Antitrust Guidelines

Policy Statement

Seagate Technology believes that it, and its customers, benefit from vigorous competition. Accordingly, Seagate considers the antitrust and fair-competition laws fundamental to its own success, and is dedicated to strict compliance with their provisions.

The importance of these laws and the serious consequences of violating them make it crucial for you to understand how they relate to your everyday work.

These guidelines are designed to help you and all other Seagate employees:

- understand the purposes and major provisions of the antitrust and fair-competition laws;
- recognize situations that require particular attention to these laws; and
- know when to seek legal guidance.

Procedures

I. INTRODUCTION

American antitrust and fair-competition laws protect the fair and open markets that are essential to our economic health. They promote free enterprise by outlawing practices that frustrate or restrict competition. Robust competition produces faster innovation, lower prices, and more choices for consumers.

Seagate Technology believes that it, and its customers, benefit from vigorous competition. Accordingly, it considers the antitrust and fair-competition laws fundamental to its own success, and is dedicated to strict compliance with their provisions.

Strict compliance means that any Seagate employee who consciously violates or knowingly authorizes or allows a subordinate or agent to violate these laws is subject to discipline, up to and including dismissal.

In addition, violations of certain antitrust laws can be prosecuted as felonies. One law authorizes sentences of up to three years’ imprisonment and large fines for individuals. Several times in recent years fines imposed on corporations have been in the hundreds of millions of dollars.

The importance of these laws and the serious consequences of violating them make it crucial for you to understand how they relate to your everyday work. These guidelines are designed to help you and all other Seagate employees:

- understand the purposes and major provisions of the antitrust and fair-competition laws;
- recognize situations that require particular attention to these laws; and
- know when to seek legal guidance.

A. Purposes of Antitrust Law

The basic principle informing the antitrust and fair-competition laws is that competitive markets provide consumers with the best
selection of goods and services at the lowest prices. The antitrust laws assume that monopolization, collusion and unfair dealing create undesirable inefficiencies in the markets for goods or services, and therefore must be deterred. The antitrust and fair-competition laws also have other goals. For example, they promote notions of fairness in economic dealings.

To serve these purposes, these laws prohibit certain conduct considered to be anticompetitive, including the following:

- agreements that unreasonably reduce competition;
- exclusionary or predatory practices that create or preserve a monopoly;
- mergers that may tend to create a monopoly; and
- unfair business behavior.

B. Sources of Antitrust Law

Federal, state and foreign governments all play important roles in antitrust regulation and the protection of fair competition. Federal and state governments each have their own antitrust and fair-competition laws, overlapping in some respects but different in others. Foreign governments also have their own laws. All can bring actions to enforce their laws. In addition, private consumers are authorized by federal law to bring claims asserting violations of the law.

Federal antitrust and fair-competition law begins with the language of four statutes – the Sherman Act, enacted in 1890; the Clayton Act, enacted in 1914; the Federal Trade Commission Act, also enacted in 1914; and the Robinson-Patman Act, enacted in 1936.

- The Sherman Act has two particularly important provisions. Section 1 of the Sherman Act forbids any contract, combination or conspiracy "in restraint of trade" in interstate commerce or commerce with foreign nations. Section 2 prohibits monopolization, attempts to monopolize, and combinations or conspiracies to monopolize any market.
- The Clayton Act prohibits exclusive dealing arrangements and "tying" practices (both of which will be discussed in these guidelines) that may substantially lessen competition. The Clayton Act also prohibits mergers and acquisitions that may lessen competition or have a monopolistic effect.
- The Federal Trade Commission Act created the Federal Trade Commission and vested it with broad powers to define and prevent "unfair methods of competition."
- The Robinson-Patman Act bars sellers from discriminating in the price charged competing customers for like products and prohibits customers from knowingly receiving the benefits of such price discrimination. The Robinson-Patman Act also makes important exceptions to its general rule, however.

