# NSK EUROPE

# COMPETITION LAW POLICY

NSK Europe Limited

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## STATEMENT FROM CHIEF EXECUTIVE OFFICER

NSK Europe has a policy of total compliance with competition law. NSK Europe companies and their employees must strictly observe and adhere to this policy.

Compliance with competition law is more than a legal requirement; it is core to NSK Europe's values of Trust and Quality - "Partnership based on Trust - and Trust based on Quality". NSK's reputation and long-term success are based not only on how effectively we serve our customers, but also on the way we conduct our business and our competitive practices in the marketplace. We must be unmistakeably clear to the outside world and to our employees alike, that we compete fairly, lawfully and with integrity.

NSK Europe operates in a global economy where competition laws play an ever more important role. As an international group of companies, and also as part of the NSK global group, we find ourselves under constant close scrutiny, from both national and multinational authorities. Breaches of competition law, even unintentional ones, can have severe consequences for the financial condition, reputation and continued viability of our company. For employees, failure to comply with competition law can potentially result in loss of employment, ruined careers, fines and imprisonment.

Although competition laws are complex, there are fundamental rules that NSK Europe employees are required to know and follow. It is essential that you are able to identify situations where competition law issues may arise and where you must seek guidance from the Legal & Compliance Department ehq-legal@nsk.com

Please read this policy carefully and ensure you comply fully with the competition rules at all times. If you suspect you or any other employee of NSK Europe has infringed or may become involved in any infringement of competition law, or whenever you are considering an arrangement that gives you any doubt as to whether you would achieve your business objective in a legitimate way, you must seek timely advice from the Legal & Compliance Department ehq-legal@nsk.com or report concerns using the ***NSK Europe Ethics Line.***

Chief Executive Officer
NSK Europe Limited

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## 1. INTRODUCTION

The purpose of this policy is to:

A. set out NSK Europe's policy of competition law compliance; and

B. provide basic guidance to NSK Europe employees, wherever located, with regard to competition law and to assist them in complying with the law.

Competition laws (also known as "anti-monopoly" (Japan), "antitrust laws" (US) or "fair trade practices" laws) can apply wherever NSK Europe does business in the world. "Competition compliance" is simply a method of making sure that we comply with the various legal rules at European Union, national and international levels which are designed to ensure that competition within our markets is fair and not restricted.

Although competition laws around the world are similar in their approach, there is no single global "Competition Law". This policy focuses primarily on European laws - any references to "Europe", "Member States", "EU competition rules" or suchlike should be read as applying equally wherever we do business. In those countries within our region where competition laws are less strict (e.g. in the Middle East and Africa), **NSK Europe shall maintain the higher standard of European Competition Law**.

It is also important to note that actions taken in one country may have an impact in others. For example, anti-competitive behaviour in Europe or Asia could breach US Anti-Trust laws, even without any contact or presence in the US.

Penalties for breaching competition law are increasingly severe. A number of countries which are important for NSK Europe, including the UK, Germany, Japan and the USA have criminal or other sanctions for individuals infringing competition laws. Finally, it is important to note that competition law infringements often result in civil damages claims by customers or other interested parties.

The aim of this policy is to provide employees with essential knowledge to identify potential competition law issues. It does not attempt to provide a detailed description of the various competition laws in all the countries where NSK Europe operates; rather it summarises the general principles that underlie most competition laws around the world and provides a practical overview of the rules likely to apply in relation to:

- contacts with competitors, including in the context of a trade association;
- interactions with suppliers, distributors and/or customers;

- mergers and joint ventures; and
- companies having market power ("dominance").

This guide cannot provide definitive answers to all competition law questions. If you have any concerns or questions about competition law matters, please contact the Legal & Compliance Department ehq-legal@nsk.com without delay (contact details are provided at the end of this document).

## 2. NSK EUROPE POLICY

All NSK Europe personnel are expected to conduct company business in a legal and ethical manner. Compliance with competition law falls within the framework of our **Code of Ethics Policy** (NSK Europe Code of Ethics - IMS ID 16785), which applies equally to all our business transactions and to the individual behaviour of employees conducting NSK Europe's business, wherever in the world. NSK Europe has a policy of strict compliance with competition law wherever it operates. All NSK Europe employees are required to adhere to this policy and breaches of competition law will not be tolerated.

This policy extends to all of the Company's operations, without exception.

For the purposes of this policy, a "Relevant Employee" shall be any NSK Europe employee who:

i) has contact with customers, suppliers or competitors (professionally or socially); or

ii) attends trade association meetings or trade fairs in the course of their employment; or

iii) has management responsibilities in respect of any employee under i) or ii) above.

Each Relevant Employee is responsible for ensuring that they:

- are familiar with the fundamental principles of competition law;
- can identify situations where competition law issues may arise;
- appreciate the personal and corporate consequences of non-compliance with competition law;
- are personally committed to achieving full compliance with this Policy; and
- always report any contact with a competitor.

Each Relevant Employee must undertake formal competition law compliance training at least once every three years or, in the case of any person recruited or promoted to be a Relevant Employee, or within three months of taking on their new role. Such training will be provided in face-to-face training sessions or using an on-line e-learning training system. Every new

employee shall receive a copy of this Policy on induction and sign to confirm their acceptance of its contents.

