

INTERACTIONS WITH ACQUISITION TARGETS AND CUSTOMERS DURING ANTITRUST REVIEW PERIODS

Purpose/Executive Summary

_____ (“Company”) acquisitions frequently require that Company notify antitrust enforcement agencies in the United States and elsewhere and wait to complete our acquisition until the agencies have concluded their review. Many competition enforcement agencies require that, during the antitrust review period, the buyer and seller in a merger or acquisition continue to operate independently and that the buyer not begin to control the seller’s activities until after the acquisition has been approved. In particular, if they buyer and seller competed before the acquisition, competition enforcement agencies require that they continue to compete until antitrust approval has been obtained. In addition, buyers are prohibited from taking operational control of sellers until antitrust approval. In the United States, this area of antitrust law is known as “gunjumping”.

This document sets out Company’s policy of compliance with competition enforcement agency rules concerning interactions between Company and acquisition targets before we have received approval for our deals, and provides background on how we achieve that compliance.

Scope

This Policy addresses how Company interacts with acquisition targets in transactions for which Company must obtain approvals from competition enforcement agencies. Depending on the size and scope of the acquisition, Company may not need any approvals for particular transactions, or may need numerous approvals. If you have questions about what approvals are needed for a particular transaction, please contact Company Legal.

Compliance Effective Date

This Policy reflects Company’s approach to engagement with acquisition targets during acquisition reviews by competition enforcement agencies, and is therefore effective prior to and upon its release. This Policy will be periodically reviewed based on changes in applicable law and competition agency enforcement decisions and policy statements.

Policy Statement

Company’s policy is to comply with competition laws in the countries where Company does business. This includes laws regarding interactions between Company and acquisition targets during competition enforcement agency review of proposed Company acquisitions.

Interactions between Company and acquisition targets that go beyond what is permitted under competition laws can raise serious antitrust concerns for Company and Company employees, particularly in situations where we compete with our acquisition targets and that competition is diminished or eliminated during competition enforcement agency review.

Those interactions can also increase agency scrutiny of Company acquisitions, which may delay or prevent approval of acquisitions.

Policy Compliance

1.1 Sales and Marketing Activities

Maintain a “business as usual” attitude during the waiting period. Company and the acquisition target must continue to promote and sell their products separately. Joint activities that are a regular part of relationships between the two companies that pre-date the discussions leading to the acquisition may continue to go forward, and need not be curtailed or discontinued.

If the Acquired Company is a competitor of Company, joint marketing activities, joint sales calls on customers, and preparation of specific marketing or migration plans for customers should NOT take place, except to the extent these activities are part of relationships between the two companies that predate the discussions that led to the acquisition announcement. The parties can meet and generally plan how they intend to go forward after the transaction closes, but this should be done by teams that have received the appropriate guidance from the Company Legal Department. Company materials used in those discussions must be reviewed by Company Legal. Joint appearances by high-level Company and target personnel, such as employee and investor meetings and conference calls on the day of announce are fine, but the scripts and other preparatory materials must be reviewed by the Company Legal Department prior to use.

If the Acquired Company is NOT a competitor, and specific joint bids or other partnering activities were planned prior to the discussions that led to the acquisition announcement, these can go forward during the waiting period. It may be possible for Company to engage with non-competitor targets through OEM or resale agreements during the antitrust review process, but the use of interim OEM or reseller arrangements must be approved by Company Legal.

If a customer asks about migration strategies or other future events if the deal is closed, it is appropriate for the Company representative to describe what we expect will occur, and to give general assurances that we will address the customer’s needs after the transaction receives regulatory approval. This includes requests for information about product roadmaps at a level of detail that goes beyond the public announcements Company makes.

The sales integration teams of Company and the Acquired Company may exchange general information about customers and products, and discuss general migration, integration or product strategies. All information should be subject to a non-disclosure agreement that prevents the use of the information for competitive purposes prior to closing. Particularly when Company and the target compete, there may be competitively sensitive information that the target provides to Company or that Company provides to the target that should only be seen by a small number of people at the receiving party that have job roles that are focused on integration and who do not participate in making decisions involving competition between Company and the target.

