Policy Name: Competition and Anti-Trust Policy

Policy Number: A150
Policy Owner: Chief Compliance Counsel
Policy Approver: Chief Legal Officer
Approval Date: July 1 2012

Policy Statement:

It is the Company's policy to engage in practices and behaviour that comply with competition and anti-trust laws in each jurisdiction that the Company conducts business in. Competition and anti-trust laws differ from country to country, and it is important that those conducting business on the Company's behalf consult local legal advisors whenever their business activities might be regulated by these laws. Failure to comply with these laws could lead to criminal and civil penalties, significant business disruptions and damage to the Company's reputation.

1. Definitions:

Applicable Law – Means all competition and anti-trust laws, rules and regulations, as the case may be, that are applicable to the Company.

Chief Compliance Counsel – The Chief Compliance Counsel of the Company or any other person designated by the Chief Compliance Counsel to fulfil the Chief Compliance Counsel's roles and responsibilities with respect to this Policy.

Chief Legal Officer – The officer holding the most senior legal position concerning legal affairs of the Company or any person designated by the Chief Legal Officer to fulfil the Chief Legal Officer's roles and responsibilities with respect to this Policy.

Competitor – Has the meaning set forth in Section 4.1.

Contractor(s) – Refers to any person or corporation who supplies materials, labour or services to the Company, including consultants.

Employees – Refers to all regular full-time, part-time, temporary, casual or fixed-term employees of the Company.

Nexen (or the Company) – Refers to Nexen Energy ULC and its majority owned subsidiaries and affiliates for which it has managerial responsibility.

2. Objective:

The objective of this Policy is to ensure compliance with Applicable Law.

3. Persons Affected:

This Policy applies to all directors, officers, Employees and Contractors of the Company.

4. Policy:

Competition and anti-trust laws are designed to prevent anti-competitive market practices. The legislative or public policy objective is to prevent activities or behaviour that:

- discourage economic efficiency and adaptability in markets
- limit opportunities for participation in markets
- impede equitable opportunities for economic participation in markets
- limit consumers' availability to competitive prices and choices in markets

4.1 Competitor

For the purposes of this Policy, a "competitor" refers to any commercial enterprise that operates within the same industry and/or services the same marketplace as the Company, and includes actual or potential competitors.

In certain circumstances, the Company may have a long-term business relationship with a competitor that is excluded from this Policy, such as:

- joint venture agreements
- business development relationships
- industry groups or associations
- transactions (e.g., mergers and acquisitions)

In such situations, counter-parties or partners would not considered competitors for the purposes of the particular initiative and this Policy, provided the relationships:

- are formally documented by agreements and/or practices
- involve the alignment of commercial interests and business objectives
- are customary within the business community

4.2 Guidelines

The following general guidelines should be followed in all jurisdictions in which the Company conducts business:

- confidential commercially sensitive information should not be discussed with competitors
- business decisions should be made independently of competitors and should be formally documented
- caution should be exercised when meeting with competitors. Agendas should be prepared in advance and minutes should be taken. If any activities mentioned below arise during meetings, object and request that the discussion immediately stop.

Do not engage in any of the following practices without first seeking legal advice:

- enter into an agreement or understanding with a competitor, customer or supplier to do any of the following:
    - limit or restrict output, production or supply, or avoid selling to competitors
    - allocate or divide a market or territory, or establish terms to lessen competition
    - participate in a boycott, price-fixing, bid-rigging or any form of collusive bidding
    - impose resale price restrictions on distributors or resellers
- agree or discuss the following with competitors:
    - prices, discounts or costs
    - terms to be submitted in response to a tender

4.3 Jurisdiction Specific Considerations

The exhibits to this Policy are intended to be general in nature and to assist in determining responsibilities under Applicable Law:

- Exhibit A - relevant considerations under Canadian law.
- Exhibit B - relevant considerations under U.S. law.
- Exhibit C - relevant considerations under U.K. law.

The Chief Compliance Counsel and legal counsel should be contacted if there are questions concerning this Policy or the legal consequences of a proposed act under Applicable Law. **Early consultation is vital in order to avoid unintended problems and lawfully structure plans to achieve business objectives**.

