Capgemini
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People matter, results count.

Group Competition Laws Policy

The way we compete

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GLOSSARY


defines specific concepts


provides additional practical guidance


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04.

FOREWORD BY THE CHAIRMAN OF THE BOARD AND CEO

Our success as a company is built upon a foundation of integrity – a longstanding commitment to act with the best-in-class ethical standards and to conduct business honestly and legally. Our Code of Business Ethics reflects this commitment, offering guidelines and principles of action that define how we run our business.

This Competition Laws Policy focuses on one of the standards set out in the Code of Business Ethics: "Fair Competition". Its purpose is to help Group employees worldwide identify and avoid situations that could violate competition laws.

The Group competes vigorously for its clients' business. Most of the countries where the Group offers services or products have competition laws and trade regulations designed to protect such competition. The Group is committed to complying with all applicable competition laws and regulations.

It is the Group's policy to make its own commercial decisions independently, free from any anti-competitive agreements or concerted practice with any competitor. Competition laws forbid any kind of agreement or practices between competitors regarding prices, terms of sale, markets, or clients' allocation or any other activity that restrains competition. This policy requires the absolute avoidance of any conduct that violates, or which might appear to violate such laws.

Understanding competition laws is not always easy. Employees must be familiar with the present Policy and regularly refresh their understanding of these rules. If this Policy does not give you enough guidance on how to proceed in a particular situation, you are invited to consult with the Group Legal Department and your country's Ethics & Compliance Officer.

No employee may violate the present Policy or tacitly approve a violation by anyone else. Violating competition laws may result in significant criminal and civil penalties for the Group and individuals alike, including jail time for individuals. As a result, it is expected that all employees comply with this Policy and it should be understood that any breach will be taken extremely seriously.

This Competition Laws Policy reflects European Union and United States rules and general national competition laws. In some countries, other national rules might be in some instances more stringent. In such cases, the legal department of the relevant countries will issue some specific guidelines which will apply in addition to this Policy.

The rules laid down in this Policy will necessarily evolve to take into account changes in legislation, best practice developments and your feedback. During my on-site visits of Capgemini operations, I look forward to receiving your views on how this Policy is helping you. We all share responsibility for complying with this Policy, and I rely on your support in ensuring this is the case.

Paul HERMELIN
Chairman of the Board and CEO

Competition laws in practice

Portrait of Christine McGUIGAN, Assistant Director, Work Force Transformation Stream Lead, Capgemini North America featured in the communication campaign:
http://www.capgemini.com/experts/

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Competition laws in practice

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1. THE IDEA BEHIND COMPETITION LAWS

Competition and anti-trust laws are aimed at preventing conduct that interferes with the normal economic effects of supply and demand in a free market.

Most countries in which the Capgemini Group operates have competition or anti-trust laws and trade regulations.

The Capgemini Group is committed to complying with all applicable competition and anti-trust laws and regulations. Any breach of competition or anti-trust laws and regulations will be taken extremely seriously.

In this Policy, the term "competition laws" will be used to refer to the common principles of competition or antitrust laws and regulations across the globe.

The Policy contains guidelines you should follow in your everyday business practices to prevent risk of infringement of competition laws for you and the Group. It is intended to help you identify issues and assist you in achieving complete compliance with laws.

If this Policy does not provide you with enough guidance on how to proceed in a particular situation, please consult with the Group Legal Department[1] promptly.

2. WHAT ARE THE DIFFERENT KINDS OF SITUATIONS THAT MAY RAISE COMPETITION LAWS ISSUES?

This section aims at providing you with an overview of the most common types of practices that may raise issues in regard to competition laws.

In general, there are three types of situations that may raise issues:

(I) **Relations** with competitors that result in anti-competitive agreements or concerted practices, whether in writing or otherwise, that interfere with the operation of a free market;

(II) **Relations** with suppliers, alliance and other business partners and clients that contain certain terms and conditions (for instance, allocating clients or markets along national lines); and

(III) **The way** a company in a dominant position or a monopoly power situation behaves towards its competitors, clients, suppliers or alliance partners.

1 "Group Legal Department" means collectively, either your local legal department or the Group legal department based at Capgemini's headquarters.

3. CONSEQUENCES OF VIOLATION OF COMPETITION LAWS?

In the European Union (EU), a violation of competition laws may result in significant penalties both for the Group (up to 10% of the Capgemini Group's worldwide revenues) and for individuals alike.

