



## Competition Compliance Policy



## TABLE OF CONTENTS

A. INTRODUCTION	3
B. NEED FOR A COMPETITION COMPLIANCE POLICY	3
C. UNDERSTANDINGS WITH COMPETITORS (HORIZONTAL AGREEMENTS)	3
D. BID RIGGING OR COLLUSIVE TENDERING	4
E. INTERACTIONS WITH COMPETITORS (INFORMATION EXCHANGE)	4
F. TRADE AND INDUSTRY ASSOCIATIONS	4
G. INTERACTIONS WITH DEALERS AND SUPPLIERS (VERTICAL AGREEMENTS)	5
H. ABUSE OF DOMINANT POSITION	6
I. COMBINATIONS	6
J. COMPLIANCE AND REPORTING	6

## COMPETITION COMPLIANCE POLICY

### **A. INTRODUCTION**

1. Escorts Limited (**Escorts**) believes in fair business practices and market driven competition. It strives to do business with integrity and trust.
2. Escorts does not engage in any practice that is prohibited under the (Indian) Competition Act, 2002 (**Competition Act**) and is committed to complying with the provisions of the Competition Act in letter and in spirit.
3. Escorts' endeavour is to ensure that all its personnel conduct themselves in compliance with the Competition Act.
4. This Competition Compliance Policy (**CCP**) sets out the broad contours within which Escorts and its personnel must conduct business to ensure compliance with the Competition Act.
5. The CCP applies to all Escorts' personnel, including its employees, management, business partners and persons acting on its behalf. Please review the CCP carefully and ensure compliance with it.
6. The CCP is to be read as part of the Code of Business Conduct of Escorts and will be updated from time to time.

### **B. NEED FOR A COMPETITION COMPLIANCE POLICY**

1. A CCP helps in the identification of competition law risks and avoidance of any inadvertent violations of the Competition Act.
2. It also reduces the risk of regulatory intervention which can lead to significant fines and penalties. It may also serve as a mitigating factor in case of a violation.
3. Implementing a CCP may help avoid costs of non-compliance, including, penalties, fines, damage to reputation, management time and resources, legal costs, compensation claims, stock price fluctuations, and adverse market/ investor perception.
4. A CCP results in promoting a culture of compliance and in building a positive corporate image and goodwill.

### **C. UNDERSTANDINGS WITH COMPETITORS (HORIZONTAL AGREEMENTS)**

1. Agreements with competitors are known as horizontal agreements (also, cartels). Such agreements are generally presumed to cause an appreciable adverse effect on competition and are prohibited by the Competition Act.
2. Such an agreement or understanding does not have to be in writing. An informal understanding with a competitor (even a wink or a nod) may violate the Competition Act.
3. The Competition Act prohibits any understanding with competitors to decide prices, control production or supply, allocate markets or customers, and rig bids.
4. Examples of horizontal agreements:
  - (i) Understanding on price: 'Price' includes not only selling/ purchase price but also any component of the price such as discounts and margins.

*Illustration:* You review the market situation and note that profitability in a particular area has consistently been low. This point is brought up in an industry meeting and there is a general consensus that no player should sell its product below a certain margin. Although you did not communicate your acceptance to the proposal, your prices going forward end up being above the proposed minimum margin. This could raise a presumption of a horizontal agreement. Although such presumption may be rebutted by demonstrating commercial circumstances which necessitated keeping the margins above the proposed thresholds, the standard of evidence required to rebut the presumption is quite high.

- (ii) Controlling production or supply: This includes agreements to control supply in the market to increase demand so that realisation/ margins improve.
- (iii) Market allocation: This includes agreements to focus on specific areas or products or customers to avoid undercutting each other.

#### **D. BID RIGGING OR COLLUSIVE TENDERING**

1. Bid rigging is a type of a horizontal agreement. Any understanding with an actual or a potential bidder which may reduce competition among bidders or otherwise manipulate the bid process is prohibited.
2. It may take various forms such as identical bids, bid rotation, non-participation, cover/ courtesy bidding, profit sharing with or sub-contracting to non-bidders or unsuccessful bidders.
3. Various factors which are considered in establishing bid rigging include, similar bids despite varying costs, prior meetings before bidding, e-mail trails and call records, bid submission from common computer (common IP address), payment of fee from a common bank account, similar cover letters or withdrawal letters (similar language or typographical errors), and financial dealings among bidders.
4. Always make all decisions in relation to a tender independently. Do not discuss participation in a tender or terms of a bid with a competitor, including any information which may be relevant for determining a bid price.
5. If you decide not to participate in a tender, record reasons for such non-participation in writing.
6. Do not participate in a tender with the intention of not winning it. If such participation is necessary, discuss with the legal team.
7. If you are approached by another bidder, do not engage in any discussion with it and report this to the legal department.
8. Do not engage in any correspondence with a potential bidder without discussing it with the legal team.
9. When in doubt about any aspect of a bid process, consult the legal team before making any decision.

