# Calder Group competition law compliance – advice to employees

**Breaching competition laws on anti-competitive behaviour is a criminal offence. It exposes Calder, its Board of Directors, the operating companies and their staff, to potential criminal liability, as well as to the risk of substantial fines, penalties and claims for damages (in addition to lengthy investigations and proceedings). It is therefore extremely important that the group's policy on competition law compliance is strictly observed.**

These are guidelines only. In any competition law assessment the central consideration will be the specific facts or circumstances applying at the time. If you are ever in any doubt about potential competition law issues please contact your line manager, your subsidiary Managing Director or the Group Finance Director.

**What are competition laws?**

Competition laws are designed to promote free and fair competition. The main focus of competition laws is to prevent:

- Agreements (whether verbal or written) which have the object or effect of preventing, restricting or distorting competition;
- Collusive behaviour between companies which replaces market uncertainty and independent decision making; and
- Abusive behaviour by companies that are dominant in their business market(s).

Competition laws have a long reach. As well as covering formal, written agreements or arrangements, they also extend to informal communications which have an anti-competitive object or effect. This includes providing a competitor (or a third party who you know will or may inform a competitor) with commercial information (e.g. employee salaries, charges paid to a supplier or a distributor and terms and conditions applied to transactions).

**What are the consequences of breaching competition laws?**

Breaching competition laws can expose Calder and/or the operating company concerned and the individuals involved to substantial penalties and severe adverse consequences. For the Group, these could be financial and reputational. For individuals, they could involve criminal liability including fines and/or imprisonment.

**Financial damage to the Group**:

- Competition authorities all over the world vigorously enforce competition laws and can impose very large fines for breach. These fines can be up to 10% of a company's global **turnover** (not just profits). For our business this could amount to millions of pounds.
- Third party companies or individuals (such as competitors or distributors) who have suffered as a result of a company's failure to comply with competition laws could bring civil claims (such as class actions) costing the Group potentially many more millions of pounds.

**Reputational damage:**

- Breaking competition laws may result in a loss of customer trust or bad media coverage causing damage to the Group and brand.

**Consequences for individuals:**

- Individual employees (not just management) who breach competition laws face criminal fines and prison sentences;
- Individual employees could face disciplinary action, up to and including dismissal, for being involved in or failing to report behaviour that may be anti-competitive.

**What do I need to know?**

We do not expect you to understand all complexities of competition laws but we do expect you to read this guidance and the accompanying "do's and don'ts" so that you are able to understand the risks and avoid breaching competition laws. You must understand what you can and cannot do in the course of your day to day role in the Group. If at any time you have concerns or questions about competition compliance do not hesitate to raise them with your Line Manager, your subsidiary Managing Director or the Group Finance Director.

**What do I do if I know of or become aware of a potential breach of competition laws?**

If, at any time, you suspect or know that the business may be in breach of competition laws you should **immediately** inform your Line Manager or subsidiary Managing Director.

It is usually in everyone's best interests to "come clean" as soon as possible. This is because the Group may be able to reduce any potential exposure by seeking leniency or immunity, both for the Group and for you, by reporting the matter early to the competition authorities. Leniency and immunity often only apply to the Company "first through the door" to the authorities. Therefore, it is in everyone's interest, including all employees involved and the Group, that you report any suspected or known breach of competition laws as soon as possible.

This guidance focuses on the two central concerns of competition authorities:

- Anti-competitive agreements; and
- behaviour by a dominant company which abuses its market position.

**ANTI-COMPETITIVE AGREEMENTS**

Agreements between two or more undertakings will be anti-competitive if they seek to:

- Fix prices for goods or services;
- Limit or control production or availability of goods, services, technical development or investment;
- Share or "carve up" the market; and
- Exchange commercially sensitive information.

An undertaking is defined as a single economic unit and therefore Calder Group as a whole is likely to be treated as a single undertaking. Agreements between intra group companies will generally fall outside the provisions on anti-competitive agreements but only if the companies are considered to be a single economic unity. The law is complex in this area and before entering any agreement which contains any element as explained below, speak to your Line Manager or subsidiary Managing Director.

