Complying with the Competition Law

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Contents

What to know

The competition and antitrust laws:

- Prohibit agreements or understandings between competitors that undermine competition;
- Regulate the behavior of dominant companies; and
- Require prior review and in some instances clearance for certain mergers, acquisitions, joint ventures, and other transactions, in order to prevent transactions that would substantially reduce competition.

These laws are a critical part of the business environment in which GE operates. They govern the day-to-day conduct of GE's businesses in setting prices and other aspects of purchasing, selling, and marketing goods and services. They also govern other GE activities, including mergers and acquisitions. It is often essential that you involve legal counsel early given the many uncertainties that arise in the application of these laws. GE is dedicated to compliance with the competition laws in all of its activities. Every GE employee is responsible for compliance with the laws and their business-specific policies.

Requirements

- Comply with the law. The basic requirements derive from the competition laws and regulations, as well as any decrees, orders and agreements reached between GE and a competition regulator. Understand the specific requirements that apply to your business activities. Often, the laws of more than one country will apply.
- Review, understand, and comply with your business' specific policies and procedures that address contacts with competitors, obtaining and handling data concerning competitors, and participating in trade associations, professional societies, and standards development and product certification organizations.

Employee responsibilities

- Understand the basic requirements of the competition laws, decrees, orders and undertakings that apply to your business activities.
- Do not propose or enter into any agreements or understandings with any competitor regarding *any* aspect of the competition between GE and the competitor for sales to third parties, (remember that an agreement or understanding does not have to be in writing to be unlawful. An unlawful agreement with a competitor can be expressed or implied, formal or informal, written or oral) including:
  - Prices
  - Bids
  - Sales territories or allocation of customers or product lines
  - Terms or conditions of sale
  - Production, sales capacity or volume
  - Costs, profits or profit margins

- Market share
- Product or service offerings
- Customer or supplier classification
- Distribution methods

- The following are examples of possible violations of the competition laws:
  - Agreements with competitors to fix prices or other sales terms
  - Agreements with competitors to divide or assign sales territories, customers or product lines
  - Agreements with competitors to limit output
  - Agreements with competitors to coordinate bids
  - Agreements with customers or vendors to fix resale prices
- Do not propose or enter into agreements with third parties, including competitors, agents, or brokers regarding whether to submit a bid or the price level of a bid to a customer. Do not agree with anyone – customer, competitor, or third party to submit a "fictitious" bid or one where there is an understanding that the bid is submitted for any purpose other than winning the business.
- Avoid any contacts with competitors that could create the appearance of improper agreements or understandings, whether the contact is in person, in writing, by telephone, through e-mail or through other means of electronic communication.
- Even when there are appropriate reasons for communications between competitors (such as customer or supplier issues arising from a genuine buyer-seller relationship, the exploration of a potential acquisition or joint venture, or participation in trade association activities), meetings and discussions between competitors present potential legal risks. Avoid creating the appearance of improper agreements or understandings by keeping communications with competitors to a minimum and making sure that there is a legitimate business reason for all such communications.
- The same cautions apply whether the communications are in person, in writing, by telephone or through e-mail or any other electronic means of communication. Consult with company legal counsel regarding the steps you should take to minimize the potential legal risks posed by communications with competitors.
- Do not propose or enter into any agreements or understandings with customers or suppliers that restrict the price or other terms at which the customer or GE may resell or lease any product or service.
- Notify company legal counsel immediately if you are contacted by any competition law enforcement authority making any request for information relating to GE's or anyone else's business activities.
- Never lose sight of who GE's competitors are. Any business that can or does sell competing goods or services should be treated as a competitor — even if GE also has some other commercial relationship with that party. A competitor may also be a supplier to GE, or a customer, or a joint venture partner. Sometimes GE may own a minority interest in a competitor or participate together in an industry-related association. Consult legal counsel if you ever need help defining whether another firm should be treated as a competitor.