Generally, customer questions about Company's plans following the close of an acquisition should be handled by explaining that there are legal limits on Company's ability to engage with acquisition targets prior to the end of the merger review period. Because merger review periods may be as short as a few weeks or as long as 9-12 months, it is impossible to predict exactly when the merger review period will end. However, Company Legal can provide additional guidance, including an estimate regarding the duration of particular antitrust reviews, as the merger review process unfolds.

1.2 Other Activities

The antitrust enforcement agencies recognize that integration is often a lengthy process, so they allow integration planning to occur during the waiting period. The major areas where joint cooperation is usually permitted are:

1.2.1 Financial and Accounting: Financial and accounting personnel of the two firms can meet and discuss, in general terms, any differences in the systems of the two companies and to plan any necessary integration of those systems after the closing. Actual data should not be provided, and neither company should be given access to the other's databases, ERP or ledger systems. Sample computer runs or other information necessary to an understanding of the other company's systems may be provided, but actual data should be omitted whenever possible.

1.2.2 IT and Management Information System Integration: Groups responsible for IT and MIS can meet and plan how to integrate systems after the deal closes. However, there may be limits on the ability of Company and the target to exchange competitively sensitive information.

1.2.3 HR Issues: HR organizations can interact with regard to qualifications, openings, integration and like subjects involving the workforce of the company being acquired by Company. This can include employment interviews of individuals, and follow-up offers. Company should not hire target personnel into functions that would involve competition with the target or the development or promotion of products in which Company and the target compete. If an employee of the target applies for a position with Company that is not in the area affected by the pending deal, his or her application can be considered and acted upon, just as it would have been if no deal were pending. Company personnel should not begin to manage target personnel until we have antitrust approval, and should refer target employees who want to discuss specific work issues back to target managers.

1.2.4 Intellectual Property Issues: If the other firm has intellectual property that Company will acquire as a result of the deal, the IP groups can review and discuss what is in the portfolio, as a means for Company to get a better understanding as to how it can be used by Company once the deal closes. If Company and the target compete, however, the Company IP reviewers should not discuss the marketing or sales aspects of the IP—specifically how Company intends to use it and which of the target's product development efforts Company will or will not continue.

1.2.5 Exchange of Confidential Information, including software code: Be sensitive to the exchange of confidential information. Confidential information includes not only information that is internal to the company, but also information about customers or end-users, and information obtained from such third parties during the course of business

relations with them. For example, customer network plans obtained under an NDA with Company could not be shared with the Acquired Company without the customer's consent. Company software programs or code should only be shared to the Acquired Company under NDA or under a limited license. In any event, please avoid exchanges of confidential information that would be outside the scope of an independent relationship.

2.1 Compliance Measurement

Compliance with this policy will be measured by the degree to which Company is able to avoid government investigations and penalties associated with improper interactions between Company and acquisition targets during antitrust review.

2.2 Exceptions

There are no exceptions to this policy. Employees involved in Company acquisitions who have questions regarding whether specific intended interactions with an acquisition target or with a customer should contact Company Legal to discuss those questions.

2.3 Non-Compliance

Failure to follow the policy may:

- Increase the risk that Company will become the subject of an investigation initiated by a competition enforcement agency regarding whether Company has violated laws and policies that restrict what interaction is permitted between Company and acquisition targets during antitrust review.
- Create a risk that acquisitions will be delayed or challenged.
- In acquisitions involving competitors, subject Company, the acquisition target, and Company and target employees to fines and possible imprisonment.

Compliance with Company policies is required. Deviations or non-compliance with this policy, including attempts to circumvent the stated policy/process by bypassing or knowingly manipulating the process, system, or data may result in disciplinary actions, up to and including termination, as allowed by local laws.