You should take particular care when dealing with competitors. The competition authorities take a broad view as to who may be a competitor, for example, a company that is a potential competitor or provides products and services which are similar to Calder's will be deemed a competitor.

**Areas to avoid**

**Direct contact with competitors** is always viewed suspiciously by competition authorities. There may be legitimate reasons why you may need to speak to a competitor, but you should always start from the position that such contact is problematic unless there is a legitimate reason. If you are unsure of whether you should contact or respond to a competitor contact speak to your Line Manager **before doing so**. Always complete a "Record of Competitor Contact" after every contact (meeting or phone-call) to document the purpose and extent of the of the contact.

**Agreeing with competitors on competitive elements of a product or service** such as the price charged to customers, technical specifications or developments, performance of our products and items of cost that can affect the price we charge for products (price paid to suppliers, production or machine costs, employee pay etc.) is not acceptable in any circumstance.

**Sharing the market** or agreeing with a competitor not to compete for certain customers, not to produce certain products or not to supply a geographical area is a serious breach of competition laws.

**Providing or supplying commercially sensitive information** whether formally or informally (even with a friend who works at a competitor) can also be caught by the rules on anti-competitive agreements. Giving to a competitor or receiving from a competitor information about commercial strategy can be a breach of the competition rules and you must not do it.

**Rigging the result of tender processes and cover pricing**, by agreeing with a competitor or group of competitors the level at which each of you will bid for a contract with a view to "allocating" the contract to a particular bidder, is a very serious breach of competition laws. You should not in any circumstance discuss the price and terms of a Calder bid in any tender process with competitors.

**Agreeing to restrict capacity or production** is prohibited by competition laws. You must not discuss or agree any strategy or approach to production or capacity for any product manufactured by Calder.

**Areas where you must be cautious**

**Trade associations** can be viewed with suspicion by competition authorities. You should not attend any trade association which expressly or impliedly allows discussion on commercially sensitive issues such as prices, costs of production or the imposition of production quotas or might give rise to agreements which could infringe competition laws. When deciding whether to attend or when participating in a trade association meeting you must:

- Speak to your General Manager and request the trade association's code of conduct and competition compliance policy for review before attending;
- Ensure an agenda is circulated and agreed in advance – if this contains any topic which you consider will or might involve commercially sensitive information being revealed you should not attend;
- Take a note of what is discussed and who was present (so far as you are able to);
- Leave the meeting, and have the fact of your leaving minuted, if topics arise that involve discussion of commercially sensitive information
- Not allow yourself to get drawn into discussion on commercially sensitive matters after formal meetings or during social activities.

Similar rules should apply to any meetings with competitors, such as meetings for setting technical standards.

**Contracts with third parties**

The laws on anti-competitive agreements do not only apply to those between competitors, they also apply to contracts Calder enters with customers and suppliers.

Before entering into contracts with customers and suppliers you should have regard to the principles below. If you are unsure whether a proposed contract complies with these requirements or may infringe competition laws contact your Line Manager or the subsidiary Managing Director.

You must not **set or agree a minimum resale price for Calder products**. Whilst it is acceptable to agree a recommended or a maximum resale price with distributors or customers you should not impose a minimum selling price. There are some very limited exceptions – you may set a minimum selling price for an agent (but not a distributor) but the law in this area is very complex and you must take legal advice before entering any such agreement.

It is acceptable to set a minimum selling price between two wholly owned Calder Group companies.

You should be cautious, in particular, of the following requirements in contracts (such as distribution agreements) with customers or suppliers:

- Exclusivity requirements or long term contracts (more than three to five years or those of an unlimited duration); and

- Restrictions on the territories in which products or services may be sold or purchased, including attempts to partition supply amongst different countries (in particular, in the EU).

Consult your Line Manager or the subsidiary Managing Director before entering into agreements of these types.