Employees must seek timely advice from the Legal & Compliance Department ehq-legal@nsk.com if they have any questions or concerns relating to competition law or if they are in any doubt about whether or not it may apply. The best way to avoid problems is by understanding the basic rules and seeking advice where appropriate. Claims of ignorance, good intentions or failure to seek timely legal advice will not be regarded as an excuse. Disciplinary action, which may result in dismissal, will be taken against any employee who is found to have violated competition law.

NSK Europe wishes to promote a climate where employees know that they will be supported if they report suspicious or questionable activity to their line managers, to the Legal & Compliance Department ehq-legal@nsk.com or via the NSK Europe Ethics Line. Employees are encouraged to immediately report illegal, unethical or improper conduct in their workplace.

## 3. WHAT IS COMPETITION LAW?

*Competition: "two or more parties acting independently to secure the business of a third party."*

Competition provides the best incentive for business efficiency; it encourages innovation and guarantees customers the best choice. Competition laws prohibit agreements, practices and conduct which have a damaging effect on competition, such as collusion between competitors or abuse of market power, both of which can lead to higher prices or lower output and restrict innovation and technical development.

Competition law is generally based on three concepts:

- prohibition of anticompetitive agreements and "concerted practices" (see definition below);
- prohibition of abuse of a dominant position or of substantial market power; and
- assessment and control of mergers, acquisitions and joint ventures to prevent the creation of dominant positions or the reduction of competition (so-called "merger control").

In addition, European Union ("EU") competition rules aim to prevent barriers between member states which hinder the creation of a single market, with free movement of goods and services.

For the competition rules of a particular country to be applicable, what matters is whether the agreements and practices may affect the economy of that country (it is irrelevant where the companies involved are located). Competition laws prohibit any arrangement restricting competition and the concept of "arrangements" extends beyond formal written agreements. It

also covers oral agreements and understandings, “gentlemen’s agreements”, non-binding agreements and even actions which are taken with an unspoken “common understanding” in mind (so-called “concerted practices”).

Note that it is not necessarily relevant whether there was an intention to breach competition rules. It may be enough if the agreement or concerted practice has as its effect the prevention, restriction or distortion of competition.

3.1 Who are NSK Europe’s Competitors?

For the purposes of this policy, NSK Europe’s competitors include:

(a) Actual: companies currently operating in the same market as us (e.g. SKF or NTN SNR for bearings and TRW or ZF for steering).
(b) Potential: companies that could enter the market in the short-term (e.g. a Chinese or Korean bearings manufacturer not currently operating or selling products in Europe).

3.2 What is an Agreement or a Concerted Practice?

In terms of competition law, an agreement is any arrangement between at least two parties (it does not need to be in writing). A concerted practice is any form of coordination which, without reaching the stage of an agreement, leads to cooperation (e.g. any understanding, practice, “concurrence of wills” or “meetings of minds” to act in a specific way).

What is the difference between the two?

- In an **agreement** there is (written or oral, formal or informal) consensus on a course of action.
- In a **concerted practice**, there is knowledge of each other's conduct which derives from sharing of information and which leads to parallel conduct. Ultimately, this replaces competition with cooperation.

Furthermore, an agreement does not require any actual impact in the market as potential impact is enough to violate competition law.

## 4. THE BASICS OF COMPETITION LAW

The following three sections explain the basic competition law principles which must be followed:

- when dealing with competitors (“horizontal” relations);
- when dealing with suppliers, distributors and customers (“vertical” relations); and

- when a company has a dominant position or substantial market power in a market.

A short guide to “Do’s and Don’ts” is provided at *Appendix A - Quick Guide - Do’s and Don’ts* on page 23.

## 5. RELATIONS WITH COMPETITORS

Some arrangements are so clearly illegal that no circumstance or explanation can justify such conduct. Examples include competitors agreeing to fix prices, dividing territories, allocating customers, jointly boycotting customers or suppliers, limiting production or engaging in bid rigging. These are each described more fully below.

### 5.1 Price fixing

In all countries with a competition law regime it is illegal for competitors to agree, whether directly or indirectly (e.g. through distributors or another third party), the price level at which their products will be sold to third parties. Any agreement or understanding which affects prices indirectly (such as rebates or discounts, pricing methods, costs and terms of payment) is also illegal.

### 5.2 Division of territories / Market sharing

It is illegal for competitors to allocate territories to each other and/or to agree not to compete in such territories.

### 5.3 Allocation of customers

Competitors are not allowed to agree to divide customers between them in the markets in which they compete, or where they could be expected to compete. It is also illegal to make any agreement to allocate any category of business with one customer (e.g. agreeing to allocate the “A” car platform to one competitor, the “B” car platform to another, etc.).

### 5.4 Group boycott

It is generally illegal for competitors to agree to boycott a particular customer or supplier or class of customers or suppliers. “Boycott” here means any concerted action or agreement between two or more competitors not to sell to or buy from a particular customer or supplier, or class thereof (because this would have the effect of limiting the demand for such products, thus influencing the price).

### 5.5 Limiting production

It is illegal for competing companies to agree to limit or stop production in any way, rather than allowing normal competitive forces to determine their independent production decisions.

