Rome, 27 June 2014

Esteemed
Autorità garante della concorrenza e del mercato
Via Verdi 6/a
00198 Rome

VIA EMAIL: consultazione.lineeguidasanzioni@agcm.it

Re: **Submission by Koninklijke Philips N.V. in the consultation on the draft fining guidelines of the Italian Competition Authority**

Koninklijke Philips N.V. ("Philips") welcomes the opportunity to submit its observations on the draft guidelines for the imposition of fines issued by the Italian Competition Authority (the "Draft Guidelines"). In these observations Philips will comment in particular on the inclusion of effective compliance programs among the attenuating circumstances identified in the Draft Guidelines.

Philips welcomes the inclusion of the "actual implementation of a compliance program" among the attenuating circumstances that are to be taken into account under the Draft Guidelines. In competition law, as in other matters, prevention is better than cure. Whereas high fines for infringements can have a strong curative effect, the actual implementation of a compliance program is the most effective means of prevention. The introduction of this attenuating circumstance will ensure that companies that have actually implemented a compliance program are treated fairly and creates an additional incentive for maintaining effective compliance programs.

Philips considers that granting a reduction of a fine to a company because it has implemented a compliance program does not amount to rewarding that company for the failure of its compliance program. On the contrary, a similar policy correctly takes into account that a company has taken all reasonable precautions to prevent an infringement and thus deserves a more lenient treatment compared to companies that have done little or nothing to offset the risks of illegal conduct.

Furthermore, the Italian Competition Authority's proposal correctly takes into account that the occurrence of an infringement does not necessarily mean that a compliance program has failed. Even the most rigorously implemented and monitored compliance program cannot prevent that certain employees may either willingly or negligently become involved in an infringement. The appropriate standard for measuring the success of a compliance program is not the absence of infringements but, rather, whether the company has taken all reasonable precautions to prevent them.

The main argument which advocates for the inclusion of the actual implementation of a compliance program as an attenuating circumstance is that this is necessary to ensure fairness in a fining policy. A company that has implemented a compliance program but is nonetheless involved in an infringement is not on the same footing as a company that has done little or nothing in terms of prevention. A company that has not taken any precautionary course of action is in essence risking an infringement and thus deserves a higher degree of liability. In contrast, a company that has set up and concretely implemented a compliance program deserves to be treated more leniently, as it has made a diligent effort to mitigate the risk of infringements. It would be manifestly unfair if this were not taken into account.

Another strong argument for including the actual implementation of a compliance program as an attenuating circumstance is that this creates an additional incentive to invest in these kind of programs. Introducing and maintaining an effective compliance program requires substantial and ongoing investments by the company concerned. The primary reason for making them is, of course, the value of prevention as such. However, the circumstance that the efforts made are also taken into account in the level of the fine creates an additional incentive to continue investing in the actual implementation of the program. This, in turn, serves the ultimate goal of preventing competition law infringements.

Philips notes that the Draft Guidelines only identify the "actual implementation" of a compliance program as an attenuating circumstance, and not the mere existence of a compliance program as such. Philips submits that this distinction is both justified and necessary. Only compliance programs that are diligently applied can be effective, deserving a more lenient treatment. Granting a reduction in the fine for a compliance program that only exists on paper would indeed result in undeserved leniency and ultimately undermine the fining policy. Companies can be expected to submit reasonable evidence of their implementation efforts if they consider qualifying for this attenuating circumstance.

Finally, Philips notes that other competition authorities of the EU Member States have preceded the Italian Competition Authority in recognizing the actual implementation of a compliance program as an attenuating circumstance. The explanatory document accompanying the Draft Guidelines mentions, by way of example, Romania and the United Kingdom, although also France should be mentioned as in specific cases it also takes into account compliance programs . It is also noteworthy that this attenuating circumstance has been accepted outside the EU in jurisdictions with relatively modern fining guidelines, such as Australia, Canada, Singapore and South Korea. Philips thus welcomes the Italian Competition Authority's choice to follow this more modern approach.

****