



**Strukton**



## Code of Conduct

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# Check straight away whether you comply

This Quick Reference for Honest Business Practice contains important practical examples. Check whether you comply with the code of conduct.



# Definitions

## **Competition law**

Competition law has three spearheads: the ban on cartels (or unfair practices), the ban on abuse of an economic power position and preventive supervision of mergers and takeovers. Whenever agreements are made which lead to the establishment of a cartel and/or abuse of an economic power position, this is known as manipulation of the market forces. Competition law prevents this.

The European competition rules are primarily enforced by the European Commission. The Commission is supported by the national competition authorities such as the Netherlands Competition Authority (NMa). The NMa also applies Dutch competition rules.

## **The ban on cartels (and unfair practices)**

The ban on cartels bans agreements that hinder, restrict or falsify competition between companies. The ban on cartels not only covers agreements laid down on paper but also spoken agreements. Even simply harmonising behaviour, without agreements actually being reached, is covered by the ban on cartels.

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## **Tenders**

Can I call the competitor to inform him that we will be responding to an invitation to tender?

- ▶ Never make agreements with competitors about whether or not to respond to an invitation to tender.
- ▶ Never make agreements with competitors about calculation payments for tenders.
- ▶ Never participate in meetings with competitors prior to a tendering process in which the tender is discussed.

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Managers and employees of Strukton must refrain from behaviour in contravention of European and national competition law. In particular, employees of Strukton may only negotiate about price and/or other conditions of an issued offer with the tenderer, client or customer in question, and only pass on information on those issues to those parties.

### **What are the measures in the event of violation of the competition rules?**

Both the European Commission and the NMa are authorised to impose fines in the event of violations of competition rules. The fines can amount to 10% of the turnover of the companies involved. This means not only their own turnover for the business unit in question but also the turnover of domestic and foreign group companies can be included in calculating the fine. This means that very high penalties can be imposed.

In addition, individuals in charge of violations of competition rules can be charged a maximum penalty of € 450,000.

### **Legality and liability**

Agreements in contravention of competition rules lead to agreements which are not legally valid and which cannot be enforced via the courts. In addition, acting in violation of competition rules leads to liability in respect of contract parties and/or third parties for the damages caused as a result. Compensation claims in civil courts for violations of competition rules are no longer unusual, over the last few years.

*Reporting of illegal price agreements between construction companies had meant that clients of construction companies have submitted many dozens of compensation claims against those companies. In addition, the NMa has imposed severe penalties on Dutch construction and installation companies.*



## 2 Dealing with competitors

Competitors should be taken to mean all companies outside the Strukton group undertaking the same activities as Strukton. Agreements with competitors as a result of which market forces are negatively influenced are banned. Providers must have equal opportunities for gaining access to the market, and acquiring work, and customers must have the possibility of choosing between multiple providers.

The ban on cartels therefore forbids agreements with competitors that restrict competition. The ban on cartels also bans any other form of harmonisation of commercial behaviour between competitors that result in a restriction of competition.

### **What are competition-restricting agreements with competitors?**

These are all agreements that lead to or result in competition being hindered, limited or falsified. Discussions with competitors about prices, discounts, margins, coverage areas, current and future activities, customers and strategy must therefore be avoided. It is permitted to carry out an order together with a competitor, on condition the work is done in full openness in respect of the customer, and Strukton would be unable to carry out the task alone.

### **How do we deal with information exchange with competitors?**

Talking about general developments on the market with players from the sector, for example at trade fairs, is a legitimate activity as such. It does however become despicable if more specific information is exchanged which in any way could influence the free operation of market forces. The limit is also reached if competitors provide each other with market information. Details such as price and other conditions may only be discussed with the client.

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### Examples of banned competition-restricting agreements

The following agreements with competitors are viewed as restricting competition and are therefore banned:

- ▶ agreements on submitted prices for tenders;
  - ▶ agreements on prices to be charged to clients;
  - ▶ agreements on not responding to specific invitations to tender;
  - ▶ agreements on discounts to be provided on the price;
  - ▶ agreements on price formulae to be employed;
  - ▶ agreements on the moment of price alterations or their level;
  - ▶ agreements on the sharing out of orders and customers;
  - ▶ agreements on jointly acting against a third competitor;
  - ▶ agreements on a joint boycott of a particular customer (for example a price cutter);
  - ▶ agreements on the geographical area of operation;
  - ▶ agreements on products to be supplied.
- .....

### How do we deal with competition-sensitive information?

The exchange of competition-sensitive information between competitors can result in the harmonisation of market behaviour. By exchanging information of this kind, you are acting in contravention of the ban on cartels. Competition-sensitive information may therefore never be shared with the competition. This also applies if the competitor could have obtained the competition-sensitive information in another way.