5. Roles and Responsibilities:

5.1 Reporting

Employees must bring to the attention of their immediate supervisor or department head any information regarding a prior or potential violation of this Policy. Supervisors or department heads must report this same information to the senior executive of their group/division who in turn should ensure that a recommended resolution is in place, in addition to updating the Chief Compliance Counsel. If an Employee has reason to believe that reporting a prior or potential violation to their immediate supervisor or department head would be ineffective under the circumstances, they may report the matter directly to the senior executive of the group/division or the Chief Compliance Counsel.

Directors, officers and Contractors must bring to the attention of the Chief Compliance Counsel any information regarding a prior or potential violation of this Policy.

Concerns can also be raised anonymously through the Company's Helpline. Those making a bona fide report of an alleged violation are protected from retaliation in accordance with the Company's How We Work: Our Integrity Guide (A099).

5.2 Chief Compliance Counsel

The Chief Compliance Counsel is responsible for:

- developing a program/process to receive, investigate and resolve any complaints regarding suspected violations of this Policy and/or Applicable Law
- developing and coordinating training and awareness programs as needed
- providing prompt guidance, direction and advice on the enforcement of this Policy
- ensuring that investigations and reports are handled in a confidential and consistent manner
- maintaining the consistent enforcement of this Policy throughout the Company's operations

With respect to a suspected violation of this Policy and/or Applicable Law, the Chief Compliance Counsel, in consultation with legal counsel and other departments in the Company, will:

- promptly conduct an investigation
- submit a report to the Chief Legal Officer detailing the findings of the investigation
- take disciplinary and/or corrective measures where warranted

5.3 Chief Legal Officer

The Chief Legal Officer has overall responsibility for the implementation, communication, supervision, monitoring and enforcement of this Policy.

6. Related Policies:

The following Nexen policies should also be consulted:

- How We Work: Our Integrity Guide (A099)

7. Revision History:

DATE	REVISION #	DESCRIPTION OF CHANGE
June 18, 2013	4th Revision	- Administrative changes relating to name change to Nexen Energy ULC, board and executive title changes and dissolution of Board Committees where applicable.
July 1 2012	3rd Revision	- Merging content of Anti-Trust and Competition policies plus addition of UK content
July 1 2008	2nd Revision	- Miscellaneous changes
September 15 2007	1st Revision	- Miscellaneous changes
January 1 2006	Policy Creation	- New Policy created and approved

Exhibit A

Canada

Overview:

The Company's policy is to conduct its activities within Canada in compliance with Applicable Laws, including, without limitation, the Competition Act (R.S.C., 1985, c. C-34). The stated purpose of the Competition Act is to maintain and encourage competition in Canada. Of principal significance are the provisions concerning (a) criminal offences (b) reviewable practices and (c) civil claims and private actions.

Any proposed course of action that may violate the Competition Act must be reviewed in advance by the Chief Legal Officer. If there is any doubt as to the legality of a proposed action, legal counsel should be consulted in advance.

Defined Terms:

Exclusive Dealing – when a major supplier requires or induces a purchaser to deal primarily in products, or a class of products supplied by or designated by the supplier.

Market Restriction – when a major supplier supplies a product on the condition that it is only sold in a specified area, or penalizes a customer for selling a product out of the specified area.

Price Maintenance – an attempt by a supplier to influence its dealers and distributors to maintain or increase the price at which its products are advertised.

Refusal to Deal – a situation where: (a) a would-be customer shows that its business has been substantially affected, or that it would be unable to carry on business as a result of not being able to obtain adequate supplies of a product on usual trade terms; (b) the inability to obtain adequate supplies resulted from a lack of competition among suppliers; (c) the would-be customer is willing and able to meet the supplier's usual trade terms; (d) the product is in ample supply; and (e) the refusal to supply has an adverse effect on competition in a market, or is likely to do so.

Refusal to Supply – a refusal to supply a product to a customer due the customer's low pricing policy.

Tied Selling – when a major supplier supplies a product only if the purchaser agrees to acquire another product of the supplier, or refrain from using or distributing a competitor's product.

