Global Competition Law Policy

Summary

1 Key principle

In accordance with our Code of Conduct, we are committed to competing fairly across our operations and do not engage in practices that restrict fair market competition.

2 Rationale

Anti-competitive practices impede the healthy operation of markets, prevent fair competition, and ultimately harm consumers.

3 Purpose

This Global Competition Law Policy (the "Policy") explains how competition law applies to ALE's business activities, and sets out our compliance obligations.

It underlines the serious consequences of breaching the law and the behavior expected of ALE employees to ensure that we can compete successfully while respecting competition laws wherever we operate. You must understand your competition law obligations in order to minimize the risk of breach. Regulators do not accept ignorance of the law as a valid defense.

4 Scope

This Policy applies to all permanent and temporary employees, regardless of their locality. It is the individual responsibility of all employees to comply with this Policy irrespective of seniority.

This Policy highlights the specific competition law risks to our operations. Certain areas and risks underlined in this Policy are particularly relevant to the positions of advisors/business managers (SPOT and Branded Stations), Operations Chiefs, Operations and Commercial Directors, given the nature of their job duties. Other areas and risks are especially relevant to our employees.

5 Requirements

5.1 Your obligations

Everyone at ALE must comply with this Policy and:

- understand how competition law applies to you and your activities;
- understand the types of conduct that are illegal and when to exercise caution, e.g. in your interactions with competitors;
- understand the serious consequences for ALE, and for you, of breaching competition law;
- be vigilant to competition law risk in your wider teams;
- know when you are required to consult with Legal or your local compliance contact;
- ask Legal or your local compliance contact if you have any questions or concerns.

5.2 Key Principles

- Competition laws aim to protect consumers by promoting free, undistorted competition between companies, protecting independent decision-making of market participants, and preventing the misuse of market power.
- The laws prohibit (i) agreements which harm competition and (ii) the abuse of market power by dominant companies.
- The greatest risks occur when dealing with competitors, in particular through commercial agreements, coordinating strategy or exchanging sensitive information.
- Risks may also arise when dealing with clients and suppliers, for example in the context of supply agreements or purchase of future production.
- The most serious competition law breaches (the **"Hardcore Breaches"**) are illegal even if they have no impact on the market and do not result in any profit. The fact that our competitors may engage in similar conduct is no excuse and may even be considered an aggravating factor.

5.3 Dealing with competitors

- It is a Hardcore Breach to collude with ALE's competitors, including to fix or increase prices, allocate markets or clients and/or setting limits of action regarding territories and products, engage in bid-rigging or collectively boycott clients or suppliers.
- Collusion may take place through formal written agreements to collude, as well as informal, unwritten agreements, for example via a common understanding to coordinate behavior.
- If you are entering into an agreement with a competitor, refer to the **Competition Law Guideline: Dealing with Competitors.**

5.4 Sharing commercially sensitive information

- Discussing or sharing commercially sensitive information with our competitors can of itself be a Hardcore Breach of competition law.
- Sharing detailed current and future pricing, cost and volume information and future strategy and investment plans is particularly high risk (**"High Risk Information"**).
- Even just a one-off exchange, or simply receiving High Risk Information from a competitor (whether in writing or in conversation) can give rise to a breach, so be vigilant in your interactions with competitors, including at informal or social events. You must actively recuse yourself from such exchanges.
- In case the telephone conversation that you participate with competitors move to issues related to competitively sensitive information, refuse to address the issue and, if the interlocutor insists on the subject, turn off the phone. Proceed in the same way even if you are present in the conversation (conference call) only as a listener, warning everyone of the disconnection. Request to always register the reason of your exit on the records.
- If it is a face-to-face meeting, you should refuse to deal with the topic and, if the speaker insists on the subject, leave the meeting and record the refusal and the registration of the exit in the Meeting Minutes (if any). You should proceed in the same way even if you are present in the conversation just as a listener.
- We do not share High Risk Information with our competitors. You must inform Legal or local compliance contact if you receive, or are asked to share, this type of information with a competitor.
- Less commercially sensitive information can be shared for legitimate commercial reasons, subject to appropriate procedural safeguards (e.g. aggregating or anonymizing the data and making sure the data is not shared beyond those who need to see it).

- For further information, including when to seek advice from Legal or local compliance contact, see the **Competition Law Guideline: Dealing with Competitors**.

5.5 Dealing with suppliers, customers (Resellers and Final Consumers) and service providers

- Most agreements (for example, for the purchase or sale of commodities) with suppliers, clients and service providers ("vertical agreements") are permitted under competition law. However, there are exceptions.
- Particular risks arise when the supplier, clients and service providers is also a competitor. You must not enter into agreements with competitors without consulting Legal or local compliance contact.
- Certain clauses are considered Hardcore Breaches in vertical agreements and attract significant penalties.
- You must not impose, or agree to, the following restrictions in agreements with suppliers, clients and service providers, without consulting Legal or local compliance contact:
    - » Re-sale price restrictions/Fixing: requiring the client, either directly or indirectly, to observe a certain price when selling fuel products to its own customers, including by setting minimum prices;
    - » Setting the client's profit margin or the maximum level of discount they can give to their own customers;
    - » Condition the granting of rebates to the adhesion of a certain resale price;
    - » Establish a relationship between the resale price of the clients and the resale price of the competitors;
    - » Making use of threats, intimidation, warnings, monitoring penalties, delays or suspension of fuel delivery as a way of fixing the resale price;
    - » Offer discriminatory prices or differentiated commercial terms to

competing customers without objective and rational justification (degree of investment, purchase volume, promotional services, contractual conditions, credit analysis, duration of the commercial contract, matching of competitive prices, etc);

- » Reducing prices below cost to exclude a competitor from the market or to prevent entry of a new one;
- » Charging excessive prices due to lack of competition in the relevant geographic market;
- » Require the client to buy one (less desirable) product to obtain the other (more desirable);
- » Refusing to sell to an actual or potential client without any objective and rational justification;
- » Condition rebates on other purchases from the client;
- » Territory or customer restrictions: restricting the client from selling a commodity to any territory, customer or customer group, or dictating the destination or customer group to which/whom the client may sell the product;
- » Profit-sharing restrictions: requiring the client to pass on to a third party a certain fraction of the margin achieved by re-selling the fuel to its own customers;
- » Information-sharing restrictions: requiring the client to provide information about its own customers (e.g. their identity, prices they were quoted);
- » Enter into collusion with competitors to prevent entry of a potential competitor into the market by creating barriers to entry.

