



## Competition and Antitrust Policy

Policy Number: LEG-022-12-11  
Effective Date: December 22, 2011

### 1 **PURPOSE**

Boart Longyear is dedicated to conducting its business activities ethically and in full compliance with all applicable antitrust and competition laws, which are designed to maintain free and open competition in a market and protect competitors and consumers from anti-competitive conduct.

This policy governs the activities of all Boart Longyear operations globally, including each subsidiary, venture, partnership or other entity directly or indirectly controlled by Boart Longyear. All employees, directors or officers of the Boart Longyear group of companies, regardless of their location, function or job responsibilities, are fully responsible for understanding this policy and its obligations and compliance requirements. This policy is not a comprehensive statement of competition laws and should not be used as a substitute for legal advice. Instead, this policy outlines basic principles of competition law to alert employees to conduct that may violate those laws. The Legal Department should be consulted whenever there is uncertainty about whether and how antitrust laws apply to any particular situation.

### 2 **POLICY**

#### 2.1 **Relationships with Competitors**

##### **2.1.1 Improper Agreements and Information Sharing with Competitors**

Antitrust laws prohibit competitors from acting together, or attempting to act together, with a goal of limiting competition in the market place. Specifically, the laws prohibit:

- agreements between competitors;
- attempted agreements between competitors, even if unsuccessful; or
- direct or indirect exchanges of commercially sensitive information between competitors.

With very few exceptions, all such conduct is deemed harmful to competition and the proper operation of markets. Accordingly, all decisions about when, where and how Boart Longyear does business must not be based on agreements or information exchanges with competitors. Instead, they must be made independently of any communication with competitors and based only on legitimate business considerations and the company's best interests.

A sample list of information employees should never share, discuss or agree to with competitors includes:

- prices and discounts;

- timing of price changes;
- rebates;
- territory, market or customer allocation;
- payment terms;
- other terms and conditions of sale;
- profit margins or costs;
- market plans or strategies;
- production limits; or
- technology suppression or delay

The list above is not comprehensive and discussions about many other topics could be perceived as attempts to restrain competition.

### Hypothetical Situation and Response

#### Situation

A representative of one of our competitors contacts you and says he is aware that Boart Longyear has been invited to bid on the Goose Down Project as well as the Up River Project. He suggests that it might be in both companies' interests if each company bid on only one of the projects to improve the chance each company will be awarded a contract at good margins.

#### Issue

Any discussion with a competitor regarding dividing territories, restricting bid activity or working cooperatively to improve price or margins is prohibited, even if an agreement is never reached.

#### Analysis and Response

Boart Longyear cannot agree to restrict its ability to bid on or compete for any project. While the Company may properly choose not to bid on a project for any reason or no reason, its decision must be unilateral and cannot be based on an express or implied agreement with another party. Terminate the discussion with the competitor's representative by clearly stating the Company will not agree to his request and then immediately contact the Legal Department to report what occurred.

### 2.1.2 Improper Contact with Competitors

Employees should avoid discussions or contact with competitors or their representatives, except for the situations listed in Section 2.2 below, and only after securing the required approvals listed there. In the event an employee has contact with a competitor or its representative and that competitor discloses commercially sensitive information or attempts to discuss potential collusion, employees should point out that Boart Longyear's policy prevents any such discussion and then immediately advise the Legal Department of the conversation.

#### Hypothetical Situation and Response

##### Situation

You are attending the PDAC trade show and a competitor's sales representative starts a conversation with you. After some small talk, the competitor discusses general market conditions and then says, "The market doesn't seem accepting of price increases so we are going to hold our prices steady." He stops talking and says nothing more, apparently waiting for you to respond.

##### Issue

The competitor has exchanged commercially sensitive pricing information in violation of antitrust laws and is attempting to reach an agreement with you on pricing.

