

The second Trump administration has surprised many by appointing leaders at the Federal Trade Commission and the Department of Justice (DOJ) Antitrust Division who are outspoken advocates for particularly aggressive antitrust enforcement.

The government recently put out guidance on antitrust compliance programs (ACPs), providing factors for determining whether those programs are effective. All companies should take these factors seriously – an effective ACP is a critical line of defense in an era of aggressive antitrust enforcement and can protect against monumental losses that commonly follow an antitrust violation. Even in cases where violations occur, an ACP can mitigate penalties assessed by the DOJ and minimize exposure.

## Potential Costs of Noncompliance with Antitrust Laws

**Criminal Penalties**  
(fines and jail time)



**Expensive and Lengthy Government Investigations**



**Civil Penalties, Including Potential Behavioral Restrictions**



**Private Lawsuits**  
(seeking up to 3x actual damages)



**Reputational Harm and Distraction From Business Objectives**



## DOJ's Elements of an Effective Antitrust Compliance Program

- **Comprehensive design** – ACPs must be more than “merely a paper program,” and should be designed based on “feedback from employees” on potential risk areas and updated as needed. An ACP must account for emerging technologies and cover all employee communication channels (e.g., email, text, phone and messaging apps).
- **Culture** – An effective ACP will promote a “culture that encourages ethical conduct and a commitment to compliance,” and should include support from senior leadership.
- **ACP responsibility** – Those responsible for antitrust compliance must have “sufficient qualifications, autonomy, authority and seniority,” and should be provided with “adequate resources for training, monitoring, auditing and periodic evaluation of the program.”
- **Risk assessment** – A company should be able to demonstrate that it has conducted an appropriate assessment of risk areas, with the DOJ specifically identifying human resources functions, as well as the use of technology, as areas to focus on.
- **Training** – An ACP must include an appropriate training component. The DOJ suggests particular attention should be given to employee certification of awareness of antitrust requirements, training when onboarding new employees and periodic updates. Consideration should be given to how training is delivered and who it is delivered to. Recording completion of training is also important.
- **Review and revise** – According to the DOJ, “an effective compliance program includes monitoring and auditing functions to ensure that employees follow the compliance program.” This may include screening for issues (e.g. communications with a competitor) or reviewing data related to bidding, pricing, hiring or other relevant functions.
- **Confidential reporting** – Employees should have access to mechanisms “to report potential antitrust violations anonymously and confidentially, and without fear of retaliation.” There should be a duty to report violations if they occur.
- **Discipline** – The ACP should spell out steps to be taken if a violation occurs, and the company should be able to demonstrate its response, consistent with the ACP, in any actual case of reported noncompliance.

### Hot Topics

Tariff and Trade Issues

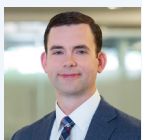
AI and Algorithmic Pricing

Messaging Apps and Tools

Competitive Intelligence

Human Resources Issues

If your company does not currently have an ACP that meets DOJ expectations, our team can advise on how to create an appropriate, cost-conscious ACP that is appropriately tailored to your business.



**Michael Wise**

Partner, US Antitrust & Competition Practice Group  
Leader, Washington DC  
T +1 202 457 5239  
E michael.wise@squirepb.com



**Martin Mackowski**

Partner, Washington DC  
T +1 202 457 5287  
E martin.mackowski@squirepb.com



**Christopher Gordon**

Partner, Washington DC  
T +1 202 626 6284  
E christopher.gordon@squirepb.com