- See **Competition Law Guideline: Dealing with Suppliers, Customers and Agents** for further information and guidance on agreements with suppliers and customers.

5.6 Abuse of dominance / exploiting market power

Dominant companies must maintain particularly high standards of behaviour in their relations with third parties. ALE operates in very competitive markets. Dominance concerns generally do not arise unless a company has a market share of 20% or more. For further information and guidance on compliance with dominance rules, see the relevant section in **Competition Law Guideline: Dealing with Suppliers, Customers and Agents.**

6 Consequences

If you breach this Policy, or permit anyone else to breach this Policy, you may be subject to appropriate disciplinary action, up to and including termination of employment. You may also face civil and/or criminal sanctions.

Failure to comply with this Policy may also result in serious consequences for ALE, including heavy fines (up to 20% of our annual turnover), costly litigation, unenforceable contracts and reputational harm.

7 Raising Concerns

If you become aware of, or suspect that, a breach of this Policy has occurred or may occur in the future, you must report your concerns to your hierarchical superior, manager or the appropriate local compliance contact.

Where a concern remains unresolved through the above local channels, or should you, for whatever reason and at any time, feel uncomfortable utilizing the local channels for resolution of your concern, you can also raise it via the 'Raising Concerns' Glencore Group website at www.glencore.com/raising-concerns/. The website allows you to raise your concerns on an anonymous basis.

Additionally, there are toll-free telephone numbers for raising concerns, which are published on the aforementioned website and on ALE notice boards.

ALE has a zero tolerance approach for retaliation against anyone who reports a concern in good faith. All queries raised via these "Raising Concerns" channels are reviewed and assessed promptly.

If you have any questions regarding this Guideline or the Policy, please contact Legal or local compliance contact.

8 References

Further information on this Policy is provided in the **Competition Law Guidelines on (i) Dealing with Competitors; (ii) Dealing with Suppliers, Customers and Agents; and (III) Dealing with Competition Law in Merger and Acquisition Transactions.**

Reference 1
Competition Law Guideline: Dealing with Competitors

1. Key principle

In accordance with ALE's Code of Conduct and Global Competition Law Policy, we are committed to competing fairly and do not engage in practices with our competitors that restrict fair market competition.

2. Rationale

Anti-competitive practices between competitors impede the healthy operation of markets, prevent fair competition, and ultimately harm consumers. They can also result in serious sanctions for ALE and for us as individuals, including significant fines and even criminal prosecution.

3. Purpose

The Competition Law Guideline: Dealing with Competitors (the "Guideline") aims at helping you comply with ALE's Global Competition Law Policy, by providing more detailed guidance on the key competition law risks which you need to be aware of when dealing with ALE's competitors.

Competition law also prohibits agreements between market participants at different levels of the supply chain. Details of the key competition law risks in that context are set out in **ALE's Global Competition Law Policy** and further guidance is provided in **Competition Law Guideline: Dealing with Suppliers, Customers and Agents**.

4. Scope

This Guideline applies to all permanent and temporary employees at our marketing offices and industrial operations majority owned or controlled by ALE. It is the individual responsibility of all employees to comply with this Guideline irrespective of seniority.

Certain areas and risks underlined in this Guideline are particularly relevant to ALE Heads of Department, Directors, Commercial Managers/ Coordinators/Advisors and Operation Managers/Coordinators/Chiefs, given the nature of their duties.

5. Guidance

5.1. Overview

Competition law aims to protect free, undistorted competition for the benefit of consumers, including by protecting the independent decision-making of market participants. The most serious competition law risks arise when dealing with competitors.

Some agreements and interactions with competitors are considered so harmful to competition that they are illegal even if they have no impact on the market in practice and do not result in any profit (**"Hardcore Breaches"**). They can attract significant fines, and even criminal sanctions.

Other types of agreements and interactions are problematic only if they have a restrictive effect on competition. They can result in unenforceable contracts and financial losses.

The main areas of risk when dealing with competitors are:

(i) **Collusion**

(ii) **Exchanging commercially sensitive information**

These risks can arise on a standalone basis, or in the context of commercial agreements or interactions with competitors which appear on their face to be harmless. So, it is important that you can identify the risks and are vigilant in your dealings with competitors.

5.2. Collusion

5.2.1. What is collusion?

Collusion is a **Hardcore Breach** of competition law and exposes ALE, and you as an individual, to significant enforcement risk. Agreeing with a competitor to do any of the following amounts to collusion:

- **Fix prices.** Agreeing with a competitor the final price you will charge a customer or any element of the price is illegal. This includes agreeing minimum prices or commission levels, setting price ranges, agreeing discounts or obligations not to offer discounts, surcharges and price premia (e.g. for logistics costs).
- **Allocate markets or customers.** Agreeing with a competitor to stay out of each other's territories or away from each other's customers is illegal. So too is agreeing with a competitor to maintain certain market shares, to share profits or avoid to competing with each other.
- **Restrict supply or capacity.** Agreeing with a competitor on supply quotas or storage capacity is illegal. So too is making joint plans with a competitor to reduce or close capacity or manage supply, for example, to "stabilise the market".
- **Bid-rigging.** Agreeing with a competitor to bid or not to bid in a specific tender, or the terms on which you or other competitors will bid is illegal. This includes, for example, in a tender for an offtake agreement.
- **Collective boycotting.** Agreeing with a competitor to refuse to deal with a customer or supplier to exclude them from any market is illegal.

5.2.2. Collusion via informal agreements and 'common understandings' with competitors

Collusion is most obvious when competitors enter into a formal agreement to fix prices, allocate markets or customers or restrict suplly or capacity. However, the agreement **does not need not be formal or even in writing** to be caught by the rules. Therefore, a "gentleman's agreement" between two

competitors to avoid selling to each other's customers amounts to collusion, even if the arrangement is not recorded in any written agreement.

