

Compliance program – effective tool for fine reduction

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Compliance program recognized for the first time as a ground for reducing fine for anti-competitive practices

For the first time in its decision-making practice, the Czech competition authority (the “**Office**”) has recognized a tailor-made compliance program as a circumstance determining the reduction of a fine.

This was decided in case of the company Z-TRADE s.r.o., which was found liable for entering into prohibited agreements on direct price fixing for the resale (RPM) of candles and luxurious "aroma goods". In addition to a fine slightly exceeding CZK 17.5 million, the Office also imposed a ban on performing of contracts with distributors affected by the unlawful conduct

To assess the amount of the fine, the Office considered, among the others, as a mitigating factor the fact that the company had evidenced the implementation of a tailor-made compliance program which, according to the Office, was sufficiently effective in relation to the functioning of competition on the relevant market, the nature and type of goods, the business model and the size of the company. The Office thus declared its intention to act preventively and to take into account efforts of those competitors who actively take steps towards compliance with competition law by setting up their internal compliance mechanisms.

In its press release, the Office stated that it can only grant this type of 'discount' if the adopted compliance program is already in place or if the undertaking commits to implement it during the proceedings before the Office. At the same time, the Office stated that only those undertakings who apply for the leniency program or the settlement procedure and whose management was not involved in the anti-competitive practices could obtain such reduction of fine.

The Office thus joined some competition authorities in other EU Member States (e.g. Germany) where the existence of compliance program could be a relevant factor for fine calculation.

What is the impact on your business?

The Office's decision demonstrates the importance of implementation of the compliance program. However, it is essential that your compliance program is not too generic – it is essential that it targets real threats of your corporation, reflects your company's market power and is effectively implemented. Such implementation can be achieved by regular trainings of your sales representatives, key account managers or other employees who interact with your business partners and/or competitors within various industry associations.

The main purpose of an effective competition compliance program is to prevent the company from committing a violation of competition rules, and thus to avoid investigation by competition authorities. In addition to fines, there is also a risk of private action for compensation for damages. The possible use of leniency or settlement in proceedings before the Office as such does not relieve the competitor of civil liability for damages.

If your company decides to reflect the above-presented findings of the Office in its existing compliance systems, we will be happy to assist you with such review and practical implementation.

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