



GF-LI Antitrust Practice Group

Antitrust guidance note Benchmarking

ABB's Code of Conduct requires you to:

Compete fairly

We believe in a competitive, free enterprise system because it guarantees that our hard work and innovation will be rewarded. We will lose the trust of our customers if we treat them differently from one another or conspire with competitors against them.

This system, as the basis of a free market economy, is protected and promoted by competition law. Consequently, our actions must always comply with all applicable antitrust and other laws regulating competition. While these laws vary from country to country, the ABB minimum standard can be defined as follows:

- We compete openly and independently in every market. We do not make any agreements – formal or otherwise – with competitors to fix or set prices or allocate products, markets, territories or customers.
- We do not obtain or share with competitors current or future information about price, profit margins or costs, bids, market share, distribution practices, terms of sales, specific customers or vendors.
- We do not agree with or require a customer to resell our products at certain prices.
- We do not act in a manner that unfairly favors or benefits one customer over another competing customer.

Use information systems professionally

ABB's information systems are there to help us work efficiently and professionally. Generally, such systems should be used only for business purposes, in a manner that does not violate the rights or interests of the ABB Group, and in line with rules issued by the ABB Group.

Remember that any communication via e-mail could be regarded as a statement of ABB. Therefore, employees must be careful not to release information that is commercially sensitive or contentious or may have undesired contractual or other legal implications for ABB.

ABB's Code of Conduct requires you to:

Safeguard confidential information

Information is an asset. We share some of it in press releases, product information, the annual report and other public documents. Any other information that comes to employees in connection with their work, whatever the source, must be kept confidential to prevent others copying our work or poaching customers. It may also include information that suppliers, customers or partners may have entrusted to ABB.

Mark information appropriately, keep it secure and limit access to those who need to know in order to do their jobs. Avoid discussing information in areas where you may be overheard, such as airports, public transport, restaurants and bars, elevators, restrooms and cafeterias.

Information is so valuable that it may be appropriate to ask any outside party given access to confidential information to sign a confidentiality statement approved by Group Function – Legal & Integrity.

The Golden Rule

Every ABB employee has the responsibility to pro-actively distance ABB from inappropriate conduct.

Benchmarking

Introduction

Competitive Intelligence gathering is the activity of gathering, analyzing and disseminating information relating to products, markets, industry players and other business parameters.

To remain competitive in the marketplace it is essential for companies, including ABB, to obtain Competitive Intelligence.

Competitive Intelligence can come from a variety of sources including from industry players, public sources, and social media, or through Trade Associations or other third parties such as independent consultants, university research centers and other entities not considered to be a competitor of ABB. Benchmarking is a form of Competitive Intelligence gathering.

Benchmarking is a structured comparison of other companies' ideas, processes, practices or methods, with the intention of identifying strengths, weaknesses or best practices and where appropriate if possible transferring them to one's own business to operate more efficiently. Benchmarking can be unilateral or can be conducted together with non-ABB companies active in the same or completely different industry sectors.

Benchmarking often is pro-competitive as it may help improve companies' internal efficiency. However, antitrust concerns can arise where a benchmarking exercise reduces the strategic uncertainty in the market and changes the incentives for competitors to compete, thereby enabling companies to coordinate their market strategies and/or otherwise restrict competition. This is especially the case where a benchmarking exercise involves the exchange of Commercially Sensitive Information (see definition section) between competitors.

Benchmarking

This Antitrust Guidance Note intends to give further guidance on how to comply with antitrust law when conducting benchmarking exercises. Frequent benchmarking exercises between the same companies are discouraged and rarely permitted.

Any ABB employee participating in, or carrying out, a benchmarking exercise has an individual responsibility to familiarize himself/herself with this Antitrust Guidance Note prior to commencing with such a benchmarking exercise.

If you have any questions regarding compliance with antitrust laws, contact a member of the Group Function – Legal & Integrity (GF-LI) in your country.

Benchmarking

Information exchanges in other contexts

To the extent you want to participate in other forms of Competitive Intelligence gathering including the exchange of Industry Statistics, only conduct these within the framework of the [Antitrust Guidance Note for Competitive Intelligence Gathering versus Commercially Sensitive Information Exchanges](#).