Even a **'common understanding'** between competitors to coordinate behaviour can be sufficient to breach the rules. This requires:

(i) some form of communication by one market player regarding future behaviour (for example, in a private, bilateral conversation with a competitor, or by publicly signalling to competitors);

(ii) followed by parallel action in response by a competitor.

Therefore, caution must be exercised in making communications about ALE's future strategy plans. If the purpose of the communication is to encourage ALE's **competitors** to pursue a similar strategy, and competitors respond accordingly, this is likely to give rise to a 'common understanding' in breach of the rules. See the example below.

Example: 'Common understanding' to collude

At an industry conference, Distributor A publicly advocates supply reductions for the whole market in order to address over-supply in the market. Distributor A has already reduced its own capacity. Following Distributor A's announcement, Distributors B and C close Terminals in response.

This could amount to a 'common understanding' between competitors to reduce supply, and a serious breach of competition law. There is no obvious legitimate reason why ALE is discussing an industry-wide reduction of market supply. This communication, coupled with a common strategy leads to the risk that market players are seen to have cooperated in this scenario rather than determining their behaviour and strategy on the market independently.

By contrast, it is legitimate for ALE to publicly communicate its strategy plans where there is a clear justification for doing so, such as providing investors and customers with relevant information. See the example below.

Example: Legitimate communication of future strategy

On an investor call, Producer A announces its decision to cut **its own production** of Commodity X, in light of sustained low prices and an unfavourable market outlook.

In this scenario, there is a legitimate justification for the communication by Producer A of its own production plans, to update investors. Therefore, even if competitors also decide to reduce their own production, this would not amount to a "common understanding" to collude.

5.2.3. Collusion in commercial agreements with competitors

Even agreements between competitors which appear to be legitimate commercial agreements can breach competition law if the agreement, or clauses within the agreement, include **hardcore restrictions which amount to collusion** between the parties.

This risk arises, in particular, in connection with **joint marketing agreements or marketing/agency agreements between competing producers/ distributors** whereby one producer agrees to sell the other's output or distribution volume (as well as selling its own output or distribution volume directly). These agreements are generally considered as a form of joint-selling, or a **quasi-cartel**, and can give rise to a **serious breach** of competition law in certain jurisdictions. They can be harmful to competition because they eliminate a source of competition for the end customer, as shown below in Figure 1.

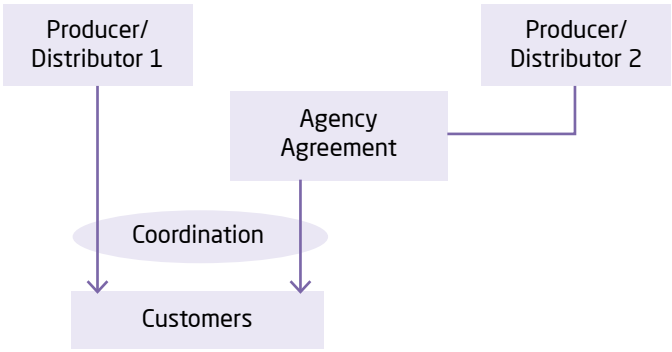

Figure 1: Marketing/agency agreements between competing producers/distributors

Other risky agreements are those which appear harmless on their face (e.g. supply agreements between competing producers) but which contain **clauses which restrict competition.** This includes **clauses which restrict capacity or production** as well as **profit sharing arrangements** or **information sharing arrangements** between the parties.

Examples: Restrictive clauses in supply agreements with a competing producer/distributor

Restriction of capacity or production

"Purchaser will purchase 200mt of [commodity] from Producer per annum. Producer/distributor will not increase its annual production/ supply by more than 10% without the agreement of Purchaser."

"Producer/distributor will supply 200mt of [commodity] to Producer/ distributor per annum. Purchaser agrees it will shut down its existing production facilities.".

Profit sharing

"Producer/distributor shall be entitled to 10% of the margin achieved by Purchaser from the on-sale of [commodity] to purchaser's customers calculated on a quarterly basis."

Information sharing

"Purchaser agrees to share commercial details of its sales (including customers, volumes, destination and price) with Producer/distributor in order to ensure a coherent and combined marketing strategy."

Joint purchasing agreements are generally compatible with competition law, provided they do not contain hardcore restrictions or involve sharing commercially sensitive information (see Section 5.3), and do not have an anti-competitive effect on competition. The risk of anti-competitive effects is higher where the parties to the agreement have significant combined market shares (> 20%) and requires self-assessment by the parties.

Checklist: Agreements with competitors

- Check the agreement does not contain any hardcore restriction clauses which could amount to collusion.
- You must contact Legal before entering into a marketing or agency agreement with a competing producer/distributor.
- You must also consult Legal before entering into the following type of agreements or clauses with a competing producer/distributor:
  - » Supply agreements which contain:
    - clauses restricting capacity or production levels;
    - profit sharing arrangements;
    - information sharing arrangements which involve high risk information or go beyond what is needed for the agreement (see Section 5.3.2, Scenario 4).
  - » Joint venture agreements.
  - » Joint purchasing agreements:
    - which restrict the parties' activities outside the scope of the agreement;

- involve the sharing of high or medium risk information (see Section 5.3);
- where the parties have a combined share of > 20% in the market in which they buy or sell.

5.3. Sharing commercially sensitive information

5.3.1. The basic principles

Discussing or sharing ALE's commercially sensitive information with our competitors can also be a **Hardcore Breach** of competition law. This is not limited to price information, but any information which is relevant to ALE's behaviour and strategy on the market.

While regularly exchanging commercially sensitive information with a competitor poses the highest risks, even a one-off exchange or simply receiving information from a competitor can be a breach. So too can sharing information via an intermediary, if you know the information will be passed on.

Some types of information are more sensitive (and therefore risky to share) than others. Figure 2 below shows the type of information which falls into the high and medium risk categories.

