



Antitrust and Competition Law

HANDBOOK

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II. WHAT ARE ANTITRUST LAWS?

Antitrust laws seek to establish a competitive marketplace and protect consumers from abusive practices. Broadly stated, the following practices are banned under the antitrust laws:

- **Cartels.** These are agreements among competitors to fix prices, restrict output, allocate markets, rig bids and so on. All cartels are illegal, whether the agreement is written or oral, expressly made or implied. Cartels are the most serious form of antitrust violation. Participation in a cartel can lead to severe penalties, including imprisonment of the persons involved.
- **Anticompetitive agreements with competitors.** Other than cartels, collaboration among competitors violates the antitrust laws when it has a harmful effect on competition. These dealings can include:
 - agreements;
 - meetings;
 - communications; and
 - memberships in industry associations.
- **Anticompetitive dealings with customers or suppliers.** Restrictions on the resale of a company's products, such as resale price agreements, exclusive territories and customer restrictions, can be illegal if they impair competition. Antitrust risks can also arise in other aspects of a company's relationships with customers and suppliers, including:
 - sales that require the customer to purchase two or more separate products;
 - discrimination in the prices charged to different customers or in merchandising support; and
 - cooperative purchasing arrangements.
- **Monopolization.** If a company has a high market share, or if it has a reasonable prospect of obtaining a high market share, it can violate the antitrust laws by conduct that limits the ability of other companies to compete. A company does not violate the antitrust laws, even if it has a very high market share, if its conduct consists only of competition on the basis of lower prices, better products or better service.
- **Anticompetitive corporate transactions.** Some corporate transactions may violate the antitrust laws if they impair competition. These transactions include:
 - a merger;
 - an acquisition of the voting shares or the assets of other companies; and
 - the formation of a joint venture.

Certain of these transactions must be reported to antitrust authorities before they are completed.

Antitrust laws vary from country to country, but nearly every country has enacted some form of antitrust law, with very large sanctions for noncompliance. Other than participation in a cartel, the practices described above may often be implemented in a manner that complies with the law. In light of the potential risks, however, it is critical that any of the arrangements or issues described above be reviewed with the Legal Department.

III. CARTELS

A cartel violation has serious consequences. It is generally a criminal offense, exposing the company to very large fines and the individual employees participating in the cartel to both fines and imprisonment. In addition, the Company can face claims for damages of enormous amounts. Even if the Company and its employees were to succeed in defending against cartel charges, they would incur considerable legal costs and would suffer a serious disruption of business.

Therefore, all employees of the Company must take care to avoid any conduct that might be characterized as cartel behavior.

Forbidden Agreements

Never agree with any competitor on the following subjects:

- Prices that either company will announce or charge their customers.
- The timing or method of price increases.
- Terms of sale or delivery that either company will offer customers.
- Markets in which either company will sell.
- Categories of customers.
- Bids to any customers.
- Sales volumes.

Remember that a cartel violation does not require a formal or written agreement. An informal conversation or implied understanding violates the antitrust laws if the effect is an agreement on an illegal subject.

Meetings and Discussions with Competitors

Any meeting or discussion with a competitor carries the risk that it will be construed later as evidence of an illegal cartel agreement. Therefore, employees should avoid meetings and discussions with employees or representatives of a competitor unless a legitimate purpose, unrelated to competition between the companies, is involved. In the event of any uncertainty over whether a legitimate purpose is involved, the Legal Department should be consulted.

For any meeting or discussion with a competitor that does proceed, the following steps should be taken:

- Document in advance that both sides understand the business purpose of the discussion. For example, agree on an agenda or exchange emails identifying the topic of discussion.
- Restrict the discussion to the identified purpose.
- Make a record of the meeting or discussion, noting the following:
 - date;
 - time;
 - place;
 - duration;
 - the persons participating;
 - all matters discussed; and
 - all agreed follow-up actions.

