Competition Compliance Policy

Logistics with Integrity

Agility

agilitylogistics.com

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AGILITY'S COMPLIANCE POLICY

Agility is a leading emerging market multinational with more than 32,000 employees and over 550 offices in 100 countries around the world. The international and complex nature of our business makes it particularly crucial that the conduct of all employees be above reproach. Integrity is one of our core values, and lawful and ethical business practice is an essential element in all of our business relationships and dealings. We are firmly convinced of the benefits to our company of a fully competitive marketplace, and we are committed to full compliance with all applicable competition laws.

In June 2006 we issued a mandatory Code of Business Ethics and Conduct and established a comprehensive corporate compliance program. Although the Code does not address every conceivable kind of business practice and behavior, it is intended to clearly communicate, at a minimum, what is expected of Agility employees.

This policy booklet complements the Code's review of competition compliance and is intended to help you understand:

- What the competition rules mean for us;
- Why it is essential to comply with them; and
- How to comply with them in practice.

Tarek Sultan

Chairman & Managing Director
Agility

AGILITY: COMPETITION COMPLIANCE BOOKLET

1. HOW THIS BOOKLET WORKS

This compliance booklet is designed to help you understand the following about how competition law applies to us:

- what we cannot do;
- what we can do; and
- when you need to seek advice.

It relies on a simple color code system:

RED shows behavior or agreements which are generally considered illegal in most countries and therefore ***FORBIDDEN***. They should NEVER be engaged in or entered into by anyone in our business.

GREEN shows lawful commercial behavior. This is ***PERMITTED***.

AMBER or yellow shows potential risk areas where ***YOU MUST SEEK ADVICE*** from our Legal Department.

This booklet is not a substitute for specific legal advice. If in doubt, consult our Legal Department.

2. THE NEED FOR A COMPETITION COMPLIANCE BOOKLET

This booklet is intended to help you understand how competition law applies to our business activities, so that you can identify and avoid arrangements or behavior which are or may be prohibited.

The consequences of non compliance can include:

- Heavy fines
- Damages claims
- Bad press
- Disqualification of directors or other senior personnel
- Administrative actions including fines, penalties and disqualifications from doing business
- Imprisonment
- Unenforceable agreements
- Termination of employment

3. WHAT ARE THE COMPETITION LAWS?

Any business practice which has the potential to interfere with fair competition in the marketplace may be caught by competition law.

Anti-competitive agreements

Competition law in most parts of the world, including the US and EU, prohibits agreements and arrangements that prevent, restrict or distort competition, or might do so - or are intended to do so. This applies to formal or informal agreements (including so-called "gentlemen's agreements," i.e. informal understandings) and exchanges of information, whether or not they are written, and whether or not they are legally binding.

The most serious example of an anti-competitive agreement is a cartel, where businesses agree on behavior which means that the market is no longer fully competitive. Typically, cartel members' arrangements cover one or more of:

- Prices
- Discounts
- Credit terms
- Output levels
- Which customers they will supply
- Which areas they will supply
- Who should win contracts or tenders

Competition law therefore prohibits:

- **Price-Fixing**
  Any arrangement between competitors which seeks to fix prices (either directly or indirectly, for example through agreements on discounts, or under which they agree to pass on surcharges or other costs). Businesses must make their own independent pricing decisions.

- **Market Sharing**
  Agreements which seek to divide or allocate customers or areas between competitors.

- **Bid Rigging**
  Bid rigging which occurs when two or more competitors get together and decide who should win or bid for a contract or tender.

This list is not exhaustive. Please refer to the Agility Code of Ethics for additional information.

Any business practice which has the potential to interfere with fair competition in the marketplace may be covered by competition law.

4. CONTACT WITH COMPETITORS

4.1 What's forbidden?

Never enter into any agreement, arrangement, understanding or discussion with any of our competitors about any of the following:

(a) Pricing

Pricing is critical in terms of competition. Businesses must determine their own pricing policy independently. Any arrangement which seeks to agree or fix prices (either directly or indirectly) will be prohibited.

Price fixing can take many forms, including agreements on:

- Minimum and/or maximum prices
- Published price lists (where these prevent one party from offering discounts)
- Fixing part of a price (e.g. a surcharge or other charge)
- Profit margins (where parties agree to base prices on a set profit margin)
- Consultation (e.g. where one party agrees not to quote a price without consulting its competitors)
- Passing on surcharges at cost
- Agreeing not to discount surcharges or other additional charges.

