DSM DEMOLITION LIMITED

COMPETITION LAW COMPLIANCE MANUAL

SECTION 1: INTRODUCTION

WHY IS COMPETITION LAW IMPORTANT?

DSM Demolition Limited ("DSM") and its group needs to act (and be seen to act) and compete in a manner that, whilst being competitive and results orientated, is also fair.

This means we must not do anything which would risk infringing competition law in the UK (or elsewhere). Amongst other things, competition law prevents companies from coordinating with competitors in order to fix prices, rig bids, share markets, limit production or collectively exclude others from the market.

Failure to comply with competition rules can have an extremely high financial cost for DSM. The competition authorities can impose fines of up to 10% of worldwide group turnover. Businesses found in breach of the competition law rules can also be excluded from public tenders and be liable to third parties by way of damages for loss suffered as a result of the infringement.

The construction sector is a focus area for competition law enforcement. In 2020/21 the UK competition authority announced a "Cheating not Competing" campaign encouraging compliance in the infrastructure and construction sectors and supporting industries. In addition, numerous recent cases have been brought in the sector including in groundworks products, office fit-outs, roofing materials, steel tanks and pre-cast concrete.

This manual provides an overview of the main rules of competition law and sets out clearly the procedures and guidelines which must be followed when dealing with matters to which competition laws may apply.

You have a duty as an employee of DSM to report infringements or suspected infringements of competition law to the legal team. If you have any queries or suspicions, or are concerned whether competition laws may apply to specific activities, you should contact Andrew Fletcher (Managing Director).

The Board of DSM is committed to ensuring compliance with competition laws and all employees should be aware that any infringements of the procedures or guidelines in this manual will be viewed very seriously and may result in disciplinary action being taken. You should take the time to read this manual carefully. Compliance with competition law is in all our interests.

Rob Braid (CEO)

SECTION 2: BACKGROUND

INTRODUCTION

It is hoped that this manual will be used as a regular reference point for employees in their day to day work. The manual, once reviewed, should give employees a "heads-up" in considering some of the potential issues before making more detailed enquiries with the Managing Director. The manual should form part of the customer facing employee's tool kit.

The rules relating to competition can be split into two categories:

1) Anti-competitive agreements and arrangements; and
2) The abuse of a dominant position.

ANTI-COMPETITIVE AGREEMENTS AND ARRANGEMENTS

The law prohibits any agreement or practice between two or more businesses[1] which affects trade in the UK[2] and which has the object or effect of preventing, restricting or distorting competition to an appreciable extent.

An agreement can be written or oral, formal or informal, based on e-mails or telephone conversations, "gentlemen's agreements" or made on the basis of nods and winks. An agreement is essentially a common understanding.

Anti-competitive arrangements normally arise between competitors (so called "horizontal agreements"); but can, in more limited circumstances, exist between suppliers and customers (so called "vertical agreements")[3].

The rules relating to anti-competitive agreements and arrangements are of direct applicability and interest to our business activities and we should, in particular, ensure our conduct in the following areas is in compliance with the rules (as set out below):

- The Key Prohibitions (including price fixing, bid rigging and market sharing) - see Section 3 below.
- Information exchanges (directly or indirectly with competitors) - See Section 4 below.
- The guidelines relating to joint bidding and sub-contracting - see Section 5 below.

[1] Therefore agreements between companies within the same Group will not infringe the prohibition on anti-competitive agreements. To be relevant the agreement must be between two or more independent companies.
[2] Most countries operate similar rules; therefore regardless of where DSM does business, similar rules apply.
[3] The rules relating to Resale Price Maintenance are discussed in Section 3 below. Further circumstances in which dealings with customers may infringe competition law include: (i) while it can be permissible to prevent customers from 'actively' re-selling (i.e. making active marketing approaches) to certain customer groups/territories; it is not possible to prevent all 'passive' sales to those customers (where the customer approaches the re-seller); and (ii) exclusivity arrangements of more than 5 years or where DSM or the counterparty has a market share in excess of 30%. As these circumstances are unlikely to be directly relevant to DSM's day-to-day business they are not considered further in this Manual. However, if any such circumstances do arise – you should speak to a manager before entering into any such agreement.

