



**COMPETITION LAW
COMPLIANCE**

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1. STATEMENT OF POLICY

It is BBA policy that all BBA companies and their employees strictly comply with the competition, anti-trust and anti-monopoly laws of all countries in which they conduct BBA business. Directors, managers and others with supervisory responsibility have a duty to ensure that employees under their supervision are aware of and comply with this policy. Any proposed deviation from this Policy must be approved, in advance, by BBA's Chief Executive with advice of counsel. Violation of this policy may subject the individual to disciplinary action, including dismissal.

2. CONSEQUENCES OF VIOLATIONS

Severe civil, and in some cases criminal, penalties may be imposed on BBA and the responsible employee if you authorise or participate in a violation of competition laws. Material breaches of EC competition law, for example, may result in fines of up to 10% of the annual sales of the whole of BBA Aviation world-wide. Under U.S. law corporations can suffer fines of up to \$100 million and individuals can be fined and imprisoned for up to 10 years. In addition, agreements which violate competition laws are automatically null and void and therefore unenforceable, meaning income streams that the business relies on may be lost. Competition law infringement may also give rise to private damages actions for the injury caused, including the trebling of actual damages in certain jurisdictions. Defending lawsuits and investigations is expensive and time consuming, even when the defence is successful. It is therefore important for you to understand and strictly follow this policy so that BBA - and you - may avoid any semblance of violation of competition rules.

In some jurisdictions, it is a criminal offence for individuals to engage in certain types of anticompetitive activity. Being involved in any investigation by the competition authorities can be an unpleasant and intimidating process and will inevitably distract you and your team from your business affairs.

3. THE IMPORTANCE OF LEGAL ADVICE

If you engage in any conduct or practice that calls for compliance with competition laws, you should be guided by this policy. If you have any doubts, it is your duty to seek the advice of

BBA Aviation's in-house legal department ("BBA Legal") and no employee is authorised to take any action that he has been advised might violate competition laws.

Both European Community and national competition laws may govern BBA's conduct or transactions. Both may need to be considered before engaging in any conduct or transaction that is covered by this policy.

4. COMPETITION GUIDELINES - THE BASIC PROHIBITIONS

The following can only serve as general guidance. You must take advice from BBA Legal if there is any doubt at all as to the legitimacy of your proposed conduct.

A. Relations with Competitors

1. Conduct Prohibited

Collusion or any understanding, plan, arrangement, or agreement (whether or not in writing) with BBA's competitors involving the following subjects is absolutely prohibited by this policy.

- (i) **Price and Other Terms of Sale.** You may not have any discussions, communications, understanding, plan, arrangement, or agreement (express or implied) with any representative of a competitor concerning prices, pricing methods and policies, price changes, bids or bidding on a particular contract, allowances, discounts, promotions, rebates, royalties, terms or conditions of sale, costs, profits, deliveries, distribution/transportation, or any other matter relating to or affecting prices or any element of price. You should not discuss any elements of BBA's likely future commercial strategy with a competitor.

Even innocent discussions or communications with competitors about any of the above topics are dangerous, even though you may not specifically intend to have an agreement. You should seek the advice of BBA Legal if you have any concerns in this regard. Remember that competition law still applies if you meet with competitors in an informal or social setting.

BBA will always *independently* and *unilaterally* determine the prices and terms of sale for its own products and services, in light of BBA's own perception of its costs and the market conditions. You may consider competitors' prices in determining BBA's prices but you must obtain competitors' prices only from published price lists or other sources - NOT from the competitor himself. You must document the source of all competitive price information that you obtain.

- (ii) **Information Exchange.** You may not give to or receive from a competitor information on any of the subjects mentioned in (i) above.
- (iii) **Customer Allocation; Division of Markets; Limits on Production.** You may not have any discussion, communication, understanding, plan, arrangement or agreement with any competitor to (a) allocate customers among yourselves or other competitors, (b) divide sales between you, (c) restrict or allocate exports or imports, or (d) control or limit production, quality or research.
- (iv) **Joint Refusals to Deal (Boycotts).** You may not have any discussion, communication, understanding, plan, arrangement or agreement with any competitor to limit business or to refrain from doing business with a particular customer or supplier.