But what do terms like "restraint of trade" and "unfair methods of competition" mean? Over the past century, courts have fleshed out these laws. Some practices, such as price fixing and bid rigging, have been identified as so plainly improper that they constitute per se violations of the law. This means they cannot be justified by any beneficial purpose or effect that may be attributed to them in a particular instance. Other practices are evaluated under a "rule of reason," meaning they are held unlawful only if they operate, on balance, in a harmful or anticompetitive way.

These guidelines will discuss several situations that require mindfulness of the antitrust and fair-competition laws and the ills they seek to prevent. If you should encounter an antitrust or fair-competition issue similar to one described below, contact the Seagate legal department for guidance.

C. Everyday Conduct

If the underlying conduct is illegal, antitrust liability cannot be avoided by careful wording of business documents or an expression of good intentions. However, sometimes perfectly legal behavior can become suspect based on faulty judgment or a poor choice of words.

You must keep in mind how a third party, such as a judge or juror, might perceive any actions you take, statements you make, or documents you write. For example, an exchange of cost information at an industry conference could be considered part of a price-fixing scheme. Similarly, if two competitors discuss their respective sales territories with each other, it may be perceived as a prelude to a market-allocation agreement.

Furthermore, in the event of a lawsuit or investigation, any relevant documents you produce become "discoverable" and must be disclosed. An important exception to this rule applies to most communications between employees and the Seagate legal department, which are generally confidential and subject to the attorney-client privilege.

When you put something in writing, therefore, do so with the expectation that you will be asked to explain it as part of an adversarial proceeding years after it was written. Avoid hyperbole, exaggeration, or conjecture. Avoid language or descriptions suggesting Seagate dominates or controls any market, and instead, if necessary and accurate, describe Seagate’s market position as strong.
D. Investigations

It is Seagate’s policy to cooperate with federal, state, local and foreign law enforcement agencies in any investigation of alleged violations of the law. If you are contacted orally or in writing by any representative of any government agency requesting information, you may inform them that you cannot provide any information until the matter has been referred to the Seagate legal department. Contact the Seagate legal department immediately.

II. RELATIONS WITH COMPETITORS

Antitrust law is especially concerned with collusion and conspiracies involving competitors. These agreements, whether explicit or tacit, threaten to reduce production, stifle innovation, and ultimately result in higher prices and less attractive options for consumers. Because of their dangers and the need to deter them, illegal agreements among competitors are the antitrust violations most often criminally prosecuted and punished with fines and jail sentences.

The law recognizes that some agreements between competitors serve the public good, however. For example, joint research and development may allow competitors to produce a new product they could not have developed on their own. It is therefore essential to distinguish between proper and improper conduct.

A. Requirement of an Agreement

Collusion with a competitor requires an agreement, meaning that Seagate is generally free to take unilateral action in its own competitive interests. As used in antitrust law, however, “agreement” is interpreted broadly. It includes both express contracts and implied understandings. And in an antitrust case, an agreement can be inferred from the conduct of competitors and their employees.

B. Per Se Violations

Over the years, courts have identified certain agreements among competitors – such as price fixing, bid rigging, market allocations and agreements not to compete, and some group boycotts – as so lacking in competitive justification that they are considered per se illegal.

1. Price Fixing

Seagate must decide unilaterally how it prices its own products and services, and the prices it will pay for its suppliers’ products or services. The antitrust laws prohibit price fixing, which includes any agreement setting, regulating or affecting the prices at which products or services are bought or sold, including but not limited to agreements among competitors to do any of the following:

- set a fixed price or price range for a product or service, no matter how “reasonable” the price may be;
- use a common formula, calculation method, or bargaining strategy to determine price;
- limit output, even if the output agreed upon is greater than past levels;
- establish uniform discounts, or standard credit, warranty or return policies; or
- uniformly time or announce price changes.

These prohibitions apply to buyers as well as sellers. For example, buyers cannot agree in advance to fix a buying price. As evidenced by the list above, “price fixing” includes more than just agreements explicitly addressing how competitors will price a product. Agreements regarding supply and output have the same negative effects as, and are punished as strictly as, agreements on price.

At the same time, it is important to distinguish between price fixing, which is always illegal, and certain joint sales or purchasing agreements, which are reviewed under the rule of reason because they may have some procompetitive effects. Also, it is perfectly proper for Seagate to decide independently to match or emulate a competitor’s prices or legal business practices.