Competition Act:

(A) Criminal Offences

The Competition Act establishes a number of criminal offences. A breach of these provisions could lead to criminal prosecution or civil liability, with fines or imprisonment for those responsible including the Company, its officers, directors and Employees. The maximum penalty for contravention is 14 years imprisonment, an unlimited fine (determined by the court) or both. The following are examples of criminal offences: conspiracy; bid-rigging; and, misleading advertising.

Conspiracy

The Competition Act makes it illegal for competitors or potential competitors to fix prices, allocate sales, territories, customers and markets, or fix production or supply. These acts are illegal, even if there is no effect on competition. The agreements do not have to be written or formalized in any way, but the agreements do have to be the result of communications amongst the parties, and not the product of independent business decisions. Agreements that are ancillary to broader agreements are exempt if they are reasonably necessary to the broader agreements.

The Company's Policy is to make business decisions independently without consultation with competitors or potential competitors. It is important to avoid any discussion or conduct from which any agreement or arrangement with a competitor or potential competitor might be inferred, and be sensitive to situations where confidential information could be exchanged or where clandestine deals could be made or seen to be made.

Bid-Rigging

Bid-rigging is an agreement to not submit a bid or tender, to withdraw a submitted bid or tender, or to coordinate tender bids. This is not permitted unless the person requesting the bid is aware of the agreement or if the parties are affiliates of each other. There should be no communication of any kind to a competitor with respect to bids on the part of the Company. Even if the third party wishing to communicate with you is believed to be an affiliate, prior confirmation is required.

(B) Reviewable Practices

The Competition Act establishes a number of "reviewable practices" which are not illegal or improper, but may be anti-competitive in some cases. A company is free to engage in reviewable practices until it is ordered not to by a court-like tribunal called the Competition Tribunal. The following is a non-exhaustive list of reviewable practices established by the Competition Act:

- Abuse of dominant position (see below for more details)
- Agreements that prevent or lessen competition substantially (see below for more details)
- Exclusive Dealing
- Market Restriction
- Tied Selling
- Price Maintenance
- Refusal to Deal
- Refusal to Supply

A person may apply to the Competition Tribunal for a prohibition order on certain reviewable practices. Only the Commissioner of Competition can bring matters to the Competition Tribunal on abuse of dominant position or an agreement between competitors that could lessen or prevent competition substantially, and typically does so only after a long and intensive investigation conducted by the Competition Bureau.

Competition Bureau investigations are typically time-consuming and expensive. Consequently, it is best to avoid dealing with the Commissioner of Competition by not engaging in reviewable practices.

If there are strong business reasons for engaging in an activity that may constitute a reviewable practice, that activity may be pursued with careful planning and legal advice. Often with proper planning and legal advice, a competitive strategy or business initiative can be developed and implemented while minimizing the risk of business disruption from an expensive and time consuming Competition Bureau review.

Abuse of Dominant Position

Seemingly innocent acts may be seen as an abuse of dominant position within a market where (i) one or more firms is or are "dominant" in a market, (ii) that firm or those firms have engaged in or are engaging in a practice of "anti-competitive acts" and (iii) that practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market.

To be "dominant" a company must possess market power (some degree of control over prices in a relevant market). Market power is a product of high market shares (at least 35%, and probably over 50%) in a relevant market (which includes a product and all of its reasonable substitutes in a defined geographic region) combined with barriers to entry into the market (e.g., high sunk entry costs, existing excess capacity, regulatory constraints, etc.).

A practice of anti-competitive acts involves one or more acts that are intended to have a negative predatory, exclusionary or disciplinary impact on a competitor, for example, by impeding the ability of the dominant company's competitors to compete in the market. The Competition Act contains a non-exhaustive list of anti-competitive acts, and numerous other anti-competitive acts have been identified by the Competition Tribunal over the years. These acts include predatory pricing, margin squeezing of competitors by a vertically integrated supplier, locking up scarce facilities or resources for the purpose of denying them to competitors, as well as some practices that are widely used in business (e.g., Exclusive Dealing contracts, most favoured nation clauses, "meet or release" clauses).

A substantial prevention or lessening of competition is something that creates, preserves or enhances the dominant company's market power. This would be accomplished primarily by raising rivals' costs or reducing rivals' revenues, for example by maintaining or raising additional barriers to entry into the market or denying competitors the ability to gain sufficient scale to compete effectively.

