



GF-LI Antitrust Practice Group

Antitrust guidance note  
Competitive intelligence gathering  
versus commercially sensitive  
information exchanges

Power and productivity  
for a better world™



# 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 Rules

## **Rule 1:**

A competitor is not a legitimate source of Competitive Intelligence.

## **Rule 2:**

Do not directly or indirectly (through a Trade Association, independent consultant or other third party), discuss, obtain from, or share with our competitors, their employees or representatives any Commercially Sensitive Information.

## **Rule 3:**

Do not exchange directly or indirectly with a competitor information on individualized intentions concerning future conduct regarding prices or quantities (e.g., intended future sales, market shares, territories, sales to particular groups of customers....).

## **Rule 4:**

Do not receive from a supplier detailed information about its offer to a competitor of ABB.

## **Rule 5:**

Do not receive from a customer detailed information about a competitor's offer or bid unless the customer has structured the bidding process in an open and transparent way, giving all market participants equal access to the information.

## **Rule 6:**

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

# Index

<b>Index</b> .....	<b>5</b>
<b>Competitive Intelligence gathering</b> .....	<b>6</b>
Introduction.....	6
Information exchanges in the context of an agreement with a competitor.....	7
<b>The Do's and Don'ts when collecting Competitive Intelligence</b> .....	<b>8</b>
Legitimate sources.....	8
Sources to exercise caution with.....	9
Sources to distance yourself from.....	10
Suppliers as source of Competitive Intelligence.....	12
Customers as source of Competitive Intelligence.....	14
Trade Associations and other third parties as source of Competitive Intelligence.....	17
The collection of Industry Statistics.....	18
Buy-Sell Relationship with a competitor.....	22
Internal ABB information flows in Buy-Sell Relationships with a competitor.....	23
Site visits by or to competitors.....	26
<b>What to do if matters go wrong?</b> .....	<b>27</b>
Introduction.....	27
What to do if a competitor raises an inappropriate topic or shares Commercially Sensitive Information?.....	27
What to do if a customer or supplier provides “detailed information” as described above?.....	28
Other.....	29
<b>Definitions</b> .....	<b>30</b>
What is “ABB”?.....	30
What is a competitor?.....	30
What is Commercially Sensitive Information?.....	31

# Competitive Intelligence gathering

## 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 such as on-line discussion groups. In fact, companies in the course of doing business, can - and often do - exchange various types of information through different channels, which leads to increased transparency in the market. These information exchanges can be pro-competitive insofar as they allow the development of more efficient and effective market strategies by suppliers and customers.

The sharing of information can however also raise antitrust concerns where it 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 Commercially Sensitive Information (see definition section) is exchanged between competitors.

This Antitrust Guidance Note intends to give further guidance on how to comply with antitrust law when collecting Competitive Intelligence.

Note: In regard to the sharing of information you need to also respect any confidentiality obligations you or ABB are bound by. Also, never use unethical or illegal methods to obtain Competitive Intelligence.

# Competitive Intelligence gathering

Any ABB employee collecting Competitive Intelligence from any source including social media has an individual responsibility to familiarize himself/herself with this Antitrust Guidance Note prior to commencing with such a collection 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.

## **Information exchanges in the context of an agreement with a competitor**

To the extent information is, or is to be, exchanged with a competitor as part of:

- A joint research & development agreement;
- A joint production agreement (including specialization agreement);
- A joint procurement agreement;
- A joint marketing agreement (including distribution agreement);
- A consortium or joint venture; or
- Any other agreement with a competitor

contact a member of the GF-LI in your country for specific guidance on the antitrust and other issues (including proper management of information flows) raised by these agreements.

# The Do's and Don'ts when collecting Competitive Intelligence

## Legitimate sources:

It is ok to collect Competitive Intelligence:

- From genuinely [public sources](#) such as:
  - Websites and press releases;
  - Marketing brochures;
  - Annual reports and filings with public regulators such as filings with the US Securities and Exchange Commission (Form 10-K or 20-F);
  - Newspapers and other mass media;
  - Analyst reports;
  - Market research reports of third parties (e.g., ARC, Frost & Sullivan, IMS);
  - Trade publications, newsletters, technical papers and other periodicals;
  - Governmental bodies;
  - Information disclosed to the general public at trade shows;
  - Suppliers manuals;
- Subject to applicable confidentiality obligations, from [your own ABB “sister” companies, divisions, or operating units](#) (e.g., from the ABB Business Intelligence Network, or Market Data Repository);

Note: On rare occasions circulating information internally on an offer given to, or received from, a [competitor](#) may be subject to restrictions (see for further guidance “Internal ABB Information Flows in Buy-Sell Relationships with a Competitor” on page 22);

- From [ABB’s own employees](#), unless recently joined (see page 11) and subject to applicable confidentiality obligations.