In some countries, an individual who commits a serious breach of competition laws may be committing a criminal offense. In the US, breach of competition laws can lead to up to 10 years in prison.

In the UK, the sanction for directors may include the disqualification from acting as a director for up to 15 years.

In addition to criminal and civil penalties, competition laws violations are also subject to damage actions that allow private parties (e.g., clients, competitors, etc) the right to recover substantial amounts as a result of damage caused to their business by any unlawful conduct.

Commercial agreements containing anti-competitive provisions may be unenforceable and therefore endanger the business transaction.

Criminal and/or civil fines, damage recoveries, and, as importantly, damage to the reputation of the Group in the marketplace, can severely impact the Group's business.

4. HOW TO BEHAVE WITH COMPETITORS?

The Capgemini Group competes vigorously but fairly for its clients' business.

Employees interacting on a regular basis must be very careful to avoid unlawful situations. Indeed, contacts with competitors, whether in writing or otherwise, may result in anti-competitive agreements or concerted practices that interfere with the operation of a free market.

4.1 Anti-competitive agreements and concerted practices

By entering into anti-competitive **agreements** and **concerted practices**, **competitors** attempt to avoid the rigors and uncertainty of competition, with the result that consumers may pay higher prices and innovation is reduced. Such a behavior harms competition and thus breaches competition laws.

WHAT IS...

... a competitor?

A Group's competitor is a company that provides services or products that compete with those of the Group, even if such company:

— is also a supplier, an alliance and other business partner, or client,

— conducts business with the Group through a consortium or joint venture, or

— interacts with the Group in a trade association.

Potential competitors, i.e., those companies which are likely, within a short period of time, to compete with services or products provided by the Group, should also be treated as competitors.

... a concerted practice?

A concerted practice occurs when competitors exchange information on commercially sensitive issues (e.g., future prices, commercial strategy or intention to bid or not to bid) where such exchange is intended to or results in a reduction of competition.

... an "agreement"?

For competition laws purpose, the term agreement has a particularly wide meaning. It includes all kinds of collusive arrangements such as unsigned or signed arrangements, written or oral arrangements and legally or not legally binding arrangements. Even in the absence of a formal agreement, any concerted action among competitors may still violate competition laws, regardless of whether it is oral or in writing.

The general rules are simple. Never make an agreement or have a concerted practice whether in writing or otherwise with a competitor that relates, in particular, to:

a) the price of a service or product (including price fixing, base price, margin, extras or other terms of sale which relate to price, such as credit terms, cash or trade discounts), and without regard to whether the arrangement is to increase the price or to decrease it;

b) allocation of clients or geographic territories (e.g., market sharing);

c) coordination of bids ("bid rigging") (including, e.g., coordination of responses to RFPs, or decisions to bid or not to bid);

d) confidential and sensitive information sharing;

e) refusal to deal with either a potential client or a potential vendor (e.g., boycotts); or

f) limiting service or product availability (such as whether to offer a particular service) or capacity (such as an agreement on how much each competitor will invest in providing a service or product).

These agreements are considered unlawful without any consideration of justification or effective impact on the market.

WHAT IS...

... "Price fixing"?

Price fixing is one of the most serious breaches of competitions laws.

Price fixing is any agreement between competitors that fixes or seeks to fix maximum or minimum prices to be applied by them. Even in the absence of an actual price-fixing agreement, mere information exchange on current or future prices, margins or commercial strategy may have effects that are quite similar to those of price fixing. They also constitute an infringement of competition laws and must therefore be strictly avoided.

... "Market sharing"?

Market sharing (or market allocation) is also a very serious breach of competition laws. Market sharing happens when competitors decide to share the market among themselves, whether by service or product, by territory, or by type or size of customer.

... "Bid-rigging" or "coordinated bid"?

Bid-rigging is how conspiring competitors trick the bidding process. Basically, they agree in advance which of the competing companies will submit the winning bid on a contract during a bid process. Bid-rigging is always illegal.

Bid-rigging usually falls into one of the following categories: bid suppression, courtesy bidding, bid rotations or courtesy subcontracting.

IN PRACTICE...

What not to discuss with a competitor

Never discuss, provide to or exchange with a competitor on prices, other terms of sale, division of markets (whether by geography, product or otherwise), allocation of customers, costs, profits or profit margins, or other terms of commercial policy (e.g., free delivery of ancillary services, liability caps and warranties in major contracts) that may restrain competition.