##### Analysis and Response

This situation poses significant legal risk both to you, personally, and to Boart Longyear, even if you do not respond or indicate any willingness to reach an agreement on price. The discussion between you and the competitor's representative likely has been witnessed by others at the event and could be construed as evidence of your participation in price fixing, even if you remain silent and especially if collusion in the industry is discovered at a later time. Therefore, don't worry about being impolite; immediately and clearly end the conversation and inform the competitor's representative that Boart Longyear policy prohibits you from further discussing the topic. Contact the Legal Department as soon as possible to report the conversation.

### 2.2 Permissible Contact with Competitors

Certain contact or business dealings with competitors may be permissible and appropriate, as discussed in this section. These arrangements pose antitrust risks, however, by providing opportunities for improper information exchange or collusion with competitors. Accordingly, employees should review each situation below carefully.

### **2.2.1 Products' Division Sales to Drilling Services Competitors**

Employees of Boart Longyear's Products business are regularly exposed to competitors of the Company's drilling services business as a result of selling the Company's products to those competitors. This policy recognizes that such contact is not only appropriate but also necessary. Nevertheless, certain precautions should be taken to ensure that such contact does not lead to improper behavior. In particular, all sales calls and other contact with competitors should be limited to necessary Company personnel. In addition, any request or attempt by a customer to condition product purchases on a restriction on Boart Longyear's drilling services business or its ability to compete must immediately be reported to the Legal Department.

### **2.2.2 Joint Ventures**

Joint ventures between competitors will not violate antitrust laws if they are designed and managed carefully. The task of conforming them to those laws, however, is very complex. As such, all joint ventures must be approved by Boart Longyear's Executive Committee before substantive discussions about the formation of the joint venture begin.

### **2.2.3 Trade Associations**

Government regulators are particularly concerned about trade associations because historically they have provided a common situation for illegal conduct to occur, such as illegal exchanges of competitive information or illegal agreements between competitors. Therefore, employees participating in trade association meetings must be familiar with all aspects of this policy and be extremely vigilant not to participate in any communication or activities that may violate, or even be perceived to violate, competition laws. In particular, such employees should undertake the following:

- Ensure that association meetings have an agenda and, if possible, review the agenda before the meeting to make sure it relates to topics relevant to the association's mission or provide the agenda to the Legal Department for review;
- Verify that legal counsel retained by the association will attend the meeting and notify the Legal Department in advance if no association counsel will be present;
- In the event a meeting strays into discussion of commercially sensitive information (particularly the topics identified in Section 2.1.1), insist that it end immediately and request that your objection be noted in the meeting minutes. If the discussion continues, explain that you are leaving the meeting because Boart Longyear policy prohibits your participation in the discussion, leave the meeting and then immediately contact the Legal Department.

### **2.2.4 Industry Surveys and Benchmarking**

Benchmarking with companies that are not competitors typically presents no legal risk, but benchmarking with competitors can raise significant antitrust issues. Accordingly, do not engage in any benchmarking with competitors without Legal Department approval.

Other guidelines for benchmarking include the following:

- an independent third party (e.g., a consultant or industry analyst rather than a customer, supplier or other party with a financial interest) should conduct the benchmarking, including the collection and collation of data; and
- the data supplied should not contain commercially sensitive information (such as profit margins or operating costs) and should be rendered anonymous so that it cannot be identified as Boart Longyear's information.

## **2.3 Relationships with Customers or Suppliers**

Competition laws in most jurisdictions also regulate “vertical” relationships between a company and its customers and suppliers. The laws governing those relationships can be very fact-specific and nuanced, so employees should consult the Legal Department about any of the following situations. As a general rule, any practice that is coercive and reduces competition should be viewed cautiously.

### **2.3.1 Refusals to Deal**

As a general rule, Boart Longyear is free to select its own customers and suppliers – but only if it does so independently and not as a result of an agreement or understanding with another party. The Legal Department should be consulted as promptly as possible if any refusal to do business with a customer or supplier appears likely to lead to litigation or is based on anything other than the Company's independent assessment of legitimate business factors, such as a customer's creditworthiness or a supplier's qualifications.