5.6 Bid rigging

It is prohibited to make any agreement or understanding between competitors regarding prices or terms & conditions to be submitted in response to an RFQ or any tender/bid request. This includes agreeing not to bid.

5.7 Joint purchasing

Joint purchasing agreements between individual competitors may restrict competition and therefore be prohibited when they limit the parties' freedom and/or prevent other suppliers from supplying them to a substantial extent. Collective purchasing agreements may lead to a substantial purchasing power, which may be interpreted as a collective dominant position of the joint buyers (see "Abuse of a dominant position" below).

5.8 Cross supply and outsourced manufacturing

There are situations where NSK is required to have contact with a competitor for valid commercial reasons, such as:

- sale of NSK products to a Competitor;
- purchase of competitor products by NSK;
- outsourced manufacture or sub-contracting by a Competitor for NSK; and
- outsourced manufacture or sub-contracting by NSK for a Competitor.

Whilst the reason for such cooperation may be legitimate, such contacts may breach competition laws if not handled with care, particularly as they may involve sharing sensitive information. Specific guidance must be obtained from the Legal & Compliance Department ehq-legal@nsk.com in each case and before any enquiry or project proceeds.

5.9 Exchange of information

In general it is illegal for competing companies to exchange information which may influence the independent determination of their own individual commercial policy, such as information regarding sales quantities, prices, cost structure, discounts and other trading conditions, or information relating to their individual customers and/or suppliers. However, an exchange of publicly available and/or general statistical information (for example provided by an independent third party) will in general not cause any problems under the competition rules.

There should be no exchange with a competitor of commercially sensitive information without first seeking the advice of the Legal & Compliance Department ehq.legal@nsk.com

5.10 Standardisation

Companies can legitimately work together in order to secure the standardisation of specific products or technologies through competent public or private bodies. However, such cooperation must not prohibit individual companies from developing and marketing other products and/or technologies independently, nor should it lead to agreements, in writing or tacitly agreed, to raise barriers in the market for those companies which do not participate in the standardisation process. The Legal & Compliance Department ehq-legal@nsk.com must be consulted before any such contact.

## 6. RELATIONS WITH SUPPLIERS, DISTRIBUTORS AND CUSTOMERS

Care should be taken with regard to the following situations.

### 6.1 Resale price maintenance

Just as it is illegal for competitors to agree price fixing arrangements, competition rules in most countries prohibit resale price maintenance between a supplier and its independent customers or distributors. In simple terms, NSK is not permitted to impose on its distributors a fixed or minimum resale price.

NSK may recommend resale prices, but no pressure can be applied to a reseller who chooses to set its own prices. Similarly, it is illegal to reward resellers on the basis of their conformity with suggested resale prices. In some countries, like the USA and Germany, agreements on maximum resale prices can also be illegal.

***Important Note - Key Account Customers***

Sometimes, often for key account customers, NSK will negotiate and agree prices direct with the end customer but the fulfilment and sale of the actual goods will be made by a nominated distributor. Even though the customer would have agreed to prices being set for the distributor, such an arrangement could breach European competition law. *To prevent an infringement is such circumstances, it is important that prices for the key account customer are notified to the distributor as "Maximum Resale Prices". The distributor must have freedom to charge less if they wish*. Contact the Legal & Compliance Department ehq-legal@nsk.com for further guidance.

### 6.2 Price discrimination

Except as indicated below, and as long as it does not have market power in a specific market (see section 7 below), it is generally permissible for a company to charge the prices it wants as long as it does so unilaterally and not pursuant to any agreement with its competitors. However, price discrimination should not be used as an indirect method to coerce resellers

into reselling at a certain price.

In some countries, such as the USA, Canada, Germany and France, specific rules exist which prevent suppliers from discriminating between customers regardless of whether the supplier has market power. Specific legal advice should be obtained from the Legal & Compliance Department ehq-legal@nsk.com if it is the intention to charge different prices (or use different price schedules) to different customers in those countries.

6.3 Restrictions on resale or use

As a general rule, NSK Europe may not prohibit its customers from reselling its products to whomever they wish, or otherwise impose restrictions on the use of its products. For example, it normally cannot insist that the customer will not resell but only incorporate its products.

NSK Europe cannot as a rule prevent or hinder resellers located in countries within the EU from importing or exporting NSK Europe products to/from other EU countries. This includes indirect methods of preventing exports/imports such as limiting the validity of a warranty to end-users in the country to which the products were originally supplied or giving lower discounts in respect of exported goods. In the EU, absolute geographical resale restrictions are usually considered hard-core violations of competition law.

Whatever the country, whether inside or outside the EU, it may be possible to:

- appoint an exclusive reseller in a defined geographical area or for a defined class of customers (e.g. steel mills);
- require the reseller not to sell competing products for a certain period of time; and
- require the reseller to purchase all its requirements of the contract product from NSK Europe.

Before entering into an agreement imposing restrictions on resellers or customers, the agreement should be reviewed by the Legal & Compliance Department via the EU05 workflow on IMS to ensure that restrictions are permissible in the countries concerned.

