

IS YOUR ANTITRUST COMPLIANCE PROGRAM ROBUST AND EFFECTIVE?

At the ABA's annual International Cartel Workshop, Antitrust Division Deputy Assistant Attorney General Richard Powers reinforced the department's new policy on evaluating and crediting effective compliance programs when considering prosecutions. While discussing the [Leniency Program](#) (which provides complete immunity for the company first to report) as the division's most important tool in fighting domestic and international cartels, he emphasized that the policy on compliance programs will play an important role as well. His remarks drew the connection between leniency to those who report first and an effective compliance program, indicating that a company with a robust, effective compliance program will be considered eligible for a deferred prosecution (DPA) that may avoid a felony conviction and reduce fines.

A strong compliance program, as he suggested, is not only a means of preventing crimes, but it can also be a tool for discovering crimes and reporting them to the government in time to get credit for the disclosure. Simple tools like employee hotlines, periodic reviews of activities, and system monitoring allow company executives, in-house counsel, and compliance to learn of potential criminal activity and put a stop to or report it if it has already gone too far.

But how do you know (and how do you prove to the government) that you have a robust, effective compliance program? When a compliance program is first established, it no doubt includes many standard policies and procedures. It may also seem to work as potential issues are identified early and effective responses are implemented. But over time, even with a good chief compliance officer, policies and procedures can become outdated, and compliance can become compromised by complacency. New issues may arise that require new program elements.

A credible independent assessment of a company's compliance program by an independent outside consultant can go a long way to giving comfort to senior leadership, the general counsel, and the chief compliance officer that the program addresses current issues and allows for an effective response. Such reviews test the strength of the program, identify weaknesses, and result in recommendations for improvement. Those recommendations keep the program current and make it a valuable tool in keeping the company compliant with ever-changing laws.

An independent review should be completely segregated from other issues to show the company's good faith. Such reviews need not be expensive or unpredictably extensive. Once the review is scoped out to achieve the company's goals, it can often be performed for a fixed fee.

Finally, an independent review of the compliance program should give the chief compliance officer and others reassurance that the company has put its best foot forward and that the company is committed to maintaining a robust, effective compliance program. This will become critically important if you are within the sights of an investigation of the Department of Justice. That demonstration of commitment should lead to the consideration of a DPA, reduced fines, and other improved settlement terms.

Companies should consider an independent assessment to ensure their antitrust compliance programs remain robust and effective.



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David H. Katz has more than 25 years of experience investigating and prosecuting complex frauds and examining and assessing compliance programs. He is an important member of the firm's high profile monitorship practice. He previously has held senior positions with the U.S. Senate's Permanent Subcommittee on Investigations, the Internal Revenue Service, and the NASD (now FINRA). Mr. Katz began his career at the U.S. Department of Justice as a trial attorney for the Fraud Section of its Criminal Division in Washington, DC, investigating and prosecuting high profile white-collar cases.



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Keith Ausbrook is a key member of Guidepost Solution's high-profile monitoring and compliance practice. He has led teams reviewing compliance programs in financial institutions around the world. Mr. Ausbrook was also a member of the monitor team reviewing the safety programs at General Motors under a deferred prosecution agreement with the U.S. Department of Justice. Mr. Ausbrook is a distinguished lawyer with an accomplished record of managing complex crises. He has held numerous senior executive and legislative branch positions where he oversaw homeland and national security policy development and implementation, including serving as the chief lawyer on the House Committee investigating Hurricane Katrina and as Executive Secretary of the Homeland Security Council at the White House.