

TOP 10 TIPS FOR INTRODUCING AND MAINTAINING EFFECTIVE COMPETITION LAW COMPLIANCE PROGRAMS

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With the Canadian Competition Bureau having [recently re-launched its Corporate Compliance Programs bulletin](#) to emphasize the important role that such programs play in detecting, minimizing, and (potentially) reducing the penalties for anti-competitive conduct, we have prepared the following list of tips to help you get the most out of your competition compliance program.

- 1. Compliance starts at the top.** Developing a culture of compliance requires visible, tangible and enthusiastic buy-in and support from the company's top management. Both the Competition Bureau (and the US Department of Justice) emphasize that active management involvement is the "foundation" of an effective compliance program.
- 2. Put an identifiable, respected person in charge of the program.** Someone with the necessary experience and organizational clout — perhaps the General Counsel, or a Chief Compliance Officer — should have operational authority over the company's compliance program, with a direct reporting role to company management (and the authority to directly contact the board where management is unresponsive to, or actively obstructing, compliance efforts).
- 3. Distill your training message to a set of crisp, clear principles.** Competition law is among the more esoteric areas of business law. Concepts such as "conscious parallelism", "vertical foreclosure" and "interbrand versus intrabrand competition" can complicate training and obscure your key messages. Focus your training materials (and your time) on the clear red-zone areas of harm, such as price-fixing, bid-rigging, and customer/market allocation.
- 4. Aim for the largest audience, and get them when they are focused.** Try to include your antitrust training session at an event that maximizes turn-out, such as an annual sales meeting or business retreat, and one where you will get the audience's full attention (rather than, for example, in the run-up to the financial year-end).
- 5. In-person training is essential.** Employees consistently remember and retain information conveyed in live training better than online or self-study formats. An in-person session also allows you to build personal rapport

with the audience, which may facilitate self-reporting.

6. Above all else, set aside substantial time for Q&A — and use it. Some of the most productive training comes from live Q&A sessions; the audience finds it more interactive and therefore more memorable, and employees get an (often too rare) opportunity to ask questions about issues that may be troubling them. In addition to clarifying the training materials, these sessions often lead to reporting (and correction) of potentially problematic behaviour. Consider a pre-arranged question with a member of the audience to break the ice.

7. Choose training materials that resonate with your audience. At the best of times, many employees find training sessions to be generic and dull. Wherever possible, use real-life examples from the relevant, or adjacent, industries, and use actual emails and contracts (with names redacted) for demonstrations.

8. Ongoing monitoring is required. A compliance program will not be as effective post-launch without ongoing monitoring. Consider employee exit interviews (where personnel may feel freer to share their views) to help monitor conduct within the Sales and Marketing teams. Periodic discussions with Purchasing staff, who are familiar with industry pricing patterns and bid responses, may also provide valuable information in respect of potential violations. Entry interviews, for personnel hired from competitors, may be worthwhile.

9. Refresher programs are essential. No matter how successfully delivered, memories fade and the principles of your initial training program will be forgotten without follow-up training. Annual or bi-annual training sessions should be conducted, particularly with those personnel in customer-facing roles or those involved in trade association activities.

10. Document the time and effort spent in ongoing compliance training. Your ability to provide specific information about key metrics such as the number of training sessions held, the number of employees in attendance, how regularly the program has been updated to reflect changes in the law, etc., is essential to convincing the Competition Bureau (and other regulators) that your company's policy is "credible and effective", to earn you the maximum possible credit.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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