Never discuss any of the following subjects with any competitor:

- Prices.
- Timing of price changes.
- Magnitude of price changes.
- Costs.
- Profit margins.
- Sales forecasts.
- Sales plans.
- Sales territories.
- Distribution practices.
- Terms offered to particular customers.
- Competitive bidding plans or strategy.
- Pricing and marketing strategies.
- Market shares.

Sources of Competitive Information

To compete effectively, we must gather information about our competitors' pricing and their actions in the marketplace. We may not obtain this information directly from competitors, because the exchange of sensitive information can imply an agreement. Rather, we may gather competitive information only from legitimate sources, such as:

- The business press.
- The Internet.
- Customers.
- Consultants.

When customers or consultants are the source of competitive information, avoid circumstances that could suggest the use of an intermediary to communicate with competitors. In particular, do not consent to any customer or consultant sharing the Company's sensitive information with any competitor.

Employees must avoid using competitive information received from an unknown source. This includes documents that arrive in unmarked envelopes and information conveyed by intermediaries who do not disclose their sources.

Loose Language

If the Company becomes involved in an investigation or litigation over cartel issues, our internal documents will be examined carefully for evidence of an illegal agreement. Therefore, we must avoid using careless language in e-mails, memoranda, notes and public statements that might suggest an illegal agreement to a suspicious lawyer or investigator. The following are some examples of careless word choices that should be avoided:

"The industry is implementing a price increase." This suggests that firms are acting collectively.

"The industry lacks discipline." When said to, or in the presence of, a competitor, this suggests an invitation to raise prices or avoid discounting.

Reports

Any employee who observes or hears of anyone acting in a manner inconsistent with these instructions, or who has any reason to suspect that someone acting on behalf of the Company is engaged in cartel behavior, must report the conduct through the reporting channels described at the end of this manual.

In addition, employees must report any conduct by representatives of competitors which suggests pricing coordination or other cartel behavior. This conduct includes a competitor's employee:

- Trying to discuss forbidden subjects.
- Requesting that the Company refrain from competing for particular customers.

Any employee reporting suspicious conduct through the reporting channels will be protected from all forms of retaliation.

IV. RELATIONSHIPS WITH COMPETITORS

In addition to avoiding cartels, we must ensure that our business dealings with any competitor comply with applicable antitrust laws.

Joint Ventures and Collaboration Among Competitors

On occasion, the company may collaborate with one or more competitors to share certain functions, for example passive infrastructure. The collaboration may take the form of a joint venture, or it may proceed on an informal basis.

If these collaborations are designed and managed carefully, they will not violate the antitrust laws. However, the task of conforming these joint ventures to the antitrust laws may be very complex. If it is not done correctly, the company may be exposed to serious and unnecessary risks, including potential liability for a cartel agreement. Therefore, the Legal Department must be consulted before the initiation of any form of collaboration with an actual or potential competitor, and any conditions established for that collaboration must be followed.

Boycotts

Although the Company is free in general to decide not to do business with a supplier, customer or competitor, these decisions carry antitrust risks when they are made jointly by two or more companies. Employees should avoid the following types of agreements, which may be viewed as illegal boycotts:

- An agreement among competitors not to do business with particular suppliers or customers.
- An agreement among certain competitors not to collaborate or do business with other competitors.
- An agreement to the request of two or more customers, or two or more suppliers, not to do business with competitors of the companies making the request.

A boycott can be based on an absolute refusal to do business with the targeted companies, or on a willingness to do business with them only on certain conditions. Some agreements of this type can be legal, but employees should not enter or discuss any of these agreements without first consulting the Legal Department.

Trade Associations

The Company participates in various trade associations in which our competitors also participate. These trade associations serve a variety of important objectives, including:

- Coordinating efforts among the members on lobbying governmental agencies.
- Protecting the health and safety of our customers and employees.
- Protecting customers from fraudulent and deceptive practices.
- Setting product standards that facilitate competition.

