

Complying with the Competition Laws

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The competition laws (referred to in the United States as the antitrust laws) are a critical part of the business environment in which GXS operates. They govern the day-to-day conduct of GXS in setting prices and other aspects of purchasing, selling and marketing goods and services. GXS is dedicated to compliance with the competition laws in all of its activities. Every GXS employee is responsible for compliance with those laws, as well as for promptly raising concerns about any possible violations to company legal counsel, senior management, or a company ombudsperson.

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Requirements:

- Comply with all applicable competition laws, policies and treaties, including federal and state antitrust laws of the United States and the competition laws of other countries where GXS does business.

Employee responsibilities under this policy:

- Understand the basic requirements of the competition laws and regulations that apply to your business activities.
- Do not propose or enter into any agreements or understandings expressed or implied, formal or informal, written or oral, with any competitor regarding any of the following aspects of the competition between GXS and the competitor for sales to third parties:
 - Prices
 - Terms or conditions of sale
 - Costs
 - Profits or profit margins
 - Product or service offerings
 - Production or sales volume
 - Production capacity
 - Market share
 - Decisions to quote or not to quote
 - Customer or supplier classification or selection
 - Sales territories
 - Distribution methods.

Such agreements or understandings must be avoided even if they are proposed or carried out through an industry association.

- Never lose sight of who GXS's competitors are. Any party that can or does sell competing goods or services should be treated as a competitor — even if we source or

sell a product from or to them, even if we conduct some business through a joint venture with them, even if we hold a minority interest in them, and even if we participate together in an industry related association. Consult company legal counsel if you ever need help defining whether another firm should be treated as a competitor.

- 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 GXS may resell any product or service.
- Comply with GXS's guidelines for **contacts with competitors, obtaining and handling competitive data**, and **participation in trade associations**, professional societies, and organizations for standards development and product certification.
- Consult with company legal counsel before entering into:
 - Any agreement or understanding with a customer that requires the customer to purchase one GXS product or service as a condition of purchasing another GXS product or service
 - Any agreement or understanding with a customer or supplier that requires it to conduct business with GXS before GXS 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 GXS 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 sales, supply, procurement, or distribution agreement that includes any form of exclusivity, including territorial exclusivity
- Consult with company legal counsel and obtain appropriate management approvals before agreeing to add a GXS employee to another firm's board of directors. GXS employees are prohibited from serving on a competitor's board of directors without prior approval as specified in the GXS 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.
- Dozens of jurisdictions around the world have merger control regulations that may require a notification of proposed mergers, acquisitions, joint ventures. In many of those jurisdictions, notice of the proposed transaction must be given 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. Company 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.

- Notify company legal counsel immediately if you are contacted by any competition law enforcement authority making any request for information relating to GXS's or anyone else's business activities.

Additional responsibilities of leaders under this policy:

- Maintain procedures for **documenting contacts with competitors, obtaining and handling competitive data, and participating in industry associations.**
- Ensure that legal review of competition issues is appropriately included in your business processes related to new products, new services, and mergers & acquisitions.
- Maintain procedures for responding to unannounced inspections, also known as “dawn raids,” in countries where the competition authorities may conduct such inspections.

Application to global activities:

A large and growing number of countries in which GXS or its controlled affiliates do business have their own competition laws. Many of these laws are similar in their basic principles, although many may be applied differently, reflecting the varied economic and legal philosophies of these countries.

However, many competition laws, including those of the United States and the European Union, may apply to GXS's activities whenever they have an impact on commerce within those regions.

As a result, GXS activities that take place anywhere in the world can be subject to several jurisdictions' competition laws, 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.