# The Do's and Don'ts when collecting Competitive Intelligence

## Sources to exercise caution with:

It is *only ok* to collect Competitive Intelligence:

- From [customers](#) and [suppliers](#), as long as you do not receive [detailed information](#) on a competitor's offer to a customer or on a supplier's offer to a competitor (see for further guidance pages 12-16);
- From [other third parties](#), such as Trade Associations, independent consultants, university research centers and other entities not considered to be competitors of ABB, as long as you respect the guidance provided in:
  - pages 17-21 of this Guidance Note;
  - the [Antitrust Guidance Note for Trade Associations, Professional Associations and other Industry Gatherings](#);
  - the [Antitrust Guidance Note for Benchmarking](#); and
  - the [Antitrust Guidance Note for Standard Setting](#).

# The Do's and Don'ts when collecting Competitive Intelligence

## Sources to distance yourself from:

Do not consider a [competitor](#) as a legitimate source of Competitive Intelligence. Specifically do not:

- Directly or indirectly (through a Trade Association, independent consultant or other third party), discuss, obtain from, or share with our [competitors](#), their employees or representatives any Commercially Sensitive Information.

Where you have a planned (e.g., in the context of a Buy-Sell Relationship or as part of a Trade Association) or unplanned contact with an employee or representative of a competitor (e.g., in an airport lobby) or know him/her socially, remain aware that you are still talking to an employee or representative of a competitor. You therefore need to be careful that your casual, social talks do not “stray” into a conversation whereby you exchange Commercially Sensitive Information.

To the extent you want to:

1. Enter into a Buy-Sell Relationship with, or conduct a site-visit at, a competitor: Please refer to pages 22 and 26 of this Guidance Note;
2. Collect Industry Statistics based on Commercially Sensitive Information: Please refer to pages 18-21 of this Guidance Note;
3. Participate in a benchmarking exercise: Please refer to the [Antitrust Guidance Note for Benchmarking](#); or
4. Participate in a standard setting exercise: Please refer to the [Antitrust Guidance Note for Standard Setting](#).

# The Do's and Don'ts when collecting Competitive Intelligence

## Sources to distance yourself from:

Do not consider a **competitor** as a legitimate source of Competitive Intelligence. Specifically **do not**:

- Exchange directly or indirectly (e.g., through public announcements) with a competitor information on **individualized intentions concerning future conduct** regarding **prices or quantities** (e.g., intended future sales, market shares, territories, sales to particular groups of customers...). To the extent you intend to issue public statements on price increases (other than published list prices), contact the GF-LI in your country for specific guidance.
- Request information from an employee that **recently joined** ABB from a competitor insofar as you are asking him/her to disclose Commercially Sensitive Information he/she became aware of during his/her prior employment.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

# The Do's and Don'ts when collecting Competitive Intelligence

## Suppliers as source of Competitive Intelligence

ABB's [external suppliers are generally a legitimate source](#) of Competitive intelligence.

Note: Specific rules apply to the extent that a competitor is supplying products and/or services to ABB (please refer to page 22 below).

However, antitrust concerns arise where ABB could obtain through the supplier [detailed \(as opposed to more general\) information](#) about a competitor's input costs and/or supply conditions.

For example, certain pricing clauses in vertical supply agreements can give ABB insight in a competitor's input cost. The most well-known are the Most Favored Nation (MFN) clauses, which guarantee that the supplier will only sell to the purchaser (here: ABB) on terms (e.g., price) that are no less favorable than the terms on which the supplier is supplying the same/similar products to other buyers.

Similarly, a supplier can in the course of negotiating a supply agreement with ABB disclose information about its offer to a competitor of ABB.

General guidance is provided below for some specific business cases, but this will not cover all factual or commercial scenarios. If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

### It is ok to:

- Subject to applicable confidentiality obligations, forward any information received from the supplier to ABB “sister” companies, divisions, or operating units.

### It is only ok to:

- Enter into an MFN clause or other clauses with the same effect, if the clause has been cleared **prior** to signing of the agreement by a member of the GF-LI in your country.