Antitrust laws generally permit competitors to meet and discuss these topics under the sponsorship of trade associations, provided that the discussions do not result in agreements that impair competition. Trade association meetings must not be used or perceived as an opportunity to form or maintain a cartel.

To avoid unnecessary antitrust risks, all employees planning to attend trade association meetings where representatives of competitors will be present must follow the following rules:

- Review the agenda in advance. Confirm that the discussion will be related to the legitimate missions of the association and will not include discussion of any topic that you should not discuss in the presence of competitors. If these points cannot be confirmed, do not attend the meeting.
- Legal counsel retained for antitrust compliance should be present at all meetings.
- At the meeting, insist that the discussion strictly conform to the agenda.
- In the event that discussion arises over any sensitive topic, insist that it end immediately. If the discussion continues, leave the meeting and ask that the minutes reflect your departure.
- Review the minutes of the meeting for accuracy and completeness.

- If the association proposes any course of action that involves collaboration among competitors, review the proposed action with the Legal Department before participating or expressing approval.

Industry Surveys

The Company may be asked to participate in a survey that collects and publishes information about pricing, sales volumes and other sensitive information. If these surveys are undertaken without following certain precautions, they can result in antitrust liability for the participating companies. Therefore, no employee should contribute or subscribe to an industry survey without first discussing the survey with the Legal Department.

V. RELATIONSHIPS WITH CUSTOMERS AND SUPPLIERS

We must deal with customers and suppliers fairly and in a manner that best advances the competitiveness of the company's products and services. The practices listed below may be prohibited or limited by antitrust laws in some countries. Accordingly, it is imperative that the Legal Department has reviewed and addressed any potential risks relating to any of these practices before it is implemented.

- Agreements with wholesalers or retailers permitting the resale of the Company's products only at a specified price or above a minimum price.
- An agreement that gives a dealer exclusive rights to a particular territory or category of customers, and restricts other dealers from infringing those exclusive rights.

Tying and Reciprocal Buying

A tying arrangement occurs when a seller agrees to sell one product only on the condition that the customer purchases a second product. Tying arrangements can constitute antitrust violations in certain circumstances. These circumstances include:

Two products. Tying is generally illegal only when it involves two separate products. Tying separate components of a single product, such as tires on an automobile or laces on shoes, is legal.

Conditional sale. For a tying arrangement to be illegal, the buyer must be forced to purchase the second product. No tying will be found if the buyer has the practical ability to purchase the desired product alone, even if a higher price is charged, or if the buyer prefers to purchase a package of two or more products. In other words, bundling several products together that can be purchased separately is not a tying arrangement.

The Legal Department should be consulted about any tying or reciprocal buying transaction where these circumstances are present, or where a customer might argue that they are present. The transaction may well be legal, but in light of the potential risks a legal review is essential.

Meetings with Dealers

Remember that many of the Company's dealers are competitors of one another. The Company may face antitrust liability if it is found to have helped a cartel or anticompetitive agreement among the dealers. To avoid this risk, employees must avoid participating in any meeting or discussion among two or more dealers that involves any of the following topics:

- The prices or pricing practices of any dealer.
- The territory or location of any dealer.
- The termination of any dealer.
- The identity or number of newly appointed dealers.

These topics should be discussed only in individual meetings, and the conversation should be limited to matters relating to the particular dealer.

Cooperative Purchasing

The participation of competitors in a cooperative buying arrangement can be legal, particularly when it achieves efficiencies. However, these arrangements can carry significant risks of antitrust liability, particularly if a court determines that the arrangement serves to facilitate a cartel among the participants. All cooperative buying arrangements must be reviewed with the Legal Department.

VI. PRICE DISCRIMINATION

In many countries, the sale of similar products to similar purchasers at different prices may violate antitrust laws. For example, charging different prices so as to favor one wholesaler operating in the same market over another may involve antitrust risks.