Sharing information that is actually available to the public, for example in annual reports, on websites and in brochures, is permitted. Also permitted is the exchange of combined historical market details (for WorkspHERE for example, Uneto figures), on the basis of which no individual market positions can be identified.

**How do we deal with appearances in sector organisations?**

Within sector organisations, competitors regularly come together. As such this need not be a problem, on condition no competition-restricting agreements are made within the sector organisation, and as long as no competition-sensitive information is exchanged. Nonetheless there is a risk. And the risk is considerable that during meetings of this kind, intentionally or unintentionally, banned agreements will be made or competition-sensitive information exchanged.

**What may we not discuss?**

Speaking with parties from the sector about specific aspects such as price and/or market method and releasing information to third parties about current or expected orders is banned. Anyone attending sector organisation meetings on behalf of Strukton must be constantly aware that these rules must be complied with. As a consequence, they must never discuss subjects that are not allowed to be discussed between competitors.

If such subjects are talked about, the representative must clearly voice his objections. If this has no effect, he or she must leave the meeting, and report the occurrence to the supervisory body.



**Prices**

- ▶ Never reach agreements with (employees of) competitors about prices, discounts or terms and conditions of delivery.
- ▶ Never discuss your prices or costs with (employees of) competitors.
- ▶ Never participate in meetings with (employees of) competitors at which discussions are held about the price for which the various parties intend to submit a tender.
- ▶ Never discuss your expectations in respect of future price developments with (employees of) competitors.
- ▶ Never impose a demand on your customer that he is not permitted to sell on the purchased product below a given minimum price.



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**The following competition-sensitive information may never be discussed with the competition:**

- ▶ information about the method of responding to invitations to tender;
  - ▶ information about current and future prices, discount tables and other terms and conditions of delivery;
  - ▶ information about own customers or possible new customers;
  - ▶ information about suppliers;
  - ▶ information about volumes of sales, market shares or production;
  - ▶ information about the planned or non-planned maintenance of power stations;
  - ▶ information about the company strategy of Strukton and its products;
  - ▶ information about the level of costs at Strukton.
- .....

## **At a trade fair also attended by Strukton, I talk with competitors about work and the market. How far can I go?**

These rules not only apply for official meetings but also discussions that take place prior to or after the meeting itself. During those discussions, too, the banned subjects must be avoided.

### **What can be discussed?**

Within the sector organisation, you are free to speak about new regulations. You may also discuss which lobby the members of the sector organisation wish to organise jointly in respect of government. There is no objection if general trends on the market are discussed within the sector organisation. However, as soon as responses by individual companies to those trends are referred to, you are on forbidden territory.

.....  
**During meetings of sector organisations, we will not participate in the following activities:**

- ▶ discussing subjects which you are also not permitted to discuss individually with (employees of) competitors;
  - ▶ discussing market information on the basis of which it is possible to identify the behaviour of individual market parties/competitors;
  - ▶ reaching agreements on prices, market sharing or contract conditions;
  - ▶ laying down rules of behaviour for example for submission of tenders;
  - ▶ issuing recommended prices, guide prices, etc.
  - ▶ agreements on collective actions in respect of certain competitors or customers;
  - ▶ exchanging competition-sensitive information.
- .....

**Dear Sir/Madam,  
I would very much like to talk to you about  
margin development within our sector.**



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 **Strukton**

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# Dealing with suppliers

## 3

Suppliers should be taken to mean those parties from whom we obtain products or services. Competition-restricting agreements with suppliers are banned.

Agreements between suppliers and customers that could restrict competition are permitted under certain circumstances. In the supplier-customer relationship, agreements of this kind (for example exclusivity contracts) are sometimes in fact considered to have such advantages that they must be permitted. Before making agreements of this kind, you should first obtain legal advice from the Legal Affairs department.

**We acquire the exclusive right to supply a particular make. Are we allowed to make this agreement?**

## 4 Dealing with customers

Customers should be taken to mean those parties to whom Strukton supplies goods or services and/or parties directly involved in that process, such as consultants, architects or project developers. We attach considerable importance to good and businesslike relationships with these parties, and make every possible effort to comply with any business agreements we make with them.

### **A customer asks me to supply material and carry out work for him privately, in the name of Strukton. Is this permitted?**

#### **How do we deal with private deliveries to customers?**

If a customer asks us if we can carry out some work for them on a private basis, there is no real objection. On the other hand, if the work we undertake for someone privately has an influence or could influence the business relationship with that person, there is a problem. For example, if Strukton only receives work from an individual or keeps a relationship with that individual, if we undertake work for them on a private basis. We must never place ourselves in a situation that could even leave the impression that we are willing to be bribed.

If material is supplied by Strukton to private individuals, or if services are provided for those individuals, the invoice for that work must be addressed to that private individual. Strukton will only supply materials or services to private individuals according to normal conditions and prices.