Immediately cease the contact if, in any conversation, your competitor seeks to discuss current prices or to discuss or inquire about plans for future prices, or any components of prices not yet announced, or any element of strategy relating to prices or commercial policy.

Keep a distance from any conversation that veers towards any of the subjects above. Literally walk away or hang up the telephone if that is what it takes to end your involvement (even listening) in the discussions. Make clear to the participants that you refuse to participate in such a discussion and that you will have to report the discussion to the Group Legal Department. If you allow yourself to hear such a conversation you may be required, at a later date, to testify that it did take place and it will be hard to avoid the implication that you were an active participant in it.

How to team up with a competitor

Anti-competitive agreements and concerted practices with competitors are unlawful.
However, under certain conditions, teaming agreements through a consortium or a joint-venture with competitors in order to respond to an invitation to tender are lawful. In such cases, to avoid the risk of having the teaming agreement qualified as **"bid-rigging"**, specific rules must be complied with. Please refer to the section **"When a competitor conducts business with the Group through a consortium or joint venture"** on page 18.

What if two affiliates of the Capgemini Group wish to participate in the same invitation to tender?

In such a case, the two entities of the Capgemini Group can:
— each submit an offer if they have not collaborated or consulted each other before their submission, or
— submit a common offer.

If they have collaborated or consulted each other but still wish to each submit a separate offer, such offers must each respond to the tender criteria and be sufficiently differentiated on criteria other than price (such as scope of the service suggested, method, know-how, brand, …). Moreover, the affiliates must, in each case, indicate in writing on their respective offer that they are affiliates of the same group and that their offers, although distinct, have been developed jointly as part of a common commercial strategy of the Group. If necessary, consult with your Group Legal Department for any further assistance.

DO'S & DON'TS

In short:

DO immediately object to any discussions that relate to subjects outlined above; continue only if the objectionable discussion ceases immediately, and when you are comfortable that the discussion has resumed a proper direction.

DO report immediately to the Group Legal Department any improper discussion with, or overtures from, a competitor.

DO NOT even discuss with a competitor prices, other terms of sale, division of markets (whether by geography, product or otherwise), allocation of customers, costs, profits or profit margins, or coordination of bids, tenders, or RFPs.

4.2 Trade associations and industry conferences

Trade associations and industry conferences perform useful and legitimate functions, and can be supported by the members of an industry under appropriate circumstances. Such meetings, however, provide opportunities for both formal and informal gatherings of competitors and, consequently, expose each person and company present to the risk of an inference of improper agreements or understandings.

Usually it is not the formal scheduled trade association meeting or industry conference itself but private meetings and social events where illegal conversations happen. Perfectly legitimate conversations or situations may quickly evolve in the wrong direction.

All membership and attendance in a trade association must be approved in writting by the BU Manager (as a minimum). Before joining or participating, the business representative must confirm he/she has read and understood this Policy.
The subjects discussed and the decisions taken in meetings must be discussed with and approved by the BU Manager before being expressly expressed.

IN PRACTICE...

Suppose that someone you know and respect from a competitor approaches you after a trade association meeting and begins complaining that “someone” has been undercutting him/her on price at a long-established account. He/she complains about the state of the industry and weakness in margins, explains that more discipline is needed and starts to hypothesize about how the situation can be corrected.

This kind of conversation can very easily give rise to illegal exchanges of competitively sensitive information and must therefore be avoided. Seemingly innocent state-of-the-market discussions can quickly spiral out of control, and the fact that you are taken by surprise will not make the exchange of information less illegal.

DO'S & DON'TS

In short:

DO obtain approval from your BU Manager before joining or participating in a trade association or participating in an industry conference.

DO insist on getting a complete draft agenda well in advance of the trade association meeting or industry conference that sets forth the matters to be discussed so that the appropriateness of the discussion can be assessed.

DO seek advice from Group Legal Department if the draft agenda uses open-ended or vague terms (e.g., "industry capacity," "market situation," etc.) or raises a question involving possible violation of this Policy. The Group Legal Department will be able to evaluate whether it is appropriate to insist on a clarification of the agenda to avoid any inference of an improper discussion.

DO strictly follow the agenda – its use, as an accurate record of the purpose and subject matter of the meeting or conference, might be undermined by discussion of off-agenda items.