#### **E. INTERACTIONS WITH COMPETITORS (INFORMATION EXCHANGE)**

1. Escorts policy is to make all its business decisions independently. As a general rule, there should be no interaction with competitors or their personnel in relation to any commercially sensitive information.
2. 'Commercially sensitive information' generally includes the following categories of information: pricing and pricing strategies; operating margins; discount/ incentive schemes; production costs and forecasts; launch of new products; capacity expansions; and sales/ marketing strategies. In case of any doubt as to what could be 'commercially sensitive', consult the legal team before sharing or discussing any such information.
3. Any unauthorized or improper interaction with a competitor can expose Escorts and its personnel to the risk of CCI inquiry and penalties.
4. Even unilateral sharing of commercially sensitive information with a competitor can raise a risk of non-compliance. Never initiate contact with any competitor to discuss any commercially sensitive information (even informally or through instant messaging).
5. Do not obtain commercially sensitive information about competitors from ex-employees of such competitors or common dealers or your acquaintances at other competitors.
6. Indirect exchange of commercially sensitive information with competitors through dealers may also raise competition law concerns. Dealers (especially, multi-brand) must be instructed not to share your commercially sensitive information with competitors and vice-versa. Your dealer management software should also not track or allow you access to competitors' sensitive information.
7. If any commercially sensitive information in relation to a competitor is received inadvertently, consult the legal team.

#### **F. TRADE AND INDUSTRY ASSOCIATIONS**

1. The Competition Act prohibits any discussion on or exchange of commercially sensitive information at an industry forum/ association or with association members.
2. Interactions with trade associations must be limited to discussions on genuine industry issues, regulations, and government policies.
3. Discussions on publicly available or aggregated historic data may be acceptable but discussions on individual, specific and contemporary data are risky.

4. If any information needs to be exchanged for addressing an industry issue (e.g., anti-dumping duty), ensure that the information is not shared directly with a competitor and is only shared with an independent third party for consolidation.
5. Insist on an agenda of a meeting in advance. Ensure that proper minutes are recorded and circulated after each meeting.
6. Keep all correspondence in relation to interactions with industry forums/associations on work email and do not use other modes such as instant messaging.
7. At an association meeting, if anything is discussed outside the agenda or if you have an objection to any discussion, have the objection recorded in the minutes of the meeting. If the discussion does not stop, leave the meeting and record the reason of your leaving in the minutes. Report all such instances to the legal team immediately.
8. It is important to publicly distance yourself from an objectionable discussion and not keep quiet about it, even if you did not contribute to the discussion.
9. Collective decisions by association members on any commercially sensitive matter such as pricing/ discounts and boycotts are prohibited.
10. If you are an office bearer of an association, note that you have a liability separate from the association for violating the Competition Act. Be careful with your role and responsibilities as an office bearer and consult the legal team, when in doubt.

