

ANTITRUST GUIDELINES FOR JOINT PURCHASING ARRANGEMENTS

Properly structured joint purchasing activities are perfectly lawful under the antitrust laws. The Guidelines which follow are intended to provide general guidance on joint purchasing arrangements that are within the antitrust "safety zone." As an added precaution, however, all proposed joint purchasing arrangements should be reviewed in advance with antitrust counsel.

All joint purchasing arrangements are subject to certain general antitrust rules. The principal "general" rules are directed at ensuring that (1) the arrangement is a legitimate, efficiency-enhancing joint purchasing activity, as opposed to an unlawful "buyers' cartel" that merely fixes the price at which participants will individually pay common suppliers; and (2) the purchasing group does not become so large that it might exercise "monopsony power" over suppliers.

Where two or more **competitors** are involved in the arrangement, additional rules apply. These additional rules are directed at ensuring that the joint purchasing activity is unlikely to affect downstream competition between the participants, as, for example, when the jointly-purchased products or services represent a high percentage of the participants' input costs (the notion being that when competitors have a known, common cost base it may tend to downstream price competition).

The "general" Guidelines and the additional Guidelines applicable to joint purchasing activities between competitors are set forth below.

GENERAL GUIDELINES FOR ALL JOINT PURCHASING ACTIVITIES

1. The joint purchasing activity must involve an actual integration of purchasing functions. Agreements among purchasers that simply fix the price each purchaser will pay for a product or service (*e.g.*, the coordination of bids in an auction setting) are not legitimate joint purchasing activities under the antitrust laws. Rather, the arrangement must actually involve **joint** purchasing activity that avoids duplication of effort and/or achieves economies of scale in ordering, transporting, or warehousing goods. In other words, the arrangement must involve some efficiency-enhancing combination of purchasing activities to be permissible.

2. The aggregate combined purchases by the group must account for less than 35 percent of total market consumption of each jointly-purchased product or service. *Example:* X, Y and Z form a buying group to purchase office supplies. Their total combined purchases represent less than 1 percent of total office supply consumption in the region. The arrangement complies with this Guideline.

3. Where the members of the buying group consist of re-sellers of the jointly-purchased products, the joint purchasing arrangement should also be reviewed for compliance with applicable price discrimination rules. The Robinson-Patman Act not only prohibits sellers from granting discriminatory price concessions, but it also prohibits **buyers** from inducing discriminatory prices. As a general rule, however, these price discrimination rules only apply in connection with price concessions granted to **re-sellers** of the supplier's products (*e.g.*, wholesalers, distributors or retailers).

ADDITIONAL GUIDELINES APPLICABLE TO JOINT PURCHASING ACTIVITIES INVOLVING TWO OR MORE COMPETITORS

4. The aggregate input cost of the jointly-purchased goods and services must represent less than 20 percent of the total sales value of competing products sold by each participating competitor. *Example:* Competing widget manufacturers X, Y and Z form a buying group to purchase packaging materials and widget forms. Packaging materials account for under 3 percent of each firm's widget price; widget forms account for 35 percent of the price of each widget. Joint purchasing of packaging materials would comply with this Guideline, but joint purchasing of widget forms (or packaging materials *and* widget forms) would not.

5. Participating competitors should not be required to purchase all of their requirements through the joint purchasing arrangement. Firms should be free to make purchases outside the joint purchasing arrangement.

6. Where possible, negotiations on behalf of the group should be conducted by a representative who is not an employee of any participating competitor. This avoids the need for information-sharing between competing firms. Where this is not feasible, the employee(s) responsible for negotiations should be subject to strict non-disclosure obligations.

7. All communications between purchasing group representatives and each individual participant must be kept confidential, and not discussed with, or disseminated to, other participants. The group purchasing activity must not become a vehicle for the exchange of competitively-sensitive information between competitors.

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Joint purchasing activities that conform to these Guidelines should not raise antitrust concerns. Many joint purchasing that do not conform precisely with these Guidelines may also be permissible, but more rigorous legal review will be required. You should review all proposed joint purchasing arrangements in advance with antitrust counsel.

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