## 5 Gifts and invitations

Giving and receiving small gifts is an acceptable way of dealing with business relations. As such there is nothing wrong with such interactions. A problem does however arise if in return for a gift or invitation, a certain return service is expected, either implicitly or explicitly. Such expectations from the giver and other parties inside and outside the organisation may under no circumstances be awakened, in any way.

### **How do we deal with giving gifts and invitations to customers?**

Before we give gifts or invitations to customers, we must be conversant with the applicable standards for that customer. No excessive gifts/invitations should be offered to customers, nor should customers be excessively feted. The (potential) customer could in that way lose his independent position. In addition, we operate the principle that for gifts and invitations we give the same standards apply as for gifts and invitations we are permitted to receive. In this way, we avoid embarrassing our business relations with our gifts and invitations.

### **Someone offers me a gift. How should I deal with it?**

Inviting customers to participate in group events – for example a day's sailing or golfing – is permitted, if this is viewed as normal for the specific target group. The same applies for invitations for example to attend a football match or theatre performance.

Invitations to an event outside the Netherlands are only permitted following express permission from the managing director, in advance.

Fraudulent and manipulative actions will not be accepted. Gifts or invitations with a value in excess of € 50 must be reported to the manager. Accepting cash sums or their equivalent (for example cheques or vouchers) is not permitted.

### **How do we deal with receiving gifts and invitations from customers or suppliers?**

We critically check the moment at which the item is given to us (just before or long after negotiations), the value of what is being offered, and the possible intentions of the giver.

Gifts and/or invitations from suppliers are not accepted unless they have the character of a 'pleasantry', and do not oblige us to offer a performance in return (or create that impression).

## **Negotiations are almost completed. We wish to offer our future customer a business gift at this stage. Is this permitted?**

Banned practices are for example: a gift or invitation with a value in excess of € 50 received from a business relation with whom we are currently negotiating; a gift or invitation received at our home address or a gift or invitation received, which we are instructed not to discuss at work. Asking for a gift or receiving a cash sum are entirely banned practices. A normal/relevant lunch or business dinner with a business relation is permitted (both given or received) in order to discuss the progress or successful completion of a project.

Agreements with (potential) customers whereby reference is made to bribery in money or goods/ services are forbidden. Also not tolerated are agreements reached for personal gain, for example private discounts. Administrative actions must be completed truthfully and reflect the underlying facts.



# Written statements

# 6

Competition authorities are authorised to demand inspection of correspondence issued by or received by Strukton, and other documents such as diaries, minutes, etc.

During unannounced company visits, they can also go in search of these documents, themselves. In that process, electronic files (e-mail, faxes and drafts of documents) can be copied. Even those files which are not or no longer accessible to the computer user him or herself can be made accessible to the authorities.

Every employee of Strukton must therefore be fully aware that written statements issued by him or her can at any moment fall into the hands of the authorities. It goes without saying that no such documents must contain evidence of forbidden behaviour.

However, even where there is no forbidden behaviour, careless written or electronic statements could awaken a suspicion of forbidden behaviour for a reader who is not aware of all the background information. This too must be avoided. With this in mind, every employee of Strukton must in all correspondence refrain from statements which could generate the impression that Strukton is acting in contravention of the rules.

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**Rules for written communication**

- ▶ issue no statements which could generate the impression that what has been written is forbidden. Adding a comment, for example, that a document must be destroyed immediately following reading will generally not have the desired effect and will lead to questions;
- ▶ do not ask in a document whether an activity is legal or illegal;
- ▶ never write anything that could leave the impression that the prices of Strukton are based on anything other than commercial considerations;
- ▶ always clarify the source of the price and market information you have used, so that it is clear that the information was obtained legally.

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# 7 Administration and invoice processing

It goes without saying that sound administration is an absolute precondition for a healthy business. Guidelines for administrative activities are the procedures laid down within Strukton. The standard is that administrative actions must be complete, correct and transparent.

Transactions with business relations must be laid down in writing in the administration, according to duly applicable procedures. Invoices must be drawn up according to statutory rules and business practice. Cash payments or a payment that can be cashed may under no circumstances be accepted, unless payment is made in accordance with generally accepted auditing procedures.

Integrity could be threatened if for example a customer or supplier issues a request for a change to the invoice. Changes are only permitted if based on the actual, factual situation.

**The following are expressly forbidden:**

- ▶ drawing up or charging a false invoice;
- ▶ drawing up a 'fictitious invoice' or drawing up a second invoice with a higher total amount than the original invoice;
- ▶ reaching agreements with suppliers aimed at charging a customer for whom work is carried out on the basis of open calculation, a higher amount than according to the agreements made with the customer, for example by using multiple quotations.

No initiatives will be made to take such actions, and requests to take such actions will be consistently refused.

