

Antitrust & Competition

Competing vigorously and lawfully

Competition-law compliance: prohibited agreements with competitors, pricing and bidding decisions, dangerous discussion topics, and when to consult legal counsel

WHY IT MATTERS

Why Competition Law Matters

The riskiest conversations rarely look risky at the time

Grave risk

Noncompliance threatens the organization, its employees, and its shareholders alike

Criminal exposure

Violations can bring civil actions, criminal prosecution, and even imprisonment

Broad reach

Laws apply where an agreement's economic impact is felt, not where it is made

Informal counts

Agreements may be oral, informal, or inferred from a course of conduct

WHY IT MATTERS Vigorous competition gives consumers the best, most innovative products and services at the lowest prices

Agreements That Break the Law

The most common illegal activities between competitors

01

Price fixing

Agreements raising, fixing, or stabilizing prices or margins

02

Output restriction

Agreements reducing output or production levels

03

Market allocation

Agreements not to compete for certain customers, accounts, or territories

04

Bid rigging

Agreements about a bid—or an agreement not to compete for one

05

Group boycotts

Agreements about which customers or suppliers to refuse

06

Resale price fixing

Agreements with resellers setting a minimum resale price

What to Do Instead

Decisions the organization must make alone—and when to seek counsel

Decide alone

Set pricing, bids, territories, and production independently

Avoid competitor contact

Avoid contacts that could even appear to create an understanding

Consult before combining

Get legal counsel before mergers, joint ventures, or distribution deals

Guard sensitive topics

Never discuss prices, costs, bids, or market shares with competitors

Know dominance limits

A dominant firm must not abuse its market position

Raise questions early

Bring competition-law questions to legal counsel promptly

DANGER TOPICS

Never Discuss With a Competitor

Subjects that must never be shared with a competitor

Prices, profits, or margins

Detailed cost information

Bids or bid terms

Territory or customer allocation

Business strategies or plans

Market shares

Product or service offerings

Production or capacity

Customers or suppliers

WHEN IN DOUBT

Consult legal counsel before any conduct, agreement, or business combination that raises a competition-law question

Definitions

01

Competition laws

Laws protecting and promoting free and fair competition for the benefit of consumers

03

Bid rigging

An agreement with a competitor about a bid or whether to submit one

02

Agreement

Any understanding—oral, informal, or inferred from conduct; no stated commitment required

04

Abuse of dominance

Conduct by a dominant firm that improperly exploits its market position

Questions the Board Should Ask

A few questions reveal whether competition risk is contained

01

Are pricing, bid, and territory calls made by us alone?

Core competitive decisions must never be coordinated with competitors, even informally

02

Do we consult counsel before mergers and joint ventures?

Combinations and distribution deals carry competition risk requiring review beforehand

03

Do staff know agreements can be informal or inferred?

Liability arises from conduct and understandings, not just written contracts

04

Is there a clear channel to raise concerns?

Employees need ready access to legal counsel and a reporting line

Firm Lawyers

Matthew Boyden

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