Price fixing is also a criminal offence in the UK, the US and other countries.

EXAMPLE 1

A trade association meeting discusses fuel surcharges imposed by major airlines. One speaker asks for each of the freight forwarders to say how much of the surcharge they intend to pass on to customers and what kind of administration fee they intend to collect. Can you give them this information?

No. You must not give any information to any competitor about our prices or components of our pricing or pricing strategy, such as passing on surcharges. Competitors must each reach their own independent pricing decisions.

EXAMPLE 2

At an industry lunch you sit next to a representative from a competitor. He does not think they have a chance with a particular contract, but wants to put in a bid so they can be considered for future contracts. He asks for indications as to a price which would look realistic, but not be sufficient to allow them to win this work.

This is an attempt to put in a “cover bid”. This is a form of illegal price fixing. You must not give any indication to a competitor about our prices, or our bidding intentions, or reach any understanding or arrangement with them about bidding.

(b) Market Sharing or Allocation

Market sharing occurs where one or more competitors agree to divide a market - for example, so they each get an equal or agreed amount of business, or so that one will do business in one area or with one group of customers, while another does business in a different area or with a different group of customers.

We must not become involved in any agreements or understandings to share markets, customers or business opportunities with our competitors.

We must make our own decisions about how and where our business operates. This includes making our own decisions about:

- Whether to bid for contracts or jobs (but see 6.3 below);
- On what terms we will bid;
- The prices and conditions we will offer any customer or prospective customer; and
- Terms and conditions relating to commercial issues such as liability.

Never enter into any discussion, understanding or agreement with any of our competitors on any issue relating to how or where we operate, whether we will or may bid for business, or the terms or conditions of tenders. This applies not only to bidding for contracts but also to any other business opportunities.

Market sharing is also a criminal offence in the UK, the US and other countries.

EXAMPLE 3

At a trade association meeting attended by several freight forwarders, others discuss a proposal for each to take it in turn to win contracts by ensuring pre-agreed bids. You have some misgivings about this but stay quiet throughout.

This is an illegal market-sharing or bid-rigging scheme. Your presence at the meeting, even if you stay silent, implicates you. You must object firmly and clearly, ask for your objections and departure to be noted, and leave the meeting. You must report what has happened to our Legal Department.

(c) Sharing Information

Information exchange between competing firms can be a serious competition law problem. Each competitor must set independently the policy which it intends to adopt. Information sharing between competitors is illegal when the type of information being shared is commercially sensitive.

We must be particularly vigilant not to share any kind of information with our competitors which would allow them to understand or estimate our current or future market position or commercial strategy, or enable us or them to better understand or predict market trends, supplier pricing and capacity.

Do not disclose or share any confidential or sensitive information about us, our customers or our intentions, including any of our:

- Sales details
- Revenues
- Future products or services
- Marketing initiatives
- Business opportunities or intentions
- Volumes

Our Code of Business Ethics and Conduct also states that if we have just hired a former employee of a competitor, we must not accept any confidential pricing information which she/he may have brought with them. The employee should destroy the material or return it to the previous employer, and report the incident to the Compliance Officer.

It is also forbidden to get a competitor's prices by pretending to be a prospective customer, as this is a form of deceit and is an improper form of business behavior.

EXAMPLE 4

You are negotiating the price for a new contract with a customer. The customer says that you need to offer a better price than Competitor X (i.e. a named rival company). The customer tells you the price which Competitor X has offered the customer. Can you use this price information?

Yes. Where a customer has voluntarily given you information about your competitors' prices, you can use that information to help make your pricing decision. You should not actively solicit this information.

(d) Collective Boycotts (collective refusals to do business)

A collective boycott occurs when two or more competitors agree not to do business with a particular firm. This is illegal. Businesses must make their own decisions about whom they do business with. It is also illegal for competitors to agree that only one of them will refuse to do business, or if two or more competitors threaten or force one business not to deal with another business, such as a competitor or supplier.

You must not engage in any conduct or enter into any agreement or arrangement (whether formal or informal, whether or not in writing) with a competitor or non-competitor to refuse to deal with a particular firm or individual for any reason whatsoever.

EXAMPLE 5

During a trade association meeting, discussions turn to the performance of a particular airline. Someone suggests that the various freight forwarders collectively agree not to deal with that airline unless it improves its performance.

This appears to be an illegal collective boycott/refusal to do business. You must make sure that there is no further involvement by us. You must report what has happened to our Legal Department and must cooperate with it to find out as much as possible about these arrangements so that we can, as a matter of urgency, decide how best to proceed, e.g. whether to contact the authorities .