**A client issues a request to alter an invoice. How do we deal with this request?**



# Compliance and supervision

# 8

This code of conduct applies for anyone who, on the basis of a contract of employment or via a secondment agency or temporary employment agency, as a trainee or volunteer, is undertaking work on behalf of Strukton.

This code of conduct is part of the individual employment agreement. Wherever necessary, employees, temporary employees and insourced workers will be requested to sign this code of conduct for receipt, acceptance and compliance. This will specifically apply for all commercial positions. Acting in contravention of the rules in this code of conduct can result in disciplinary measures or even dismissal.

In those cases where acting in contravention of the code of conduct is suspected, assumed or determined, this must be immediately be reported to the supervisor.

Responsibility for compliance with this code of conduct in principle lies with each individual employee. Despite the efforts to provide clear formulations in this quick reference, within the dynamic situation of day-to-day business practice, situations will undoubtedly arise whereby the rules described here do not immediately provide a suitable answer, or whereby they leave room for interpretation.

Every situation is unique and must be evaluated as such. In the case of any doubt, the situation should be described to the superior, who in turn can contact the next management level, the supervisor or the Legal Affairs department.

The interpretation of the relevant statutory rules in specific situations is reserved exclusively for the Legal Affairs department.

# 9 The rules of the code of conduct in brief

## 1 **Applicability**

The management shall issue the code of conduct to all employees. The code of conduct shall apply for the management and all employees of Strukton.

## 2 **Supervisor**

The chairman of the Group management acts directly and personally as supervisor. In that process, he receives advice and support from the Legal Affairs department.

## 3 **Honest action**

The management and the employees are required to act according to the rules laid down in this code of conduct. This means that they shall behave carefully, honestly and with social responsibility.

## 4 **Presents/gifts**

Business gifts shall be exchanged in order to underline a good relationship, but may not be viewed as being in return for a specific service, nor may they affect the independence or freedom of the recipient.

For this reason, you are not permitted to offer or to accept cheques, money, vouchers, etc. Business gifts must remain within reasonable limits: whether given or received.

If the management or an employee is placed in a difficult situation by a business gift, this must be reported to the supervisor, who will then determine what action should be taken. Gifts with a value of more than € 50 must always be reported. Invitations to non-business activities may only be accepted following permission from the management.

## 5 Illegal action

The management and the employees must refrain from:

- ▶ behaviour in contravention of the European and Dutch competition laws;
- ▶ behaviour which (on the basis of European tender directives) could result in exclusion from participation in an invitation to tender [\*];
- ▶ other illegal actions in interaction with clients and competitors.

## 6 Recording of information

All transactions entered into by the management and the employees on behalf of Strukton shall be correctly recorded in the administration according to the applicable procedures and internal rules.

## 7 Additional activities

Only with prior written permission from the management may employees undertake paid or unpaid additional activities, the implementation of which could be in conflict with the interests of Strukton.

*[\*] Anyone may be excluded from participating in a tendering process, who:*

- ▶ has been convicted in a final and conclusive judgement, for a criminal act that threatens the professional integrity of the contractor;*
- ▶ in the exercising of his profession, has made a serious error, determined on any basis the tendering organisation may make plausible;*
- ▶ has not complied with his obligations in respect of the payment of social security contributions in accordance with legal stipulations of the country where he is based or those of the country of the tendering organisation;*
- ▶ has not complied with his obligations in respect of payment of his taxation in accordance with the legal stipulations of the country where he is based or the country of the tendering organisation;*
- ▶ has been seriously guilty of issuing false statements in the provision of information, which may be demanded in accordance with the law or tender rules.*

## **8 Confidentiality**

Employees are required to maintain strict confidentiality in respect of third parties in relation to all confidential business matters, in as much as not in contravention of the legal disclosure requirements. The confidentiality obligation shall also remain in force following termination of the contract of employment. The management may grant an exemption from the confidentiality obligation, in writing.

## **9 Reporting of violations**

If an employee is aware of a violation of the code of conduct by other employees of Strukton, he must report this fact to the supervisor. Soliciting of violation must also be reported. Any report shall be dealt with in confidentiality, and the privacy of the reporting individual will be guaranteed.

## **10 Sanctions**

The code of conduct is not non-binding. In the event of violation of this code of conduct, the management will impose sanctions which, depending on the seriousness of the incident, may range from reprimand, suspension, penalty or dismissal, to dismissal with immediate effect.

## **11 Compliance programme**

In the form of a compliance programme, the management and employees will be made fully conversant with the operation of the code of conduct and compliance with regulations laid down in the code of conduct. Participation in the compliance programme is compulsory for both management and all employees.

## **12 Unforeseen circumstances**

If a specific form of behaviour is not described in this code, but may be in violation of the spirit of the code of conduct, this shall be submitted to the supervisor for evaluation, and the supervisor shall decide on the applicability of the code. If necessary, the management will be advised on the necessity to impose sanctions.



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