6.4 Long-term supply

Long-term supply agreements which effectively block other suppliers from offering and selling to a customer are prohibited in a number of countries. They are allowed in certain cases, such as those requiring the supplier to make considerable investments, but advice should be taken from the Legal & Compliance Department ehq-legal@nsk.com.

## 7. ABUSE OF A DOMINANT POSITION / MONOPOLISATION

An illegal restriction of competition may also occur when a company (or group of companies) abuses a dominant position or its substantial market power to the detriment of competition.

A dominant position exists when a company has the power to behave to an appreciable extent independently of its customers, competitors and suppliers - for example when firms have no real alternative but to deal with this (dominant) company. Market power is usually determined from market share and a significant market share in the relevant market (which is the market for a product or service and the geographic market in which the product or service is sold) is a good indication that the company may have market power. In general, companies with a market share of over 40% in a relevant market may be considered to have market power. Sales managers should contact the Legal & Compliance Department ehq-legal@nsk.com for advice if they believe that NSK Europe's market share may exceed 40% of the market for any particular products.

Having such a position is not prohibited in itself. It is the abusive behaviour of a company in that position that constitutes the violation. Therefore, if NSK Europe was to have market power, special care is required to ensure its behaviour in the market is not aimed at and does not result in the elimination of its competitors or exploitation of its customers. Examples of abuse of a dominant position are given in *Appendix B - Abuse of a dominant position / monopolisation* on page 26.

## 8. TRADE ASSOCIATIONS, SUPPLIER DAYS, TRADE SHOWS

NSK Europe is a member of a number of trade and industry associations. These associations can be effective in gathering and disseminating appropriate information as well as in representing the industry to the public, government officials and agencies. Furthermore, such organisations are often responsible for enabling their members to produce better and safer products. In addition, NSK employees may legitimately meet competitors at supplier days or trade shows and the principles of this section should be applied to all such contact.

However, although it is perfectly legitimate for companies to participate in trade associations, such activities are not allowed to go beyond such legitimate purpose and notably should not be used as a forum for illegal collusion between competitors, for example by facilitating price fixing, market and customer allocation arrangements.

Competition authorities have a natural suspicion of trade association meetings, not least

because they have in the past provided an environment for anti-competitive discussions to take place. It is NSK Europe strict policy that employees do not engage in such anti-competitive activities and remain vigilant to such discussions when attending trade association meetings. The following rules apply in relation to trade/industry associations and meetings:

- all trade association memberships are to be registered with the Legal & Compliance Department via the reporting tool;
- the Legal & Compliance Department should be consulted before joining any new trade association and approve the membership;
- every meeting must have a formal agenda and the agenda must be reviewed by the Legal & Compliance Department, via the reporting tool, in advance of each meeting;
- meetings must be attended only by appropriate NSK Europe employees who have received Competition Law training;
- a commercial employee (e.g. a salesman) should generally not attend a technical meeting (e.g. technical standards);
- informal commercial discussions of any kind before or after meetings must be avoided as much as possible. Avoid staying in the same hotel and socialising with other participants;
- accurate, detailed notes of each meeting must be taken and a copy sent to the Legal & Compliance Department, via the reporting tool, promptly following the meeting;
- during a meeting, objections should be made against any deviation from the agenda which strays into prohibited or sensitive areas. NSK employees must be vigilant as to what is discussed;
- if a competitor seeks to initiate a discussion on an improper subject, objections should be made, notably by saying that it is NSK Europe's strict policy not to discuss such topics and by asking such discussion to stop immediately. If such person persists, withdraw from the meeting and request that the time and reason for leaving are recorded in the minutes. The incident should immediately be reported to the Legal & Compliance Department via the reporting tool and your manager.

Furthermore, when any NSK Europe employee participates in any trade or industry association, the following guidelines are to be observed:

8.1 Matters which should never be discussed (formally or informally) with competitors, at any official meeting, informal assembly or social gathering:

- territorial restrictions, allocation of customers, restrictions on types of products, or any other kind of market division;
- individual company prices, price changes, conditions of sale (including payment terms and periods of guarantee), price differentials, discounts;
- general market conditions and general industry problems, including industry pricing policies or patterns, price levels, or industry production; capacity, or inventories (including planned or anticipated changes regarding those matters), except to the extent necessary to achieve legitimate objectives of the trade association as stated above;
- individual production or distribution costs, cost accounting formulas, methods of computing costs, raw material costs;
- individual company figures on market shares, sources of supply, production;
- information as to future plans of individual companies concerning technology, production, marketing and sales; and
- matters relating to individual suppliers, distributors or customers.

8.2 Matters which may be discussed

It is permitted to exchange information on non-confidential technical and promotional issues relevant to the industry, including issues relating to technology in general, counterfeit products, health, safety and environmental matters, technical standards, transportation hazards and regulations and new/proposed legislation.

8.3 Trade industry statistics

To be certain that it is legal to exchange industry statistics through a trade association, the Legal & Compliance Department ehq-legal@nsk.com should be contacted to ensure that:

- an independent company, or at the very least a team of trade association staff unconnected with any of its members, collects and disseminates the information without identification of the company who submitted it;
- the participants submitting their data do not disclose that information to other participants, in order to maintain complete confidentiality of the individual data submitted;

- the data collated and disseminated is aggregated data which does not allow the identification of an individual participant; and
- the information relates to historic data only and does not include future data.

