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GUIDELINES ON ANTITRUST COMPLIANCE

I. Preamble

1. Under the "*Guidelines on the application of the criteria for setting administrative fines imposed by the Authority pursuant to Article 15(1*-bis*) of Law 287/1990*", the adoption and implementation of a specific compliance programme – adequate and aligned with European and national best practices – may be treated as a mitigating circumstance.

2. These Guidelines are designed to give undertakings guidance on: (i) what a compliance programme should contain; (ii) how to submit a programme for assessment for its recognition as a mitigating circumstance; and (iii) the criteria applied by the Authority in such assessment.

3. The Guidelines have been adopted with the following main policy objectives in mind: (i) promoting a culture of competition across the business community; (ii) preventing antitrust infringements through the timely adoption of effective compliance programmes; (iii) providing legal certainty on how compliance programmes are assessed for recognition as a mitigating circumstance; and (iv) establishing an incentive system consistent with that underpinning the leniency programme.

II. The antitrust compliance programme

4. The key criterion for recognising a compliance programme as a mitigating circumstance is whether it is substantively capable of preventing antitrust infringements.

5. For a compliance programme to be considered adequate and potentially effective, it must be tailored to the undertaking's specific features and the market environment in which it operates. This ensures it reflects the real nature and level of antitrust risk faced by the undertaking.

Features of the undertaking. The compliance programme must be tailored to the nature, size and market position of the undertaking. In general, the type of business activity carried out by the undertaking determines the antitrust risks to which it is exposed. The processes and procedures put in place to effectively prevent antitrust infringements must be proportionate to the complexity of the undertaking's organisation and to its management structure. The undertaking's market position is also a key factor – particularly where its market power makes it necessary to manage the antitrust risk arising from possible abusive conduct.

Market context. The compliance programme must be suited to the market context. For example, the risk of collusion may depend on factors such as the number of competitors, their (relative) size, the transparency of commercial conditions, and how frequently undertakings interact – for instance at trade association meetings. Similarly, for undertakings in a dominant position, antitrust risks may depend on how their supply chain is organised – that is, on their relationships with customers and suppliers. The competitiveness of the market environment also plays a role, as it affects the antitrust risks faced by the undertaking (e.g., strategies by a dominant undertaking to counter the entry of new market players) and thus the need for regular monitoring of the compliance programme's adequacy.

6. In line with international best practices, the following are typical components of an antitrust compliance programme.

Antitrust compliance as an integral part of corporate culture and policy

7. An effective compliance programme requires clear recognition of the value of competition as an integral part of the undertaking's culture and corporate policies, together with a lasting commitment to compliance. To this end, the undertaking must demonstrate that it allocates sufficient resources to put the programme into practice, and ensures the "compliance officer" is autonomous, independent and equipped with adequate tools.

An effective commitment to preventing antitrust violations can be ensured when:

- competition is expressly recognised as a core value of the undertaking's business activities, for example, in its code of ethics or code of conduct;
- a specific compliance programme is in place, expressly aimed at preventing antitrust risks. This may form part of a broader risk management system covering other risks to which the undertaking is also exposed; - the programme is explicitly endorsed by senior management, including through their active involvement in its implementation and monitoring;
- the undertaking allocates sufficient resources to the design, implementation and monitoring of the programme;

- the undertaking appoints a compliance officer – possibly selected from among the heads of other business functions – who is granted adequate autonomy, independence, resources and tools, and reports directly to the highest level of management.

Identification and assessment of the undertaking's specific antitrust risk

8. An effective compliance programme must be based on a careful analysis of the risk that the undertaking may engage in anti-competitive conduct ("antitrust risk").

9. A thorough risk analysis allows the proper identification of priorities for action – by identifying the most critical areas and the most suitable prevention and/or management measures – thereby maximising the effectiveness of the resources devoted to implementation. From a risk management perspective, the undertaking should prioritise the allocation of resources to activities and areas of management most exposed to the risk of breaching competition rules.

10. For this reason, tailoring the compliance programme to the undertaking's specific antitrust risk is a key factor in assessing whether it qualifies as a mitigating circumstance. Ultimately, the effectiveness of the programme depends on its ability to prevent or manage antitrust risks in the undertaking's operations, with a view to minimising or eliminating them altogether.

To ensure that the compliance programme is tailored to the specific features of the undertaking, and reflects the antitrust risk it faces, a range of factors should generally be considered, including: (i) the size of the undertaking and its position in the market; (ii) the nature of its business activities and the goods/services it offers; (iii) the competitive environment; (iv) the internal organisational structure and decision-making processes; and (v) the regulatory/legal framework.