2. Further Conduct Issues to Consider

- (i) **Contacts with Competitors.** Competition law infringements often begin with contacts with competitors. Courts may presume violation of competition laws from contacts between competitors and their subsequent behaviour even when the purpose of the contact is innocent. This policy requires that
 - If you have authority to negotiate or fix your company's selling price or other terms and conditions of sale, you should normally avoid any discussions in respect of such issues with a competitor.
 - You must not discuss with competitors any issues of general changes to BBA prices nor discuss with competitors changes which they propose to their prices. This includes the fact that any increase or decrease in prices is contemplated, or the likely timing of any such increase/decrease.
- (ii) **Trade Associations.** While trade associations perform many legitimate functions (e.g. industry promotion, government relations), they also create risks because they involve contacts with competitors. Since competition law infringements often arise in connection with otherwise lawful participation in trade association activities, competition law authorities carefully scrutinise these organisations. You should remain alert to any potential abuse by any trade association of otherwise legitimate objectives.

You need to bear in mind the following points:

- Trade associations do not legitimise anti-competitive behaviour.
- Just stating an intention to comply with competition law is not enough to ensure that the proceedings will actually be compliant.

- Make sure that there is a formal agenda for meetings and that proper minutes are taken.
- If you are concerned about any item on the agenda, raise this with BBA Legal.
- Do not get drawn into inappropriate discussions. Just sharing sensitive commercial information with a competitor can be enough to breach the rules.
- If matters are raised which could cause problems under competition law, you should object to those discussions and ask for your objection to be noted. If the discussion continues, you should leave the meeting and ask your reason for leaving to be noted in the minutes. You should also keep your own note and inform your immediate manager or BBA Legal.

Discussion with competitors

In the context of trade associations and also trade fairs or supplier conventions, you will find yourself talking to competitors, whether in dealing with the formal business of a meeting, or more informally about the industry generally. Set out below for guidance are some examples of projects or topics for discussion which are and are not acceptable in competition terms. These cannot be exhaustive so please seek guidance from BBA Legal if you have any queries or concerns:

Unacceptable topics:

- Which distributors or suppliers to use or not to use;
- The price or terms on which products should be supplied or the customers or key contracts for which BBA is or is not bidding;
- Codes of conduct or best working practices that would lead to harmonisation of pricing, costs or standard terms to be applied to customers, or where members are prevented from exceeding the agreed standard should they choose to do so;
- The sharing of plant or equipment on anything other than an ad hoc basis.
- The refusal of admission of eligible applicants to join the association.

Acceptable topics:

- Information relating to new technical developments, ideas and inventions;
- New or proposed legislation and its commercial and legal implications, but bearing in mind that it would not be permissible to discuss or exchange information on how a particular company's terms and conditions of trade would be affected by the changes;

- Lobbying tactics and approaches to Government;
- Statistical data, market research and general industry studies, or economic prospects or trends in general, provided it relates only to ‘opinion and experience’ and does not include confidential or sensitive business information;
- Best practice, or practical issues and standards with a legitimate objective related to issues such as the environment or health and safety. Discussion should be subject to seeking approval from BBA Legal to confirm that any impact on competition is acceptable in view of the benefits;
- Employment/pensions schemes, provided there is no agreement on what to offer employees.

Industry data

Participation in a legitimate industry data-gathering exercise may be an exception to the general rule that you should not exchange commercial information with competitors. That said, any such exercise needs to operate in a particular way to ensure that it is competition-compliant. The key points are:

- data submitted should be historic, not forward-looking;
- each participant should have access only to its own individual data and to aggregated data - information relating to individual competitors should not be identifiable to other participants; and
- submissions should be made to an independent body or officer of the trade association who is not also employed by any of the participants.

Before agreeing to take part in any data-sharing exercise, you should seek approval from BBA Legal.

Credit circles

It is acceptable to give credit references and to take part in credit circles. However, you should be careful only to give factual information and not to discuss BBA’s own decisions on whether or not to supply certain customers.

For example:

In response to the question “Do you think Customer X is a poor credit risk?”

You can answer: “Yes, that customer is a poor credit risk”.

You cannot say: “That customer is a poor credit risk. I would not supply them”.

The risk with the second comment is that an implied agreement could arise between BBA and other members of the credit circle that the customer in question will be boycotted. This would breach competition law.

In general, it is acceptable to respond to genuine requests for credit references, information or your opinion in relation to a particular customer, provided that the information is given in general terms, i.e. no details are given as to the circumstances that led you to form your opinion of a customer's creditworthiness or as to the terms on which you do/do not, will/will not deal with a particular customer.

B. Relations with Customers

1. Conduct Prohibited

(i) Resale Pricing

Any understanding, plan, arrangement or agreement with customers (including distributors) regarding resale prices will violate competition laws. This policy prohibits agreements with or coercion of customers (wholesalers, distributors, or dealers) regarding the prices at which BBA customers resell BBA products. BBA customers must remain free to establish their own resale price of BBA products. BBA may, however, suggest or recommend resale prices, but may take no action to force adherence to suggested resale prices. BBA can also impose a maximum price, provided this does not operate as a fixed price in practice.

