

# Antitrust: A Dangerous but Underappreciated Compliance Issue

*Society of Corporate Compliance and Ethics*

March & April 2012

## **OBJECTIVE:**

This survey was conducted to assess how organizations are managing compliance of antitrust laws. The objective, to determine what companies are and aren't doing, as well as how enforcement authorities might be able to further antitrust compliance programs.

## **METHODS USED:**

118 responses were collected primarily from compliance officers, attorneys, consultants, accountants and academics in the field of compliance in all segments of business. These responses were collected from contacts in the Society of Corporate Compliance and Ethics databases and collected via Zoomerang, an online third-party survey mechanism.

## **KEY FINDINGS:**

- Management of antitrust compliance is not as clearly defined as it might be.
  - 43% indicated it is owned by the compliance department.
  - 28% indicated it is the responsibility of the legal department.
  - The remaining answered the ownership of antitrust compliance was undefined, unknown, or believed there was no antitrust risk to manage.
- Organizations generally rely on multiple communication vehicles to educate employees on antitrust risk.
  - 92% responded that antitrust policies are included in most codes of conduct.
  - However, most companies do not require training as a condition for attending high-risk gatherings of competitors, for example, trade associations.
- Live antitrust training was used by 69% of respondents and online training was used by 67% of respondents.
- For a surprisingly large number of companies, antitrust audits are either not comprehensive or nonexistent.
  - 26% reported that their organization performs neither antitrust compliance audits nor administrative checks of their antitrust compliance program.
  - 38% reported they do not perform antitrust compliance audits other than administrative checks of their antitrust compliance program- checking training records and employee certifications.
- An overwhelming majority of survey respondents felt that government actions to better define compliance programs and provide incentives for them would be of substantial or great value.

## **CONCLUSION:**

- Placing responsibility for this specific area in legal rather than the compliance department may suggest that the approach may be somewhat soiled from other risk areas. The departments risk overlap and gaps in compliance efforts.
- The approach to auditing suggests a strong need to reexamine antitrust compliance. Given the dangers of an antitrust compliance failure, not conducting more comprehensive audits appears highly risky.
- Currently, the Department of Justice gives credit to the first corporation that confesses to an antitrust crime and no credit is given for having a program in place. This could be providing a disincentive for corporations to have strong compliance programs.

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