DO leave the room if inappropriate information exchanges occur, ask that your departure be registered in the minutes and promptly report the incident to the Group Legal Department.

DO ensure that minutes of the meeting are taken in draft form and thereafter reviewed before being finalized in order for you to keep them.

DO check with the Group Legal Department and your management before providing the Group commercial data to a trade association.

4.3 Benchmarking

In case of doubt, when engaging in a benchmarking exercise, you must consult with the Group Legal Department for guidance.

> Benchmarking by industry analysts:

It is increasingly common for our clients, particularly in the Outsourcing business, to request a right to benchmark our prices or terms against industry standards (e.g., Gartner, Compass, Meta Group, Staffing Industry Analysts). Benchmarking in this context is permissible.

> Benchmarking by the Group:

Benchmarking by the Group with competitors, directly or even at the client's request, regarding pricing, clients, geographic territories, bids, or capacity is never permissible. This could be viewed by competition authorities as a "tacit concerted practice" among competitors to restrict competition.

WHAT IS...

Benchmarking is the process of identifying and learning from best practices, for example in other organizations, relating to quality, time or cost. It is a powerful tool in the quest for continuous improvement and performance breakthroughs.

4.4 Market intelligence

> Market intelligence gathered from public sources:

You can gather market intelligence from a wide variety of legitimate sources, such as analyst reports, journals, industry associations or other publicly available material. To the extent that a competitor makes information available to the marketplace through, for example, its public Internet site, public regulatory filings, annual report or other marketing materials made available to the public, it is permissible to collect such information.
You should mark the source of such information on the material itself to document that it comes from a legitimate source. Even if those sources do not give you as much information as you would like, you must never go to competitors to ask for additional information.

> Prohibited market intelligence gathered with competitors:

It may appear to you sometimes that essential competitive information as to existing price structures and commercial policy can only be obtained from a competitor, and that a discussion of existing prices with them is therefore justified. **Don't ever do it.**

> Market intelligence gathered from supplier or client:

In exceptional circumstances, a supplier or client may wish to provide you with competitors' prices or a competitor's proposal to ask you to meet the competitor's price or terms. Receiving such information for the purpose of making a more competitive offer may be legitimate, but may also raise red flags about a possible appearance of concerted practice. Therefore, always keep a written record of the source of such information.

An exchange of current price information alone may be found unlawful, and for this reason you must not engage in, or reply to, any such inquiries from competitors. For example, do not confirm with a competitor price information that you may have received from another source (e.g., a client). Use every effort to obtain the desired information from proper market intelligence sources.

If in doubt about any market intelligence gathering, consult with the Group Legal Department.

DO'S & DON'TS

In short:

DO obtain necessary market intelligence from public sources and not from your competitor.

DO mark the source of any competitive information received on the material itself to document that it comes from a legitimate source.

DO NOT exchange information or meet with your competitors regarding market intelligence.

5. HOW TO BEHAVE WITH SUPPLIERS, ALLIANCE OR OTHER BUSINESS PARTNERS AND CLIENTS?

When entering a relationship with suppliers, alliances or other business partners or clients, be aware that competition laws still apply and some behavior might be prohibited.

5.1 When a supplier, alliance or other business partner or client is also a competitor

> When a supplier or a client is also a competitor:

Even when there are legitimate reasons for communications among competitors, such as where the Group orders services from or provides services to a competitor, there is a risk that such communications create the appearance of an anti-competitive agreement. You should keep communications with such a competitor to what is strictly necessary to carry out the projects for which the competitor or the Group is hired. The information shared must not permit either side to predict the future strategy or competitive behavior of the other, in particular its prices and costs for future bids, nor its intention to bid, or not to bid, for a specific client or certain categories of services.

If a supplier is an IT services business unit of an alliance partner, the same rules still apply.

> When an alliance or other business partner is also a competitor:

For these large companies that sell software, hardware and IT services, all the units as a whole (hardware, software and IT service units) must be considered competitors.

However, if:

— there are effective and documented firewalls in place that prevent information shared with the hardware or software unit from being shared with the IT services unit, and vice versa, and

— the hardware or software unit treats the IT services unit like any other client, and vice versa,

then, only the units that sell the IT services need to be considered competitors.

In summary, you should not share commercially sensitive information with competitor IT service units through your contacts with the hardware and software competitor units. The Alliance team of the Group and of the competitor should manage this carefully.