If you are issuing a recommended price list or discussing recommended resale prices with a customer, you should always make clear that such prices are for guidance only and do not bind the customer.

(ii) Agents and Pricing

When selling through an agent or sales representative, BBA can set the sale price of the product. An agent (as opposed to a distributor) is an intermediary who procures customers on BBA's behalf, rather than buying and reselling products in his own right. Although BBA can set the price of products an agent is marketing and/or selling on our behalf, we cannot prevent an agent from sharing with the customer any commission he earns. In effect, the agent must be free to give the customer a form of rebate, funded from his own commission, if he chooses.

This degree of control is one advantage of selling through agents, rather than distributors. Don't forget, however, that agents operating within Europe have certain rights, including a right to a payment on termination of their dealings with BBA. The various pros and cons of dealing with agents and distributors should be weighed in the balance.

2. Further Conduct Issues to Consider

The following business situations must be carefully managed because they are frequently the cause of costly competition related litigation. If in any doubt, consult BBA Legal when taking any action in the following areas:

- (i) **Selection and Termination of Customers.** A decision to initiate or terminate (even for credit reasons) a business relationship with any BBA customer must be made *independently* and *unilaterally* by BBA. Under no circumstances should you make such a decision based upon discussions or agreements with any other customer or potential customer or with any persons not employed by BBA.
- (ii) **Resale Restrictions.** Restrictions placed on any customer to limit resale of BBA products to particular customers or territories pose substantial legal risk. The risks associated with resale restrictions increase if the restrictions are selectively enforced or if BBA also competes with the customers subject to the resale restrictions.
- (iii) **Pricing and Promotional Practices**
 - (a) **Sales Below Cost.** Sales below cost may be prohibited in certain circumstances. Sales at unprofitable or marginally profitable prices also pose substantial legal risk especially if the aim is to target (and undermine) other suppliers' markets.
 - (b) **Discriminatory Prices and Promotional Practices.** As a general rule, prices, discounts, rebates and payment terms must be available to all customers that compete with each other in the purchase of BBA products, on equal terms. Put simply, like cases should be treated alike. Different customers may, however, pay different prices for the same product provided that there is objective justification. For example, a customer purchasing large volumes may be granted a higher discount than a customer purchasing only small quantities of product, provided that all customers are offered the opportunity to achieve the higher discount level. Similarly, promotional payments and services (e.g. co-operative advertising programmes) must be available on proportionally equal terms to all customers that compete with each other in the resale of BBA products.

You should review in advance any changes to your pricing and promotional practices with BBA Legal if the proposals contain elements of selectivity or discrimination - and in any other circumstances if you are in doubt.

- (iv) **Exclusive Purchasing Contracts.** Agreements that prohibit a customer from purchasing competitive products or require a customer to purchase all or a significant portion of its requirements from BBA.
- (v) **Tying or "Bundling" Arrangements.** Agreements that require a customer to buy one BBA product to qualify to buy another BBA product (unless for example, there are

genuine safety reasons). Where BBA has significant market power or dominance in the tied BBA product, such bundling arrangements are absolutely prohibited.

C. Relations with Suppliers

1. Conduct Issues to Consider

The following business situations must be carefully managed as they may cause costly competition related litigation. If in any doubt, consult BBA Legal when taking any action in the following areas:

- (i) **Reciprocal Dealing.** Attempts to use BBA's purchasing power to compel a BBA supplier to purchase BBA products.
- (ii) **Requirements Contracts.** Agreements requiring BBA to purchase all or a substantial portion of its requirements from a supplier or requiring a supplier to sell all or a substantial portion of its output only to BBA.

As a matter of policy, BBA purchases raw materials, supplies and other products on the basis of price, quality and service. BBA sells its products on the same basis.

You are entitled to seek discount or rebates based on volumes purchased.

- (iii) **Exclusive Supply.** Agreements that a supplier will supply exclusively, or a significant proportion of its output, to BBA.

D. Unilateral Behaviour

Some BBA companies may be regarded as dominant in certain of their markets. They may thus infringe competition laws if they abuse that position in some way for example through exclusionary or predatory conduct. Dominance merely consists of having sufficient market strength to act independently of the market. It does not necessarily entail having a majority share of the market, although a market share of over 50% is generally presumed to indicate dominance.

Examples of abuse include pricing below cost to eliminate a competitor, lowering prices only in a specific area to destroy local competition, using market power in one market to obtain an unfair advantage in another market, unjustified refusals to supply, or giving discounts or rebates to customers based on their buying all, or a significant proportion of their requirements, from BBA. Genuine volume-based discounts should not cause problems.