There may be a number of valid reasons for charging different prices to different purchasers, such as volumes purchased or geographic areas. The Legal Department should periodically review pricing strategies in order to ensure there is no antitrust risk created by the company's practices.

It is worth noting that supporting wholesalers or retailers in advertising, promoting or reselling the company's products (for example, by granting allowances or performing or subsidizing services) may be treated in the same manner as pricing in many countries for antitrust purposes.

VII. MONOPOLIZATION

In any line of business where the company has a high market share, we must ensure that we comply with the provisions of the antitrust laws that prohibit monopolization and attempted monopolization.

Monopoly Power

Monopolization laws apply when a company possesses monopoly power or holds such a strong position in a market that its conduct presents a dangerous probability of success in achieving monopoly power. The presence of monopoly power is a complex issue. For the purpose of compliance, employees should consult with the Legal Department when monopolization issues arise in markets where the Company might be found to hold a market share of 50% or more.

Unlawful Acquisition or Maintenance of Monopoly Power

Antitrust laws do not generally prohibit the mere possession of monopoly power. A violation occurs when the Company acts to obtain, preserve or enhance its monopoly power by some method other than legitimate competition. Legitimate competition includes selling better products, charging lower prices or delivering better service. Practices that can be found illegal include the following:

- Selling products below the cost of production (known as predatory pricing).
- Offering a bundled discount on a package of two or more products, where the seller has a monopoly position on one of the products and a competitor on the non-monopoly product cannot match the bundled price.
- Refusing to deal with a competitor, or with a customer or supplier of a competitor, where the deal would be profitable and no reason exists for the refusal other than to exclude competition.
- Demanding exclusivity from suppliers or customers so that competitors are blocked from essential inputs or channels of distribution.

None of these practices are illegal in all circumstances. However, all of them carry antitrust risks. Employees must consult the Legal Department before undertaking any activity that might be characterized as one of these practices.

VIII. CORPORATE TRANSACTIONS

Acquisitions of assets or equity from another company can violate the antitrust laws if the effect of the acquisition could impair competition. Parties to transactions that meet certain financial thresholds, regardless of the deal's effect on competition, must give prior notice to antitrust authorities and delay closing their transactions for specified periods.

To ensure the Company's compliance with this notice requirement, employees must consult the Legal Department before reaching an agreement on a transaction that would result in the acquisition of another company's equity or a significant quantity of its assets. What is considered "significant" will vary from country to country; please consult the Legal Department in case of any doubt.

The parties to a corporate transaction must also avoid "gun jumping" (that is, taking substantial steps to coordinate or integrate their activities before the required waiting period has expired). Standard contractual provisions that require a target to preserve its assets and operations until closing usually raise no issues. However, when the acquiring party exercises significant influence over the management of the target, or where the parties coordinate their business activities, the antitrust agencies may conclude that the parties are enjoying the benefits of their transaction prematurely and seek to impose fines or block the transaction.

IX. RESPONSIBILITY

To fulfill the Company's commitment to comply with antitrust law, all of us have an obligation to report any of the following:

- A violation of the law.
- Conduct that might be a violation of the law.
- Questionable conduct that might indicate a violation.

A report may be made to any of the following:

- An employee's supervisor, unless the employee suspects that the supervisor has participated in or condoned the violation.
- A member of the Legal Department.
- The Millicom Ethics Line.

Reporting to the Millicom Ethics Line

The Millicom Ethics Line is a 24-hour service that any employee can contact to report any violation or potential violation of the law. Employees can also use the Millicom Ethics Line to seek any guidance on legal and ethical compliance. You may also contact the Millicom Ethics Line directly at www.millicom.ethicspoint.com and submit a report through the Internet or by calling any of the local phone numbers provided therein. The company will not allow retaliations of any kind against parties who in good faith report any suspected unethical or illegal misconduct.