Abuse of dominant position may result in a prohibition order, an order to divest assets or businesses, and a $10M penalty ($15M for repeat offenders) from the Competition Tribunal. Wherever possible, document the business rational for a decision. Explain why the decision makes sense for the Company. Explanations given at the time that a practice was developed are much more persuasive than explanations created after a practice has been challenged. Finally, seek legal advice where the Company has a significant presence in a line of business and is contemplating conduct that could be considered anti-competitive. Legal guidance and oversight from an early phase will allow the Company to compete aggressively within the bounds of Applicable Law.

Agreements or Arrangements that Prevent or Lessen Competition Substantially

Agreements or arrangements with actual or potential competitors are subject to review by the Competition Tribunal and a potential prohibition order if the agreement or arrangement has or is likely to prevent or lessen competition substantially.

As with abuse of a dominant position, not all agreements with competitors are anti-competitive (and in fact not all anti-competitive agreements could be subject to a Competition tribunal order). However, as noted above, certain agreements with competitors to fix prices, allocate markets or restrict supply are criminal offences and could result in a criminal conviction for the Company and individuals involved in the conspiracy, along with fines and imprisonment. Where contemplating an agreement or arrangement with an existing or potential competitor, legal advice should be sought.

(C) Civil Claims and Private Actions

The Competition Act allows private parties to sue the Company civilly for a violation of one of the criminal provisions of the Competition Act (e.g., conspiracy; bid rigging) or for violating an Order issued by the Competition Tribunal. To be successful in a suit, the plaintiff would have to demonstrate to a court's satisfaction (i) that the Company breached one of the criminal provisions or a Competition Tribunal order, and (ii) that the breach caused the plaintiff damage. A successful claim could have a serious effect on the Company, and it should be noted that a civil claim can be made even if the Company has not been prosecuted for or convicted of a criminal offence.

The Competition Act also allows private parties to challenge a company or individual's Refusal to Deal, Resale Price Maintenance, Tied Selling, Market Restriction, and Exclusive Dealing. However, the available remedy is limited to an injunctive relief (no damages). Private parties cannot apply to the Competition Tribunal regarding: agreements between competitors that could lessen or prevent competition substantially or abuse of dominant position.

Suggested Business Practices:

1. Trade Associations or Meetings – Be careful when in contact with competitors at trade meetings:

    - Secure and review agenda and program in advance of meetings;
    - Retain copies of minutes and speeches from the meetings;
    - Immediately object at a meeting if a prohibited subject arises, and call for the discussion to stop; and
    - If the discussion continues, leave the meeting, demand the departure, as well as the reason for the departure, be recorded, and immediately contact legal counsel.

2. Gathering Market Intelligence – Do not exchange confidential price or product information with a competitor. If a competitor offers you this type of information, do not accept it. If a competitor, customer or supplier provides you confidential price or product information of a competitor unsolicited, document the circumstances in which the information was received and notify legal counsel.

3. Documenting Business Decisions – Where a decision is made on pricing, customer or territorial allocation, bids etc., the business justification for that decision should be recorded before the decision is made.

4. The Competition Act does permit agreements/arrangements related exclusively to:

    - The exchange of statistics;
    - Defining product standards;
    - The exchange of credit information;
    - Definition of industry terminology;
    - Cooperation in research and development;
    - Restriction of advertising;
    - Sizes and shapes of containers; and
    - Measures to protect the environment.

It is prudent to seek legal advice if an agreement falls within these exceptions.

Exhibit B

United States

Overview:

The Company's policy is to conduct its activities within the United States in compliance with Federal and State anti-trust laws including, without limitation, the *Sherman Act*, 15 U.S.C. § 1, *et seq.*

Pursuant to this policy, any proposed course of action that may implicate these anti-trust laws must be reviewed in advance by the Vice-President and General Counsel of Nexen Petroleum U.S.A. Inc., who will consult with the Chief Legal Officer. If there is any doubt as to the whether any proposed course of action could implicate anti-trust laws, as set forth below, legal counsel should be consulted in advance.

