

Legal update

The carrot and stick approach: the Competition Bureau of Canada updates its corporate compliance programs bulletin and kicks off a cross-Canada conference series

November 2015 Antitrust and competition

On November 10, 2015, the Competition Bureau held the first of a Canada-wide series of conferences on its newly released corporate compliance programs [bulletin](#) at our Montréal office. The conference was attended by more than 70 corporate advisors and led by Thierry Dorval, business law partner. Speakers included our partner Eric C. Lefebvre, who focuses on competition law matters, Nadia Brault, Compliance Director at the Competition Promotion Branch, and Stéphane Hould, Deputy Commissioner, Cartels and Deceptive Marketing Practices at the Competition Bureau of Canada.¹

What is a corporate compliance program?

The Bulletin recaps the elements that should be addressed by a compliance program, insofar as they apply to the business: price fixing between competitors, bid rigging, false or misleading representations in advertising, abuse of dominance, deceptive marketing practices and corporate mergers.

According to the Bureau, the goal of a competition law compliance program is to enable businesses: (i) to comply with the various provisions of the *Competition Act* (Canada) (Act) and thereby avoid the likely penalties associated with contraventions; (ii) to detect actions at an early stage that may contravene the Act and thereby request immunity from prosecution or, in some cases, apply for lenient treatment in sentencing; and (iii) to determine the circumstances in which they may be the victim of anti-competitive conduct by other parties.

Violating the Act could result in imprisonment, fines, administrative monetary penalties, restitution or the obligation to cease and desist. In addition to potential reputational harm, companies run the risk of class actions. There are many reasons for a business to do its utmost to prevent such violations. In addition to preventing the previously mentioned negative consequences, the Bureau believes that implementing an effective compliance program can allow a business to improve its ability to recruit and retain staff, customers and suppliers who value ethical conduct.

What makes a compliance program credible and effective?

According to the Bureau, for a compliance program to be credible and effective, it needs to encompass the seven key elements below, which can be adapted to the company's risk profile and size.

- 1- **Management commitment and support:** the board of directors and managers must actively and continuously support the compliance program in order to foster a culture of compliance.

- 2- Risk-based corporate compliance assessment: before establishing a compliance program, companies need to identify the business activities and employees most likely to act in a non-compliant manner. For example, employees who have contact with competitors or oversee advertising have more opportunity to contravene the Act than people working on an assembly line. The company's compliance program should factor in higher-risk areas, provide for measures proportionate to the level of risk and be flexible so it can be adapted to any internal changes that may occur.
- 3- Compliance policies and procedures: the compliance program should establish internal controls designed to ensure compliance within the business and inform employees on how to remain in compliance with the Act.
- 4- Training and education: it is essential to tailor mandatory compliance training to the target audience so that it is clearly understood. Such training should establish the parameters of acceptable behaviour and explain the possible penalties for non-compliant behaviour. Depending on the size of the business and the needs of the employees, various training methods can be used, provided employees have sufficient opportunity to ask questions.
- 5- Monitoring, verification and reporting mechanisms: an effective compliance program should include measures to report and detect offences and potential misconduct.
- 6- Disciplinary procedures and incentives: the compliance program should set out the disciplinary actions that will be taken in the event of a contravention in order to show that the business takes the program seriously. Incentives are tools that encourage employees to comply with and promote a compliance program.
- 7- Program evaluation: it is important to regularly evaluate the compliance program to ensure that it is meeting its goal and to determine whether it needs to be updated.

Who should implement a compliance program?

All businesses in Canada, regardless of their size, can benefit from a compliance program as all of them are subject to, and therefore at risk of contravening, the Act. The program's structure should be tailored to the needs of each business and take into account the particular risks affecting the business as well as the business's size. To help SMEs develop a compliance program tailored to their needs, the Bureau has prepared fact sheets and a pamphlet entitled "Compliance Programs for Small and Medium-Sized Businesses," which are available on the Bureau's [website](#).

How can we help you?

At first glance, implementing a compliance program can seem complicated. However, in addition to the various tools available on the Bureau's website, our legal advisors can support you in this process. We have developed a variety of compliance programs for our clients, in English and French, both offline and online. We are also available to provide on-site competition-law training to our clients. Please contact a member of our team if you have any questions concerning compliance within your company.

Marilyne Rougeau

Footnote

1. The video of this conference will soon be available for viewing on our website at www.nortonrosefulbright.com.

For further information, please contact one of the following lawyers:

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