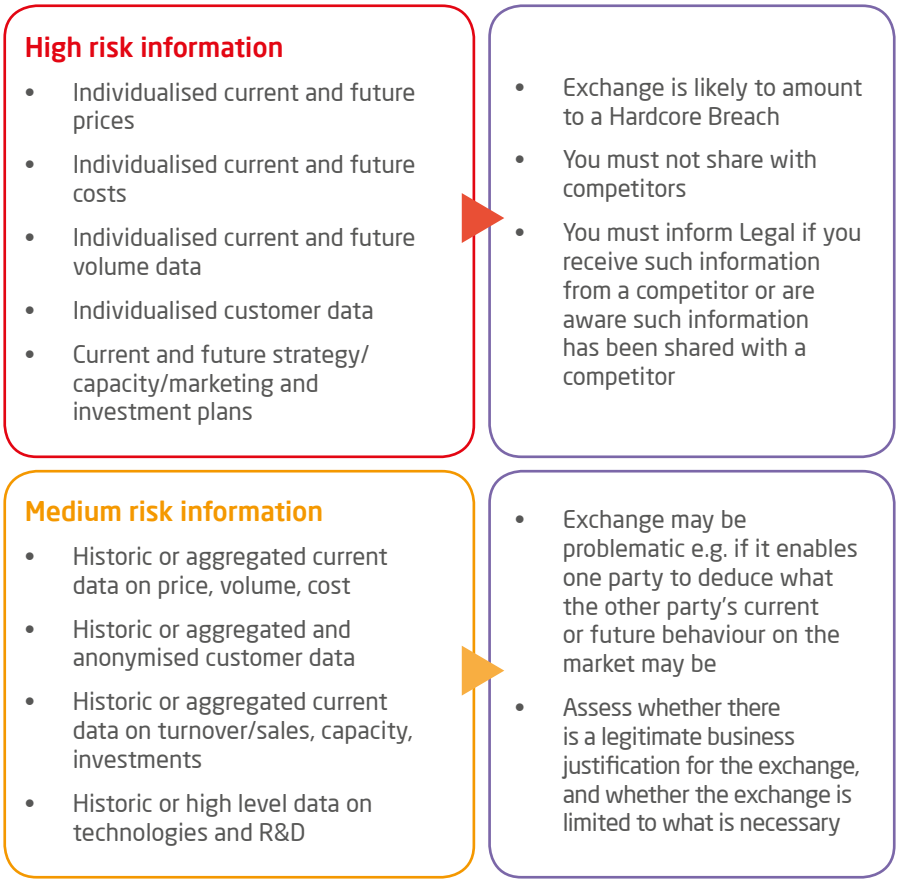

Figure 2: High risk versus medium risk information

High risk information is so sensitive that it **should never be shared with a competitor.** Sharing this information with a competitor may amount to a **Hardcore Breach** and carry significant penalties for ALE and for you as an individual.

Sharing **medium risk information** between competitors **can breach competition law if it removes uncertainty**, by enabling one to work out what the other's competitive strategy and behaviour on the market will be.

However, where competitors have a **legitimate commercial purpose** for sharing medium risk information, and the **information does not go beyond what is strictly necessary for the legitimate commercial purpose**, then sharing it will generally be compatible with competition laws.

Checklist: Medium risk information

- Is there a legitimate business justification for the information exchange? For example, a joint venture or other legitimate cooperation?
- Is the information exchange necessary for the legitimate business justification?
- Is the information limited to what is necessary? Could it be aggregated or anonymised to make it less sensitive?

If in doubt, approach Legal to assist with this assessment.

5.3.2. Sharing information in practice

We come into contact with our competitors in our day to day business. While it may be permissible to exchange information where this is strictly required for a legitimate commercial purpose, it is important that you do not cross the line and breach competition law. Set out below are guidelines for common scenarios you may face.

Scenario 1: Trade association meetings, industry events, social events

Industry groups may facilitate pro-competitive initiatives. However, such events do not justify the sharing of highly commercially sensitive information. Competition laws apply to all contacts with competitors, so informal chats at industry gatherings and social events are no exception.

Checklist: Trade association meetings, industry events, social events

- You should have a clear idea about the subject matter of the meeting and who the attendees will be (e.g. by reviewing an agenda/attendee list if provided)
- You should check that any minutes of the meeting are accurate
- Do not have any informal or "off-the-record" chats with competitors which involve the disclosure of commercially sensitive information
- If commercially sensitive information is disclosed, you should leave the meeting
- You must inform Legal if you are aware that commercially sensitive information has been disclosed

Scenario 2: Benchmarking and market research

Benchmarking and market research exercises can be legitimate and pro-competitive, for example, if they increase transparency in the market or result in improved performance. However, they can also result in illegal exchanges of information or coordination between competitors.

Remember that a competitor is not a legitimate source of commercially sensitive market intelligence.

Checklist: Benchmarking and Market Research

- You must never share high risk information with a competitor without first consulting Legal.
- Before sharing medium risk information, you should ensure the information is strictly necessary for the purpose of the exercise and consult Legal to ensure appropriate safeguards are put in place, e.g.:
  - » using an independent third party to conduct the exercise
  - » ensuring data is shared only in a form that is aggregated, anonymised and/or historical

» ensuring the results of the exercise are exchanged in an open forum (and not bilaterally or within a closed group)

Scenario 3: Cross-directorships, minority shareholdings, sharing facilities and other links

Where ALE holds a minority stake or has a long-term commercial agreement with a company or facility use/product storage agreement, it will often be legitimate to have a board member or right to access certain information in order to safeguard ALE's interests. But what if the relevant company is a competitor? In that case, ALE's commercial interest needs to be balanced with the obligation not to share commercially sensitive information with a competitor or coordinate competitive behaviour.

Checklist: Cross-directorships, Minority Shareholdings and Other Links

- You must consult Legal before any cross-directorship or other structural link with a competitor is put in place.
- If the ALE representative will receive high or medium risk information, safeguarding measures may be required, e.g.:
  - » information barriers to restrict the flow of information more widely within ALE
  - » an obligation on the ALE representative to recuse him or herself from meetings involving high or medium risk information

Scenario 4: Information sharing provisions in commercial agreements with competitors

Certain commercial relationships are legitimate even between competitors, for example, a supply agreement between two competing producers/ distributors. Where an agreement is legitimate and compatible with competition law, then the information which is strictly necessary to implement that agreement can also be lawfully exchanged.