In this area, caution is key. If you believe that any matter or proposal relating to Seagate possibly could be considered either price fixing or a joint sales or purchasing agreement, contact the Seagate legal department for guidance.

2. Bid Rigging

Bid rigging is also a per se violation of the antitrust laws. It is illegal to reach an agreement with competitors to fix or rotate bids, or to agree not to bid at all.
3. Market Allocation

It is illegal to enter into any agreement with current or potential competitors to allocate, or to not compete in or for, any of the following:

- product lines;
- suppliers;
- customers; or
- territories.

The prohibition on agreements not to compete also means it is generally impermissible for competitors to agree not to engage in other normal competitive behavior, such as advertising.

4. Group Boycotts

It may be illegal to agree to boycott a supplier, customer or another competitor. This is known as a "group boycott" or a "concerted refusal to deal." A group boycott may have an anticompetitive effect by deterring customers or suppliers from dealing with a competitor, or by denying a competitor a necessary product or service. Here, the law addresses both boycott agreements among competitors and similar agreements between competitors of the injured party and one or more third parties, such as customers or suppliers.

Some group boycotts are per se illegal, as where firms use a boycott to enforce a price-fixing agreement. Other concerted refusals to deal are evaluated under the rule of reason. In any event, nothing that could be characterized as a group boycott should be undertaken without prior approval from the Seagate legal department.

C. Relations Evaluated Under the "Rule of Reason"

The antitrust laws recognize that some relationships among competitors have a competition-enhancing purpose and effect. For example, collaborative ventures in research and development may allow competitors to develop new products faster than would otherwise be possible. Likewise, trade associations can serve the public good by setting safety standards.

Yet these activities also may raise antitrust concerns. A joint venture can become a way to coordinate competitors’ activities. Trade associations may use standard-setting as a device to unfairly discourage entry into a market.

Because they involve both dangers and benefits, collaborative efforts that do not fall within any of the prohibited categories discussed above or threaten to raise prices or reduce outputs are generally evaluated under the rule of reason.

Although the phrase "rule of reason" sounds straightforward, in practice many factors are considered in determining the reasonableness of business conduct. The Seagate legal department always should be contacted before any employee participates in any collaborative venture with a competitor or competitors.

D. Communications with Competitors

Since an illegal agreement can be inferred from even innocuous statements and conduct, you must exercise extreme caution when communicating with competitors. As a general rule, you should avoid unnecessary contacts with the competition. It is Seagate policy, furthermore, to avoid certain topics in conversations with our competitors’ employees.

1. Subjects to Avoid

Because of the risk that an illegal agreement may be surmised from such communications, when dealing with Seagate competitors you should not discuss or share information regarding any of the following subjects:

- prices, credit terms, and other terms of purchase or sale;
- customers or customer lists;
- bidding plans or strategies;
- marketing plans;
- sales territories; or
- costs.

On an everyday basis, you should also avoid falsely implying to anyone that Seagate is taking action pursuant to an "industry agreement" or "industry policy" rather than out of its own self-interest. When discussing competition or prices with anyone, avoid giving a false impression that Seagate is not competing vigorously or that its prices are based on anything other than its own business judgment.
If communications with a competitor inadvertently turn to an improper subject, or if you accidentally enter into an inappropriate discussion, you should terminate the conversation immediately and report the incident to the Seagate legal department. This holds true regardless of whether the situation involves a personal conversation or a large meeting. Where a record is being kept of the meeting, you should place your objections to the improper discussion on the record before leaving.

2. Competitors Who Are Also Customers

Of course, some of a company's competitors may also be its customers. In these situations, the competitor should be treated like any other customer. No information should be disclosed to or accepted from the competitor unless necessary to serve that competitor as a customer, and all information received from such a customer should be put to lawful purposes only.

3. Acceptable Sources of Information

Information about rivals' prices can be obtained from sources other than the competitors themselves, such as customers or your own independent research (bearing in mind the rules that must be followed with competitors who are also customers). Likewise, participation in trade associations and industry conferences is perfectly legal, provided that these forums are not used for impermissible purposes.