DO'S & DON'TS

When an alliance or other business partner is also a competitor:

DO ensure, by written assurances from the competitor company, that effective firewalls are in place preventing any sharing of information between the hardware or software unit of the alliance partner and its IT services unit with whom the Group competes.

DO screen all participants at joint meetings to ensure that they are not in a position that communicates with their IT services unit and document the fact that you have carried out such screening.

DO avoid discussions about services in which the Group competes that are not the subject of the Alliance and not strictly necessary to carry out the projects for which the Alliance is in place.

Consult with the Group Legal Department if you have any questions about appropriate or improper communications relating to an Alliance.

> When a competitor conducts business with the Group through a consortium or joint venture:

Sometimes, a client requests us to partner with a competitor as a co-contractor, subcontractor or lead in a consortium context, or at other times, when neither the competitor nor the Group has the skills needed to make a competitive offer to a particular client, and partnering is required to have a chance to win against other competitors.

In such cases, sharing of information required to make the offer or perform the contract is permissible under certain conditions:

— the information shared must be limited to that required to respond to the particular bid;

— the information shared must not permit either side to predict the future strategy or competitive behavior of the other, in particular its prices and costs for future bids, but also its intention to bid, or not to bid, for a specific client or certain categories of services; and

— the partnering must not have the object or the effect of setting prices or allocating markets, clients or geographies in future bids.

Consult with the Group Legal Department before initiating or responding to any communication in the context of a consortium or a joint venture.

5.2 When a supplier, alliance or other business partner or client is not a competitor

Arrangements with a supplier, alliance or other business partner or client which is not a competitor, may be unlawful if it relates to:

— setting the pricing policy of the supplier, alliance or other business partner or client; or

— allocating the market by territories or clients (e.g., agreeing to work exclusively with one supplier in a particular country or for public bids).

IN PRACTICE...

Exclusive agreements...

Even if certain **exclusive agreements** are lawful as being pro-competitive (for instance, when exclusivity is granted in exchange for significant investments to be made to develop the marketing of certain services or products), under certain conditions exclusive agreements **may be considered unlawful**.

... with suppliers

For example, an exclusive purchase and/or supply agreement between the Group and one of its suppliers (e.g., a software and/or hardware vendor) might be unlawful if:

— it locks out competitors of the supplier from selling opportunities through the Group, in particular in situations where the Group represents a very significant part of the market, or

— it prevents the competitors of the Group from working with such a supplier and as a consequence from competing effectively with the Group.

... with clients

For example, an exclusive agreement between the Group and one of its clients (e.g., a service agreement) might be unlawful if:

— it prevents the competitors of the Group from competing effectively (because the client covered by the agreement represent a very important part of the market where the Group sells its services), or

— it offers certain services exclusively to the client of the Group, and prevents the competitors of the client from benefiting from such services and being in a position to effectively and fairly compete on downstream markets.

These agreements may raise issues in particular if they are of a long duration (more than one to five years depending on the kind of services or products).

All agreements with suppliers or clients that contain exclusive provisions must be reviewed by the Group Legal Department.

DO'S & DON'TS

When a supplier, alliance or other business partner or client is not a competitor:

DO NOT assume that you can agree "total requirements" or long-term exclusive contracts with your suppliers, alliance and other business partners or clients without having checked with the Group Legal Department.

DO NOT imply that a client must work with the Group exclusively or stop working with a Group competitor to have access to the Group's services. Never imply that a supplier must sell to the Group exclusively or discontinue selling to a competitor.

DO consult promptly with the Group Legal Department if any supplier, alliance or other business partner or client wishes to engage you on issues that involve restrictions to the Group's or the supplier's, alliance or other business partner's or client's commercial freedom.

6. HOW TO BEHAVE IN A DOMINANT POSITION OR A MONOPOLY POWER SITUATION?

A competition laws policy would not be exhaustive if it does not also address dominant position and monopoly power situations. For further details, you may refer to Appendix "Detailed guidelines on how to behave when in a dominant position or a monopoly power situation".

In brief, remember that special rules apply to the conduct of companies that possess a"dominant position" or a "monopoly power."

In general, a company has a "dominant position" or a "monopoly power" if it has enough market presence to allow it to act without regard to its competitors, customers and, ultimately, end-users.