### Do not:

- Receive from a supplier **detailed information** about its offer to a competitor of ABB (i.e., a copy of the actual offer/contract or a detailed description of the contract/offer or elements thereof);
- Provide the offer you have received legitimately from the supplier to another competitor, supplier, or customer;
- Discuss with, or provide to the supplier **detailed information** about offers ABB has received from other (internal or external) suppliers.

# The Do's and Don'ts when collecting Competitive Intelligence

## Customers as source of Competitive Intelligence

ABB's external [customers are generally a legitimate source](#) of Competitive Intelligence.

Note: Specific rules apply to the extent that a competitor is purchasing products and/or services from ABB (please refer to page 22 below).

Our customers regularly challenge our offers (price, terms & conditions etc.) on the basis of offers submitted by our competitors.

In addition, customers may in negotiations grant ABB a "last-call", i.e., the right to match or undercut a competitor's last offer thereby enabling ABB to win the contract. Existing (framework) agreements with customers may also contain clauses, which require ABB to match offers (especially on price) of competitors (so-called "meeting competition clauses").

Although these types of arrangements are not as such illegal, specific attention must be given to the information ABB is entitled to receive in the context of these discussions with a customer, as concerns under antitrust or public procurement law may arise where ABB would - through the customer - obtain [detailed \(as opposed to more general\) information](#) about a competitor's offer.

General guidance is provided below for some specific business cases, but this will not cover all factual or commercial scenarios.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

It is ok to:

- In the negotiations phase, ask and discuss with a customer how to improve ABB's offer;
- In the negotiations phase, have the customer indicate ABB's price is too high, or X% higher than that of the competition;
- In the negotiations phase, have the customer indicate the target price that ABB must meet for it to win the contract;
- In the negotiations phase, have the customer identify who the other competitors are;
- In the negotiations phase, have the customer indicate how ABB must modify its other terms and conditions of its offer (e.g., the supply time, technical details, scope) for it to win the contract;
- Subject to applicable confidentiality obligations, forward any information legitimately received from the customer to ABB "sister" companies, divisions, or operating units;
- After the award of the contract, do a post-mortem with the customer to see where ABB's offer did not meet the customer's expectation or requirements, provided that you do not obtain from the customer [detailed \(as opposed to more general\) information](#) about the competitor's winning offer.

It is only ok to:

- Enter into "meeting competition clauses" with a customer as described above or other clauses with the same effect, if the clause has been cleared [prior](#) to signing of the agreement by a member of the GF-LI in your country.

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

### Do not:

- Receive from a customer [detailed information](#) about a competitor's offer, unless the customer has structured the bidding process in an open and transparent way, giving all market participants equal access to the information. This includes asking for, or receiving from, the customer:
  - In hard copy, electronic format or just to be read at the customer's premises, the actual offer/bid document of a competitor. If a customer offers to provide a competitor's offer/bid document to ABB, you must decline;
  - A precise statement about either the price of a competitor (e.g., "Siemens' offer is USD 1 million") or specific terms of a competitor's offer (e.g., "Siemens' delivery date is 1 January 2012") such that in effect you are receiving the same information had you looked at the actual offer/bid document;  
Instead, structure your conversation with the customer as described on the previous page.
- After the award of the contract in a post-mortem with the customer of ABB's offer, obtain from the customer [detailed information](#) about the competitor's winning offer.
- Provide the information you received legitimately from the customer to another competitor, supplier, or customer.



# The Do's and Don'ts when collecting Competitive Intelligence

## **Trade Associations and other third parties as source of Competitive Intelligence**

Information exchanges often also arise in Trade Associations, or through other third parties such as independent consultants, university research centers and other entities not considered to be a competitor of ABB. These Trade Associations or other third parties often publish general industry reports, periodicals etc., and establish standards, but also may compile industry statistics or conduct benchmarking exercises based on company data (including Commercially Sensitive Information) of individual members or participants.

Only participate in standard setting activities or develop standard terms for agreements within the framework of the [Antitrust Guidance Note for Standard Setting](#).

## **Benchmarking versus Industry Statistics**

[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 transferring them to one's own business to operate more efficiently. Benchmarking often is pro-competitive as it may help improve companies' internal efficiency. Only participate in a benchmarking exercise within the framework set out in the [Antitrust Guidance Note for Benchmarking](#).

In contrast, the compilation of [industry data or market studies \(Industry Statistics\)](#) 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. The collation of Industry Statistics is often pro-competitive as it allows industry participants to make better informed choices to adapt their strategy more efficiently to market conditions.