**ABUSE OF A DOMINANT POSITION**

Competition rules not only apply to anti-competitive agreements: they also apply to anti-competitive market behaviour by dominant companies. A company may be considered to be dominant where it has a market share around 40%. However, dominance can be difficult to assess and will depend on the precise circumstances. Therefore all employees should be cautious about any behaviour or strategy that could be construed as seeking to exclude competitors from entering the market or seeking to drive out existing competitors. In particular, before doing any of the following you should contact your Line Manager or the subsidiary Managing Director:

- Pricing a contract below cost (e.g. setting prices so low that the business will make a loss);
- Refusing or ceasing to supply products to a customer or distributor without reasonable justification. Assessing what is "reasonable" can be complex and will depend on the particular circumstances, so you should seek advice if you are in any doubt. It will usually be reasonable to stop supplying a customer because of non-payment, so long as there is no additional anti-competitive purpose (e.g., to stop a customer competing with Calder);
- Requiring customers to obtain "linked" or "tied" ancillary products;
- Requiring a customer or distributor to obtain all or most of their product requirements from you; and
- Treating different customers or distributors differently without reasonable justification (again, assessing what is "reasonable" can be complex - see above).

**Additional considerations: documentation**

- Calder must not only comply with competition laws at all times but must be seen to be complying: think about the substance of your actions and how they may appear.
- Take care in all communications. Think about the language you are using in all internal and external communications - both written (emails and presentations) and orally. Do not give the wrong impression or allow your language to be misinterpreted.
- Remember that competition authorities have extensive powers to conduct investigations including "raiding" premises, requesting information and questioning individual employees.

**Calder Group competition law compliance – do's and don'ts guidance**

The following checklist of do's and don'ts should be referred to as a starting point when considering competition issues which concern your day to day role within Calder. If, at any stage, you have any doubts as to whether there may be competition law issues, ASK BEFORE PROCEEDING.

*Generally*

- **DO** remember that competition law expects all companies to compete independently.
- **DO** work to maintain competition in the markets we conduct business in.
- **DO** conduct business ethically and in accordance with the principles of honesty and integrity.
- **DO** contact your Line Manager or subsidiary Managing Director if you are aware of any anti-competitive behaviour within the business OR if you are aware that a complaint has been or is about to be made to Calder or to a competition authority.
- **DO** remember that breaching competition laws can have serious adverse consequences for Calder and for individuals, including criminal liability, proceedings and fines.

*Contact with competitors*

- **DO** contact your Line Manager or subsidiary Managing Director before entering any discussion, meeting or agreement with a competitor.
- **DO** remember that competition law does not just apply to formal agreements – it also applies to informal agreements or understandings (however vague).
- **DO** ensure that there is a legitimate business reason for any contact with a competitor and ensure that this is documented
- **DO** file a "Record of competitor contact" to note the content and extent of any contact with a competitor (meeting or phone call).
- **DO** be mindful of language used in communications and how this could be misinterpreted by regulators
- **DO** leave, and have it minuted that you are leaving, any trade association meeting if the conversation involves commercially sensitive information.
- **DO i**nform your Line Manager or subsidiary Managing Director if you become aware or become suspicious of anti-competitive behaviour.
- **DO** inform the Group Finance Director if you receive any contact from a competition authority
- **DON'T** discuss prices or any other commercially sensitive information with a competitor - or with a third party who you suspect or know will pass that information to a competitor.
- **DON'T** receive or accept confidential information - a competitor providing you with commercially sensitive information can be viewed as an anti-competitive agreement and cannot be undone once you have heard/read it.
- **DON'T** participate in any private meetings / social encounters or hold "off the record" discussions with competitors where commercially sensitive information could be shared.
- **DON'T** enter into any agreement with competitors to fix prices, share the market or rig bids

- **DON'T** allocate customers or territories with competitors e.g. agree where Calder will and won't supply.
- **DON'T** agree with any other bidder in a tender process what the price or conditions of your bid will be or agree to "forego" one contract by bidding above market in return for competitors doing the same in another bidding process.
- **DON'T** agree to limit capacity or production.
- **DON'T** take any action or make any statement that could be construed as an understanding between competitors
- **DON'T** use language in any communications that could be construed as anti-competitive
- **DON'T** hesitate to take advice from your Line Manager, the subsidiary Managing Director or the Group Finance Director if you have any concern regarding compliance with the group's policy on competition law.