## 9. FAMILY, SOCIAL AND AD-HOC CONTACTS

Competition rules apply to all contact with competitors, including family, social and informal contact plus also ad-hoc contacts (e.g. accidental meeting at an airport).

9.1 Family and social contact

Where employees have family members, friends or other acquaintances (e.g. sports teams, or via clubs, residents' associations, etc) who work for a competitor, that relationship must be recorded with the Legal & Compliance Department via the reporting tool and in accordance with the reporting rules in section 14 below. Once the relationship is recorded, there is no need for routine reporting of each meeting provided no sensitive discussions took place. NSK employees must advise such family members, friends, and acquaintances that they must not discuss any sensitive issues.

9.2 Ad-hoc contact

Any chance or ad-hoc contact with a competitor (e.g. at an airport) must be reported to the Legal & Compliance Department via the reporting tool and in accordance with the reporting rules in section 14 below. Any discussion must follow the rules set out in paragraphs 8.1 and 8.2 above.

## 10. MERGERS AND JOINT VENTURES

The merger of companies, the acquisition and sale of businesses and the establishment of joint ventures may be subject to (prior) control by competition authorities. Any such transaction should be referred to the Legal & Compliance Department ehq-legal@nsk.com for guidance at the earliest opportunity.

When assessing the competition effects of mergers, acquisitions or joint ventures, the authorities often question other parties in the industry, not directly involved in the transaction. NSK Europe's response to any such questionnaire must be considered carefully and it is therefore very important that the Legal & Compliance Department ehq-legal@nsk.com be informed immediately when such a questionnaire has been received. Any further contact with the competition authorities should be established only through the Legal & Compliance Department.

## 11. DOCUMENT CREATION & RETENTION

It is important that all physical and electronic documents and communications accurately reflect proper business decisions and activity and do not create any improper impression through carelessness or exaggeration.

### 11.1 Document Creation

Careful language will not avoid liability where anti-competitive conduct is involved, but it will prevent lawful conduct being treated as suspect due to a poor choice of words.

Care should be used in drafting internal documents (e-mails, letters, faxes, memos, reports and evaluations, minutes, briefing papers, meeting notes, business plans, etc.) and in any formal or informal contacts or communications with third parties, such as competitors (including at trade association meetings), press releases, advertisements and promotional material, to avoid language which exaggerates market share positions or which could be misconstrued as suggesting an improper purpose. A poor choice of words can make a perfectly legal activity look suspect.

Remember that any written evidence may be required to be shown to the competition authorities or in litigation with another company and so may be subject to future outside scrutiny. Under current discovery procedures (see “Sanctions”, section 13 below), all kinds of all documents, both electronic and hard copies, formal and informal (for example private notes and diaries or e-mails) may have to be submitted to competition authorities.

Communications with outside legal counsel are usually “legally privileged”, which means that they need not be submitted to competition officials. For this reason, all correspondence with outside legal counsel should be kept in a separate file marked “privileged correspondence”.

It is important to keep concise and accurate records of all legitimate contacts with competitors (such as at trade association meetings or supplier days), so as to minimise the risk of allegations being made (for instance by customers, competitors, the press or the authorities) that the parties have some anticompetitive motive or agenda.

When communicating, the following rules should be observed in order to avoid a perfectly legal activity looking suspect due to a poor choice of words:

- Do not use vocabulary which could be misconstrued as suggesting guilty purpose, such as “please destroy/delete after reading” or “no copies”. Such phrases suggest the possibility of wrongdoing even though the objective being pursued in using such words is simply to

preserve the confidential nature of a document. Wording such as “strictly confidential” or “company secret – restricted circulation” is preferable.

- Avoid power or domination vocabulary. Examples are “we will dominate the market”, “we have virtually eliminated competition” and words like destroy, kill, squeeze, damage, price control, prevention of parallel trade. Such words may be interpreted as implying the use of market power to drive out competitors. Instead, refer to NSK Europe as having a “significant” position or being one of the “leading” companies.

- Because the term “market” has legal significance (in both determining if a company has a dominant position and in merger analysis), it is better to avoid references to “market” where possible. It is better to say that NSK Europe has a 20 per cent share of sales of a particular product or that NSK Europe is one of the leading producers of a product, without saying or implying that the market is necessarily limited to that product.

- Avoid loose or “macho” language with regard to intentions, such as, when contemplating a merger “the main purpose of this acquisition is to take an important competitor out of the market”. Such statements are usually exaggerated and fail to focus on the legitimate competitive benefits of the transaction. Where possible, try to show that the merger will lead to efficiencies or have other consumer benefits, such as new products or technologies, or lower prices.

- Exercise caution when talking about competition and prices. Examples are phrases that suggest that competitors or distributors will certainly follow a price rise or stick to an agreed price, such as “status quo”, “orderly marketing”, “managing the brand”, “gentlemen’s agreement”, “similar prices”, and “this transaction will enable us to improve pricing”.