ABUSE OF A DOMINANT POSITION

It is illegal for companies with strong market power (referred to as a "dominant position") to exploit their position in particular ways which may affect trade, for example, by imposing excessively high or predatorily low prices, or discriminating between customers without justification.

Generally speaking, a company will be considered to be in a dominant position if it can take business decisions without regard to its competitors, customers and ultimately consumers. Assessing whether a company is in a dominant position depends on a variety of factors of which market share is only one.

As a general guide, there is a risk that companies with a market share of 40% or more might be regarded as dominant (above 50% there is a rebuttable presumption that they are dominant). Companies often define a market in a manner that suits them and their results. Such definitions may be artificial and may not concur with those used by the competition authorities to assess whether a dominant position exists. It is possible that a particular market can be defined very narrowly by the competition authorities (e.g. by local area).

If a company is in a dominant position, it is subject to additional legal constraints on how it can act in the marketplace. In particular, a dominant company has a legal "special responsibility" that limits its commercial flexibility in relation to issues including the following:

- Pricing and discount policies.
- Terms of supply.
- Tying (making the provision of its dominant products/services conditional on the purchase of other products/services).
- Refusal to supply.

There is currently no reason to believe that DSM is in a dominant position in a strict legal sense in relation to its business activities. However, it is worth being aware of the rules as DSM may do business with companies that do hold a dominant position. It is also best practice to minimise references to DSM being "dominant" or as having "market power" in internal documents and external marketing material – this will help reduce the risk of any accusation of dominance being made against DSM.

ENFORCEMENT

In the UK, the Competition and Markets Authority ("CMA") has the power to mount unannounced on-site inspections, often referred to as dawn raids, where they suspect a company has breached competition law. The CMA and the Serious Fraud Office ("SFO") also have power to conduct a dawn raid where individuals are suspected of having committed the criminal cartel offence.

Investigations may be triggered by:

- The authority's own suspicions about what may be happening in the market.
- Tip-offs from whistle-blowers.

- Another company can "come clean" in return for immunity/large reductions in fines – so called "leniency applicants".

The competition authorities have wide powers of inspection including taking copies of any internal hard-copy document or images of hard drives and servers.

SANCTIONS FOR BREACHING THE COMPETITION RULES

For the company:

There are severe sanctions on a company that has been found to have breached the competition rules. The company itself could be fined very heavily (potentially up to 10% of worldwide group turnover) and can be sued for damages by any third parties that are adversely affected by the breach of the competition rules. In addition, the company could be barred from bidding for certain contracts (e.g. public tenders) and any restrictions in an agreement that breaches competition law are void and unenforceable (which may lead to the entire agreement being unenforceable).

For the individual:

There are also potentially severe sanctions for the individuals directly involved in a breach of the competition rules. If a director is involved in a breach (or is found to have taken no action to stop a breach of which they were aware or should have been aware) they are vulnerable to being disqualified from acting as a director of a company for up to 15 years. The CMA is actively pursuing directors and has used this power on numerous occasions in the last few years in sectors including office fit-out, steel tanks and concrete pipes.

In cases of serious breaches of the competition rules, where an individual has participated in the criminal cartel offence, the individuals concerned may be liable for a maximum penalty of five years imprisonment and/or a fine. Criminal prosecutions have taken place in both the steel tanks and pre-cast concrete markets.

SECTION 3: KEY PROHIBITIONS

Competition law absolutely prohibits certain types of agreements and practices (as discussed below); whether other types of conduct or agreements will be permissible depends very much on the individual factual situation.

As noted above, it is very easy in inadvertently infringe these rules; it is not only written agreements which can constitute an infringement – even one conversation can be enough. Therefore, it is important that DSM does not do anything which could be interpreted as breaching these requirements.