Consult with GE legal counsel before entering into:

- Any sales, supply, procurement, or distribution agreement that includes any form of exclusivity, including territorial exclusivity, by any party
- Any agreement or understanding with a customer that requires the customer to purchase one GE product or service as a condition of purchasing another GE product or service. This is called "bundling" or "tying"
- Any agreement or understanding with a customer or supplier that requires it to conduct business with GE before GE will buy from or sell to it
- Any agreement or understanding with a customer to restrict the customer's choices in using or reselling a GE product or service
- Any agreement or understanding that restricts any party's freedom to manufacture any product, provide any service or conduct business with any other party, or to sell at any price or other terms that party chooses
- Any agreement with a competitor where one party will serve as a distributor or reseller of the other's product

  - Any acquisition, divestiture or joint venture agreement, including acquisition of a minority share in an entity
  - Any patent, copyright or proprietary know-how licensing arrangement that restricts the freedom of the licensee or licensor
- Consult with company legal counsel before entering into any agreement with any other company that includes restrictions on the ability of either company to solicit or hire employees of the other company.
- Consult with company legal counsel and obtain appropriate management approvals before agreeing to add a GE employee to another firm's board of directors. GE employees are prohibited from serving on a competitor's board of directors without prior approval as explained in the GE Conflicts of Interest policy.
- Consult with company legal counsel before offering a customer a special price or promotional allowance or service that is not offered for the same or like grade and quality product to all competing customers.
- Consult with company legal counsel before implementing or changing any policies or practices related to servicing our own or others' products or the sale of parts and other products associated with such service.
- If you are involved in mergers and acquisitions, understand the notification requirements. A large number of jurisdictions around the world have merger control regulations that may require or make optional a notification of proposed mergers, acquisitions, joint ventures, and acquisitions of a minority share of another entity. In many of those jurisdictions, notification of the proposed transaction must occur one month or more before the transaction may be completed. In some cases, the closing of a transaction can be delayed further if the competition regulators open an investigation into the competitive impact of the transaction. GE legal counsel should be consulted early in the transaction evaluation process to be sure that the required merger notifications are made in a timely manner.
- Many competition laws, including those of the United States and the European Community, may apply to GE's activities whenever they have an impact on commerce within those regions. As a result, GE activities that take place anywhere in the world can be subject to the competition laws of several nations, even if the activity took place in a country without a competition law. In view of the extraterritorial reach of the various competition laws, you should review with company legal counsel any actions or agreements that would raise issues if they took place in any jurisdiction whose competition laws can apply to actions taken outside its borders.

Leader responsibilities

- Establish business-specific implementing procedures for contacts with competitors, obtaining and handling competitive data and participation in industry associations.
- Ensure that competition law training is delivered regularly to employees likely to face competition law issues.
- Include legal review of competition issues in your business processes related to new products, new services, joint ventures, and mergers and acquisitions.
- Establish and keep updated business-specific procedures for responding to unannounced inspections, also known as "dawn raids," in countries where the competition authorities may conduct such inspections.

QUESTIONS AND ANSWERS

Obtaining competitive information

Q: In developing our marketing strategy, it helps to have as much information as we can get on what our competitors are doing. Is it okay to benchmark by simply calling our competitors and asking for their price lists or information about their production costs?

A: No. Competitive information should come from the marketplace (customers, suppliers and public sources) and not from competitors. Although it is appropriate to seek information about the competitive environment from consultants or other experts, do not hire anyone to obtain pricing and other sensitive competitive data from competitors. To the extent that a competitor makes information available to the marketplace through, for example, its public internet site, public regulatory filings, annual reports or other marketing materials made available to the public, such information can be collected like any other form of public information. You should also carefully document in your files the source of all competitive information to avoid any inference that information obtained from proper sources was secured through an improper communication with a competitor.

Communications with competitors regarding such competitively sensitive subjects as prices, costs, terms and conditions of sale, and decisions to quote or not to quote may be treated as evidence of an improper understanding or agreement between competitors. This is particularly so if the communication is followed by similar bids, price increases or other such significant competitive actions.

Avoid creating an appearance of an improper agreement with competitors. Keep discussions with competitors to a minimum and make sure they are always supported by legitimate business reasons.

Q: What if we make clear that the purpose of sharing the information is for benchmarking only and not to form an agreement with our competitors?

A: Even absent strong evidence of an agreement, regulators can take enforcement action in a situation where the flow of information between competitors can have a negative impact on competition. When competitors provide each other with information on price or other key aspects of competition, there is a risk that the competitors will compete less vigorously on those points, and therefore a risk that the information exchange could be viewed as problematic under the competition laws. Therefore, information about competitors' prices and key terms should be gathered from legitimate sources in the marketplace, and not directly from our competitors.

Competitive proposals

Q: Sometimes a customer will complain that GE prices are higher than the competition. Can I ask such a customer for copies of my competitor's proposals to confirm that the competitor's price is lower than the price I am quoting?