- Do not speculate as to the legal nature or consequences of conduct. For example: “These arrangements may well breach competition law so discretion is required”. NSK would not wish to cover-up potentially illegal conduct, but any such matter should be referred immediately to the Legal & Compliance Department ehq-legal@nsk.com.

- Clearly identify the source of all information relating to competitor prices or plans to avoid any false impression that the information was obtained from a competitor.

- Avoid any suggestion that an industry view has been reached on a particular issue (such as price levels).

## 11.2 Document Retention

Documents must be retained in accordance with the NSK Europe Document and Data

Retention Policy IMS ID 50472 or any greater local statutory requirements. Destroying, altering or falsifying documents and records may be illegal and have serious consequences, including personal criminal sanctions.

In the event that an investigation into possible anti-competitive behaviour is launched, ***all document destruction or disposal must be suspended immediately*** pending guidance from the Legal & Compliance Department ehq-legal@nsk.com. Such action during an investigation or litigation may be regarded as an obstruction of justice and could lead to personal criminal sanctions.

## 12. POWERS OF COMPETITION AUTHORITIES

In many countries the competition authorities have powers to conduct on-the-spot investigations at company premises, often called "dawn raids". The European Commission, along with some national competition authorities, is also entitled to carry out searches at the homes and vehicles of company employees. Such investigations can be prompted by complaints from competitors or disgruntled customers or employees, from the authorities' own economic analysis of the practices in a particular industry, or from a competitor who has admitted to a violation and is seeking amnesty or leniency in return for co-operation.

Officials may arrive unannounced to search and copy digital or hard-copy files and to question company representatives. Companies are required by law to give investigators full access to everything on the premises, including confidential files and records (physical and electronic). Legally privileged and private (not related to business activities) documents do not have to be submitted to the competition authorities.

In the event of a dawn raid, officials should be treated courteously but firmly. It should be explained to them that the company has every intention of cooperating with the investigation. Please consult the Legal & Compliance Department ehq-legal@nsk.com if you need more information.

The authorities can also send formal letters requiring companies to provide information on particular agreements or markets. In some jurisdictions, NSK Europe may receive a request for information from a government investigator by telephone. Any such request for information must be referred to the Legal & Compliance Department ehq-legal@nsk.com without delay. Any further contact with the competition authorities should be established only through the Legal & Compliance Department.

## 13. SANCTIONS

### 13.1 Public Sanctions

In most countries enforcement of the competition rules is a matter of administrative law. Heavy fines (in the EU for instance, up to 10% of a company's worldwide annual sales) may be imposed on companies found to have infringed competition laws.

In certain jurisdictions, however, infringing companies and individuals may also be prosecuted under criminal law. In countries such as Japan, the USA, the UK, Germany, the Netherlands and the Russian Federation, (national and foreign) employees of companies violating competition law can be prosecuted and fined and/or imprisoned, in addition to the often severe sanctions imposed upon their companies. There are other potential consequences for individuals too: in the UK for example a company director may be liable to disqualification where the company of which he or she was a director at the time has infringed competition law.

Increasingly there is multilateral cooperation amongst competition authorities around the world, who share information about anti-competitive activities in each other's territory. In certain circumstances, they can ask the other authority to take enforcement action in that other country. Furthermore if the breach of competition laws of a country is a criminal offence in that country, the extradition of a person either suspected or convicted of that offence may be sought by another country.

In addition to possible criminal and civil fines, an investigation is likely to incur significant legal expenses and require substantial management input, even if ultimately NSK Europe is found not guilty.

### 13.2 Private Sanctions

Apart from the above, there is a growing trend for civil claims by private parties for damages suffered as a result of competition law violations such as a price cartel. In the USA, a successful claimant is entitled to treble damages (three times the amount of the overcharge or other damage suffered as a result of a competition law violation), plus an award of their legal fees. Competition authorities in many countries actively encourage private actions for damages by people affected by anti-competitive agreements and behaviour.

In a number of countries (especially the UK and USA), NSK Europe could be faced with the so-called discovery procedure, which means that it may be subject to the mandatory production of all documents (including those electronically stored, such as e-mails), wherever

located, relating to the claim (including internal and even personal files). Such production of documents poses a very severe administrative burden upon a company having to comply with such an order.

Finally, the standing, reputation and stock price of NSK Ltd in Japan may be severely damaged as a result of competition law investigations and litigation.

13.3 Leniency programmes and whistle blowing

Many competition authorities encourage companies to tell them of competition law infringements by means of leniency programmes. A company that has participated in a cartel may receive a reduction in a fine, or even no fine at all, if it tells the competition authorities about the cartel, stops participating in it, cooperates fully with the authorities and gives them incriminating evidence against the other participants.