#### **G. INTERACTIONS WITH DEALERS AND SUPPLIERS (VERTICAL AGREEMENTS)**

1. Agreements between entities operating at different levels of supply chain are called vertical agreements. E.g., agreements between a manufacturer and its dealers, or agreements between a manufacturer and its suppliers.
2. Certain restrictions imposed on suppliers/ dealers/ customers may raise competition law issues. Generally, if market shares of all parties to a vertical agreement in their respective markets are below 20-25%, such restrictions should not result in a violation of the Competition Act. However, if a vertical agreement relates to a popular goods/ service and a party to the agreement may be considered to be a significant player, certain restrictions may raise a risk of violation of the Competition Act. These restrictions include:
  - a. Resale price maintenance (RPM): RPM includes restrictions imposed by a manufacturer on its dealers fixing the minimum retail price or minimum dealer margins or maximum discounts which can be offered by dealers. If maximum prices are prescribed, explicitly state that lower prices can be charged by dealers.
  - b. Refusal to deal: This includes agreements restricting persons: to whom goods can be sold (exclusive distribution); or from whom goods can be bought (exclusive supply).
  - c. Exclusive distribution: Agreement to limit output/ supply of goods/ area/ market. E.g., (i) restriction on a dealer not to sell: outside a defined territory; or to a category of customers; and (ii) restriction on a supplier not to supply (or supply only limited quantities) to your competitor.
  - d. Exclusive supply: Agreement restricting a dealer from dealing in goods of other brands (single branding). E.g., requiring a dealer to deal primarily with Escorts' products.
  - e. Tie-in arrangements: Agreement requiring a dealer or customer to purchase one product only if it agrees to purchase certain quantity of another product. E.g., purchasing a minimum quantity of a slow-moving product along with fast moving products.
3. Some of these restrictions can be objectively justified and may not result in a violation of the Competition Act. E.g., (i) certain territorial restrictions may be justified to protect the investment of a new dealer from free riding by other dealers; and (ii) dealers may be restricted to deal with counterfeits or deal only with products which meet prescribed quality thresholds (such as lubricants or spare parts).
4. Do not terminate a dealer without consulting the legal department (especially on the ground of not complying with one of the above-mentioned restrictions). Record reasons for termination in writing.
5. If any condition needs to be agreed with a dealer, consult the legal department first. Keep all correspondence with dealer in this regard on email and do not use alternative modes such as instant messaging.

## **H. ABUSE OF DOMINANT POSITION**

1. Dominant position is a position of strength in a relevant market to be able to operate independently of competitive forces or affect competitors or consumers in your favour.
2. Market share is an important indicator of a dominant position. Other factors include size and importance of competitors, entry barriers, and countervailing buyer power.
3. Being dominant is not prohibited under the Competition Act. However, engaging in conduct which may be considered to be abusive as a result of such dominance is prohibited.
4. An entity with a dominant position has a special responsibility to ensure that competition in the market is not distorted and must act in a fair, reasonable, and non-discriminatory manner.
5. Following are the categories of abusive conduct which are prohibited by a dominant entity:
  - (i) Imposing an unfair or discriminatory condition (forcing an onerous condition on a business partner/ customer, or offering different terms for similar transactions);
  - (ii) Unfair or discriminatory pricing (offering loyalty-inducing rebates, or below-cost pricing);
  - (iii) Limiting or restricting production or services (granting exclusive right to an entity to offer after-sales services and spare parts);
  - (iv) Denial of market access (refusal to deal or unduly terminating a business relationship);
  - (v) Conclusion of contracts made subject to acceptance of unconnected supplementary obligations (tying sale of one product to another); and
  - (vi) Using its dominant position in one market to enter into or protect another market (leveraging).
6. Where Escorts has a strong market position (say, 40-50% market share), personnel must exercise caution and should not engage in the above-mentioned conduct without prior consultation with the legal team.

## **I. COMBINATIONS**

1. A combination is an acquisition of control, shares, voting rights or assets of an enterprise, or a merger or amalgamation of enterprises.
2. If such a transaction meets certain assets/ turnover based financial thresholds, it cannot be closed without obtaining a prior approval of the CCI.
3. Certain categories of transactions are exempt from the CCI pre-notification requirement and certain categories can avail of deemed approval (green channel). Consult the legal team on CCI filing requirements.
4. The CCI may impose penalties for failure to notify a combination or taking certain steps towards the consummation of a combination without securing the CCI approval (gun-jumping). Gun jumping may include advance payment or any arrangement which accords an opportunity to an acquirer to influence the affairs of the target business.

## **J. COMPLIANCE AND REPORTING**

1. A competition compliance committee has been set up by Escorts to oversee and ensure on-going compliance with the Competition Act. The members of the said committee are as follows:-
  - a. Mr. Shailendra Agarwal
  - b. Mr. Bharat Madan
  - c. Mr. Shenu Agarwal
  - d. Mr. Amit Singhal
  - e. Mr. Brijesh Lamba
2. In the event of any doubts / clarifications on any aspect of this CCP or any other aspect of competition law compliance, contact:-  
Mr. Brijesh Lamba – Head Legal  
Email: [generalcounsel@escorts.co.in](mailto:generalcounsel@escorts.co.in)  
Phone: 0129-2564251
3. If you have a reason to believe that any activity of Escorts or conduct of its personnel/ business partners may raise a competition law concern, contact [raiseaconcern@escorts.co.in](mailto:raiseaconcern@escorts.co.in)