The examples below are not exhaustive list, but the key point is that **DSM must act independently of its competitors at all times.**

The following are examples of what **you absolutely cannot do.**

- **Price fixing with a competitor** - the direct or indirect fixing of purchase or selling prices with a competitor is probably the most serious of competition law breaches. Direct price fixing agreements may take the form of agreements or understandings between competitors which: -
    - Fix the prices at which they will sell to third parties.
    - Fix the components of a price (for example, transport costs) at which they will sell to third parties.
    - Set minimum prices to be charged to third parties below which prices are not to be reduced.
    - Establish the amount or percentage by which prices charged to third parties are to be increased.
    - Establish a range outside of which prices charged to third parties are not to move.
    - Limit or prevent the granting of discounts or allowances to third parties.
    - Concern prices they will charge third parties for additional services.
    - In addition to competitors agreeing directly with each other to fix the prices that they will charge third parties, competitors also cannot indirectly fix prices, for example by disclosing to each other details of their future pricing intentions. Indirect price fixing with a competitor is also prohibited as contrary to the competition rules.
- **Fixing the resale prices of a customer** - while *recommending* a resale price is generally permissible, if a supplier tries to fix the prices at which a customer will resell that supplier's products that will also be contrary to the competition rules. For example, a supplier must not agree with a customer (and must not even try to agree with a customer): -
    - That the customer will resell the products to third parties at a particular level.

- That the customer will resell the products to third parties above a minimum level.
- That the customer may not discount the products or may not grant discounts of more than a certain amount when reselling the products to third parties.

Indirect resale price fixing is also prohibited, for example:

- Agreements fixing the customer's margins.
- Linking the resale price of its products to the resale prices of competitors.
- Threats, intimidation, warnings or penalties where a level of resale pricing is not respected by a customer (e.g. discouraging discounting).
- Delaying or suspending deliveries, or terminating contracts, if a given level of resale pricing is not observed.
- Making the grant of rebates or reimbursement of other costs subject to the customer reselling at a particular price level.

- Bid rigging - it is a serious breach of competition law to collude with competitors in responding to tenders. Bid rigging can take many forms, all of which would constitute an infringement. For example:
  - The fixing of tender prices to customers / or any agreement not to bid for certain contracts.
  - The payment of money/inducements to other contractors to encourage them to increase their bid prices / to not bid.
  - The rotation of bids between DSM and others so that only one company submits a competitive price on any one bid.
  - Agreeing to award sub-contracting work to competitors on a rotational basis (i.e. to discourage competition on the main tender) rather than on a bona-fide contract-by-contract basis.
  - Agreeing the price that DSM and others will charge for essential inputs (e.g. machinery) to other contractors in order to increase the other contractors' costs.
  - Indirect bid rigging is also prohibited for example by discussing with a competitor which tenders DSM is intending to bid for/not to bid for; or otherwise discussing tender intentions.
- Direct or indirect market or customer sharing - in a classic cartel competitors agree to keep out of each other's markets. Therefore, any agreement to reduce, limit or prevent competition for certain categories of contracts or customers is prohibited.
  - This type of arrangement is illegal whether the markets are drawn nationally, regionally or locally (such as by limiting sales to customers in a particular territory).

- Customer sharing is also prohibited. For example, if we agree to sell to certain customers only and to leave other customers to a competitor; as is sharing sources of supply, e.g. we agree to obtain our raw materials from one source and to leave another source to a competitor.

- Direct or indirect limitation of supply or production - any agreement between competitors which restrict quantities of goods to be produced, bought or sold are also prohibited.

- Collective boycott - do not agree with competitors to boycott customers or competitors – to do so would also amount to a serious infringement of competition law.

- Illegal information exchange - do not provide competitors with your confidential commercially sensitive information (see Section 4 below for more information). To do so could contribute to any of the infringements listed above, or constitute an infringement in its own right. Such information could, for example, include DSM's future pricing or margin intentions, its future bidding intentions, its sales volumes, discounts given by and prices paid to its suppliers, costs structures and confidential customer information.

An agreement need not be written for there to be a breach of competition law. It does not matter whether or not it is legally binding. An oral agreement or a mere understanding may be sufficient. Even if there is no overt agreement between competitors there is a risk that any sharing of information in this respect could lead to an understanding between those companies as to each other's competitive strategy going forward. Competition law breaches have been found even as a result of just one meeting of competitors.