The compilation of [Industry Statistics](#) relates to the collection of raw data from individual companies relating to, for example, sales, costs, exports, imports, overall turnover, production volumes, or stock levels on the basis of which the Industry Statistics are compiled.

To the extent you want to participate in Trade Associations (whether or not as part of the benchmarking exercise), only do this within the framework set out in the [Antitrust Guidance Note for Trade Associations, Professional Associations and other Industry Gatherings](#).

To the extent you want to participate in a standard setting exercise or develop standard terms for agreements (whether or not as a result of a benchmarking exercise), only do this within the framework of the [Antitrust Guidance Note for Standard Setting](#).

The Do's and Don'ts when conducting a Benchmarking Exercise

Legitimate exercises:

It is ok to conduct a benchmarking exercise:

- Within ABB (i.e., by comparing your performance with that of “sister” companies, divisions, or operating units);
- Which is unilateral, i.e., where ABB itself or with help of an independent consultant - without receiving any information from industry parties - compares its performance to that of other industry players using Competitive Intelligence;
- With companies which are not competitors of ABB;
- With competitors of ABB if the benchmarking exercise only relates to data which is not commercially sensitive, such as for example structure and functioning of business processes, human resource management, staffing;

The Do's and Don'ts when conducting a Benchmarking Exercise

Legitimate exercises:

It is ok to conduct a benchmarking exercise:

- With **competitors** of ABB, if the benchmarking exercise only relates to data which is **commercially sensitive**, if the following cumulative requirements are met:
 - a) **Benchmarking Work Plan**: Before commencement of the exercise the relevant business must prepare, or require the preparation of, a written benchmarking work plan clearly detailing the purpose, participants, nature of the information to be exchanged, anticipated efficiency gains and agreed process of the benchmarking project;
 - b) **Participants**:
 - i) There are at least five companies contributing data for each category of information collected;
 - ii) No single company's data may represent a significant portion (i.e., more than 25%) of the total data collected for a given statistic;
 - iii) Participation in the benchmarking exercise is voluntary;
 - c) **Type of information**: The benchmarking exercise must only relate to technical, engineering, scientific and other operational initiatives, which do not involve non-public price and related price data, capacity or production data, cost data, profit margins or marketing and sales information;
 - d) **Agreement**: The participants to the benchmarking exercise must have a written agreement confirming the benchmarking work plan, confidentiality arrangements and agreed procedures, and ensure these are implemented;

The Do's and Don'ts when conducting a Benchmarking Exercise

Legitimate exercises:

e) Process:

- i) The collection and collation of the data, as well as the dissemination of the benchmarking results, is managed by an independent third party (e.g., trade association, third party consultant, academic institution, government agency);
- ii) Participation in the benchmarking exercise must be structured in such a way that information does not flow between the participants, but only to, or from, the independent third party;
- iii) Employees of such independent third party must be subject to appropriate confidentiality obligations. Any employee or representative of a company which at the same time holds a function (e.g., Chairman) within the independent third party cannot have access to raw company data, but only to the final benchmarking report;
- iv) All surveys and questionnaires, as well as the responses thereto, must be in writing;
- v) Prior to disseminating the benchmarking results, the independent third party must aggregate or otherwise anonymize the data received, to ensure that individual companies or assets cannot be identified or that the raw company data be deduced. Specifically, each participating company must be ranked anonymously in the report available to all companies and informed individually of its actual performance so that each company knows its data, but not that of a competitor;
- vi) Direct contact between the participants in the benchmarking exercise is not permitted.

The Do's and Don'ts when conducting a Benchmarking Exercise

Exercises to exercise caution with:

It is **only ok** to participate in a benchmarking exercise where any one of the above-mentioned requirements **is not met** if you have received **prior** clearance from a member of the GF-LI in your country.

Note: Exceptionally cost data older than 3 months may be exchanged where it is essential to conduct an otherwise legitimate technical/operational benchmarking exercise between competitors. Adequate safeguards must be put in place to ensure this data is not shared between the competitors participating in the benchmarking exercise.