III. RELATIONS WITH CUSTOMERS AND SUPPLIERS

Because they may have an anticompetitive purpose or effect, relationships between customers and suppliers also fall within the ambit of the antitrust laws. The law makes some buyer-seller arrangements per se illegal. Others are evaluated under the rule of reason. And other practices are plainly acceptable, even essential.

A. Choosing Business Partners

The antitrust laws generally do not require a good-faith competitor to do business with anyone it would prefer to avoid. This means a competitor is free to refuse to commence a business relationship with anyone – provided that the decision results from an independent and unilateral decision, not any understanding with a competitor, customer, supplier, or another third party (here recall the dangers of group boycotts), or a desire to obtain or maintain monopoly power.

B. Buyer-Seller Relationships Implicating the Antitrust Laws

Antitrust law does prohibit certain conduct in the course of a buyer-seller relationship. "Vertical price fixing," an agreement between a buyer and seller to set a resale price for a product, is per se illegal. Depending on the circumstances, it may be per se illegal to "tie" multiple products together for sale. Most other restrictions on distributors, including territorial or customer limitations and exclusive arrangements, are normally evaluated under the rule of reason.

1. Vertical Price Fixing or Resale Price Maintenance

Seagate cannot agree with customers who resell its products on a particular price at which a product will be resold, or on a minimum price for that product. This is known as "vertical price fixing" or "resale price maintenance." It is illegal.

To be per se illegal, the agreement normally must address price or price levels; other sorts of "vertical" agreements (agreements between buyers and sellers) are typically evaluated under the rule of reason. Agreements to set a maximum price for a product also are evaluated for their reasonableness.

It is not illegal for Seagate to announce in advance a suggested resale price policy, and then to unilaterally refuse to sell to customers that refuse to observe the policy. Under the antitrust laws, however, Seagate generally cannot condition the sale of its products on assurances from customers that they will not violate the announced resale policy.

If a Seagate customer complains to you about how another customer is pricing Seagate products, contact the Seagate legal department. Seagate cannot always alter its customers' selling practices. To avoid any appearance of improper conduct, any response to the complaining customer requires prior approval from the legal department.

2. Tying

Another practice, tying, occurs when a seller requires buyers of one product or service (the "tying" product) for sale or lease only on the condition that the buyer also buy or lease other, different products or services (the "tied" products). For example, in one well-publicized antitrust case it was asserted that the defendant had illegally "tied" its operating-system software (the "tying" product in that case) with an internet browser (the "tied" product).
Tying is illegal in some circumstances, but only if the seller has "market power" in the tying market, meaning it could profitably raise its price for the tying product above competitive levels. The seller can then generate excessive sales of the tied product by linking it with the tying product. In addition, it is required that customers be coerced in some way into buying the tied product. Examples of coercion can include a seller's refusal to sell the tying product without the tied product, or a technological design that makes it impossible to sell each product separately.

Tying issues can arise with "package" deals, in which products or services are bundled with others. One of the simplest ways to avoid tying liability is to ensure that all products are made available for purchase at a reasonable price on a separate or stand-alone basis. It is not always easy, however, to determine what the law considers to be different "products." In this and other ways, tying is an unsettled area of the law.

The penalties for tying can be severe. If you should have any questions about the relationship between tying and the sale of Seagate products, contact the Seagate legal department.

3. Exclusive Arrangements

In some situations, buyers and sellers may enter into exclusive relations with each other. For example, a buyer might promise to buy its requirements of a product exclusively from a particular seller, or promise not to purchase the product from any other seller. The mirror image of this contract requires the seller to sell all of its outputs to a single buyer, or to grant an exclusive license to a buyer. Finally, a "reciprocity agreement" requires the buyer and supplier to make reciprocal purchases from each other.

Exclusive arrangements are generally evaluated under the rule of reason. These arrangements can have procompetitive effects by reducing volatility and uncertainty. At the same time, some agreements can unreasonably restrict the opportunity of competitors to market or sell their products or services, or to obtain necessary products or services. Reciprocity agreements are more closely scrutinized, sometimes being considered per se illegal.