If in doubt, contact your direct line manager.

SECTION 4: INFORMATION EXCHANGES WITH COMPETITORS

As noted above sharing information with competitors can be problematic in competition law terms when it leads to an artificially transparent market, namely, when companies are able to identify, individually, their competitors' practices and behaviour. Therefore, particular caution is required in relation to any commercially sensitive information which is not already in the public domain (e.g. information in the public domain may include tender results published by the customer).

However, in contrast, there is nothing wrong with market research in principle. After all, the exchange of certain types of information with our customers enables us to measure our performance against that of our competitors, or allows customers to negotiate a better price with us. Such exchanges enable us to survive in an extremely competitive marketplace and respond more effectively to that competition.

Top Tips:

(i) Never to seek to verify customer feedback directly with a competitor; and (ii) always state the source of market intelligence in any internal document (e.g. I know this information relating to Competitor X as Customer Y informed me during our negotiations).

The basic position is:

- It is generally permissible to receive feedback on competitors from customers.
- It may be permissible to receive feedback on competitors from suppliers/ non-competing sub-contractors, however this can be problematic, for example where you may be taken to know that the competitor has provided the supplier with information in the knowledge that it will be passed to you, and vice versa.
- You must not share any information with a competitor that could lead to a reduction in their uncertainty as to your strategy on the market. This includes where and with whom you do business, the terms on which you do business, the volume of business you do and at what price, including the costs and other factors that make up your price.
- If a customer/supplier asks DSM to pass on competitively sensitive information to one of the customer's/supplier's competitors, or otherwise attempts to involve DSM in a potentially anti-competitive behaviour – DSM must refuse to become involved.

Remember that sharing commercially sensitive information with a competitor (e.g. relating to price, tenders, costs or capacity) even on a **single** occasion can be sufficient to breach competition law and incur fines.

This applies even in a **one way** exchange (i.e. even if you do not respond, DSM will be presumed to have taken the information into account, unless we can provide evidence to the contrary).

Therefore, if you ever receive commercially sensitive information from a competitor (either verbally or via email or letter) you **must report it to the DSM legal team** and then take steps to **actively distance** DSM from the information (i.e. delete the information, do not pass it on internally, do not use it to influence DSM's strategy, and write to the competitor informing them that you do not want to receive similar information in the future).

If you are in attendance at a meeting with a competitor and any information is shared or remarks made which would cause a competition law concern, it is mandatory that you leave the meeting! In 2016 the CMA said *'any company that is approached to join a cartel or becomes involved in anti-competitive arrangements, should immediately reject the approach unequivocally. It is not enough to refrain from price-fixing or market sharing. The*

business (and its representatives) must leave the meeting and make clear and explicit its refusal to take part.'

This also applies if you are in a meeting with customers/suppliers (who compete with each other) and you are concerned that they may be infringing competition law. DSM cannot be seen to be facilitating an infringement, even where it is not directly involved.

SOCIAL EVENTS

Social events are a potential hazard. In a competition case involving Allsports, Allsports held a golf day for those involved in the sportswear business. This was followed by a dinner at which Allsports' MD sat at a table with representatives of sportswear suppliers, including Umbro, Manchester United, Adidas and Nike. In the course of the dinner, Allsports' MD berated the "brands" for their treatment of Allsports in relation to discounting by other retailers, in particular the discounting of "statement products". The Competition Appeal Tribunal observed that "it shows a singular lack of awareness of the risks being run under competition laws if a group of competing suppliers are placed at the same table at a social function and the host, a retailer, then seeks to commence a discussion of retail prices with a view to limiting price competition by other retailers".

You should therefore follow these guidelines in relation to your attendance at social events:

- Do not assume that because discussions may take place outside of an office environment that such conversations will not in future be the subject of incriminating evidence which may be used against the business.
- The informality of the function may mean that discussions can be over-heard and misinterpreted by other competitors (or potential competitors) or third parties.
- Take care with what you say and to whom – always err on the side of caution. You may think that a conversation is confidential, but you cannot control what someone does with the information - they may write it down or tell a colleague or client.