Checklist: Information Sharing Provisions in Agreements with Competitors

- You must never share high risk information with competitors without consulting Legal.
- Before sharing medium risk information, ensure that the information is strictly necessary for the purpose of the agreement and consider additional safeguards, e.g.:
  - » whether the information could be provided in a more aggregated, anonymised and/or historical form
  - » whether the information could be provided to an independent third party
- Remember, if in doubt, contact Legal.

6. Consequences

If you breach ALE's Global Competition Law Policy (the "Policy"), as further explained in this Guideline, or permit anyone else to breach the Policy, you may be subject to appropriate disciplinary action, up to and including termination of employment. You may also face civil and/or criminal sanctions, including imprisonment.

Failure to comply with the Policy may also result in serious consequences for ALE, including heavy fines (up to 20% of our annual global turnover), costly litigation, unenforceable contracts and reputational harm.

7. Raising Concerns

If you become aware of, or suspect that, a breach of the Policy, as further explained in this Guideline, has occurred or may occur in the future, you must report your concerns to your supervisor, manager or the appropriate local compliance contact.

Where a concern remains unresolved through the above local channels, or should you, for whatever reason and at any time, feel uncomfortable utilising the local channels for resolution of your concern, you can also raise it via

Glencore Group website - 'Raising Concerns Programme' at www.glencore.com/raising-concerns/. The website allows you to raise your concerns on an anonymous basis.

Additionally, there are toll-free telephone numbers for raising concerns, which are published on the Glencore Group website and available on the notice boards of ALE Units.

ALE has a zero tolerance approach for retaliation against anyone who reports a concern in good faith. All queries raised via these Raising Concerns channels are reviewed and assessed promptly.

If you have any questions regarding this Guideline or the Policy, please contact Legal.

Reference 2
Competition Law Guideline: Dealing with Suppliers, Customers and Agents

1. Key principle

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2. Rationale

Anti-competitive practices impede the healthy operation of markets, prevent fair competition, and ultimately harm consumers. They can also result in serious sanctions for ALE and for us as individuals, including significant fines and even criminal prosecution.

3. Purpose

The Competition Law Guideline: Dealing with Suppliers, Customers and Agents (the "Guideline") aims at helping you comply with ALE's Global Competition Law Policy, by providing more detailed guidance on the key competition law risks which you need to be aware of when dealing with suppliers, customers and agents.

Competition law also prohibits some agreements and interactions with competitors. Details of the key competition law risks in that context are set out in **ALE's Global Competition Law Policy** and further guidance is provided in the **Competition Law Guideline: Dealing with Competitors.**

4. Scope

This Guideline applies to all permanent and temporary employees at our marketing offices and industrial operations majority owned or controlled by

ALE. It is the individual responsibility of all employees to comply with this Guideline irrespective of seniority.

Certain areas and risks underlined in this Guideline are particularly relevant to ALE Heads of Department, Directors, Commercial Managers/ Coordinators/Advisors and Operation Managers/Coordinators/Chiefs, given the nature of their duties.

5. Guidance

5.1. Overview

Competition law aims to protect free, undistorted competition for the benefit of consumers, including by protecting the independent decision-making of market participants and preventing the misuse of market power.

Supply/distribution and agency/marketing agreements are often referred to as **'vertical' agreements** as they involve entities operating at different levels of the supply chain. Most vertical agreements are permitted under competition law, but some are not.

The key competition law risks in supply/distribution and agency/ marketing agreements are set out below.

In a supply/distribution agreement the risk areas are:

- Hardcore restrictions (resale price maintenance, customer and territorial restrictions)
- Exclusivity
- High market shares at either level of supply chain (>20%)
- Long duration (>5 years, but also potentially 1-5 years)
- Profit-sharing provisions

Additional risks when the supply/distribution agreement is with a competing producer/ distributor:

- Additional hardcore restrictions in supply/distribution agreements (output restrictions, information-sharing)

- Material market shares (>20%)

Additional risks in supply/distribution agreements when ALE may be dominant in the relevant market:

- Conduct which excludes competitors (e.g. exclusivity clauses, predatory pricing, refusal to supply)
- Conduct which exploits customers (e.g. excessive pricing, tying)

In an agency/marketing agreement the risk areas are acting as marketing agent for a **competing producer or** where ALE acts as marketing agent for **more than one producer.**

5.2. Which rules apply?

Different competition law rules apply according to:

(i) whether the agreement is a supply/distribution agreement (including "off-take" agreements) or an agency/marketing agreement; and

(ii) whether the agreement is with a competing producer/distributor.

The table below helps you to identify different types of agreements, so that you know which rules apply.

Is the agreement a supply/ distribution agreement or an agency/marketing agreement?	In a **supply/ distribution agreement:** The purchaser takes ownership of the goods and sells to customers on its own behalf. It takes on financial and market risk under the contract.	In an **agency/ marketing agreement:** The agent sells or markets on behalf of the supplier. Typically, the agent does not take ownership of the goods or take on financial or market risk. A marketing agreement can be an agency agreement.
Is the agreement with a competitor?	The agreement is with a competing producer if ALE and the counterparty is each a: • **Actual competitor**; or • **Potential competitor** (could enter the market quickly); or • **Quasi- competitor** (already has access to production volumes under a long-term supply agreement (>1 year) with another producer)	

Section 5.3 provides further details of the risks for **supply/distribution agreements**. Section 5.4 provides further details of the risks for **agency/ marketing agreements**. These sections set out the general risks – and the additional risks which apply if the agreement is with a competing producer/ distributor.