Anti-Trust Law:

The following is a list of generally prohibited activities under U.S. anti-trust law, and no personnel should engage in such activities:

1. DO NOT become a party to any arrangement, agreement or understanding with a competitor regarding prices, discounts, terms, shipping arrangements, transportation charges, or warranties including an arrangement for the exchange among sellers of this type of information. For example, it is generally illegal for two competitors to agree to the prices they will each charge to their own individual customers. DO make all pricing decisions independently of competitors or others outside the company. DO gather all information about a competitor from customers or other third-party sources, not the competitor itself.

2. DO NOT become a party to any arrangement, agreement or understanding with a competitor to restrict production, sales or output.

3. DO NOT become a party to any arrangement, agreement or understanding with a competitor to allocate customers or to divide a market or territory. For example, it is generally illegal for two competitors to agree that one of them will not sell in a particular area or to a particular customer that they both can presently serve.

4. DO NOT become a party to any arrangement, agreement or understanding with a competitor to participate in a boycott, bid-rigging or any form of collusive bidding. For example, it is generally illegal for one company to agree with another company that neither one will do business with a particular supplier or customer.

5. DO NOT become a party to any arrangement, agreement or understanding with a competitor to exclude a third party from any line of business or disadvantage an existing competitor.

6. DO NOT become a party to any arrangement, agreement or understanding with a supplier under which it agrees not to sell to the Company's competitors.

7. DO NOT engage in false or deceptive advertising.

The following is a non-exclusive list of activities that could implicate U.S. anti-trust law, and legal counsel should be consulted on any proposed course of action that involves any of the activities below. Keep these guidelines in mind as you prepare your day-to-day business correspondence and engage in your day-to-day business activities. When matters arise that are related to any of the subjects listed above, DO consult with legal counsel in advance to determine how to prepare the necessary documentation.

1. Requesting a customer to deal exclusively with the Company as a condition of sale.

2. Requesting a buyer of one product to buy another product from the Company, or not buy that product from another company, as a condition of purchase.

3. Total requirements sales contracts, especially those in effect one year or longer.

4. Selling substantially similar products at different prices to different buyers who are in competition with each other, or who sell to buyers in competition with each other.

5. Discriminatory price arrangements, including advertising allowances or other services.

6. Taking actions that do not appear to be in the company's best interests, such as a particular customer or supplier relationship or selling a product or service below cost. For example, DO NOT make statements—orally or in writing—which exaggerate the company's competitive power or which might suggest a predatory intent.

7. Restricting advertisements of competitors.

8. Conventions, meetings of a trade association, or business or social conversations where competitors discuss entering into any type of arrangement, agreement or understanding with each other regarding the competitive product market. Because representatives of competitors attend such meetings, it is important to be particularly careful at such meetings.

9. Acquisition of suppliers, customers or competitors, including all or any part of the stock or assets of any supplier, customer, or competitor. All proposed acquisitions shall also be reviewed by the Chief Compliance Counsel.

Regarding acquisitions, the *Hart-Scott-Rodino Act* prohibits any person with substantial assets or sales from acquiring voting securities or assets from another person with substantial assets or sales unless the parties first notify the Department of Justice and the Federal Trade Commission of the proposed transaction and comply with the applicable statutory waiting period which is usually thirty days. These procedures must be followed when:

1. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities or assets of the acquired person valued in excess of $200 million (as adjusted, as this amount is revised annually, currently at $272.8 million (2012)); or

2. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities or assets of the acquired person of more than $50 million (as adjusted, as this amount is revised annually, currently at $68.2 million (2012)); and

(a) one person has sales or assets of at least $100 million (as adjusted, as this amount is revised annually, currently at $136.4 million (2012)); and

(b) the other person has sales or assets of at least $10 million (as adjusted, as this amount is revised annually, currently at $13.6 million (2012)).

There are many exemptions to the reporting requirement including: (1) acquisitions of goods or realty transferred in the ordinary course of business; (2) acquisition of voting securities solely for the purpose of investment if they do not exceed 10% of the outstanding voting securities of the issuer; and (3) certain intrapersonal transactions such as mergers of subsidiaries, repurchases of a corporation's own stock, and creation of wholly owned subsidiaries, all of which involve acquiring and acquired entities with the same parent. All proposed acquisitions shall be reviewed by the Chief Compliance Counsel to determine whether HSR reporting is appropriate.