As a general rule the following topics are safe / not safe to discuss with competitors:

DO NOT DISCUSS - UNSAFE	OKAY TO DISCUSS – SAFE
Prices (or price increases, discounts, rebates, commissions etc)	Health and Safety
Future or recent costs (e.g. of production, logistics etc)	Upcoming legislation
Future capacity (e.g. spare ability to provide products/services)	Operational best practice
Future or recent bidding/tender intentions	High level market trends
Future or recent business strategy (e.g. potential entry in new markets/areas, particular areas for future focus)	Social topics

TRADE ASSOCIATIONS / INDUSTRY BODIES

Another way in which DSM may be in danger of becoming involved in exchanging information with our competitors is in the context of a trade association / industry body. Such bodies can present a legitimate opportunity to exchange statistical information between companies in the same industry sector, and represent a forum for companies to share opinions and experiences. They also provide companies with a vehicle through which they can make representations to public bodies, for example, when law reforms are imminent.

However, such bodies can be potentially fertile ground for discussions that stray outside the realms of what is permitted. To avoid such 'spillover' effects, the following guidelines should be adhered to:

Recommendations

- Adopt a written constitution setting out the objectives of the body.
- Draw up an agenda for meetings and circulate to all members in advance of the meeting.
- Take accurate minutes of all meetings and circulate these to all members.
- Discuss matters of general interest that are not confidential or commercially sensitive (such as market trends, best practice within the industry, health and safety issues).
- If statistical information is collected from members, ensure that no individual responses are circulated to members. Only aggregated information should be circulated and any data circulated should be anonymised and aggregated to a high level.
- Circulate a reminder of the basic competition law prohibitions at the start of each meeting.
- Terminate discussions/leave a meeting if these guidelines are violated and promptly inform your manager.

Not permitted

- Do not discuss pricing, costs, margin, output, forecasts, sales business plans and other commercially sensitive issues (e.g new research and development, marketing strategies, projections etc).
- Do not allow, encourage, or participate in any breakout or 'shadow' meetings before or after the main meeting during which individual competitors exchange commercially sensitive information.
- Do not publish, exchange or otherwise disclose any data which allows the practices or marketing behaviour of individual members to be easily identified. Ensure only aggregated anonymised information is circulated to members. Do not annotate such data with comments or observations.
- Do not do anything to influence the conduct of a competitor (other than your normal, legitimate, commercial activities).

- Do not adopt any rules or recommend any conduct which could have the object or effect of preventing or distorting competition e.g. price fixing, market sharing.

- Do not assume that you have to follow recommendations of the trade association or assume that others will.

- Do not use ambiguous language in minutes of meetings which could be in danger of being misinterpreted if read by competition authorities at a later date.

SECTION 5 – JOINT BIDDING AND SUBCONTRACTING / COMPETITOR SUPPLY

Joint bidding - As noted above, the general rule is that DSM should not discuss bids with competitors. This includes discussing details of whether it is intending to bid for a contract, the price it is intending to submit, or any other aspect of its bidding strategy. However, there may be circumstances in which it is permitted to bid jointly with a competitor, for example where DSM could not credibly bid on its own. Caution is required in these circumstances.

Subcontracting / supplying to competitors - It may be necessary to sub-contract to/from a competitor, or otherwise supply them with products or machinery. For example, where that competitor does not have a physical presence in that area, or lacks the necessary expertise. This is not necessarily anti-competitive and can help increase competition. However, there are risks associated with such arrangements.

These arrangements are likely to be anti-competitive if they lead to:

- The allocation of markets or customers between competitors - e.g. an agreement with a competitor that DSM will supply all customers in a particular local area and the competitor will supply all customers in another area, or the division of categories of customers in a similar way.
- Any limitation of either party's capacity or output in respect of the product concerned.
- The exchange of commercially sensitive information – e.g. where DSM is supplying a competitor/bidding with a competitor, it should only provide that competitor with information on price and supply terms relating to the contract/bid.