Training and know-how

11. To make compliance with competition rules an integral part of corporate culture and policy, the undertaking must ensure broad knowledge of antitrust issues across the organisation and clear awareness among employees of the antitrust risks linked to their own activities.

12. Accordingly, an effective compliance programme generally requires training that is proportionate to the size and business context of the undertaking, and to the antitrust risks it faces. Training should not be a one-off exercise. It should involve regular updates for staff, in line with developments in both the competitive environment and antitrust risks.

Training – particularly for staff working in divisions most exposed to the risk of anticompetitive conduct – is the main tool for building awareness of antitrust law and of the processes the undertaking has put in place to ensure compliance. This objective is typically achieved through training courses and the preparation of tailored manuals and guides, designed to meet the undertaking's specific needs as identified in its antitrust risk analysis.

Management systems for processes at risk of antitrust violations

13. Taking into account the specific features of the undertaking and the market environment in which it operates, an effective compliance programme must include management processes designed to minimise the risk of conduct that breaches competition law. Ideally, the management of high-risk processes aimed at mitigating antitrust risk should form an integral part of the undertaking's day-to-day operations.

The practical solutions set out in a compliance programme depend closely on the types of decisions/conduct that may lead to breaches of antitrust law, and on the specific organisation of the undertaking's internal functions.

A first tool generally consists of internal reporting models that allow staff to promptly flag antitrust issues, seek clarification on specific matters, and, where necessary, report possible infringements – including anonymously. Where a whistleblowing system is in place, it should ensure anonymity and protect whistleblowers against retaliation.

The undertaking's antitrust compliance system should also include periodic due diligence, self-assessment measures (internal audits), regular targeted reviews of specific business areas, legal advice from independent third parties, and other initiatives designed to promptly identify any conduct that may infringe competition rules.

Incentive system

14. An effective compliance programme generally includes an adequate system of disciplinary measures and incentives designed to ensure adherence to the programme itself and, ultimately, to antitrust rules.

A credible compliance programme generally provides for the application of disciplinary measures where employees breach antitrust rules.

At the same time, the undertaking may establish incentives to promote compliance with the procedures and with antitrust risk management processes set out in the programme – for example, by incorporating them into employees' performance objectives.

In this regard, it is particularly important to design incentives for the compliance officer, under a management-by-objectives approach, to ensure sufficient motivation to secure the programme's full implementation and effectiveness.

Auditing and periodic review of the programme

15. A credible compliance programme cannot be a one-off exercise; it requires ongoing commitment. Periodic monitoring and, where necessary, updates are essential to ensure that the programme continues to prevent anticompetitive conduct.

16. Reviewing the programme becomes especially important when changes in the undertaking's business activities or market environment call for a revision of the antitrust risk assessment. A revision is equally required where there are developments in antitrust case law.

Monitoring and reviewing the programme generally require systematic evaluation of the effectiveness of its various components, such as training and antitrust risk management processes. In particular, problematic conduct detected by the programme can provide valuable insight for refining the antitrust risk analysis and improving related prevention and management processes. At the same time, the absence of detected irregularities does not remove the need for regular review, as a lack of negative findings may simply reflect the programme's inability to detect them.

III. Request for assessment of the programme with a view to recognition as a mitigating circumstance

17. As clarified in the Guidelines on Fines, the incentive-based treatment associated with the adoption of a compliance programme requires proof of the adoption of, and real and concrete commitment to, an adequate programme.

18. In particular, the Authority shall only consider programmes that are not manifestly inadequate and that were adopted before the opening of the investigation (see point 33 et seq. below).

19. The burden of proving the adequacy and actual implementation of the compliance programme lies with the undertaking under investigation, which must present detailed arguments demonstrating the programme's adequacy and effectiveness.

20. An undertaking involved in proceedings that seeks to benefit from a mitigating circumstance for its compliance programme must submit a specific request to the Authority, accompanied by an explanatory report setting out: (i) the reasons why the programme should be considered adequate for preventing antitrust infringements; and (ii) the concrete initiatives adopted by the undertaking to ensure its effective implementation/application.

21. The explanatory report must be accompanied by supporting documentation, which includes not only the materials used to design the programme (such as internal guidelines or operational manuals) but also evidence of a real and concrete commitment to its observance.