Being in a dominant position or benefiting from a monopoly power in itself is legal. It is the abuse of dominant position or the illegal acquisition or maintenance of monopoly power that is prohibited. They may, in particular, consist of:

— predatory pricing, which is the practice of selling a service or product at a very low price, intending to drive others out of the market, or create barriers for entry of new potential competitors;

— making the sale of a service or product conditional on supplementary obligations that have no connection with the subject of such contracts (such as "tie-ins" and "bundling" of service and product ranges);

— applying different commercial conditions to equivalent transactions with suppliers or clients, thereby placing them at a competitive disadvantage; or

— limiting output, markets or technical development to the prejudice of clients and/or consumers.

7. PRACTICAL ADVICE

7.1 Accuracy in written documents

It is not unusual that perfectly legitimate conversations or written documents, when taken out of their context or associated with other pieces of information, may look inappropriate or provoke incorrect impressions about the Group's conduct or the state of the market in which the Group competes. It may happen, for instance, when battlefield metaphors are used to refer to competition (e.g., "war," "annihilate") or when you use certain terms (e.g., referring to them as "friends") that could even remotely give the impression that you are trying to resort to exclusionary practices or colluding with competitors.

Be accurate in what you write in correspondence, e-mails and memoranda about the competition, competitors and businesses in which the Group competes. Make sure that there cannot be any misunderstanding about the purpose of your discussions or writings.

DO'S & DON'TS

Following some simple guidelines can substantially reduce the risk of unjustified inferences in the event the Group later faces some form of inquiry by competition authorities:

DO avoid exaggeration, be clear and complete. The content of inter-office memoranda or e-mails should never permit the inference that there is some sort of collusive understanding among competitors or among the Group and its clients or partners, or that the Group is engaging in activity that could illegally exclude a client or competitor.

DO remain factual and objective. When dealing with competition or competitive prices, every correspondence, e-mail or memorandum should simply state what the facts are, and the source of the information.

DO NOT overstate the market position of the Group or its market strategy. This might support an inference that the Group is engaging in predatory activity or is otherwise acting with anti-competitive intent (e.g., references to eliminating competition or references like *"the Group has the strongest position in XYZ market"* if it is not demonstrated by industry analysts reports or other objective criteria).

IN PRACTICE...

How can careless language be dangerous?

During an investigation, the competition authorities can examine and copy almost every form of data and correspondence (emails, travel expenses, diaries, photos,…) and can even recover deleted electronic data. These documents may be subsequently used by competition authorities as incriminating evidence to support a case. Misunderstandings on the meaning of certain words, especially if they are taken out of their context, can therefore cause very serious damage.

7.2 How to behave in case of public authority investigations

It is the Group's policy to fully cooperate with public authority investigations.

A law enforcement public authority can launch a non-routine inquiry related to corporate activities of the Group or its subsidiaries regarding possible criminal or civil violations of any laws or regulations.

Public authorities may also issue requests for information to the Group at any location and require the Group to provide oral or written information.

Any non-routine government investigation, whether related to competition laws or otherwise, must be transmitted immediately to the Group Legal Department, who will handle and coordinate it.

In case of routine inquiry, no information concerning the Group's business, whether oral or written, should be provided except after prior review, advice and approval of the Group Legal Department. They will ensure the necessary coordination and safeguard the rights of the Group and its employees.

DO'S & DON'TS

In case of public authorities' investigations:

DO inform the Group Legal Department without delay when there are allegations, either from competitors, clients or any other source, that the Group is involved in any illegal behavior.

DO inform the Group Legal Department immediately when an employee is approached by any person conducting a public authority investigation, whether such investigation concerns the Group or any other third party.

IN PRACTICE...

What are the powers of investigations of the competition authorities?

Competition authorities are responsible for maintaining effective and fair competition and may investigate suspected breaches of competition laws.

They have general very large investigation powers and might:

— search the company premises or your home (if it is being used in connection with the company or if company documents are kept there) and take copies of all relevant documents;

— require an oral explanation from employees about issues arising from the documents found during the search.

If you are contacted by competition authorities, notify the Group Legal Department immediately.

What can affect the level of fines for a company?

Generally, a number of factors can increase the basic fine for a company: repeated breaches, duration of the breach, refusal to cooperate or provision of misleading information, attempts to obstruct the investigations or destruction of documents relevant to an investigation.

In contrast, cooperation with public authorities may in some instances lead to a reduction of the basic fine for a company. One way of cooperating for a company consists in informing the competition authorities that it is participating in an illegal agreement with its competitors or providing relevant information and fully cooperating with competition authorities once an investigation has started.