Because of the countervailing considerations applicable to these arrangements, you should contact the Seagate legal department before entering into any contract that might be considered an exclusive or reciprocity arrangement.

4. Territorial and Customer Restrictions

Sellers sometimes require distributors to resell their products only in particular territories, or to specified consumers or classes of consumers. These arrangements can have legitimate procompetitive purposes. One such purpose might be to encourage each distributor to invest in promoting the product.

Many restrictions are permissible; others are not. Some restrictive agreements may constitute a form of illegal price fixing akin to resale price maintenance. As with exclusive arrangements, contact the Seagate legal department before imposing any restrictions on a distributor.

5. Facilitating Illegal Practices

Just as it would be illegal for Seagate to agree with its competitors to fix prices or allocate markets, Seagate cannot assist its suppliers or customers in breaking the law. If you learn of any arrangements among Seagate's suppliers or customers that could be categorized as illegal, contact the Seagate legal department.

6. Termination of Customers

A company may decide to discontinue relationships with customers or suppliers, so long as its decisions result from its independent business judgment, and not from improper motives such as wrongful agreements or understandings with competitors, rival customers or suppliers. States also often have their own laws that must be followed when terminating a business relationship. To ensure compliance with these laws, you should contact Seagate's legal department before severing any relationship with a customer or supplier.

You also should avoid discussions with customers or suppliers as to dealings or future intentions with respect to any other current or potential customer or supplier, as improper agreements may be inaccurately inferred from such communications.

IV. SETTING MARKETING POLICY AND OTHER UNILATERAL ACTIONS

The preceding sections of these guidelines addressed agreements among competitors, and between customers and suppliers. A company can violate the law acting on its own, however. The most familiar example is monopolization, but there are also
several other provisions of the antitrust and fair-competition laws applicable to a corporation's unilateral decisions.

A. Price Discrimination

The Robinson-Patman Act was enacted during the Great Depression to prevent chain stores from obtaining more favorable prices, allowances, or services than smaller competitors. The Act makes it unlawful for any person to directly or indirectly discriminate in price between different purchasers of commodities "of like grade and quality," where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce. Buyers may be held liable under the Act for knowingly inducing or receiving a discrimination in price.

For liability to exist under the Robinson-Patman Act, there must be sales at different prices to two or more different customers and the price difference (or discrimination) must be likely to harm competition.

The Robinson-Patman Act contains several important exceptions to the general rule prohibiting price discrimination. A seller will not be liable for price discrimination where it can demonstrate that:

- a price concession was given in good faith to meet, but not beat, a competitor's price (the "meeting competition" defense). This exception will apply in many situations where prices are negotiated individually with major customers who may be playing one supplier off another;
- a lower price to one customer was justified by a lower cost of manufacture, sale, or delivery to that customer (the "cost justification" defense);
- the price discrimination resulted from changed conditions, such as deterioration or obsolescence affecting the marketability of a product; or
- the seller made a price reduction program available to all customers, yet only some customers took advantage of the program.

Though they may seem expansive, these exceptions have their own exceptions and are not always applicable to conduct that might at first glance seem to fall within their scope. You should contact the Seagate legal department if you have any questions regarding whether a pricing decision is acceptable under the Robinson-Patman Act.

The Robinson-Patman Act's ban on "indirect" price discrimination means that the law addresses more than just pricing. Promotional allowances or services furnished to distributors in connection with the resale of a product must be made available to competing customers on proportionally equal terms. The allowances, facilities or services covered by the Act include but are not limited to the following:

- advertising or promotional allowances;
- displays;
- handbills;
- warehousing facilities;
- storage cabinets;
- credit returns; and
- prizes or free merchandise for promotional contests.

The meeting competition defense applies to discrimination in promotions or services, but the cost justification defense does not. In addition, if any customers cannot avail themselves of the services or allowances involved in a promotional plan, Seagate must provide some other reasonable means of participation.

To avoid misinterpretations of your actions and potential liability under the Robinson-Patman Act, you always should avoid suggestions that special treatment is being given to a customer or class of customers.