Examples of violations:

- 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

Penalties for violations:

Employees who violate the spirit or letter of GXS's policies are subject to disciplinary action up to and including termination of employment. Violations of the competition laws of the United States and of certain other countries may result in criminal prosecution of the company and of the individuals who authorized, ordered, or participated in the violation, and individuals convicted of violations may be sentenced to prison terms. In addition, both the company and individual employees may be subjected to substantial fines for violations of the competition laws, which can go as high as hundreds of millions of U.S. dollars or ten percent of a company's world group turnover, depending on the severity, duration and impact of the violation. In addition, in some countries, persons injured by violations of the competition laws can recover

their actual damages and, in some situations, can recover amounts equal to three times the actual damages incurred.

In the instance of a merger, acquisition, divestiture or joint venture for which the required regulatory approval has not been sought, the penalties can include substantial fines as well as delay of the transaction, or even an unwinding of the transaction if it is already completed.

Related policies:

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

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 simply to call our competitors and ask 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 such persons 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.

Competitive proposals

Q: Sometimes a customer will complain that GXS 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. It is appropriate to receive such information from customers. You should carefully document in your files the source of any competitive information to avoid any inference that information obtained from proper sources was secured through an improper communication with a competitor.

Important caution: It may be improper to receive such information from the government. 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 often are also our customers and/or 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 GXS's **procedures for reporting and documenting contacts with competitors**.

Due diligence information exchanges

Q: If we are contemplating a joint venture or 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, appropriate levels of due diligence often require obtaining some competitively sensitive data from a competitor. However, we must be sure that the information we obtain is limited to that appropriate to perform the due diligence, and that the information is used for no other purpose. Consult company counsel to make sure the appropriate safeguards are in place before commencing any due diligence involving a competitor.

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 low prices." She suggests that both firms will be better off if they stick to their own customers. I think that she may be right. How should I respond?

A: You must not enter into agreements or understandings with competitors to allocate customers, territories or product lines. Such agreements, like price-fixing agreements, can result in criminal prosecution. Even suggestions to a competitor to fix prices or allocate customers may result in a criminal prosecution. 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.

Joining trade associations

Q: We have been asked by a customer to join a trade association. How do I decide whether GXS should join?

A: GXS has **guidelines governing 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 GXS 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 also clearly voice your objection to such discussions and let company counsel know about the incident.

Q: The same 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 GXS policy, you should consult with company legal counsel before providing such information to or obtaining it from a trade association.

Minority holdings

Q: If GXS acquires a minority share in a competitor and we would like to place a GXS employee on its board of directors, are there any competition issues?

A: Very possibly. Because of the competition law issues presented by such a step, it is very rare for a GXS employee to serve on the board of directors of one of its competitors. The facts and circumstances of each situation should be carefully examined to determine whether the GXS 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. GXS's General Counsel must give approval before a GXS employee may become a director of a company with whom we compete. If we did not compete with the firm, legal review and appropriate manager sign-off would still be required under GXS's Conflicts of Interest policy.

Selling multiple products

Q: One of our products is selling very well, but another is not. We're thinking about requiring customers who want to buy the "hot" product also to buy the other product as well. 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 a 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 GXS’s suggested resale price. You may not, however, require or force the distributor to sell at the suggested price.

Q: You believe that your distributors would sell GXS 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 passive sales to customers outside the territory, pose higher risks, particularly in Europe, where such arrangements are prohibited if they prevent sales between entities in different 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 GXS’s products. You would like to require your distributors to sell only GXS products so that they will put more effort into GXS sales. Is it okay to require a distributor to sell only GXS products?

A: In some circumstances, you may be able to require your distributor to sell only GXS products. However, the lawfulness of an exclusive distributorship depends on several factors including GXS’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 GXS 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.

Reducing sourcing costs

Q: One of my suppliers tells me she cannot reduce prices to GXS 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 GXS. Does this raise any issues?

A: In some circumstances, you may be able to enter into an agreement with a supplier to sell products exclusively to GXS. 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 market share and the nature of the product in question. The particular facts of each situation should be reviewed with company counsel before you enter into any such exclusive agreement with a GXS supplier.

Licensing of patents and other intellectual property rights

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