The reason behind this incentive is to ensure that participating in anti-competitive agreements is never a sustainable advantage since it might be in a participating competitor's interest to be the first to disclose an on-going anti-competitive agreement to the authorities and to give the names of all participants in order to obtain a reduction of its fine.

Appendix

Portrait of Faisal GHADIALLY, Principal, Oracle Service Line, Capgemini North America, featured in the communication campaign:
http://www.capgemini.com/experts/

Appendix

Detailed guidelines on how to behave when in a dominant position or a monopoly power situation

1. WHAT IS A DOMINANT POSITION OR A MONOPOLY POWER?

Special rules apply to the conduct of companies that possess a “dominant position” or a “monopoly power” on a relevant market.

In general, a company has a “dominant position” or a “monopoly power” if it has enough market presence to allow it to act without regard to its competitors, customers and, ultimately, end-users.

The existence of a “dominant position” or a “monopoly power” is assessed in a relevant market, by reference to a specific service or product and for a specific geographical area.

Note that the definition of a relevant market for competition analysis may be far narrower than one would expect. It may therefore be that an affiliate of the Group is considered dominant or as having a monopoly power in a narrowly defined market that one might not naturally consider as a separate market and even if such affiliate of the Group is not a leading player in the overall IT service sector in that area.

Behavior that is perfectly legal for a company that does not have a substantial and durable market power may be unlawful when engaged in by a company that has such market power.

In assessing whether a company has a dominant position or a monopoly power, competition authorities will also analyze its “market power”. Market power is the economic power exercised by a company in a relevant market. It is measured in reference to several criteria depending on the particular characteristics of each relevant market, such as: the market shares of the company, the potential for new competitors to enter such market, the number and strength of competitors, the fact that the company controls important assets such as intellectual property rights. As you can see, if market shares are important to assess market power, they are not the only criterion to take into account as many other factors may impact competition.

2. PROHIBITED BEHAVIOR WHEN BEING IN A DOMINANT POSITION OR BENEFITING FROM A MONOPOLY POWER

Being in a dominant position or benefiting from a monopoly power in itself is legal. It is the abuse of dominant position or the illegal acquisition or maintenance of monopoly power that is prohibited. Abuse of a dominant position or the illegal acquisition or maintenance of a monopoly may, in particular, consist of:

>> predatory pricing, which is the practice of selling a service or product at a very low price, intending to drive others out of the market, or create barriers for entry of new potential competitors.

A seller with substantial and durable market power in a particular service or product market is not allowed to undercut a competitor (or price below costs), with the intent to eliminate one or several competitors so that it can recover its losses and eventually benefit from such practices by increasing prices to clients.

In your day-to-day correspondence, you should always keep in mind not to make any statement that could support an inference that the Group is engaging in predatory activity (such as a reference to eliminating competition by being aggressive on prices).

>> making the sale of a service or product conditional on supplementary obligations that have no connection with the subject of such contracts (such as “tie-ins” and “bundling” of service and product ranges).

A seller with substantial and durable market power in a particular service or product is not allowed to force its clients to make other purchases from it by “tying-in” or “bundling” a sale of other service(s) or product(s). This would be the case, for instance, if the Group were particularly strong in a particular type of service, and would only supply that service if that client also takes a different service from the Group.

Tying, consists in making the supply of a particular service or product conditional on the purchase of another service or product.
Bundling, consists in selling different services or product as a bundle, whose price represents a discount to the individual prices of such services or products when sold separately.

“Tying-in” or “bundling” sales may be legal in certain circumstances, but only if the seller does not have substantial and durable market power in respect of any service or product in the bundle that would, in effect, force the buyer to accept the entire bundle to get that particular service or product.

>> applying different commercial conditions to equivalent transactions with suppliers or clients, thereby placing them at a competitive disadvantage.

A seller with substantial and durable market power in a particular service or product must not discriminate in its prices or other sales conditions when dealing with similarly situated clients. Different prices or terms may be proposed to clients in the same class or category only if there is an objective justification for the different pricing (e.g., a rebate to a client providing and additional service or purchasing a certain volume).

Please note that in certain jurisdictions, a seller even without substantial and durable market power in a particular service or product may not discriminate in its prices offered to similarly situated clients. This is the case when lower price may give the favored client a competitive advantage over the disfavored client with respect to

the resale of the service or product. Also, in certain instances, a client that knowingly solicits a discriminatory price may also violate the law.