## 14. REPORTING

All contact with competitors, and any other contact with competition law implications (e.g. with distributors), must be reported to the Legal & Compliance Department via the online reporting tool (https://nskeurope.ethicspoint.eu/custom/nskeurope/_v5/forms/cois/form_data.asp) without delay thus:

| Type of Contact | Scenario / Example | Reporting Action |
|---|---|---|
| 14.1 Regular / ongoing contact with Competitor | Regular and routine contact with a competitor for a valid reason.<br>E.g. where a competitor is a customer or supplier to NSK. | 1. Report relationship annually<br>2. Report immediately any inappropriate discussion or conduct |
| 14.2 Contact with Competitor re Cross Supply, Outsourcing, etc (see section 5.8) | E.g. Contact with a Competitor to buy or sell to each other.<br>E.g. Contact with a Competitor for the manufacturer of products for the other. | 1. Report in advance and seek guidance from Legal & Compliance Department.<br>2. Once regular business is underway, report in accordance with 14.1 above |
| 14.3 Ad-hoc planned contact with Competitor | E.g. Trade association meetings, customer supplier days, etc. | 1. Report in advance and seek clearance for agenda<br>2. Follow up with meeting report at earliest opportunity |
| 14.4 Ad-hoc unplanned contact with Competitor | E.g. A chance meeting at airport, trade show, etc. | 1. Report at earliest opportunity |
| 14.5 Social contact with Competitor | E.g. A family member or friend works for a competitor<br>E.g. An acquaintance through a sports club, committee, etc. | 1. Report relationship annually<br>2. Report immediately any inappropriate discussion or conduct |
| 14.6 Other contact with a potential competition law aspect | E.g. A distributor discusses other distributors entering the market or suggests fixing resale prices, etc | 1. Report immediately |

Reports should follow the structure at ***Annex 1 - Competition Contact Report Form***.

## 15. CONCLUSION

This policy describes the general principles which underlie most competition laws around the world, focussing mainly on Europe. It does not claim to cover comprehensively the competition laws of any particular country. Although many of the basic legal principles are similar, there are important differences between the competition laws of various jurisdictions. It should therefore be regarded as a tool to raise awareness among NSK Europe employees.

If doubts exist, or if more specific information is needed concerning the precise legislation applicable to any particular action, the Legal & Compliance Department ehq-legal@nsk.com must be contacted. Every employee should be aware that it is NSK Europe's strict policy to ensure that its practices throughout all its operations are in full compliance with all applicable competition laws.

### 15.1 Raising concerns

If you need to report an incident or have information on possible wrongdoing, you should first inform your manager and then immediately notify the Legal & Compliance Department. If you wish to report anything anonymously, you should use the ***NSK Europe Ethics Line*** (NSK Europe Ethics Line - User Guide IMS ID 161417).

## APPENDIX A - QUICK GUIDE - DO'S AND DON'TS

This Appendix describes some of the specific situations which you may come across and gives guidance on how to deal with them. In cases of doubt, you must refer to the Legal & Compliance Department ehq-legal@nsk.com.

You may be subject to disciplinary action if you engage in any of the following practices which are described as likely to be illegal (indicated by a cross ("✗"), or if you fail to consult the Legal & Compliance Department engaging in any of the practices indicated by a question mark ("?"). Bear in mind that where conduct is classified as potentially illegal this merely indicates that competition issues frequently arise in situations of this type. It is often possible to overcome the potential problem by careful drafting or obtaining a clearance from the competition authorities.

### Pricing

**Likely to be illegal:**

✗ Contacting a competitor to ask whether, if you were to raise your prices, he would do the same.

✗ Discussing with a competitor the prices of key raw materials that you both purchase.

**Prior clearance by Legal & Compliance Department needed:**

? Suggesting that you and a competitor increase leverage with a supplier of non-key items by purchasing jointly.

**Generally permissible:**

✓ You offer customers discounts related to the volume of their individual orders.

### Supply & Distribution

**Likely to be illegal:**

✗ Discussing a supply arrangement with a competitor to get a feel for selling prices in the market.

✗ Agreeing resale prices with a supplier or distributor.

**Prior clearance by Legal & Compliance Department needed:**

? Entering into cross-supply or outsourcing arrangements with a competitor.

? Entering into exclusive distribution agreements.

? Discussing with a competitor a possible plant closure and substituting a product supplied by him.

**Generally permissible:**

✓ Recommending resale prices or conditions of resale to a distributor provided that no pressure is exerted on the distributor to adhere to the recommendations.

## Import and export

**Likely to be illegal:**

- ✘ Specifying one price to a distributor if he is selling the product in his own country and a higher price if he is going to export it to another EU country.
- ✘ Preventing a distributor from reselling products to a customer in another EU country.

**Prior clearance by Legal & Compliance Department needed:**

- ? Requiring a distributor not actively to seek customers outside his allocated territory.

## Refusing to deal

**Likely to be illegal:**

- ✘ Refusing to deal with an existing customer without any objective justification (*only if NSK was in a dominant position*).

**Generally permissible:**

- ✓ Making an independent decision not to deal with a certain party.

## Trade associations

**Likely to be illegal:**

- ✘ At a trade association meeting, discussing product prices, terms of sale, product or marketing plans, or business relations with suppliers or customers.

**Prior clearance by Legal & Compliance Department needed:**

- ? Joining a trade association.

**Generally permissible:**

- ✓ Attending trade association meetings generally. (Agendas must be reviewed in advance by Legal & Compliance Department)
- ✓ Discussing counterfeit issues at a trade association meeting.
- ✓ Discussing proposed changes to export controls laws relevant to the industry.

## Technological co-operation

**Likely to be illegal:**

- ✘ Agreeing with a competitor launch dates of new technology which you are both developing independently.