### **2.3.2 Boycotts**

A boycott is an agreement with a third-party not to do business with another party, or to do business only on specified terms. Boycotts often take the form of illegal agreements between competitors (which are covered in Section 2.1, above). They may, however, also involve agreements by a company with one or more of its customers, distributors or, in some cases, suppliers. Boycotts will be deemed illegal if their purpose is to restrict or diminish competition.

### Hypothetical Situation and Response

#### Situation

BAD Drilling, a Boart Longyear Products division customer, demands that Boart Longyear not do business with Startup Drilling, a new drilling competitor in BAD's territory. It worries that Startup will be a price cutter. BAD asks Boart Longyear to confirm it will not sell to Startup.

#### Issue

An agreement between BAD and Boart Longyear not to do business with Startup would be an illegal boycott.

#### Analysis and Response

Boart Longyear could legitimately choose not to do business with Startup for any reason, including its concern about Startup's creditworthiness, but it would violate the law if it agreed with BAD not to do business with Startup. This is true because BAD's motives are anticompetitive: (1) they are attempting to stop a new market entrant and (2) they are seeking Boart Longyear's help to stop a competitor from cutting prices. Terminate the discussion with the BAD's representative by clearly stating Boart Longyear will not agree to his request and then immediately contact the Legal Department to report what occurred.

### **2.3.3 Tying Arrangements**

Tying is the practice of selling one product or service only when the customer also purchases a second product or service. If the seller has a strong market position in the first (or "tying") product, this practice carries substantial risk under competition laws in most jurisdictions.

Tying arrangements should be distinguished from arrangements where products or services are bundled as a convenience to the customer or to promote the sale of the less-desirable product in the bundle. Such bundling arrangements are acceptable if the customer is not coerced to purchase the products or services together and remains free to purchase them separately.

### Hypothetical Situation and Response

#### Situation

Sales of diamond bits have been slow while sales of coring rods are at an all-time high. Your supervisor tells you that customers placing orders for coring rods should be told that they must also place minimum quantity orders for diamond bits.

#### Issue

This is an example of a tying arrangement. We should not coerce a customer to buy a product they do not want by tying it to the sale of the product they do want.

#### Analysis and Response

Even though some tying arrangements may be permissible in specific circumstances, Boart Longyear employees should never tie the sale of a product or service to another without first consulting the Legal Department and obtaining prior approval.

### **2.3.4 Reciprocal Dealing**

Reciprocal dealing is similar to a tying arrangement. It occurs when a buyer of a product or service requires or coerces the seller to purchase another product or service from the buyer. As with tying arrangements, this practice may violate competition laws if the buyer has a strong market position.

### **2.3.5 Exclusive Dealing and Requirements Contracts**

Exclusive dealing contracts are common and generally legitimate. One form of exclusive dealing arrangement, which is common between manufacturers of products and their distributors and resellers, requires a purchaser to buy all of its requirements for a particular product or service only from a single seller. A second type of exclusive dealing arrangement requires a seller to sell all of its output to a single buyer.

When a party to an exclusive dealing arrangement has a strong market position, however, exclusive dealing arrangements can be seen as anticompetitive. Accordingly, because of the potential antitrust implications, the Legal Department should review and approval all exclusive dealing arrangements in advance.

### Hypothetical Situation and Response

#### Situation

Boart Longyear has signed an exclusive contract with Lucky Mining Company to provide drilling services only to Lucky in the country of Fantasia. High Hopes Mining Company is upset that Boart Longyear will not provide drilling services to help it explore its holdings in Fantasia and contends that the exclusive contract with Lucky is anticompetitive and illegal.

#### Issue

Boart Longyear's exclusive contract with Lucky appears to be harmful to High Hopes.

#### Analysis and Response

Exclusive arrangements like this often are permitted. In this example, the exclusive arrangement may have pro-competitive benefit for the Fantasia mining market (such as encouraging greater investment by both Lucky and Boart Longyear). As long as there are sufficient other drilling companies to provide services to High Hopes, antitrust laws are likely to allow this arrangement.