>> limiting output, markets or technical development to the prejudice of clients and/or consumers.

A seller with substantial and durable market power in a particular service or product is not allowed to refuse to deal with a potential or existing supplier, alliance or other business partner or client for the relevant service or product.

In the exceptional case of refusing to make or place an order, ensure that this is made against a set of clear legitimate criteria, such as unavailability or inadequacy of services or products, refusal to agree on reasonable price or terms (e.g., those agreed with similarly situated clients) or the client's credit risk profile.

>> entering into "reciprocal dealing", which is the practice of making a purchase dependent on the seller's purchase of the buyer's services or products. In certain jurisdictions reciprocal dealings, also known as "reciprocity," may be a violation of competition laws.

It is the Group's policy to make all its purchases of supplies and services on the basis of price, quality, terms of sale and reliability of the supplier. As a consequence, the Group refrains from "reciprocal dealing." In exceptional circumstances, such dealing may be acceptable, so long as there is no coercion and suppliers are not threatened with loss of the Group's business. However, any reciprocal dealing requires the prior consent of the Group Legal Department.

DO'S & DON'TS

In short:

DO NOT undercut or price below costs to eliminate a competitor.

DO discuss with the Group Legal Department where you are uncertain about proper pricing policy (including discounts and rebates) to clients.

DO select your suppliers, alliance or other business partners and clients based on objective and verifiable business reasons.

DO NOT ask your suppliers, alliance or other business partners about prices offered to competitors at all.

If you think that the Group has a significant market share or market power in a particular service or product:

DO consult with the Group Legal Department before:

— entering into any agreement that includes "tying-in" or "bundling," either expressly or implicitly;

— refusing to make an offer or place an order;

— applying different prices or sales conditions to clients that belong to the same class or category.

The Ethics & Compliance Hub on Talent

This is where you can find material you will need to help you with all Ethics & Compliance issues.

In the Hub you will find:

> Group Policies and Guidelines
> Overview of Ethics & Compliance Officers and contact details
> Access to training material
> Frequently asked questions and answers. These FAQs are regularly updated to provide you with extra practical guidance where needed.

Need further help?

If you require any further information regarding Ethics & Compliance issues, please consult the Ethics & Compliance network and your primary contact, your Ethics & Compliance Officer.

The Ethics & Compliance network

The Chief Ethics & Compliance Officer (CECO) is responsible for the Ethics & Compliance program for the entire Group. This role includes developing and implementing initiatives to improve compliance for all operational and functional units or departments, in coordination with the relevant operational and functional unit heads, the General Counsel–Ethics & Compliance Officers, and the Group General Counsel (GGC).

The CECO coordinates the E&C program within the entire Group and reviews and evaluates E&C issues and advises managers and employees.

The General Counsel – Ethics & Compliance Officer (GC ECO) is responsible for the Ethics & Compliance program within the geography for which he/she is appointed. This role includes developing and implementing (either by managing or controlling) initiatives to improve compliance for all local operational and functional units or departments in coordination with the CECO, the relevant local operational and functional unit heads and GGC. Each GC ECO coordinates the E&C program within the geography for which he/she is appointed, and reviews and evaluates E&C issues and advises managers and employees.

The SBU/BU Manager is accountable for ethics and compliance in his/her respective Unit(s). He/she is also accountable for achieving the Ethics & Compliance program.

Need to raise an Ethics & Compliance concern? The Raising Concern Procedure

The Raising Concern Procedure (RCP) is a procedure enabling employees to obtain advice and guidance or report concerns on ethics and compliance issues and behavior with regard to possible misconduct, wrongdoings, breaches of policies, laws or regulations (including irregularities in accounting, auditing or banking matters, bribery, unfair competition or improper financial reporting related to the business of the Group and/or Company) or where the interests of the Group and/or the Company or any team member is at risk.

Employees may use the RCP and seek advice and guidance or report concerns to the local General Counsel–Ethics & Compliance Officer (GC-ECO) and/or directly to the Chief Ethics & Compliance Officer.

The RCP is currently being developed on a case-by-case basis in the countries where the Group operates in accordance with the applicable legislation.

Ethics & Compliance

The Ethics & Compliance program is founded on the ethical culture which has existed in our Group since 1967.

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People matter, results count.