The Do's and Don'ts when conducting a Benchmarking Exercise

Exercises to distance yourself from:

Do not:

- Participate in a benchmarking exercise which is based on Commercially Sensitive Information where the data is:
 - Future data, including but not limited to future sales prices, production capacity, sales information etc.;
 - Non-public price and related price data, capacity or production data, profit margins or marketing and sales information;
 - Cost data younger than 3 months.
- Exchange such information or any other Commercially Sensitive Information with a competitor during, or as part of, such a benchmarking exercise;
- Discuss the results of the benchmarking exercise with the other participants, or agree with them on a uniform set of best practices. ABB must unilaterally decide how to use, and act upon, the information and conclusions received as a result of the benchmarking exercise.

What to do if matters go wrong?

Introduction

Antitrust agencies generally presume that when a company receives Commercially Sensitive Information from a competitor (be it orally in a planned or unplanned meeting, by mail or electronically) it has accepted the information and adapted its market conduct accordingly **unless** it responds with a clear statement that it does not want to receive such data. Even a single instance can be enough for ABB to fall afoul of antitrust law.

Therefore, every ABB employee has the responsibility to pro-actively distance ABB from inappropriate conduct.

What to do if competitor raises an inappropriate topic or shares Commercially Sensitive Information?

If a **competitor**, its employees or representatives (verbally or in writing), directly or indirectly through a third party (e.g., Trade Association) raises an inappropriate topic and/or provides you with Commercially Sensitive Information:

1. Immediately **stop** the conversation (do not accept any documentation);
2. Point out that it is ABB's policy to comply with antitrust law;
3. If the discussion persists, immediately leave the meeting, where possible ensuring your objection and departure have been minuted;
4. Do not disseminate any Commercially Sensitive Information internally;
5. Immediately inform your supervisor and Country Integrity Officer of the incident and your actions in writing; **and**
6. Determine with help of your Country Integrity Officer what additional steps need to be taken.

Definitions

What is “ABB”?

In this guidance note the word “ABB” includes all companies belonging to the ABB group of companies.

What is a competitor?

A company or group of companies which offers (or is capable of offering within a reasonable period of up to 3 years) the same or similar products or services to those which ABB offers must be regarded as a competitor of ABB. For example:

- When we purchase from, or sell to, from a vertically integrated company, such as Siemens, Alstom T&D, Mitsubishi, or Hyundai Heavy, we must treat our counterparts as part of a competitor given that other divisions of the same group compete with ABB;
- An EPC that does not manufacture products (e.g., ETA, Al-Fanar) will nevertheless compete with ABB on a systems level;
- A company in which ABB holds an interest (incl. a joint venture), which offers the same or similar products or services to those which ABB offers, is a competitor unless otherwise indicated by the head of the Antitrust Practice Group (GF-LI).

Definitions

What is Commercially Sensitive Information?

Commercially Sensitive Information is information that could influence a commercial decision or strategy of ABB or a competitor, such as information about past, current or future:

- Prices and pricing elements (e.g., actual prices, discounts, rebates, calculation methods), pricing strategy, planned price changes (increases or reductions), etc.;
- Sales revenue, sales volumes (incl. market shares), sales territories, order position, marketing and distribution strategies, market entry, customer lists, sales to specific customers, the content of sales agreements, terms of sales, etc.;
- Offers, bids planned or made (including technical specifications and Terms & Conditions), including whether or not ABB (or conversely a competitor) will submit or has submitted a bid, etc.;
- Purchases from specific suppliers, purchase volumes, purchase prices, the content of purchase agreements, etc.;
- Cost structures (R&D, production & distribution), profit margins, production capacity, capacity utilization, output, or investments in production capacity, etc.;
- R&D plans & their results, other investments, etc.

Information is not considered to be commercially sensitive if:

- It does not relate to parameters of competition;
- It is in the public domain;
- It is historic (Information must be older than one year, but may need to be older – use common sense!); or
- It is sufficiently aggregated to lose its sensitivity.

Contact us

If you have any questions regarding compliance with antitrust laws, contact your Country Integrity Officer or a member of the Antitrust Practice Group (GF-LI)

ABB Ltd

Affolternstrasse 44

CH-8050 Zurich Switzerland

Phone: +41 (0) 43 317 7111

Fax: +41 (0) 43 317 7321

www.abb.com