# The Do's and Don'ts when collecting Competitive Intelligence

## The collection of Industry Statistics

However, to the extent the collation of Industry Statistics involves the collection of Commercially Sensitive Information from competitors, safeguards must be put in place to ensure that:

- this information does not flow or is discussed between the participants; and
- the resulting report sufficiently aggregates and anonymizes the data considering the market characteristics and type of information involved.

General guidance is provided below for the collection of Industry Statistics, but this will not cover all factual or commercial scenarios. If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

## Some specific Do's and Don'ts:

It is ok to:

- Participate in a data collection exercise to compile Industry Statistics with companies which do not compete with ABB;
- Participate in a data collection exercise to compile Industry Statistics with [competitors](#) of ABB, if the exercise only relates to data which is [not commercially sensitive](#);

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

It is ok to:

- Participate in the collection of Industry Statistics based on [Commercially Sensitive Information](#) if the following cumulative requirements are met:
  - a) [Age of information](#): At the time the collected information is published/disclosed by the third party, the information must be historic (normally more than one year old);
  - 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) No single company may enjoy a share in excess of 25% in the relevant market for which the data is being collected;
    - iv) Participation in the Industry Statistics exercise is open to all (including non-members of the Trade Association) and voluntary;
  - c) [Adequate documentation](#): The participants to the Industry Statistics exercise must have an adequate documentation (i.e., written agreement, minutes of meeting or equivalent) confirming the agreed objectives, procedures and confidentiality arrangements and ensure these are implemented.

# The Do's and Don'ts when collecting Competitive Intelligence

## d) Process:

- i) The collection and collation of the data, as well as the dissemination of the Industry Statistics, is managed by an independent third party (e.g., Trade Association, third party consultant, academic institution, government agency);
- ii) Participation in the Industry Statistics 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 report;
- iv) All surveys and questionnaires, as well as the responses thereto, should be in writing;
- v) Prior to disseminating the Industry Statistics, the independent third party must aggregate or otherwise anonymize the data received, to ensure that individual companies or assets cannot be identified or that raw company data can be deduced;
- vi) Direct contact between the participants is not permitted in the collection of Industry Statistics;
- vii) The Industry Statistics may contain objective statements from the independent third party, but should not be accompanied by any comment, analysis, observation or recommendation;
- viii) The Industry Statistics are made available to non-members.

It is only ok to participate in the collection of Industry Statistics where any one of the above-mentioned requirements are not met (including where the data concerned is older than 3 months but younger than one year) if you have received prior clearance from a member of the GF-LI in your country.

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

### Do not:

- Participate in the collection of Industry Statistics based on Commercially Sensitive Information where the data is:
  - Future data, including but not limited to future sales prices, production capacity, sales information, etc.;
  - Current data or data less than 3 months old;
- Exchange such information or any Commercially Sensitive Information with a competitor during, or as part of, such a collection exercise;
- Discuss the Industry Statistics with the other participants, nor disclose how ABB interprets the data or what unilateral action ABB intends to take based on the data. ABB must unilaterally decide how to use, and act upon, the information and conclusions received as a result of the Industry Statistics exercise.

To the extent that the data is current or less than 3 months old, there may be exceptions to the above prohibition for certain data reporting services. The Regional Integrity Officer must clear all such arrangements prior to your participation in any such exercise or providing any such information.

# The Do's and Don'ts when collecting Competitive Intelligence

## **Buy-Sell Relationship with a competitor**

It is legitimate and not unusual for ABB to purchase products and/or services from, or supply ABB products and/or services to, our competitors (the Buy-Sell Relationship).

General guidance is provided below for some specific business cases, but this will not cover all factual or commercial scenarios. If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

## **Some specific Do's and Don'ts:**

In negotiating the Buy-Sell Relationship with a competitor:

### **It is ok to:**

- Exchange and discuss that information which is strictly necessary for concluding the specific Buy-Sell Relationship at hand (i.e., price, product/service specifications, delivery and applicable terms and conditions).

### **Do not:**

- Request, or respond to a request for, an offer of a competitor unless there is a genuine intent between the parties to enter into a specific Buy-Sell Relationship. Antitrust Agencies will view fictive offers/bids as a means to illegally exchange price or other Commercially Sensitive Information between competitors;
- Exchange or discuss Commercially Sensitive Information which goes beyond that information which is strictly necessary for concluding the specific Buy-Sell Relationship at hand;
- Exchange or discuss with a competitor detailed information about offers they have received from other (internal or external) suppliers; or
- Exchange or discuss with a competitor detailed information about offers ABB has received from other (internal or external) suppliers.