A: Yes. You are permitted to receive such information from customers. You should carefully document in your files how you obtained competitive information so later on you can show that you obtained the information from proper sources and not through an improper communication with a competitor.

Important caution: It may be improper to receive such information from public authorities in public bid situations. Be sure to check with company legal counsel before you accept such information from government employees or representatives.

Competitors as customers or suppliers

Q: Our competitors are often either our customers or our suppliers. What discussions with competitors are proper in a buyer-seller context?

A: We must always treat our competitors as competitors, even if we sometimes buy from or sell to each other. Therefore, communications must be limited to subjects related to the buyer-seller relationship. For example, you may provide a competitor who is a potential customer for a product with information about that product. Take care to limit discussions with a competitor to the products or services you are buying or selling. You should not talk about resale prices, margins or which one of you will sell to particular customers. It is a good idea to check with company legal counsel to obtain guidance in dealing with customers or suppliers who are also competitors.

Contacts with competitors

Q: If I am at a trade show and meet an old friend who now works for a competitor, what should I do?

A: You should limit the discussion to non-business subjects and follow your business component's procedures for reporting and documenting contacts with competitors.

Due diligence information exchanges

Q: My business is contemplating a joint venture with or an acquisition of a competitor. What information can I gather to help support our business decision?

A: As long as we are seriously contemplating a joint venture or acquisition, we often need to obtain some competitively sensitive data from a competitor in order to make a business decision about our plans. However, we must be sure that the information we obtain is used for due diligence only and that access is limited only to those individuals involved

in the evaluation of the potential transaction. Consult company counsel to make sure the right safeguards are in place before launching any due diligence involving a competitor. Likewise, when we are divesting a business to a competitor, we need to limit the information provided to what is necessary for due diligence, and make sure the proper safeguards are in place for how that information will be handled by the potential buyer.

Bid rigging/dividing up business opportunities

Q: A competitor tells me that "we're killing each other by trying to take away each other's long-standing customers with aggressive bids." She suggests that both firms will be better off "if we either take turns submitting the low bid or simply agree to not bid for each other's customers." I think that she may be right. How should I respond?

A: You must not enter into agreements or understandings with competitors to manipulate the bidding process in any way, including agreeing (i) on whether or not to bid or (ii) what price or terms to bid. Such agreements, like price-fixing agreements, can result in significant fines, and, in some countries, criminal prosecution. Even suggestions to a competitor to fix prices or allocate customers may result in serious sanctions. Any offer to participate in such an agreement must be immediately and clearly rejected. You should also immediately tell company legal counsel about the competitor's request.

Q: My contact at the customer, who works in the procurement department, called me recently to say that he had neglected to get three bids for a particular product, as required by his company, but that he had gotten two bids and already had decided upon a winner. He asked if I could submit a "courtesy bid," i.e., a bid that is not intended to win the business, so that he could move forward more quickly with the purchase. Should I do it, since it was requested by a good customer?

A: You should not submit courtesy bids, even when requested to do so by a customer. In some industries, or particularly if the government is the ultimate customer, there may be legal requirements governing the minimum number of competitive bids. Submitting a courtesy bid could violate the procurement laws or industry rules that relate to that bid and subject GE to penalties. Because of the risks associated with courtesy bids, it is the better practice to submit bids only with the intention of competing for and winning the business.

Joining trade associations

Q: My component has been asked by a customer to join a trade association. How do I decide whether GE should join?

A: Your component should have a policy containing guidelines governing the component's participation in trade associations. You should review and follow those guidelines. It is usually advisable to have company legal counsel review and monitor the trade association's bylaws and compliance procedures. Generally, it is a good idea to exclude GE employees with pricing responsibilities from trade association activities.

Trade association meetings

Q: You are at a trade association meeting. The talk turns to the state of the market and where people expect prices to go. Is it okay to participate in the discussion?

A: No. You should not participate in or remain at a meeting of competitors at which current or future prices are discussed. You should publicly and non-equivocally distance yourself from the discussion; clearly voice your objection to such discussions; have your objection documented in the minutes of the meeting; and let company counsel know about the incident.

Q: A trade association puts out an annual report on the industry and requires each member to provide certain information in order to receive the report. May we participate?