To avoid falling foul of competition rules it is important to:

- Ensure all cooperation is for a legitimate purpose. For example, only cooperate with competitors to bid for contracts that DSM or the joint bidder could not perform individually. There should be efficiencies created which extend beyond merely improving margins for the parties. For example, cooperation is more likely to be acceptable where the individual parties do not have the necessary scale, expertise, technical know-how, capacity, or geographical reach to tender for the contract by themselves.
- The intention should be to use the cooperation to offer a better price or service to customers. Cooperation should not be used to increase prices or foreclose a supplier, competitor or customer.
- Contact your manager before cooperating for a bid where DSM and the other company are the only potential bidders for the contract. If all competition is going to be eliminated for that contract, particular caution is required.
- Ensure that DSM and the joint bidder(s) compete vigorously in all other contexts, including competitively bidding for other contracts outside of the scope of the joint bid.
- Ensure that all dealings between DSM, and the joint bidder(s) are 'at arm's length' in all other respects.

Conversely, DSM should not:

- allow the cooperation to last longer than is necessary for the bidding for, and performance of the contracts;

- use the joint bid or subcontracting arrangement to facilitate information exchange which would impact the parties ability to compete with each other outside of the contract. For example, this includes:

    - providing entire price lists where the bid/sub-contract only relates to a specific service;

    - circumstances where DSM is also potentially bidding for the main contract as well as entering into a joint bid/subcontract arrangement with a competitor. In such circumstances, legal advice should be sought as to whether ring-fencing measures are required to allow both arrangements to go ahead.

SECTION 6: ABUSING A DOMINANT POSITION

There are additional rules that apply to dominant market players. A company may be considered to be dominant if it can take business decisions without regard to its competitors, customers and ultimately consumers. Assessing whether a company is in a dominant position depends on a variety of factors of which market share is only one, but as a general guide, there is a risk that companies with a market share of 40% or more would be regarded as dominant (above 50% there is a rebuttable presumption they are dominant).

There is currently no reason to believe that DSM is in a dominant position in a strict legal sense in relation to their business activities. However, it is worth being aware of the rules as DSM may do business with companies that do hold a dominant position. It is also best practice to minimise references to DSM being "dominant" or as having "market power", in internal documents and external marketing material – this will help reduce the risk of any accusation of dominance being made against DSM.

There are the additional rules that apply to a dominant market player:-

PRICING ABUSES

If in any market a company was considered to have a dominant position, it would be prevented from:-

- Pricing at excessively high levels – for example charging prices that bear no relation to the costs of operation or supply.
- Margin squeeze – charging significantly higher input prices to a competitor in relation to an upstream market (e.g. machinery hire) in comparison to the prices it charges to its own businesses so that the competitor is less able to compete with that company on the downstream market (demolition services).
- Engaging in predatory pricing (pricing below cost with a view to eliminating a competitor from the market).
- Engaging in discriminatory pricing (charging different prices to similarly placed customers or the same prices to differently placed customers without objectively justifiable rationale with a view to driving them out of the market).
- Requiring customer exclusivity, or offering rebates or discounts to encourage exclusivity without objective justification, with a view to excluding competitors.

REFUSAL TO SUPPLY

Without objectively justifiable reasons, competition law enforcement authorities have stated that it would normally be abusive for a dominant supplier to refuse to supply customers (whether existing or new).

No-one has to supply goods or services if they will not be paid for them, so lack of credit worthiness is a justifiable reason for not supplying. However, the belief must be held in good faith. In one case an attempt by a supplier to justify a refusal on the grounds that the customer was not creditworthy was defeated by the customer producing a bank guarantee.

TYING

The practice of "Tying" is specifically considered to be an abuse of dominance. Tying is making a customer's purchase of a product from a dominant company conditional on the customer also buying other products or services that the customer would not otherwise have wanted to purchase from the dominant company.

