

In the Picture



# Compliance? Elementary, my dear Watson!

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## Imagine...

Monday morning around the coffee machine, a colleague slides a newspaper in front of you: "Have you read this? Our competitors just got hit with a huge fine by the European Commission for exchanging strategic price information, including at the annual trade fair."

Frankly, you are not surprised. You attended that trade fair and were also approached by your competitor to discuss a number of "interesting matters concerning the future of the sector", including the best way to respond to the capricious evolution in raw material prices. Fortunately, you still recalled from your compliance training that competitors are not allowed to exchange just *any* information. So the proposal immediately made you suspicious and you politely declined the offer. Apparently your competitors went ahead with the discussion, and now they have to pay the price for doing so.

Looks like that compliance training saved your company a lot of money!

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### A brief clarification.

Every company is liable for violations of competition law committed by any of its employees. Such liability is potentially huge: fines up to 10% of the company's annual turnover, damage claims filed by customers, lawyers' fees, lost management time, reputational harm, ... Moreover, the position of the employee who committed the violation, his experience or degree of legal knowledge are all irrelevant. Nor is it important whether the violation was committed during a business meeting or at a private get-together.

So a company has every interest in teaching its employees the principles of competition law, for them to have the right reflexes at the right time. After all, competitors are not colleagues. That might seem elementary, but in practice it is anything but.

Compliance is important not only "*on the job*", but also within the framework of an investigation by a competition authority. For example, in December 2019 the Dutch Competition Authority imposed a fine of almost 2 million euros on a company because its employees had left WhatsApp groups and deleted chats during a dawn raid by the authority.

### Concretely.

A well-founded compliance programme can substantially reduce the risk of violations. Moreover, in some countries (e.g. Italy and the UK) there is the added factor that, in the event that a violation is nevertheless committed, companies with a compliance programme may be entitled to a reduction of the fine.

Compliance programmes exist in all shapes and sizes, but experience has shown that for all programmes at least the following **7 rules of thumb** apply:

1. "**Tone from the top**": the support of senior management is essential for compliance.
2. **Identify** the competition risks that are specific for your company.
3. Organise interactive compliance **trainings** for employees, preferably face-to-face, focusing on the identified risks.
4. In terms of impact, compliance trainings have a limited shelf life (around 6 months), so arrange for periodic **repeat factors**.
5. Provide **concrete guidelines** for risk situations (for example, meetings of trade federations or dealer meetings). In so doing, focus on a limited number of "**dos and don'ts**".
6. Provide for a **fixed contact point**. A compliance officer or a compliance hotline make it possible to ask questions or report problems, and to intervene where necessary.



7. Continue to **monitor** the risks and the effectiveness of the compliance programme.

## Want to know more?

Consult the [guide](#) for SME's on the website of the Belgian Competition Authority or the [documentation](#) on the website of the European Commission, check out the [contrast compliance programme](#), consult the [documentation](#) of the seminar "Compliance: tips & tricks" of **contrast** seminars, or ask the **contrast** compliance team ([compliance@contrast-law.be](mailto:compliance@contrast-law.be)) for more information.