Exhibit C

United Kingdom

Overview

The Company's policy is to conduct its activities within the United Kingdom in compliance with Applicable Laws, including, but not limited to:

- the UK's Competition Act 1998 (Competition Act), and
- the Treaty on the Functioning of the European Union (TFEU).

These laws prohibit (i) anti-competitive agreements between businesses, and (ii) the abuse of a dominant position in a market. The Competition Act applies to the UK only, whilst the TFEU applies to the European Union, including the UK.

The information below is provided to assist with the identification of some of the more common potential competition law infringements in the UK, so as to reduce the risks of these arising. However it is not a comprehensive guide and if it is considered that there may be a potential competition law risk on a matter you are working on, specialist legal advice should be sought.

Anti-competitive agreements

Prohibition

Chapter I of the Competition Act prohibits agreements between businesses that prevent, restrict or distort competition in the United Kingdom (or are intended to do so) and that may affect trade in the UK. Article 101 of TFEU has a similar prohibition in relation to the prevention, restriction or distortion of competition in the European Union that may affect trade between its member states.

The prohibitions also cover decisions of associations of businesses as well as concerted practices (ie, cooperation which falls short of an agreement or decision).

Agreements can be formal or informal, written or oral. An informal understanding or telephone conversation where two competitors agree to match each other's prices will be caught in the same way as a formal agreement between them. Such agreements, decisions and practices are automatically void and therefore cannot be enforced. Agreements, decisions and practices that are likely to be prohibited include those that:

- fix the prices to be charged for goods or services
- limit production
- carve up markets
- share markets of sources of supply
- discriminate, eg, between customers (eg, charge different prices or impose different terms when there is no difference in what is being supplied)
- "tying" or "bundling", where the conclusion of a contract is subject to the acceptance by the other party of supplementary obligations which, have no connection with the subject matter of such contract.

However the prohibition is expressed on general terms and can apply to other forms of anti-competitive agreements, decisions and practices, in addition to those listed above.

The following factors are relevant to assessing the anti-competitive effects of an agreement.

Market context	Factors such as the market shares of the parties in the relevant market, whether the agreement is part of a network of similar agreement and the state of the competition in the market in the absence of the relevant agreement, should be considered.
Relevant market	In order to identify the economic context of an agreement it is necessary to identify the product and the geographic markets affected by the agreement. Care should be taken when dealing with a new product or geographic market.
Vertical or horizontal restrictions	Vertical restriction (i.e. those entered into between two or more businesses operating at different levels of the production and distribution chain) are likely to be viewed more favourably than horizontal restrictions (i.e. those entered into between two businesses operating at the same level of trade (e.g. two manufacturers or two distributors)).
Appreciable effect	An agreement will only infringe this prohibition if its effect on competition and trade in the UK is likely to be appreciable.

Cartels

Cartels are the most serious form of anti-competitive agreement. They are agreements between businesses not to compete with each other, eg, on price, discount levels, credit terms or in respect of particular customers or in particular areas.

There are a number of signs that may indicate a cartel is operating, including where businesses:

- raise prices by the same amount at around the same time;
- offer the same discounts or have identical discount structures;
- quote or charge identical or very similar prices;
- refuse to supply a customer because of their location, or
- use give-away terms or phrases, such as "the industry has decided margins should be increased" or "our competitors will not quote you a different price".

The presence of these signs does not necessarily mean a cartel is operating. Some, such as similar prices or price changes at around the same time, can indicate healthy competition. However if several of the signs are present, then it is more likely that a cartel is operating.

To reduce the risk of becoming involved in a cartel, you should not, without having first obtained specialist legal advice, enter contracts:

- agreeing or discussing prices, price increases or important costs with competitors, including the terms to be submitted in response to a tender;
- imposing resale prices on distributors or resellers;
- sharing out markets or customers with competitors;
- agreeing with competitors to limit output or production;
- exchanging confidential commercially sensitive information with competitors;
- absolutely preventing distributors from selling outside of a designated area; or
- imposing unjustifiably long exclusivity periods or non-compete obligations (the permitted length will depend on market shares of the parties involved and impact on market).