SECTION 7: WATCH YOUR LANGUAGE

Take care with your language in all business communications, whether in writing (especially emails) or in the course of telephone conversations or meetings. **Careless language could be very damaging if the business is subject to an investigation by the competition authorities or is involved in litigation with another company. A poor choice of words can make a perfectly legal activity look suspect.**

Many **internal** documents are likely to come under scrutiny during an investigation or legal proceedings involving a third party, even those which you might believe to be confidential such as diaries, telephone call records or personal note books. Documents in this context are not limited to papers, but will include any form in which information is recorded: computer records and databases, text messages, emails, voicemail, films, videos and so on can all be examined.

These are often key pieces of evidence used by competition authorities.

E-mail and voicemail can often contain even more damaging statements than letters or memoranda, because they are usually sent or left casually, in the false belief that they are confidential or will be destroyed after a short time. Both e-mail and voicemail messages can be accessed during an inspection by the competition authorities or in legal proceedings. They are regarded as a particularly good source of information because they are stored by time and date and can give a full picture of what was done and said.

You should therefore follow these guidelines:

- If you think it might be a sensitive area, speak to a manager before you engage in it.
- Whenever you write or type something down, remember that it could be made public one day, even if deleted. Take as much care in sending messages by e-mail or leaving them on voicemail as you would when sending a letter or memorandum. Assume that all e-mail or voicemail messages may be read or heard by others.
- Avoid any suggestion that an "industry view" has been reached on a particular issue such as price levels.
- Do not use "guilty" vocabulary ("Please destroy/delete after reading").
- Do not speculate about whether an activity is illegal or legal. Take legal advice first!
- All prices must be based on independent business judgement. Do not write anything which implies anything to the contrary.
- State clearly the source of any pricing information so it does not give the false impression that it came from talks with a competitor (e.g. "*I received information relating to Competitor X, it came from Customer Y during our negotiations with them*").
- Keep accurate notes of all meetings with customers and competitors.

- Avoid “power” or “domination” vocabulary, such as “This will enable us to dominate the market”, or “We have virtually eliminated the competition”.

- Avoid language suggesting that the business has a strategy to drive a competitor out of business.

- Exercise particular caution with messages sent to or received from outside the company over the internet. Remember that e-mail messages are often appended to other e-mail messages and may be forwarded or replied to several times.

- If you receive a questionable or unclear e-mail or hear something you think is problematic speak to a manager. Never ignore such an e-mail/activity – you can be guilty by failing to act.

SECTION 8: COMMUNICATIONS REGARDING COMPLIANCE WITH COMPETITION LAW

In some circumstances we are able to prevent the disclosure of communications on the ground that the communications are protected by the right of legal professional privilege, and can therefore be kept confidential.

To enable the business to substantiate any claim of legal professional privilege which it may wish to make in order to protect the confidentiality of communications, these guidelines should be followed:

- Where you are seeking legal advice in relation to competition law matters, clearly state "Prepared for the purpose of seeking legal advice" at the head of the document or email and ensure that the words "Privileged and confidential" appear at the beginning of the communication.

- Do not forward on privileged advice/communications to anyone else as you may lose the benefit of that privilege.

- Do not in the same communication also seek views on non-legal matters, even if they are related to the request for legal advice.

- Do not refer to communications between non-lawyers as being "privileged and confidential", even where a legal advisor receives a copy.

- All communications passing between you and legal advisors should be kept separately in files marked "Privileged and confidential".

- In cases where it may be appropriate to refer to legal advice you or the company has taken when dealing with third parties, do not disclose the advice to others without checking with your legal counsel first.

SECTION 9: DOCUMENT RETENTION AND DESTRUCTION

In the context of this manual you should note that:

- You must not destroy documents or records because you think they contain damaging information. This could damage the company's standing with the competition authorities if it comes to light in an investigation.

- If you are notified that the company is under investigation by the competition authorities, all document destruction must immediately cease until further notice.

SECTION 10: FREQUENTLY ASKED QUESTIONS

1. **What should I do if I receive confidential information from a competitor, or a request from a competitor to do something that I think may breach competition law?**

   Immediately contact DSM's internal legal team. If you are concerned with another company's behaviour (even if they are not a competitor of DSM) you must report this to DSM's legal team. Ignoring or turning a blind eye is not an option, if you notice anti-competitive conduct DSM has a duty to actively distance itself from this conduct. If DSM does not take steps to distance itself it risks being deemed to have acquiesced with the breach and can still be fined (even if DSM is not itself involved in the anti-competitive action).