**Prior clearance by Legal & Compliance Department needed:**

- ? Discussing the possibility of carrying out joint R&D with a competitor.

? Entering into technology licensing arrangements with a competitor.

**Generally permissible:**

✓ Undertaking joint R&D with a non-competitor, where all parties participating are free to exploit the results.

## Information gathering

**Likely to be illegal:**

✗ Exchanging information on historical sales, prices, discounts, terms of business etc. directly with a competitor.

**Generally permissible:**

✓ Providing sales data to an independent third party which aggregates the figures and distributes the aggregated industry-wide sales figures to participants (e.g. for a trade association).

✓ Obtaining information on competitors' sales and prices from publicly available sources, such as the media or from customers (always note on such information its source).

## Dealing with competitors generally

Whenever you are dealing with a competitor, you should be on high alert. Do not have any discussion with a competitor concerning prices, price changes, discounts, pricing methods, material costs, warranties, transportation charges, terms of sale, marketing initiatives or product plans without first consulting the Legal & Compliance Department.

**Likely to be illegal:**

✗ Dividing up projects with a competitor, for example by agreeing to bid for different contracts.

✗ Having discussions or making plans with a competitor to keep a new arrival out of the market.

✗ Warning a competitor or new market entrant to stay off your patch.

✗ Discussing possible investments that a competitor is considering making in a particular country.

✗ Agreeing to boycott particular customers or suppliers.

✗ Making an agreement or acting with a competitor in such a way as to allocate sales, territory, customers or products between you and the competitor.

**Prior clearance by Legal & Compliance Department needed:**

? Discussing cross-supply or a joint venture proposal.

## APPENDIX B - ABUSE OF A DOMINANT POSITION / MONOPOLISATION

This appendix provides examples of abuse of a dominant position.
*(The term "dominant company" is used to describe a seller, having market power or a dominant position in the relevant market for a product)*.

a) Tying

Often it is illegal for a dominant company, to make the sale of one product conditional upon the purchase by the customer of other products or services, which the customer might well obtain from other suppliers at similar or better terms or conditions.

b) Discrimination in prices or other trading conditions

In many jurisdictions, it is illegal for a dominant company to enforce different prices or other trading conditions upon different customers in similar situations without objective justification. Differentiation may be permissible if it is justified on objective grounds, e.g. a lower price may be warranted where a distributor performs additional services not provided by other distributors or where larger volumes are purchased.

c) Rebates and discounts

Rebates and discounts applied by a dominant company should be the same for all (potential) customers, transparent and based on objective criteria. It is acceptable to offer a discount or rebate to a customer where the reduction is justifiable on the basis of genuine cost savings. Quantity rebates, which reflect cost savings in economies of scale, which are made available to all buyers and do not restrict the buyer's choice of supplier, are permitted.

However, a dominant company may not grant loyalty rebates or discounts that have the effect of tying that customer to the supplier and which are not based upon quantities, but on the percentage of the customer's total requirements for the relevant type of goods purchased from the dominant company.

d) Refusal to supply

In general, there is no absolute obligation to supply, particularly where it concerns a potential customer with whom there has been no previous trading relationship. However, in many jurisdictions a dominant company is required to have some reasonable and fair commercial reason for cutting off or reducing supplies to an existing customer. Objective justifications might include concerns about the customer's creditworthiness or a shortage of the relevant product. Unilateral decisions not to deal are generally not prohibited under competition laws

in most jurisdictions, however, agreements to refuse to deal based on discussions or agreements with third parties can often raise competition law concerns.

e) Forcing competitors out of the market (predatory behaviour)

In most countries, a dominant company is not allowed to force competitors out of the market by means of predatory pricing: selling below average cost in order to drive a competitor out of the market, with the intent of charging higher prices and gaining larger profits once the competitor has left the market.

f) Excessive pricing

Under the competition rules of a number of jurisdictions, including the EU, a dominant company may not charge excessively high prices. Whether a price is “excessively high” is difficult to establish. It can be determined by comparing the economic value of the product or service with that of competitors on the market.

g) Other forms of abuse

In certain countries, other commercial practices may constitute abuses of market power. These include imposing restrictions on customers to prevent them from using competitors’ products (so-called “non-compete”) and exclusive dealing obligations, where customers are only permitted to deal with the company concerned (“total requirement” obligations).

## ANNEX 1 - COMPETITION CONTACT REPORT FORM

Any competition law report required under this policy should be submitted via the online reporting tool, if you cannot do this then you must submit the report by e-mail to the Legal & Compliance Department ehq-legal@nsk.com using the following headings:

| **Heading** | **Comments** |
|---|---|
| Name | |
| Job Title | |
| BU / Function | |
| NSK Site | |
| Date of Report | |
| Type of Concern/Report | i) Bribery/Corruption; ii) Competition Law; iii) Export Control; or iv) Other |
| Report Title | |
| Date of Incident | Date of incident (anniversary date if the report is of routine/regular conduct or family member, etc) |
| Incident Location | If applicable |
| Details of Incident/Report | Details of the incident or contact being reported |
| Witnesses | Details of any other people involved or present. |
| Attachments | Any relevant attachments (e.g. meeting agenda, business cards, etc) |