5.3. Supply/distribution agreements

5.3.1. General rules

5.3.1.1. Hardcore restrictions

In many jurisdictions, and subject to limited exceptions, it is a hardcore breach of competition law to impose, or agree to any of the following restrictions:

- **Resale price restrictions.**
  (i) Restrictions on the purchaser's ability to set its own prices including margins and discounts.
  (ii) Maximum prices and recommended prices are allowed, provided they do not result in fixed prices in practice, nor a result of threats, intimidation, warnings, or generate monitoring penalties, delays or suspension of product supply.
  (iii) Establish a link between the resale price and the resale price of competitors is also not allowed.
- **Territorial restrictions.** Restrictions on the purchaser's ability to sell a commodity outside a specified territory, or dictating the destination to which the purchaser may sell the commodity, or creating disincentives from selling outside the purchaser's allocated territory (e.g. a requirement to pass profit from such sales to the supplier).
- **Customer restrictions.** Restrictions on the purchaser's ability to re-sell a commodity to any customer or customer group, dictating the customer group to whom the purchaser may sell or creating disincentives from selling to the customer group (e.g. profit pass over). Limited exceptions apply.

5.3.1.2. Other competition restrictions

Supply/distribution agreements may also restrict competition if either party has a **high market share** at either level of the market, or if they contain **exclusivity** obligations, in particular, if the agreement has a **long duration**.

- **Market shares > 20%.** The agreement is more likely to have a restrictive effect on competition if either party has a **market share > 20%** at either level of the market (upstream or downstream).
- **Exclusivity obligations** are obligations on the supplier to exclusively supply the buyer, or the buyer to exclusively buy from the supplier (or to do so in respect of **> 80% of the buyer's total purchases).**
- **Duration.** Agreements lasting **5+ years** are higher risk, but 1-5 years may also be problematic in certain circumstances.
- **Profit-sharing provisions.** These can be problematic in particular where they disincentivise the buyer from lowering its prices, or incentivise the buyer not to sell to certain territories or customers. Profit-sharing provisions may also inadvertently facilitate **information sharing** relating to commercially sensitive information.

5.3.2. Additional rules where the supply/distribution agreement is with a competing producer

Where ALE enters into a supply/distribution agreement with a competing producer, in addition to the above, ALE must also comply with the competition rules on agreements between competitors **(See Competition Law Guideline: Dealing with Competitors).** In particular:

5.3.2.1. Additional hardcore restrictions

The agreement must not contain any **clauses which restrict competition between the producers as competitors.** This may include clauses which **restrict capacity or production,** or **information sharing arrangements** between the parties relating to commercially sensitive information.

Examples: Restrictive clauses in supply agreements with a competing producer

Restriction of capacity or production

"The Purchaser will purchase 200mt of [commodity] from the Producer per annum. The Producer will not increase its annual production by more than 10% without the agreement of the Purchaser."

"The Producer will supply 200mt of [commodity] to the Producer per annum. The Purchaser agrees that it will shut down its existing production facilities."

Information sharing
"The Purchaser agrees to share commercial details of its sales (including customers, volumes, destination and price) with the Producer in order to ensure a coherent and combined marketing strategy."

5.3.2.2. Other competition restrictions

Even if the agreement does not contain hardcore restrictions, it may have a restrictive effect on competition. In assessing whether this is the case, a stricter standard applies when the agreement is between competing producers.

- **Market shares:** The risk of anti-competitive effects is higher where the parties have a combined **market share > 20%** in the production or supply market, or in particular market segments e.g. particular grades, uses or customer types.
- **Duration of agreement:** Agreements lasting **5+ years** are higher risk, but 1-5 years may also be problematic in certain circumstances.

5.4. 5.4 Agency/marketing agreements

5.4.1. General rules

Agency agreements, such as a marketing or sales agency agreement, generally do not give rise to competition law concerns. As the agent is acting on behalf of the principal, the principal can:

- Set, or agree with the agent, the **price** at which the agent will sell;
- Specify the **territory** into which the agent will sell; and
- Specify **customers** to whom the agent will sell.

However, competition law risk does arise where ALE is a producer and acts as marketing agent for a competing producer (see further below) or where ALE acts as marketing agent for more than one producer. This arrangement could facilitate collusion, or the sharing of commercially sensitive information, between producers/distributors, unless appropriate ring-fencing measures are put in place. For more information on the risks around sharing commercially sensitive information between competitors, see Competition Law Guideline: Dealing with Competitors.

5.4.2. Additional rules where the agreement is with a competing producer

Entering into an agency/marketing agreement with a competing producer/distributor may in certain jurisdictions amount to a Hardcore Breach of competition law. This type of agreement is in certain jurisdictions considered as a joint selling arrangement or quasi-cartel.

5.5. Dominance

5.5.1. General rules

Dominant companies must maintain particularly high standards of behaviour in their relations with third parties.

A company is dominant if it is able to behave independently of competitors, customers, suppliers and ultimately the final consumer. Being dominant is not prohibited under competition law, however **dominant companies must not "abuse" their dominance** to the detriment of any third party (in particular to exploit customers or suppliers or to exclude competitors or potential competitors from the market). Dominance concerns generally do not arise unless a company has a market share of 20% or more.

5.5.2. Guidelines

ALE operates in competitive markets. However, there is a risk that ALE may be dominant in a particular market where ALE may have a market share in **excess of 20%** (including on a sub-segment of the market); and the market share of the next largest competitor is **considerably lower**.

If the above applies, you must **consult Legal** before engaging in any of the following types of conduct:

- **Charging excessively high prices.** This refers to prices that bear no reasonable relation to the economic value of the product supplied.
- **Exclusive dealing.** This includes strict contractual exclusivity, but can also cover types of rebates that are intended to secure loyalty on the part of customers and may prevent customers obtaining their supplies from competing producers/distributors (except those that are quantity related and identical for other customers).
- **Predatory behaviour.** This means very low pricing intended to drive out competitors so that prices can be increased without competition in the longer term. Where prices are below average variable cost, there is a presumption that they are predatory.
- **Tying.** This refers to making the purchase of one product or service conditional on the purchase of another product or service.
- **Refusal to supply.** Refusing to supply goods or services to an existing customer and, in some cases, to a prospective customer without reasonable justification.
- **Discrimination.** Applying different conditions (e.g. prices) to equivalent transactions with different customers. It is especially likely to be regarded as abusive where its object or effect is to exclude or eliminate competitors in a way that goes beyond the normal conditions of competition.

5.6. Recap and checklist

The table and checklist below summarise the **key risk areas** for supply/distribution agreements and agency/marketing agreements. You should consult Legal before entering into any such agreements which falls into the **red** or **amber** categories.