22. Recognition as a mitigating circumstance is limited to compliance programmes in place before the opening of the investigation, and to any amendments adopted, implemented and submitted by the parties to the proceedings within six months of notification of its opening. Later submissions would not enable the Authority to verify a concrete and well-established commitment by the party to adopt a corporate policy aimed at internalising, promoting and complying with competition rules.

Programme's adequacy in preventing antitrust infringements

23. The undertaking must explain why the programme is effective in reducing its antitrust risk, and how it is tailored to the undertaking's specific features and the market in which it operates.

For undertakings that participate in meetings on potentially sensitive topics – for example, trade association meetings – the undertaking concerned must demonstrate that the measures set out in its compliance programme are sufficient to protect it effectively from the risk of engaging in discussions of an anticompetitive nature.

Likewise, an undertaking that supplies goods and services to public authorities and regularly participates in tendering procedures should demonstrate that the programme has been designed and implemented so as to protect it effectively against the risk of contacts or discussions with potential competitors during the tender process. This includes both refraining from initiating such contacts and adopting appropriate precautions to avoid potentially risky interactions (for instance, in decisions on whether to form temporary joint ventures or sub-contracting agreements, or in dealings between undertakings and the contracting authority).

For an undertaking in a dominant position it is essential to demonstrate that the programme is capable of preventing possible abusive conduct, identified on the basis of a careful analysis of the antitrust risks to which the undertaking is exposed. For example, in the case of a vertically integrated dominant undertaking, particular attention should be given to supply relationships involving goods/services used by competitors as inputs for their own activities.

Full and effective implementation of the programme

24. Without prejudice to the undertaking's rights against self-incrimination and to legal privilege, the explanatory report must set out the concrete steps taken to implement the programme, together with documentation proving their actual implementation.

Relevant elements include, first and foremost, documents confirming the appointment of the compliance officers and of staff responsible for implementing the programme, vested with appropriate oversight and reporting powers, as well as materials prepared for staff training and regular refresher courses. Additional documentation the undertaking may submit could include, for example, evidence of an internal reporting and/or whistleblowing system, and disciplinary measures for employees who expose the undertaking to antitrust violations.
It is, moreover, the undertaking's responsibility to show that implementation and observance of the compliance programme are embedded in its business operations. This may be shown through appropriate documentary evidence (such as emails or other internal records) proving continuous and regular activities aimed at preventing infringements. Examples include requests for clarification on the programme's requirements, explicit reminders from senior management to comply with it, checks on its implementation status, and the adoption of incentive/corrective measures, alongside regular training and refresher courses.
The above examples are purely illustrative and not exhaustive. Other documentation may also be relevant if it shows that the adoption of the programme reflects a real, adequate and ongoing commitment to preventing unlawful conduct.

25. The explanatory report, together with the supporting documentation, must describe in detail all the activities carried out for the programme's actual implementation. It must explain why the measures applied should be regarded as effective means of implementing an adequate programme and, where relevant, describe any changes in the conduct under investigation resulting from the programme's application.

26. If the undertaking has modified its compliance programme after the opening of proceedings to make it more effective, the explanatory report and supporting documentation must clarify: (i) the features of the previous programme; (ii) the initiatives adopted to implement it; (iii) the improvements made to the programme and the reasons for introducing them; and (iv) the steps taken to implement the new programme following its adoption, and the results – even if partial – achieved. In this case, the Authority's assessment may focus in particular on the improvements made to the programme by the undertaking, and on the commitment shown in implementing the new measures to prevent anticompetitive conduct.

IV. Incentive-based treatment of compliance programmes adopted before the opening of the investigation

Effective programmes

27. The adoption of an adequate and effective compliance programme before the Authority opens an investigation represents, in principle, the situation most deserving of favourable consideration from an incentive perspective.

28. Adequate compliance programmes that have proven effective, enabling the prompt detection and termination of the infringement before notification of the opening of the investigation, are the ideal candidates for the most substantial incentive-based treatment, with a reduction of **up to 10%** of the fine to be imposed.

29. Where the leniency regime applies, a reduction of up to 10% for a pre-investigation compliance programme may only be granted where, after discovering the infringement, the undertaking or association of undertakings submits a leniency application before the Authority has carried out inspections relating to the same collusive conduct (or, in any event, before notification of the decision to open the investigation).

Manifestly inadequate programmes

30. No reduction of fines may be granted for compliance programmes in place prior to the opening of the investigation that are manifestly inadequate.

31. By way of example, indicators of a manifestly inadequate compliance programme include: (i) serious shortcomings in the content of the compliance programme; (ii) lack of evidence of its actual implementation; (iii) involvement of the undertaking's top management in the infringement.