B. Monopolization

The antitrust laws do not prohibit a company from attaining and maintaining a dominant market position through superior products, innovation, or business acumen. Free and fair competition sometimes produces exactly this result. The laws against monopolization are aimed only at exclusionary, predatory or anticompetitive conduct aimed at seizing or maintaining control over a market.

Exclusionary and predatory conduct includes the illegal acts discussed elsewhere in these guidelines. The following behavior can also be illegal when practiced by a monopolist, or those attempting to become monopolists and who have a "dangerous probability of success":

- engaging in predatory pricing;
- taking actions for the principal purpose of encouraging a competitor to exit the market;
• attempting to enforce a clearly invalid patent;
• buying up previously independent suppliers or distributors without legitimate business justifications;
• abusive use of the courts or regulatory process;
• using one monopoly to leverage or extend monopoly power into another, different market;
• disparaging a competitor's products; and
• obtaining information about a competitor's products or policies through espionage.

In short, were Seagate to have the actual or potential power to capture a market, it could not engage in these practices even if a smaller competitor could. Regardless of Seagate’s market position, however, you should not engage in or authorize any of these types of conduct in any event, since they may incur liability under Section 5 of the Federal Trade Commission Act and always make bad business sense.

C. Mergers

The antitrust laws also prohibit mergers and some asset acquisitions where the effect may be substantially to lessen competition or tend to create a monopoly. The Seagate legal department should be involved in every merger or substantial asset acquisition by the company.

D. Unfair Methods of Competition and Deceptive Practices

Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." This broad language means that any violation of the Sherman, Clayton, or Robinson-Patman Acts also violates the FTC Act. The FTC Act also prohibits other types of behavior beyond the scope of these laws. Furthermore, many states have laws similar to the FTC Act that prohibit "unfair" or "deceptive" business practices. California, for example, makes corporations liable for any "unlawful, unfair or fraudulent act or practice."

Unfortunately, the scope of these fair-competition laws is not always clear. The following behavior has been found to violate the law, but the list is by no means exclusive:

• Commercial bribery;
• Coercion, intimidation, or scare tactics directed against customers, prospective customers, competitors, or suppliers;
• Offering special benefits to dealers who agree to exclude competing product lines;
• Acquiring competitors' trade secrets by unfair means, including espionage;
• Making false or deceptive comparisons of one's own product to another company's product;
• Making false or deceptive statements about competitors or their products, business practices, financial status, or reliability;
• Misrepresenting the price, composition, effectiveness, quality, or other characteristics of a product; and
• Making an affirmative product claim in advertising without a reasonable basis.

It should be obvious from this list that for the most part, liability under the FTC Act and state law can be avoided by exercising common sense. Sell Seagate products by emphasizing their positive characteristics. Do not make false representations. Avoid criticism or harassment of competitors and their offerings – even if such criticism or actions might seem justified. If you are ever in doubt whether planned conduct might be unfair or deceptive, contact the Seagate legal department before acting.

In addition, state law makes a party who intentionally interferes with a contract liable for damages. You should never encourage or facilitate a breach of contract between another company and its suppliers, customers, employees or agents.

V. CONDUCT EXEMPT FROM ANTITRUST LAWS

There are some limited exemptions from the antitrust and fair-competition laws, which permit certain types of conduct that might otherwise be unlawful. You should contact the Seagate legal department before concluding that any action arguably covered by these laws is somehow exempt.

The exemption most relevant to Seagate is under the First Amendment to the United States Constitution. It allows competitors to take joint measures to influence government action, provided that in doing so they do not restrict competitors’ right to do likewise. For example, competitors may jointly lobby Congress, make common presentations to a regulatory agency, or file a joint brief with a court in a case affecting their interests. A competitor may not use this exemption to file baseless and harassing court actions against another competitor, though.
VI. CONCLUSION

Seagate’s commitment to free and fair competition relies on your attentiveness to the antitrust and fair-competition laws. Use your informed judgment and, whenever you come across a situation implicating antitrust or fair-competition issues, contact the Seagate legal department for guidance.

Top of Page