2. **When tendering, if DSM is not interested in a particular opportunity, can we submit an over-inflated price to the client?**

   Yes, an independent decision by DSM not to bid for a contract or not to submit a competitive bid (by submitting an over-inflated price) would not breach competition law.

   It is the contact between competitors and any understanding reached which would breach competition law.

   However, as a matter of best practice, rather than submitting a high price, we would encourage you to return the tender documents to the client and explain why DSM will not be submitting a price on this occasion.

3. **A sub-contractor informs me that our competitor is not bidding for a particular project. What should I do with this information?**

   On a day-to-day basis, you will often hear a great deal about our competitors' business activities from sources such as sub-contractors, customers and trade press. Information received from such normal market sources may be used by you in making business decisions and in taking action in the market. However, such "market gossip" about a competitor should not be checked or verified with that competitor.

   Always record in writing the source of such "market gossip" so that DSM could, if necessary, demonstrate to the competition authorities where the information came from. Additionally, always state the source of the information in all internal communications.

   If a sub-contractor gives you detailed pricing information relating to a competitor in a live tender scenario – it is best practice not to accept the information and otherwise delete it and speak to a manager.

   If you think that the sub-contractor has passed any information on to you at the request of the competitor, or it ever becomes commonplace so that DSM and a competitor(s) understand that certain parties will act as information conduits – this could constitute a clear infringement.

4. **I have been invited by a client to attend a golf day. It is likely that some of DSM's competitors will be present. Can I attend?**

   Yes, it is perfectly acceptable to attend such meetings but exercise caution about what you discuss with your competitors when you meet them.

General discussions and expressions of opinion concerning market outlook or conditions affecting sub-contractors, suppliers or customers generally are permissible, provided they do not have the purpose, and would not be materially influential in, determining the future conduct of the other participants to the discussions.

For example, discussions on health & safety issues, potential future legislation or regulation, etc are almost invariably permissible. But you should avoid discussing anti-competitive or commercially sensitive topics as set out in this Manual.

5. **Can I tell a sub-contractor to tell our closest competitor what projects we are interested in bidding for?**

No. A third party should not be used as a post-box to share information with a competitor.

If a third party volunteers confidential or commercially sensitive information to DSM about a competitor, then this is permissible, providing that:

- DSM does not seek to verify that information with the competitor
- DSM has not asked for the information or any additional confidential or commercially sensitive information from the third party
- DSM does not know/does not have reason to believe that the competitor provided the information to the third party in the knowledge or anticipation that the information would be relayed by that third party to DSM and DSM does not attempt to reciprocate
- DSM does not share confidential or commercially sensitive information about its own activities with the third party in the knowledge or anticipation that this will be passed by the third party to the competitor.

One caveat to this is it would still be best practice to refuse any pricing information relating to live tender processes.

6. **Can we offer one customer a better price than another customer, even if it is for the same end-customer?**

DSM may generally charge whatever its customers will pay, providing it is not dominant. Accordingly, DSM may discriminate between its customers and it may refuse to supply anyone who will not pay its prices.

So long as DSM sets its prices (and discounts and rebate structures) according to its own policies, and not in co-operation or collaboration with its competitors, there will be no competition law concerns.

Seek legal advice if DSM is dominant.

7. **Can DSM enter into rebate agreements with our most loyal customers?**

When deciding its pricing policies, DSM may charge by reference to its list prices, or net prices, or on an ad hoc basis. Accordingly, it may offer rebate schemes or other incentives.

So long as it sets its prices (and discounts and rebate structures) according to its own policies, and not in co-operation or collaboration with its competitors, there will be no

Competition law concerns. For non-dominant products/services, the practice that must be avoided is fixing resale prices or imposing minimum resale prices on its customers.

Seek legal advice if DSM is dominant. Rebates or discounts granted by dominant companies in return for securing all or an increased proportion of the business of customers may infringe the competition rules unless there is an objective justification.

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