E. Intellectual Property

Patent rights are an exception to competition law in general, as they give a “limited monopoly” to the patent owner. Nevertheless, it is possible to fall foul of competition law by abuse or misuse of the limited monopoly. Similar issues can arise in the fields of know-how, copyright and trade marks. The issues can be complex but are largely outside the scope of this Policy Document. Nevertheless, if you are involved in any such matters (patents, trade marks, know-how, copyright) especially where licensing of rights is concerned, you should consult BBA Legal to ensure that you are in compliance with the law.

F. Government Requests for Information or Investigations

It is the policy of BBA to co-operate with governmental authorities seeking information concerning BBA operations. At the same time, BBA is entitled to the safeguards provided by law for the benefit of persons under investigation. Therefore, if a government representative seeks copies of documents or access to files, he should be told that while it is the policy of BBA to co-operate with all authorities, the matter must be initially referred to BBA Legal. This procedure should be followed whether the request is in writing (e.g. letter, subpoena, etc.) or in the form of a personal visit by the representative. In all cases, proper identification should be requested and immediate contact be made by telephone to BBA Legal.

G. Use of Language

Writing Documents

Internal or external memos and e-mail are frequently written about competitive matters. Sometimes, because of ambiguity or exaggeration, these may give the incorrect impression that there has been contact with competitors or customers with respect to prices or other matters of competition law sensitivity. All memos and e-mails must be written clearly and carefully to avoid misinterpretation. The following are guidelines to keep in mind when writing memos and e-mail:

Don'ts:

- Don't use words that suggest illegal or secretive behaviour, e.g. "please destroy after reading." or "I shouldn't tell you this but...".
- overstate the significance of BBA's competitive position or our production or marketing strategy. For example, don't use terms such as "dominant position" or indicating that any given move will "cripple the competition" or state that we are "a price leader."
- describe the competitive activities of competitors or customers as undesirable or unfair. Customers are lost, not "stolen"; price cutting is not "unethical"; and customers who charge lower prices than others are not "mavericks", "cowboys" or "irresponsible".
- suggest that a customer or a class of customers is getting special treatment, e.g. by using the words "for you alone".
- use language that falsely suggests you have collaborated with competitors e.g. "industry agreement" or "industry policy".
- use expressions that could appear flippant or as though you are speaking in code. For example, refer to a competitor by name, not as "our German friends". Only use code-names to refer to legitimate projects that are confidential.

Documents containing careless and inappropriate language may make perfectly legal conduct look suspicious. The time spent in writing clearly, and in following these guidelines, is an important part of our competition law compliance effort. BBA Legal will be happy to assist you.

APPENDIX

BBA COMPETITION LAW COMPLIANCE POLICY

GENERAL DOs AND DON'Ts

All BBA employees have a responsibility to comply with competition and anti-trust rules. Each employee must observe the following *DOs* and *DON'Ts*:-

DOs

- Do seek guidance from BBA Aviation Legal (“BBA Legal”) before meeting a competitor.
- Do ensure that you keep your own records of any contact with competitors.
- Do seek advice from BBA Legal before entering into any arrangement with a competitor.
- Do seek guidance from BBA Legal before joining or renewing membership of any trade association.
- Do treat equivalent customers or distributors in a consistent manner.
- Do seek advice from BBA Legal before refusing to supply an existing customer or distributor or substantially changing terms of trade with them.
- Do seek advice from BBA Legal before discussing the granting or receiving of patent, trademark or know-how licences.
- Do seek advice from BBA Legal before refusing to release technical information or copyright to another party upon their request.

- Be proud of this policy and of building a culture of compliance for BBA. Competition law is a fact of business life and it is in all our interests, and our customers' interests, that we comply.

DON'Ts

- Don't take joint or linked action with competitors in respect of prices or other terms and conditions of sale.
- Don't agree with competitors to allocate product ranges, limit production or divide up markets.
- Don't discuss confidential commercial matters, including pricing, with competitors.
- Don't give to, or seek from competitors confidential and unpublished commercial information.
- Don't seek to impose resale prices on customers or distributors.
- Don't prevent distributors from meeting orders from other territories or meeting export orders.
- Don't do anything to restrict or prevent onward sales by your customers or distributors.
- Don't intervene in any dispute between distributors regarding pricing or encroachment on each other's territory/customer group without first consulting BBA Legal.
- Don't remain at any sessions where others engage in improper discussions, even if you are silent. Tell the others that the discussion may breach competition rules and is contrary to company policy. Leave the discussion and ensure that your departure and the reason for it is on record. Report the incident to your immediate manager and to BBA Legal and keep your own written note of your objections and departure.