



Stockholms
universitet

Corporate Compliance Programs as a Remedy in EU Competition Law Enforcement (?)

Katharina Voss

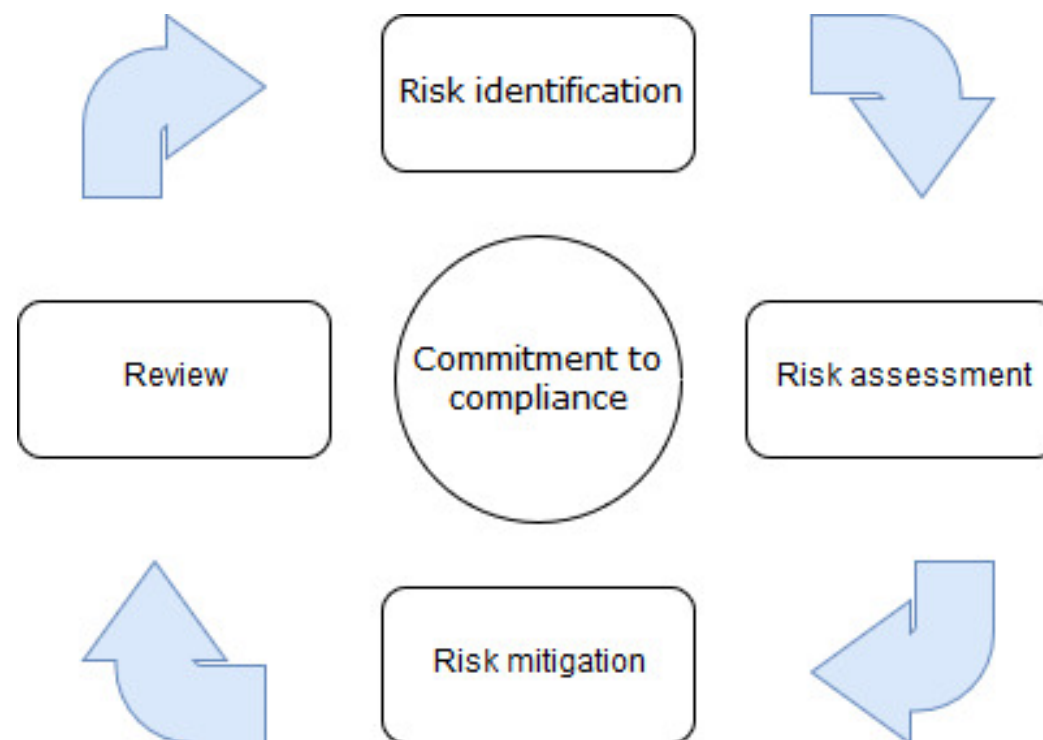
PhD Candidate at Stockholm University

Katharina-voss@juridicum.su.se

The broader context

- Flaws in deterrence theory
- Fines may be too low
- Effectiveness of competition law enforcement
- Enforcement vs Regulation
- Compliance approach

Corporate Compliance Programs



Source: Office of Fair Trading, How your business can comply with competition law, (OFT 1341, 2011) adopted by CMA Board

CCPs and competition authorities

- Neutral position
- Mitigation of fines
- Remedies

Remedies under Article 7 of Regulation 1/2003

“In particular, there cannot be held to be any justification for such a restriction on freedom of contract where several remedies exist for bringing an infringement to an end. [...] Consequently, the Commission undoubtedly has the power to find that an infringement exists and to order the parties concerned to bring it to an end, but it is not for the Commission to impose upon the parties its own choice from among all the various potential courses of action which are in conformity with the Treaty.”

Case T-24/90 *Automec Srl v Commission of the European Communities*, para 52.

“As the Court of First Instance rightly found, the imposition of that obligation with the possibility of making authorization of publication dependent on certain conditions, including payment of royalties was the only way of bringing the infringement to an end.”

Joined cases C-241/91 P and C-242/91 *Magill*, para 91.

Negotiated Article 7 decisions (ARA)

“ARA acknowledged the infringement as set out in this Decision as well as the need for a structural remedy, which it accordingly proposed. The proposed structural remedy further ensures that the legal gap as to the legal obligation to grant shared use is removed. The acknowledgment and the accompanying waiver also allowed for administrative efficiencies.”

ARA Foreclosure (Case AT.39759), para 162.

Remedies under Article 9 of Regulation 1/2003

“Undertakings which offer commitments on the basis of Article 9 of Regulation No 1/2003 consciously accept that the concessions they make may go beyond what the Commission could itself impose on them in a decision adopted under Article 7 of the regulation after a thorough examination. On the other hand, the closure of the infringement proceedings brought against those undertakings allows them to avoid a finding of an infringement of competition law and a possible fine.”

Case C-441/07 P *Alrosa*, para 48.

Examples from NCAs

- CMA (UK)
 - Hasbro (OFT-2003)
 - Care Home medicine (OFT-2014)
 - Bathroom fittings
 - Real-estate agents
 - Private ophthalmology
 - Light fittings
- Autorité de la concurrence (France)
 - Poultry
 - Cat- and Dogfood

Conclusions

- Use of CCPs as remedies possible both under negotiated Article 7 decision and Article 9 decision
- Remaining questions:
 - Agreement of terms
 - Follow-up of compliance
 - Legitimacy of procedure