

Compliance Programs – Italian Competition Authority Highlights Importance of Effective Implementation and Update

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EU Competition Law

On 19 January 2017, the ***Italian Competition Authority (the Authority)*** issued a decision concerning alleged anticompetitive agreements in the home ventilotherapy and home oxygentherapy supply services sector in Italy. The decision acknowledges the importance of implementing and updating effective compliance programs, in order to be able to benefit from a mitigation of the fine.

In setting up the fines, the Authority noted that three of the companies involved in the alleged infringements had updated their compliance programs during 2016, before receiving the Authority's statement of objections, in order to improve their efficiency. Furthermore, the companies effectively implemented the compliance programs by carrying out training sessions involving all employees, executives and senior managers, in order to raise awareness of applicable competition laws. Therefore, the Authority granted these companies a 5% reduction of the fine. The Authority rejected instead the requests made by other companies to benefit of the same reduction of the fine, noting that in order to be considered as a mitigating factor, a compliance program shall not be only formally implemented, but it needs to be constantly updated and effectively implemented through specific training sessions.

According to the guidelines on the method for setting fines in antitrust cases issued by the Authority on 31 October 2014, the implementation of a compliance program shall be considered as a mitigating circumstance if the companies demonstrate that they actually and effectively committed to comply with such program by means of the following:

- Full engagement and participation by management;
- Identification of the person responsible for the compliance program;
- Risk assessment and evaluation on the basis of the specific industry and market sector;
- Adequate training programs in light of the size of the company concerned;
- Provision of incentives and disincentives for those who do not comply with the program;
- Monitoring and audit systems.

On 7 October 2015, the Authority started an investigation against several companies operating in the home ventilotherapy and home oxygentherapy supply services sector for alleged breach of Article 101 of the Treaty on the Functioning of the European Union. According to the Authority, a number of public tender procedures would have showed irregularities consisting either in the absence of participants or the participants offering exactly the same bid. The companies would have implemented three single agreements aimed at fixing high prices and allocating clients on the market. Therefore, the Authority issued a decision imposing fines approximately of €47 million to the companies involved in the alleged infringements.

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