# The Do's and Don'ts when collecting Competitive Intelligence

## **Internal ABB information flows in Buy-Sell Relationships with a competitor**

ABB is a vertically integrated company. Generally information that is obtained legitimately from a competitor in the context of a Buy-Sell Relationship by one ABB business, can be – subject to applicable confidentiality obligations – shared with another ABB business active in an up- or downstream market.

Note: An ABB legal entity that receives an offer must always make sure to comply with confidentiality clauses in that offer which, for example, could prevent the receiving ABB legal entity from sharing the offer with other ABB legal entities.

Exceptionally, this internal sharing of information could adversely affect competition in the up- or downstream market.

General guidance is provided below for two specific business cases, but this will not cover all factual or commercial scenarios. If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

**Business Case 1:** An ABB business active in a downstream market (e.g., the business unit Substations - PSS) wants to share an offer it obtained from a competitor of an ABB upstream business (e.g., the offer for the supply of a power transformer) with that ABB upstream business (here: the business unit Transformers - PPTR):

It is ok, subject to checking applicable confidentiality obligations prohibiting the ABB-recipient from disseminating the offer within ABB, to:

- Forward the information on the offer from the competing upstream supplier to other ABB business units, including ABB's competing upstream business unless the customer is allowing for both a systems offer (e.g., a substation offer) and offers for components (here: separate offers for power transformers, GIS etc.) thereof, provided you mention your source on the information forwarded.



# The Do's and Don'ts when collecting Competitive Intelligence

## Some specific Do's and Don'ts:

**Business Case 2:** An ABB business active in an upstream business (e.g., the business unit Transformers - PPTR) wants to share an offer it has submitted to a downstream competitor (e.g., for the supply of a power transformer) with the ABB downstream business (e.g., the business unit Substations - PSS):

It is ok subject to checking if the competitor's offer contains confidentiality obligations prohibiting the ABB-supplying entity from disseminating the offer within ABB to:

- Forward the information on the offer submitted to the competitor to other ABB business units, including ABB's competing downstream business (here: PSS) as long as:
  - There are 4 or more competitors competing for the contract with the end-customer; or
  - If less than 4, contact a representative of GF-LI in your country for further guidance.
  - You mention your source on the information forwarded.

# The Do's and Don'ts when collecting Competitive Intelligence

## **Site visits by or to competitors**

Site visits by, or to, factory sites of competitors should be kept to a minimum and done only where there is a legitimate business reason to do so. Discussions during these visits must be limited to topics which are not commercially sensitive such as health & safety, environmental and similar operational initiatives.

During a site visit no Commercially Sensitive Information may be exchanged. Agree ahead of time on a written agenda.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

# 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 the help of your Country Integrity Officer what additional steps need to be taken.

# What to do if matters go wrong?

## **What to do if a customer or supplier provides “detailed information” as described above?**

If you receive in writing (e.g., by email, or hard copy) from a customer the [actual offer/bid document of a competitor](#) or from a supplier its [actual offer/contract to a competitor](#);  
or

If you receive orally or in writing a [detailed description](#) of the contract/offer or elements thereof:

1. Inform the other party that it is ABB’s policy to comply with antitrust law, and not to exchange Commercially Sensitive Information even when coming from a customer, supplier or other third party;
2. Do not disseminate this information internally, but immediately inform your supervisor and Country Integrity Officer of the incident in writing; [and](#)
3. Determine with help of your Country Integrity Officer what additional steps need to be taken.

To the extent the customer or supplier [orally](#) (e.g., in the context of negotiations) provides detailed information on [one element](#) of the offer:

1. Appropriately inform the customer/supplier that you wish to limit the discussion to ABB’s offer/purchase;
2. Do not disseminate the information received internally, but immediately inform your supervisor of the incident and your actions so that your supervisor can determine whether to involve the Country Integrity Officer; and
3. If the customer/supplier persist in repeatedly providing such detailed information, determine with help of your Country Integrity Officer what additional steps need to be taken.

# What to do if matters go wrong?

## **Other**

Contact a member of the GF-LI in your country for specific guidance if you have received Competitive Intelligence from a legitimate source, but you have reason to believe the information may be confidential (e.g., because you have received documents with a restrictive legend such as “proprietary” etc.) or collected through unethical or illegal methods.

# 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, 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](http://www.abb.com)**