise, and should be repeated at regular intervals, including whenever

significant new business is undertaken that may alter the overall risk profile of the organisation.

Set out below is a 'roadmap' of questions designed to identify information and issues that will be relevant to a business in its assessment of its competition law risks. Having answered these questions, an assessment can be made of the business's competition law exposure and the extent to which its policies and procedures adequately address those risks. Thereafter, any necessary measures can be adopted and implemented to address any shortfall or gaps in the systems, policies and procedures of the organisation.



1. Assessing your competition law enforcement risk

1.1 Assessments/audits

- Has your business undertaken any assessment of the competition law risks it faces and, if so, when was that assessment last undertaken?
- Has your business undertaken any formal competition law compliance audits and, if so, when was that audit undertaken?

1.2 Sector/business risk

- What sector(s) does your business operate in?

Does your business operate in any sectors that are perceived as particularly sensitive from a competition perspective (such as defence, medical research, AI and encryption technology)?

- Does your business hold any significant market share(s)? For these purposes, any share above 25% would constitute a significant market share.

1.3 Transactional strategy

- Does your business have any transactions that may be subject to competition law enforcement risk?
- Is your business working towards a foreseeable future?
- Does your business consider its market (e.g. claiming to be the market leader)?
- Has your business been required to undergo a competition review last 10 years or been the subject of a competition review by a competition regulator (e.g. the Competition and Markets Authority (CMA))?

1.4 Relationship with competitors

- Do personnel within your business have any relationships with personnel at your competitors? If yes, in what circumstances? (e.g. joint ventures, shared services, etc.)

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2. Assessing your current approach to competition law compliance

2.1 Policies and procedures

Do you have:

(i) An up-to-date competition compliance policy?

(ii) A dawn raid policy (i.e. a policy for use in the event of an unannounced inspection by a competition regulator)?

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3. Procedures and top-down compliance

Regulators, like the CMA in the UK, increasingly expect senior management to take the lead in competition compliance, including in ensuring that adequate compliance policies are put in place and observed.

3.1 Proportionate procedures

- Objectively, would your organisation be viewed as having adopted competition procedures that are proportionate to the risks that you face?

3.2 Tone from the top

- To what extent, and in what ways, does your Board/senior management provide clear leadership to the business on the approach to competition compliance (for example, consideration of competition compliance risk assessments

- Is the Board/senior management overseeing and driving developments in competition compliance?

3.3 Communications and training

- Does your organisation provide training to all relevant employees, including customer or supplier-facing employees?
 - (i) Is that training tailored such that it includes specific training relative to competition compliance?
 - (ii) How often is the training provided?
 - (iii) Does this differ for persons with obvious competition compliance responsibilities?
 - (iv) Is understanding of the legal requirements and the mark required to be achieved?

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4. Specific concerns

- Have any potential competition compliance issues or red flags been identified as part of any internal or external audits conducted within the past 5 years? If so, how were these dealt with?
- Have any potential competition compliance issues been raised within the past 5 years? If so, how were these dealt with?
- Are you aware of any allegations, inquiries, investigations, prosecutions or other actions by a competition authority or other national regulator which may indicate a competition compliance issue connected with your organisation?

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