	Supply/distribution Agreement	Agency/marketing Agreement
Where only one party to the agreement is a producer of the relevant commodity	• Fixing resale price, customer/territorial restrictions. • Parties' market shares > 20%; or • Exclusivity provisions; and • Agreement is >1 year. • Profit sharing	• Generally not problematic. • Caution needed where agent acts for several competing producers/ distributors.
Where the parties are competing producers	As above, plus: • Information sharing, output restrictions • Agreement of >1 year; and • Parties' market shares > 20%.	• May amount to a hardcore breach. • Requires assessment on the facts.

Checklist: Supply/distribution agreements

- You must consult Legal before entering into a supply/distribution agreement which contains a hardcore restriction clause (see 5.3.1).
- You must consult Legal before entering into a supply/distribution agreement where:
  - » Either party has a market share of > 20% at either level of the market; or
  - » The agreement contains exclusivity arrangements; and the agreement has a duration of > 1 year.
  - » The agreement contains profit-sharing provisions.
- If the supply/distribution agreement is with a competing producer/distributor, you must also check that the agreement does not contain any other restrictions which could be hardcore (output restrictions, sharing information about on-sell prices and customers). See 5.3.2. If in doubt, consult Legal.
- You must also consult Legal before entering into a supply/distribution agreement with a competing producer where:
  - » the parties have a market share of > 20%; and
  - » the agreement has a duration of > 1 year.

Checklist: Agency/marketing agreements (see 5.4)

- You must contact Legal before:
  - » entering into an agency/marketing agreement with a competing producer.
  - » entering into an agreement for ALE to act as marketing agent for a producer where ALE already acts as marketing agent for one or more competing producers.

Checklist: > 20% market share

- In a market where ALE has >20% market share (including in any segment), you must consult Legal before engaging in any of the following behaviour (see 5.5.2):
  - » Charging excessively high prices
  - » Exclusive dealing
  - » Predatory behaviour
  - » Tying
  - » Refusal to supply
  - » Discrimination

6. Consequences

If you breach ALE's Global Competition Law Policy (the "Policy"), as further explained in this Guideline, or permit anyone else to breach the Policy, you may be subject to appropriate disciplinary action, up to and including termination of employment. You may also face civil and/or criminal sanctions.

Failure to comply with the Policy may also result in serious consequences for ALE, including heavy fines (up to 20% of our annual global turnover), costly litigation, unenforceable contracts and reputational harm.

7. Raising Concerns

If you become aware of, or suspect that, a breach of the Policy, as further explained in this Guideline, has occurred or may occur in the future, you must report your concerns to your supervisor, manager or the appropriate local compliance contact.

Where a concern remains unresolved through the above local channels, or should you, for whatever reason and at any time, feel uncomfortable utilising the local channels for resolution of your concern, you can also raise it via

Glencore Group website - 'Raising Concerns Programme' at www.glencore.com/raising-concerns/. The website allows you to raise your concerns on an anonymous basis.

Additionally, there are toll-free telephone numbers for raising concerns, which are published on the Glencore Group website and available on the notice boards of ALE Units.

ALE has a zero tolerance approach for retaliation against anyone who reports a concern in good faith. All queries raised via these Raising Concerns channels are reviewed and assessed promptly.

If you have any questions regarding this Guideline or the Policy, please contact Legal.

Anexo 3
Competition Law Guideline: Dealing with Competition Law in Merger and Acquisition Transactions

1. Key principle

In accordance with ALE's Code of Conduct and Global Competition Law Policy, we are committed to competing fairly and do not engage in practices with our competitors that restrict fair market competition.

2. Rationale

Anti-competitive practices between competitors impede the healthy operation of markets, prevent fair competition, and ultimately harm consumers. They can also result in serious sanctions for ALE and for us as individuals, including significant fines and even criminal prosecution.

3. Purpose

The Competition Law Guideline: Dealing with Competition Law in Merger and Acquisition Transactions (the "Guideline") aims at helping you comply with ALE's Global Competition Law Policy, by providing more detailed guidance on the key competition law risks which you need to be aware of when you are involved in a Merger and Acquisition ("M&A") transaction.

Please note that this Guideline does not cover the rules on merger control.

4. Scope

This Guideline applies to all permanent and temporary employees at our marketing offices and industrial operations majority owned or controlled by ALE. It is the individual responsibility of all employees to comply with this Guideline irrespective of seniority.

Certain areas and risks underlined in this Guideline are particularly relevant to ALE Heads of Department, Directors, Commercial Managers/Coordinators/Advisors and Operation Managers/Coordinators/Chiefs, given the nature of their duties.

5. Guidance

5.1. Overview

Competition law aims to protect free, undistorted competition for the benefit of consumers, including by protecting the independent decision-making of market participants.

When ALE participates in M&A transactions, it must obtain relevant merger control clearances from competition authorities and ensure that the transaction is not implemented before obtaining relevant clearances. ALE must also ensure that it complies with general competition laws when dealing with the other party/parties to the transaction. Particular caution is required where the other party/parties are ALE competitor(s).

This Guideline explains the following areas of competition law risk in an M&A transaction:

(i) Sharing commercially sensitive information

(ii) Gun-jumping

(iii) Non-compete clauses

(iv) Document creation

5.2. Sharing commercially sensitive information

ALE may provide, or receive, commercially sensitive information about the target company during the due diligence and/or integration planning phase of a sale or acquisition process. However, where the target company is a competitor of the purchaser, basic rules should be followed to protect against unlawful **information sharing**, which can be a **hardcore breach** of competition law.

- Information shared should be limited to that strictly required for assessing and evaluating the transaction or planning for integration.
- Where the information is **highly commercially sensitive**, extra caution is required:
    - » Highly sensitive information includes individualised current and future price, cost, volume and customer data; and current and future strategy / capacity / marketing and investment plans.
    - » Highly sensitive information should be **aggregated and anonymised** as far as possible to reduce its sensitivity.
    - » If it is necessary to share highly sensitive information for due diligence or integration planning purposes, it is advisable to restrict the sharing of such information to a **'clean team'** of individuals who are not involved in a senior decision-making or market-facing role. This will help to mitigate against the competition law risks. You should consult Legal about setting up a **'clean team'.**

Special attention should be paid to any work streams to assess the synergies between the businesses that will result from the transaction, as these are more likely to involve the sharing of commercially sensitive information.