32. A compliance programme shall also be regarded as manifestly inadequate where, in a case eligible for leniency, an undertaking or association of undertakings fails to bring the infringement to an end and to submit, as rapidly as possible, a leniency application pursuant to Article 15-*bis* of Law 287/1990 and the Notice on the non-imposition and reduction of fines.

Programmes that are not manifestly inadequate

33. Compliance programmes adopted before the opening of proceedings that have not proven fully effective – failing to ensure the timely detection and termination of the infringement before inspections by the Authority – but which are not manifestly inadequate, may benefit from a reduction of **up to 5%**. This is conditional on the undertaking adequately supplementing the compliance programme and beginning its implementation after the opening of proceedings (and within six months of notification of the opening of the investigation).

34. The undertaking shall bear the burden of demonstrating that: (i) the programme it adopted was well designed to prevent the risk of anticompetitive conduct, and that its implementation was pursued diligently and consistently throughout its duration – even if it did not, in practice, prevent the infringement or ensure its timely termination/reporting; (ii) the amendments proposed by the undertaking are suitable to address the shortcomings that prevented the original compliance programme from functioning effectively.

35. The level of the reduction for a mitigating circumstance shall be proportionate to the completeness and quality of the programme already in place at the start of the investigation, as well as to the amendments subsequently implemented by the undertaking. Due account shall be taken of the undertaking's specific features and of the market environment in which it operates.
36. While the assessment of each programme must take account of the specific circumstances of the case, it is clear that prolonged involvement in antitrust infringements while a programme is in place is typically a sign of that programme's inability to serve a preventive function against antitrust violations. The Authority shall take this factor into account when assessing the programme for the purpose of granting and/or setting the reduction for a mitigating circumstance.

V. Repeat Offenders

37. A repeat offender – as defined in point 22 of the Guidelines on Fines – may not be granted a reduction for a mitigating circumstance if it already had a compliance programme in place when involved in a later investigation, or if it has previously received a reduction of the fine in an earlier case for having adopted a compliance programme. This applies even if the programme was amended after the investigation began.

VI. Compliance programmes and commitments under Article 14-*ter*

38. An undertaking cannot invoke any presumption of adequacy or effectiveness where its compliance programme is included in commitments made binding under Article 14-*ter* of Law 287/1990. Where the same undertaking is involved in a subsequent investigation, it shall bear the burden of providing all information necessary to demonstrate the actual implementation of an adequate compliance programme in order to obtain recognition of a mitigating circumstance.

VII. Compliance programmes within corporate groups

39. In cases involving a corporate group, including the parent company, the latter's compliance programme shall only be considered adequate if it is adopted and implemented at group level. When assessing a possible mitigating circumstance, the Authority shall consider the programme adopted and implemented both by the parent company and by the subsidiaries that are party to the proceedings.
40. The adoption of a compliance programme by the parent company alone shall not be regarded as sufficient to exclude the parent company's liability for the anti-competitive conduct of its subsidiary.

VIII. Compliance programmes as an aggravating circumstance

41. The Authority shall not normally regard the existence of a compliance programme as an aggravating circumstance, save in exceptional cases. This may occur, for example, where a compliance programme has been used to facilitate or conceal an infringement, to mislead the Authority as to its existence or nature, and/or to engage in conduct intended to prevent, obstruct or otherwise delay the Authority's investigation, and there is evidence that the guidance set out in the programme was actually followed (for example, where the undertaking provides incomplete responses to requests for information or engages in obstructive conduct during inspections). Such conduct may constitute an aggravating circumstance under point 21 of the Guidelines on Fines, which mentions "*conduct intended to prevent, obstruct or otherwise delay the Authority's investigation*".

42. Furthermore, where an undertaking is a repeat offender and has previously benefited from a reduction of the antitrust fine as a result of an earlier investigation for having adopted a compliance programme, this shall be taken into account when determining the aggravating circumstance for repeat offences.

43. Finally, where proceedings for non-compliance with a cease and desist order issued by the Authority are opened against an undertaking that has benefited from a reduction of fines for having adopted a compliance programme, this element – while not amounting to an aggravating circumstance – may nevertheless be taken into account in assessing the seriousness of the infringement and the corresponding coefficient applied when setting the fine.

IX. Final and interim provisions

44. These Guidelines apply to investigation proceedings opened by the Authority pursuant to Article 14 of the Competition Act following their publication.