4.2 Summary

You must be particularly careful about dealing with competitors, and must not discuss with any competitor:

- Prices
- Price changes
- Discounts
- Costs
- Warranties
- Confidential information, such as details of sales, revenue, contract terms, or business opportunities
- Terms of sale
- Marketing initiatives

This extends to any discussion about sub-contractors and their terms of business (e.g. how much they are charging).

You **must not** under any circumstances:

- Discuss how to keep a company (e.g. a competitor) out of any market;
- Divide up different projects or work with another competitor or competitors (other than on a normal co-loading or
- Subcontracting arrangement);
- Agree to leave another competitor's customers, locations, areas or opportunities alone; or
- Make any agreement or reach any understanding with a competitor which allocates sales, territories, customers, tenders, opportunities or services between us and that competitor or other competitors.

4.3 What's permitted?

Any contacts with competitors are a highly sensitive area from a competition law perspective.

There are therefore very few contacts that are allowed, though discussions which will not and could not have any impact on the commercial behavior of the parties are less likely to give rise to concern.

Discussing the following is unlikely to be problematic (as long as the discussion does not also cover other, potentially sensitive, areas):

- Regulatory changes and compliance (such as proposed changes in legal or regulatory requirements which apply to everyone)
- Government or European policy
- Industry lobbying and promotion initiatives
- Health and safety information
- Industry employment and training issues

4.4 When you need to seek advice

If you have any doubts whether the discussion is likely to or could:

- affect future commercial strategy, product or service composition
- lead to a change of strategy in the short to medium term
- lead to an immediate or short term change in behavior relating to:
- Prices
- Services offered
- Discounts
- Surcharges

Contact our Legal Department before you enter into, or continue with the discussion.

If in doubt, seek advice!

5 TRADE ASSOCIATIONS

Competition authorities believe that trade associations are often used as a cover for illegal cartels.

If you are to attend trade association meetings, or go to any other event where competitors may be present, remember:

5.1 What's forbidden?

5.1.1 You must not discuss (nor even appear to discuss) any of the following types of information at any trade association meeting (or anywhere else with competitors):

- Pricing or other terms given to customers, including agreeing the extent to which fuel, war or other surcharges will be passed on to customers (or any associated costs, e.g. financing, collection, administration, etc.);
- Industry-wide and/or individual company price changes, price differentials, mark-ups, discounts, allowances, credit terms or related financial issues;
- Service capacity of individual companies, or changes in industry production, capacity or inventories;
- Bids on contracts for particular products and the procedures for replying to bid invitations;
- Any individual company's costs;
- Terms on which we or any of our competitors usually do business, whether with airlines, shipping lines, truckers or customers;
- Allocation of customers, contracts, sites, regional areas, or types of services;
- Details about potential individual suppliers or customers which might exclude them from the market or influence other companies' behavior towards those suppliers or customers; or
- Any company-specific business plans, marketing initiatives, market share data or any other confidential information, including proposed territories or customers.

5.1.2 Do **not allow** any industry benchmarking or cost control initiatives which a trade association may prepare to have any 'spill-over' effects. For instance, a fuel and security surcharge report database should **not** be used as a cover to reach price or volume or market sharing agreements, or collective boycotts of airlines with high surcharges.

5.1.3 Make sure that **written agendas** are prepared for all trade association meetings, are circulated in advance and are strictly followed. Also make sure that **full notes** are made of the discussions at each meeting - do object if those notes are not correct.

Do not allow business related discussions at trade association meetings (or at the associated meals and social events) to go beyond the written agenda.

5.1.4 What should you do if those points are discussed?

If any of the above prohibited subjects are raised during a meeting at which you are present, including in a telephone conversation or an informal conversation/meeting, you must make clear that you cannot discuss these subjects and must leave if the discussion continues. This applies even to social meetings or conversations.

You must make a careful and thorough note of what happened, i.e. that a sensitive prohibited issue was raised which you refused to discuss and that you left the discussion if the other parties carried on despite your objections, and pass it immediately to our Legal Department.

Crucial evidence for investigations by competition authorities is often contained in manuscript notes of telephone conversations, or internal memos passing on information received from competitors.

Remember that:

- **There is no such thing as an "off the record" discussion to the competition authorities;**
- **Other participants in such discussions may disclose them to competition authorities, even if you seek to keep them quiet.**

Please see section 8 below on communication and use of language.