A: In some cases, a trade association may legally collect and disseminate historical information involving industry sales volume, industry revenues and industry production capacity that does not include firm-specific data. To make sure you are complying with the competition laws and GE policy, you should consult with company legal counsel before providing such information to or obtaining it from a trade association.

Employee non-solicits/non-hires

Q: My business is considering forming a joint venture or other arrangement with another company for purposes of developing a new product. Can we agree not to solicit from each other the employees who are working on the joint project?

A: Agreements to not solicit or hire employees from another company can be a legitimate part of an agreement to work jointly on a project, especially if the parties would not embark on the project without protecting the employees they each are contributing to the effort. However, you should consult with counsel to make sure the restrictions are appropriate.

Minority holdings

Q: My GE business has investments or minority holdings in several businesses and joint ventures. Some of them compete with each other, and some of them compete with GE. Can I share competitive information among these firms, or between the firms and GE?

A: You should not share sensitive competitive information with a GE competitor, even one in which GE has a minority interest. If we also buy or sell from that competitor, the information we exchange should be limited to the buy-sell relationship only. We should also not exchange information

among two competing businesses in which we hold minority interests. Company legal counsel can help provide guidance on managing minority relationships.

Q: My business is contemplating acquiring a minority stake in another company. Do I need to consider any competition law approvals in connection with such a transaction?

A: Yes. Not only majority stakes and control can trigger merger control approvals. In certain cases, the acquisition of a minority stake will be reportable. But even when merger control rules are not triggered, competition authorities may wish to assess such deals under general antitrust rules.

Q: My GE business is acquiring a minority share in a competitor and we would like to place a GE employee on its board of directors. Are there any competition issues here?

A: Because of the competition law issues presented by such a step, it is not common for a GE employee to serve on the board of directors of one of its competitors. The facts and circumstances of each situation should be carefully examined with a company lawyer to determine whether the GE employee may serve and whether safeguards on the receipt and handling of competitive information need to be put in place to avoid competition law issues. The relevant business leader must also approve in advance the appointment of any GE employee as a director of a company with which we compete.

Selling multiple products

Q: One of our products is selling very well, but another is not taking off. We're thinking about requiring customers who want to buy the "hot" product also to buy the other product. Can we require customers to buy both products?

A: In some circumstances, it is a violation of the competition laws to condition the sale of one product on the purchase of another. You should consult with company legal counsel before adopting any such sales policy.

Q: Is it okay to offer a special package price if the customer agrees to buy both a "hot" product and another, less popular product?

A: Where two products are offered separately but are also made available as a package for a discount price, the package discount ordinarily will not present legal problems. However, if the prices at which the products are offered separately would keep buyers from considering purchasing them separately, legal issues may arise where one of the products has a large market share, is covered by an essential patent or is particularly attractive to customers. To make sure that you are complying with the competition laws, you should consult with company legal counsel before offering package discounts involving such products.

Dealing with distributors

Q: A distributor calls you to complain that another distributor is undercutting him on price. He asks you to request the discounting distributor to bring his prices "in line" with the market. Is it okay for you to call the discounter and require him to raise his prices?

A: No. It is generally unlawful for you to set a distributor's resale price. Furthermore, if a distributor complains about a competitor, you should tell company legal counsel about the complaint and follow his or her advice in dealing with it. Although you generally cannot set a distributor's resale price, you can inform a distributor of GE's suggested resale price. However, generally, you cannot require the distributor to sell at the suggested price.

Q: You believe that your distributors would sell GE products more effectively if each distributor were assigned an exclusive territory. Do exclusive territories violate the competition laws?

A: It may be appropriate to assign distributors to exclusive territories or to particular customers if you have a good business reason for doing so. However, absolute territorial restrictions, i.e., restrictions that prevent distributors from responding to unsolicited requests from customers who approach them from outside the territory ("passive sales"), pose higher risks, particularly in Europe, where such arrangements are prohibited if they prevent sales between entities in different regions or member states of the European Union. Therefore, you should discuss the terms of any proposed exclusive territory or customer arrangements with company legal counsel before entering into such an arrangement.

Q: You believe that your distributors are not working hard enough at selling GE's products. You would like to require your distributors to sell only GE products so that they will put more effort into GE sales. Is it okay to require a distributor to sell only GE products?