The Enterprise Act also applies to cartels, making it a criminal offence for individuals to dishonestly agree with another person to create arrangements whereby at least two businesses will engage in prohibited cartel activity. Under the Enterprise Act the prohibited cartel activities are:

- direct or indirect price-fixing;
- limitation of production or supply;
- sharing customers or markets, and
- bid-rigging arrangements, including, for example, arrangements pursuant to which businesses agree that one of them will not bid in response to a request for bids, or if the businesses do bid they will only bid in accordance with such arrangements.

Abuse of a dominant market position

Prohibition

Chapter II of the Competition Act prohibits a business from conduct that amounts to the abuse of a dominant position (within the United Kingdom) in a market if it may affect trade within the United Kingdom. Article 101 of TFEU has a similar prohibition in relation to the abuse of a dominant position within the European Union that may affect trade between its member states.

A dominant position in a market essentially means that a business is generally able to behave independently of normal constraints imposed by competitors, suppliers and consumers. Factors that should be taken into account when considering whether a business may occupy a dominant position include:

- the relevant markets in which the business is operating;
- whether the business has persistently had a large market shares, in excess, for example, of 40%, in the relevant market (The higher the market share and the longer the period of time over which it is held, the stronger the preliminary indication is of the existence of a dominant position.);
- whether there are barriers to entry or expansion that may prevent potential competitors from entering or expanding in the market, and
- whether the business's customers have any degree of buying power that they can exert on the business.

Abusive conduct

Conduct that may be considered an abuse by a business in a dominant position, includes:

- unfair pricing practices (such as charging (a) excessively high prices, (b) predatory pricing (undercutting a rival with a view to eliminating it from the market), (c) discriminatory pricing (charging different prices to similarly placed customers or the same prices to differently placed customers, or (d) fidelity (or loyalty) pricing (or implementing discounting schemes), that are designed to discourage customers from placing business with a competitor);
- limiting production;
- refusing to supply an existing long standing customer without good reason;
- charging different prices to different customers where there is no difference in what is being supplied, and
- "tying" or "bundling", where the conclusion of a contract is subject to the acceptance by the other party of supplementary obligations which, have no connection with the subject matter of such contract.

However this prohibition is expressed in general terms and can apply to other forms of conduct (that fall within the general prohibition), in addition to those listed above.

Investigations and enforcement

The Office of Fair Trading (OFT) has a wide range of powers to investigate businesses suspected of breaching the Competition Law and it can order that offending agreements or conduct be stopped. It must act consistently with European Union law, when applying the Competition Act. Some industry sector regulators (eg those for gas, electricity, water) have concurrent powers with the OFT to apply the prohibitions in their designated sectors.

The OFT also has the power to apply and enforce Articles 101 & 102 TFEU in the UK in accordance with case law of the European Court.

Some agreements or conduct may be excluded from investigation under the Competition Act or Articles 101 or 102 TFEU because they are instead subject to examination under other laws. Agreements (but not conduct) may be exempt because they meet certain requirements set out in legislation in respect of certain categories of agreement and are considered not to be anti-competitive (for example where the benefits they create outweigh their anti-competitive effects). In addition an agreement that does not fall within any of the excluded or exempt categories may still be lawful if it satisfies certain conditions.

However whether an exclusion or exemption may apply to a particular form of agreement or conduct (that appears to involve a risk of competition law infringement) is a matter for which specialist legal advice should be sought.

The benefits of compliance

Being aware of agreements and conduct that may breach competition law should help the Company avoid the many potential adverse consequences of competition law infringement, including the following.

- financial penalties of up to 10% of a business's worldwide turnover
- adverse reputational impact (business and personal) associated with having breached competition law
- considerable diversion of management time
- non-enforceability of infringing agreement (or in some cases just the infringing provisions)
- lawsuits from those who have suffered harm as a result of the infringement
- director disqualification orders (for up to 15 years) for the directors of infringing companies
- criminal convictions for individuals involved in a cartel (resulting in an unlimited fine and/ or imprisoned for up to five years)