Problematic contacts include:

- Attendance at any trade association meetings, conferences or seminars where competitors are present; and/or
- Telephone calls, emails and text messages to competitors or other trade association members.

EXAMPLE 6

You attend an annual industry dinner at a hotel in London. You are approached by a former colleague who now works for a competitor. He tells you that a UK chemicals group has asked his company to bid for a contract to transport bulk chemicals around the world. They are not keen but they do want to bid for another large contract due to come up for tender later in the year (for which we would also be a likely bidder). Your former colleague does not overtly make any suggestions as to future conduct, but ends the conversation with an "I'm sure you know where we're coming from" remark.

This is an attempt to rig bids. You must make clear that you cannot discuss bids. You should make a note of the conversation and report it to our Legal Department.

5.2 What's permitted?

At any trade association meeting or during other discussions with competitors, you may discuss:

- Regulatory changes and compliance
- Government or European policy
- Industry lobbying and promotion initiatives
- Health and safety information
- Industry employment and training issues
- Research and development

In other words, information that is about the market in general and not commercially sensitive, or company or site specific, can be discussed with our competitors. Information concerning matters such as prices, capacity, production, investments, commercial strategy and views on the evolution of market conditions should not be discussed.

5.3 When you need to seek advice

It is not always easy to distinguish between legitimate trade association activity, and unlawful activity. If you have any doubts, please seek guidance from our Legal Department.

6 CONTACT WITH CUSTOMERS AND SUPPLIERS

Most companies can be flexible about their trading terms with their suppliers and/or customers. Some restrictive provisions, especially relating to pricing, can be anti-competitive and will be prohibited. As a general rule, if any contract terms are requested or an agreement or understanding is reached (remember that agreements need not be in writing), which you think may be unlawful, seek advice from our Legal Department.

6.1 Exclusivity

In principle, there is no objection to entering into exclusive arrangements with customers or suppliers provided the term (duration) of the agreement is not excessive. As a general rule, the term should be kept to five years or less and should not automatically continue after five years.

Advice should be sought from our Legal Department in relation to any long term exclusive agreements, i.e. more than 5 years. Agreements which will automatically continue unless terminated (evergreen agreements) have an indefinite term, i.e. more than 5 years.

6.2 Dealing with competitors as customers

This area often raises concerns under competition law, so consult our Legal Department before entering into any of these arrangements.

Be particularly careful, if negotiating with competitors as customers (for example as a sub-contractor on certain lanes) not to reveal commercially sensitive information. For example, do not disclose:

- Prices and terms offered to other customers;
- Details of such customers or services where they are not already known;
- Our costs; or
- Any marketing initiatives or confidential information which would enable the competitor to adjust its behavior.

Any preferential terms offered to competitors as customers in exchange for an agreement to withdraw from one of our markets would be a clear breach of competition law. Similarly, no agreement or commitment should be made to a competitor to behave in a certain way (e.g. staying out of a market, not bidding in a tender, etc.) in exchange for payment of a higher price or a contract/subcontract award. If this is suggested during negotiations, you should decline immediately.

6.3 Dealing with competitors as suppliers

This area can raise concerns under competition law, so consult our Legal Department before entering into any of these arrangements.

Competitors can also be suppliers, for instance where shipping lines offer Agility and its customers vessel capacity. Large customers can go direct to a shipping line to book suitable vessel capacity, without using a forwarder such as Agility. Competition can therefore exist between Agility and the shipping line to attract business from such large customers.

Be particularly careful when you are negotiating with competitors as suppliers, so that you do not restrict competition between Agility and the supplier. Make sure that you **do not**:

- Agree to any resale price maintenance (e.g. do not give a commitment to a carrier about the price Agility will charge for freight);
- Restrict the terms on which Agility does business, e.g. through any non-compete or exclusivity clauses, without taking legal advice;
- Restrict a carrier's freedom to set prices to others; or
- Circulate any price information through carriers to competitors.

7 WHAT TO DO IF SOMEONE ELSE IS NOT COMPLYING

The competition rules discussed in the previous sections apply to our trading partners and competitors as much as they do to us.

We may be the victim of anti-competitive agreements or behavior by our competitors, contractors or sub-contractors.

If, for example, you notice:

- Similar or identical pricesr
- Terms of business
- Surprising bids or failure to bid

from several contractors or sub-contractors, they may be breaking competition law.

Bring any suspicions to the immediate attention of our Legal Department

This is crucial to protecting our interests!