A: In some circumstances, you may be able to require your distributor to sell only GE products. However, the lawfulness of such an exclusive distributorship/single branding requirement depends on several factors including GE's market share, the duration of the exclusive agreement, the nature or characteristics of the product, and your business reasons for wanting to require the distributor to sell only GE products. Because the lawfulness of this type of arrangement depends on such factors, it is important to consult company legal counsel before entering an exclusive distributorship agreement.

Q: A large distributor called recently to complain that there were too many distributors competing in his region and to tell me that he and the three other large distributors in his area had decided to work together to keep things "running

smoothly." Their plan was that they each would keep their customers and would not compete to try to win customers from each other. This agreement would violate GE policy. Is it okay if the distributors do it?

A: The distributor is describing a price-fixing arrangement between these four distributors that could be illegal, and could also be criminal, under the laws of many countries. Under some circumstances, it is possible that GE could be viewed as participating in the behavior, depending on GE's level of awareness and involvement in the arrangement. You should contact counsel immediately to get help determining whether any laws have been violated and what the next steps should be.

Selective discounts

Q: I am losing business with one of my best customers because my competitor is undercutting the price of my product to that customer. I can't afford to match my competitor's prices for all my customers. Can I just lower my price to the one customer we are competing for?

A: Yes. It is generally okay to meet a competitor's price to a particular customer. Before offering a discount to meet competition you should take reasonable steps to ensure that the price being met was really offered by a rival. First,verify the competitive offering with the customer requesting the discount. You may also try to verify it with other customers in the marketplace. However, you may not check with your competitor. Also, before offering a "meeting competition" price, you should consult with company legal counsel and complete any forms your component may have for documenting the basis for price differences offered to meet the price charged by a competitor. Since the laws governing price discrimination are quite complex, it is a good idea to seek guidance from company legal counsel to determine whether and, if so, how the laws apply in specific situations.

Q: My business is considering putting a rebate system in place to encourage customers to continue to purchase our products in significant quantities. Can we try to enhance the loyalty of our customers by using a rebate plan?

A: Price competition is generally beneficial to customers and rebates are not an uncommon practice. However, some rebate programs can have an anticompetitive effect when employed by a leading firm with a very large and long-standing market position. You should consult with company counsel to make sure your rebate program is appropriate.

Reducing sourcing costs

Q: One of my suppliers tells me she cannot reduce prices to GE any further without also reducing prices to our competitors because of the price discrimination laws. How should I proceed?

A: The price discrimination laws can be complex and can apply whether we are buying or selling product. A company lawyer should be consulted to determine how they apply in a given situation.

Q: I'd like to make my top suppliers exclusive to GE. Does this raise any issues?

A: In some circumstances, you may be able to enter into anagreement with a supplier to sell products exclusively to GE. However, exclusivity in supplier agreements can raise issues under the competition laws, depending on several factors, including the duration of the exclusivity, the supplier's and GE's respective market shares and the nature of the product in question. The particular facts of each situation should be reviewed with company counsel before you enter any exclusive agreements with GE suppliers.

Licensing of patents and other intellectual property rights

Q: I think we could reap maximum revenues from the licensing of a GE patent if we gave exclusive rights to certain licensees for specific uses. Is it okay to limit the scope of the license for a GE patent?

A: Licenses that carve out a particular field of use are generally lawful. However, certain restrictions could raise issues under the competition laws. Some exclusive licenses are treated as acquisitions by the competition authorities and may require merger control filings before the license can be transferred. Because issues involving the licensing of intellectual property are often complex, you should consult company legal counsel before entering into a licensing agreement.

Application to global activities

Q: My business is considering entering an agreement with a large distributor who is based in the same country as our manufacturing facilities. At present, there is no law in that country regarding a manufacturer's ability to set a distributor's resale price. May we enter into such an agreement with the distributor?

A: Even though this agreement would be formed in a country where the competition law does not prohibit such agreements, it may still be subject to challenge from some other competition authorities if the effects of the agreement could be felt within those jurisdictions. This might be the case, for example, if the product were exported by the distributor to one of these jurisdictions. Because most countries with competition laws generally prohibit a manufacturer from setting the price at which a distributor may resell the product, you will want to consult counsel for an assessment of the effects of this potential agreement and the applicability of other jurisdictions' competition laws before proceeding.

Related policies

- Conflicts of Interest
- Intellectual Property
- Supplier Relationships
- Working with Governments
- Regulatory Excellence

Resources

- Individual business implementing procedures
- More information on matters covered by this policy is available from your business' assigned antitrust counsel or corporate competition counsel.