5.3. Gun-jumping

Most merger control regimes require completion to be suspended until clearance is granted. This means that, prior to completion, the parties must continue to operate as independent competitors, and any dealings between them should be on an arms-length basis. This is because it is illegal to engage in so-called "gun-jumping" when a transaction is in contemplation but not yet completed.

Prior to completion:

- the parties must not commence any integration of their businesses;
- the purchaser must not exercise any operational control over any part of the target;

- the purchaser must not influence the business decisions of the target, and must not give the impression that the target or its employees is/are part of the purchaser;
- neither party may act in a way which affects competition between them (including by coordinating competitive behaviour or pricing or excessively sharing commercially sensitive information).

Particular care must be taken with respect to vendor covenants in the share purchase agreement (i.e. clauses which restrict the vendor's conduct of the target business between signing and closing), to ensure that they do not go beyond what is required to protect the value of the target.

Example of an impermissible vendor covenant

"From the date of this Agreement until the Completion Date, the Vendor undertakes that Target shall not enter into, amend or terminate any contract without the prior consent of the Purchaser."

Analysis: *while it may be permissible for the Target to seek purchaser consent for changes to material contracts (i.e. where they exceed a certain value threshold), the purchaser should not have control over the target's ordinary course of business, prior to closing of the transaction.*

However, normal integration planning is permitted, as long as it would be possible to unwind it if the transaction did not go ahead.

Examples of permitted / non-permitted integration planning steps

Types of steps which are prohibited	Types of steps which are permitted
Transferring or allocating customers, integrating business operations or coordinating competitive practices	Discussing communication strategy to customers about the merger
Engaging in general business planning activities with the target, being involved in the operation or decision-making of the target's business	Discussing post-completion sales and marketing plans with customers (but must be conditional upon clearance)
Purchaser gives the impression that it is representing the target towards third parties/customers or jointly meeting/negotiating with customers, suppliers, other business partners	Discussions with the target's suppliers but must be conditional upon clearance and no discussion of current supplier terms
Appointing personnel for functions post integration	Planning and arranging post integration personnel appointments

5.4. Non-compete clauses (restrictive covenants)

Sale and purchase agreements often contain a non-compete clause.

Non-compete clauses are generally permissible under competition law if they are ancillary (i.e. directly related, necessary and proportionate) to the main transaction. If a non-compete clause goes beyond what is directly related, necessary and proportionate to the transaction, it may breach the rules on anti-competitive agreements. In that scenario, the agreement may be unenforceable, and fines could be imposed.

A non-compete clause must be sufficiently limited in scope and duration to be considered ancillary:

- **Subject matter:** should be limited to the products and services in which the target is mainly active.
- **Geography:** should be limited to the area where the target is active immediately before the transaction.
- **Duration:**
  - » In a **company/business sale,** a non-compete clause imposed on the seller to prevent it from competing with the target is generally permissible for two years if the target includes goodwill, and up to three years if it also includes knowhow.
  - » In a **joint venture ("JV")**, a non-compete clause imposed on the JV parents from competing with the JV, is generally permissible for the duration of the JV.
  - » Longer durations may be justifiable in certain circumstances, however these require consultation with Legal.

Example of a non-compliant non-compete clause

Scenario: Acquisition of a Target business which sells wheat in Europe.

"The Vendor has agreed that for a period of ten years from the completion date no member of the Vendor's group will supply any grain, seed or related products in any territory."

Analysis: *The product scope and geographic reach go beyond the activities of the target and the duration is longer than necessary to protect the value of the Target.*

You **must contact Legal** before entering into an agreement containing a non-compete clause.

5.5. Dealing with other bidders and consortium bids

In a competitive M&A auction scenario, communications between bidders about their intentions regarding the auction, can give rise to antitrust risk in certain jurisdictions. This includes disclosing whether they will bid, the price or other terms on which they will bid and, in particular, agreeing not to bid.

Any proposed contact with a party who is likely to be a bidder in a competitive process regarding that process should be discussed with Legal.

Submitting a consortium bid can be permissible (including where the consortium includes competitor(s) of ALE), if the consortium arrangement is sufficiently transparent, is contractually permissible or approved by the seller and provided the conditions below are met.

There must be an objective efficiency justification for the joint bid (for example if the joint bidders are not able to submit a competitive bid on a standalone basis or the joint bid allows companies to bring together complementary expertise). Any restriction on the bidders must be directly related, proportionate and necessary to the implementation of the joint bidding arrangement.

Care must also be taken to ensure that no competitively sensitive information is exchanged between the joint bidders. Should such an exchange be necessary to achieve the goals of the consortium (e.g. to reach an understanding in relation to the allocation of the assets between the consortium members), it should be strictly limited to what is objectively necessary and restricted to a clean team only.

5.6. Document guidance

Competition authorities have extensive powers to request internal documents as part of their review of a transaction, and internal documents carry significant weight in evidencing how the parties to a transaction consider the markets, their own position within the markets and the likely impact of the transaction.

You should therefore exercise caution when creating documents and assume that all internal documents which discuss a transaction or the relevant markets will be reviewed by a competition authority. It is important to avoid language which could be misinterpreted or taken out of context. For example, terminology such as "dominance", "leverage", "oligopoly", "strong barriers to entry", "market leadership" and "market power" have specific meaning in competition law and it is easy for such words to be misinterpreted. Note that "documents' are not only formal presentations or memos, but also include emails, handwritten notes and all other files.

Legally privileged documents are generally protected from disclosure. You should do the following to help maintain legal privilege:

Checklist: Legal Privilege

- Mark any documents prepared for the purposes of the antitrust analysis (including any economic analysis) as "Privileged and Confidential – Prepared at the Request of External Counsel".
- Avoid copying, annotating, forwarding or summarising legal advice as this could result in loss of legal privilege.
- Store legally privileged documents separately.

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termination of employment. You may also face civil and/or criminal sanctions, including imprisonment.

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