8 COMMUNICATION AND USE OF LANGUAGE

8.1 Be careful about the language that you use, whether in writing, e-mails, text messages or conversations. Always ask yourself how your language might be interpreted by a competition authority.

E-mails, texts and voicemail messages can be accessed by the competition authorities or in legal proceedings. Simply deleting them is ineffective and may well be illegal. Competition authorities often find that e-mail, texts and voicemail contain the most damaging statements.

Many internal documents are likely to come under scrutiny during an investigation or legal proceedings involving a third party, even those which you might believe to be confidential, such as diaries, telephone calls or personal notebooks. “Documents” are not limited to papers, but will include any form in which information is recorded: computer records and databases, e-mail, microfilms, tape recording, films and videos can all be examined.

8.2 Examples of language to avoid:

Avoid these types of language

"This is a great initiative … However, a word to the wise, never ever put anything in writing, it's highly illegal and it could bite you right in the arse!!!! Suggest you phone Lesley and tell her to trash?"
E-mail cited in the UK Office of Fair Trading Decision, dated 21 November 2003, 'Agreements between Hasbro U.K. Ltd, Argos Ltd and Littlewoods Ltd fixing the price of Hasbro toys and games.' Littlewoods was fined £5.37 million and Argos £17.28 million.

"[ABC] has a longstanding relationship with this consignee and they [ABC] have handled their airfreight business since 2000. They know we handle their ocean freight business. They will leave their ocean freight business to us if we do not attack their airfreight business. We should accept this proposed gentlemen's agreement."

8.3 Guidelines

Remember:

- Whenever you intend to write something down, especially in an e-mail, consider how it might look to the competition authorities.
- State clearly the source of any price information or other commercially sensitive information, so as not to give the false impression that it came from a competitor.
- Follow the same rules if writing on or summarizing copies of notes or memoranda originated by customers - hand-written notes can be used as evidence.

Avoid language which wrongly suggests that:

- A customer is getting special treatment. For example, if a customer is getting our lowest price because it buys more of our services than anyone else, then make sure that this entirely legitimate reason is made clear to it and documented as well;
- An industry view has been reached on a particular issue, such as price levels; or
- Our prices are based on anything other than our independent business judgment.

Do not:

- Use incriminating language such as "please destroy" or "delete after reading". For example, the European Commission used the following hand-written note at the top of a table setting out adjusted market quotas between companies as evidence in a competition case:"to be destroyed completely… EU case looks bad. Be careful for Christ's sake"
- Speculate in writing about whether an activity is illegal or legal.

9 COMPLIANCE SUMMARY

This summary should be read in conjunction with previous sections.

9.1 What's forbidden?

(a) Dealing with Competitors

DO NOT:

- Discuss prices, capacity, opportunities or customers with our competitors. This includes any discussion about sub-contractors and their terms of business, including prices they are charging;
- Participate or remain in any meeting with competitors where there is any discussion about whether, where, to whom, or at what price any of them will sell;
- Agree to divide or share markets or business opportunities with competitors, or agree not to do business with certain customers or pursue any business opportunities for any reason; or
- Disclose or exchange our confidential business information.

(b) Trade Associations

DO NOT:

- Discuss prices, capacity or customers
- Discuss commercial plans or other sensitive information
- Discuss surcharges

(c) Dealing with Customers

DO NOT:

- Give preferential terms to a competitor as customer in exchange for an agreement to withdraw from one of our markets; or
- Agree to behave in a certain manner on the market in exchange for payment of a higher price or more favorable terms.

9.2 What's permitted?

(a) Dealing with Competitors

YOU CAN:

- Discuss regulatory issues (as long as the discussion does not also cover other potentially sensitive areas).

(b) Trade Associations

YOU CAN:

- Discuss with competitors within a trade association matters of general interest to the industry, such as regulatory changes, government or European policy and industry lobbying.

(c) Dealing with Customers

YOU CAN:

- Obtain information about our competitors from customers.

9.3 When you need to seek advice

(a) Dealing with Competitors

ASK FOR ADVICE:

- Before collaborating or doing business with competitors in any respect (e.g. entering into a joint venture, or undertaking joint research); or
- If discussing commercial strategy, product or service composition.

(b) Trade Associations

- If you're unsure about any issues.

(c) Dealing with Customers

ASK FOR ADVICE IF:

- We are giving a better price to one customer to the detriment of another;
- Considering entering into an exclusive contract; and/or
- The customer is also a competitor.

IF IN DOUBT, ASK FOR ADVICE

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