

Antitrust Guidelines for the ICT Counsel Roundtable

October 2018

Applicability

- The ICT Environmental, Sustainability and Supply Chain Counsel Roundtable is an informal forum for in-house counsel with ICT companies to meet periodically and discuss emerging environmental, sustainability and supply chain issues. All Roundtable discussions will conform to, and Roundtable participants will participate in accordance with, the antitrust guidelines specified below.

Background

- The U.S. federal and state antitrust laws (as well as the laws of many other countries) prohibit competitors from acting together to restrain competition in purpose or effect. Competitors may not agree to fix prices, allocate territories, allocate product markets, or otherwise set the terms of competition. These laws also can prohibit agreements between customers and suppliers that unreasonably restrain competition, such as an agreement between a manufacturer and a supplier, the purpose and effect of which is to foreclose competition from other suppliers. Whether or not an agreement violates the antitrust laws turns on specific facts.
- Agreements between or among competitors need not be formal to raise questions under antitrust laws, but may include any kind of understanding, formal or informal, secretive or public, under which each of the participants can reasonably expect that another will follow a particular course of action or conduct.
- Initiatives such as this Roundtable by their very nature involve cooperative action by competitors and/or interaction among suppliers and customers. The antitrust laws therefore require close scrutiny to ensure that Roundtable activities do not reflect any anticompetitive intent or lead to any anticompetitive result.

Admonition

- Roundtable meetings will begin with a reading of the following admonition:

“Our discussions today are subject to the antitrust guidance applicable in the United States. Nothing discussed at this meeting is intended to restrict the individual decision-making of any participating company or to represent an agreement to coordinate marketing or sales conduct. Those participating in this meeting are instructed to avoid discussion of competitively sensitive subjects, including, confidential marketing, sales, and pricing information.”

Guidelines

- It is the sole purpose of the Roundtable to provide a forum for expression of various points of view on topics described in the agenda and participants should adhere to that agenda.
- Under no circumstances shall the Roundtable meetings be used as a means for competing companies to reach any understanding, expressed or implied, which tends to restrict competition, or in any way to impair the ability of members to exercise independent business judgment regarding matters affecting competition.
- Do not, at any Roundtable meeting or incidental social gathering, whether seriously or in jest, in fact or appearance, agree on the price, cost or strategic terms of competition, or discuss or exchange competitively sensitive information. Competitively sensitive information includes, but is not limited to, the following:
 - individual company current or future prices; price changes; price differentials; mark-ups; discounts; allowances; margins; or credits terms;
 - data that bear on current or future prices, *e.g.*, costs; production; capacity; inventories; and sales; industry pricing policies, price levels, price changes or differentials;
 - bids on contracts for particular products or procedures for responding to bid invitations;
 - individual company plans concerning the design, production, research and development, sales, distribution or marketing of particular products, including proposed territories or customers; and
 - matters relating to actual or potential individual suppliers that might have the effect of excluding them from any market or of influencing the business conduct of firms toward such suppliers or customers.
- Do not engage in discussions of standard-setting when the purpose of such standards is to limit the availability and selection of products, limit competition, restrict entry into an industry, inhibit innovation, or inhibit the ability of competitors to compete.
- Do not engage in discussions related to codes of ethics that might be administered in a way that could inhibit or restrict competition.
- Do not engage in discussions related to group boycotts, the validity of patents, or on-going litigation.
- Do protest any activity that threatens to violate the antitrust laws; disassociate yourself from any such discussions or activities; and terminate or leave any meeting in which they continue.