### **2.3.6 Resale Price Restrictions**

As a general rule, under applicable competition laws, the Company loses the right to control the price at which its distributors and resellers sell the Company's products. In particular, Boart Longyear may not be able to impose minimum price requirements on distributors or resellers for their resale of Boart Longyear's products.

Boart Longyear may suggest recommended resale prices to its distributors and resellers, but they must remain free to determine their resale prices independently. Therefore, no employee should ever, without Legal Department approval, attempt to reach agreement with a distributor or reseller concerning the resale price of Boart Longyear's products. Similarly, employees must not engage in conduct that attempts to coerce a reseller into maintaining certain resale prices or punish a reseller for not abiding by the Company's suggested resale price.

### **2.3.7 Resale Restrictions Other than Price**

Non-price agreements with distributors and other resellers of the Company's products are common and often appropriate. Examples of such agreements include restrictions on resale to certain territories or customers or requirements that the resellers meet certain advertising, training, customer support or facility objectives. Such restrictions generally are allowed if their recompetitive effects outweigh any

anticompetitive aspects, but they should be reviewed with the Legal Department to ensure they are acceptable.

### **2.3.8 Terminating a Relationship with a Distributor or Reseller**

Termination of resellers or distributors should be handled with care, as they often give rise to litigation. Once a relationship with a distributor or reseller exists, the company may be restricted in its ability to terminate the relationship.

In particular, you should consult the Legal Department prior to a termination in any of the following circumstances:

- the termination is in response to complaints received from other distributors or resellers, as such a termination could be construed as an illegal agreement between the company and a third-party;
- Boart Longyear's termination rights or obligations under its distribution or reseller agreement are unclear;
- the termination is because the distributor resells products at prices below the Company's suggested prices; or
- the termination may lead to litigation.

### **2.3.9 Price Discrimination**

Antitrust laws in several global jurisdictions prohibit price discrimination, which is generally defined as the practice of charging similar customers different prices for goods that are identical (or very similar). Price discrimination can include all forms of pricing terms, such as discounts, rebates, advertising and freight allowances, and credit terms, among others.

Illegal price discrimination is very fact-specific. It is often legal and legitimate to charge customers different prices. For example, the following circumstances would generally justify charging customers different prices:

- sales to the company's subsidiaries;
- the customers are in different geographies
- the customers are functionally different, such as one customer being a distributor and another an end-user;
- Boart Longyear's price reimburses the customer for performing services that benefit the Company, such as a stocking distributor receiving a lower price than a distributor who does not stock Company products;
- the Company's lower price to a customer reflects actual cost savings or other efficiencies in producing or delivering product to that customer;
- the customers buy the product in significantly different volumes; and
- a price concession is made to a customer to meet a competitor's price.

Although price discrimination involves complex legal and factual questions, employees should keep in mind some basic scenarios that may indicate illegal price discrimination:

- below-cost sales;
- price differences that are intended to hinder a customer's ability to compete or that otherwise injure that customer; or
- price differences that do not reflect, and are disproportionate to, actual savings or efficiencies associated with the company doing business with a customer.

## 2.4 Penalties for Violations

Penalties for violating antitrust laws vary significantly among jurisdictions, but can be severe. Generally, both civil and criminal penalties against the Company and responsible individuals are available to regulators enforcing antitrust laws. Additionally, civil claims by private individuals, such as by competitors or consumers who have been injured by illegal conduct, are available in many jurisdictions and can involve the award of damages as high as three times the actual damages the plaintiff sustained. Individuals can receive significant fines and be imprisoned for violating the laws. Additionally, failure to comply with this Policy may also result in Boart Longyear disciplinary action, up to and including termination of employment.

## 3 REPORTING OBLIGATIONS

Every Boart Longyear employee is obligated to report an actual or potential violation of the law or any conduct that might indicate or result in a violation of the law. A report may be made to the employee's supervisor or another member of local management. Employees also are encouraged to report potential violations of antitrust laws to a senior manager or member of the Legal Department, or to the company's Confidential Compliance Hotline.

## 4 REVISION HISTORY

Revision	Date	Comments