Guide to Antitrust Compliance

Sysco Corporation and Sysco Operating Company Associates
Guide to Antitrust Compliance

Sysco U.S. Operating Companies
Sysco Corporation
The Guide to Antitrust Compliance is intended to serve as a guide for Sysco associates, its corporate office and its operating companies to assist associates in complying with the antitrust and trade regulation laws affecting the Companies.

The antitrust laws of the United States are a critical part of the business environment in which Sysco Corporation and its operating companies work. They govern the day-to-day conduct of Sysco’s businesses in setting prices and other aspects of purchasing, selling and marketing goods and services whether the sales activity be in conjunction with distributors or with consumers.

This Guide is being distributed to those who may be in a position to prevent antitrust violations from occurring. Every recipient is expected to become familiar with its contents. It identifies practices which could violate the antitrust laws. It is not intended to equip you to act as your own legal counsel or to be the final resource available to you. The aim is to familiarize you with the general principles of these laws, and to help you recognize issues or questions on which you should seek the advice of your company’s Senior Management, Sysco’s General Counsel, or other lawyers in Sysco’s Legal Department.

The purpose of this antitrust compliance Guide is to:

- Inform you how to perform your job in compliance with the antitrust laws and help you recognize when you need to seek legal advice;
- Assist you in resolving antitrust questions as they arise; and
- Assist management in monitoring compliance so that the business as a whole is not placed in jeopardy by the misconduct or carelessness of a single associate or small group of associates.

Your Company’s Senior Management, Human Resources and Sysco’s Legal Department will be available at all times for notification by any associate who believes that he or she may have encountered an antitrust violation or who is unsure as to whether the antitrust laws permit some action that he or she is considering taking. All concerns will be documented and immediately discussed.

Sysco’s policy is that no reprisals or retaliatory actions will be permitted against associates who report activity which they suspect may be illegal. Any associate who knowingly, willfully, and willingly does any act that causes any Sysco Company to violate the antitrust laws will be disciplined, up to and including termination, as will anyone who suspects that an antitrust violation has occurred or is occurring but fails to report the same to management or Sysco’s Legal Department.

These responsibilities reflect Sysco’s belief that there is no commercial objective which is more important than obeying the law and retaining the integrity of our enterprise. Should you believe that an antitrust violation has occurred or is about to occur, please contact your senior management. In addition, you can contact Sysco’s Legal Department (281-584-1471) or the Sysco AlertLine at 1-877-777-4020 or a web message https://syscoethics.alertline.com.
CONSEQUENCES OF ANTITRUST VIOLATION
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A  Criminal Penalties
A violation of the Sherman Antitrust Act is a felony for which an individual associate who is involved may be imprisoned for up to three years and fined up to $350,000 for each count. The Company could face a fine up to $10,000,000.00 (ten million dollars) for each violation. A court may impose an alternative maximum fine of twice the monetary gain or twice the loss arising from the offense. Criminal penalties are assessed not only against high level officers but also against other associates such as marketing or sales personnel, district managers, or merchandisers who are involved in the antitrust violation, even though the lower level associates may have been following instructions from their superiors. The Government generally reserves felony prosecutions and the possibility of substantial jail terms for “hard-core” violations such as price fixing, bid rigging or market allocation schemes which result in both halting competition and in corporate and personal monetary gain.

B  Civil Sanctions
The law allows private parties to recover damages caused by anticompetitive conduct and even offers a special incentive for competitors, suppliers and customers injured by such conduct to sue: successful plaintiffs receive triple the amount of their provable damages, plus their attorneys’ fees and costs. Because of these provisions, even a one dollar verdict against the Company could result in having to pay millions of dollars in attorneys’ fees and costs to the plaintiff.

C  Injunctions
In addition to criminal penalties and treble damage actions, courts or the Federal Trade Commission can issue injunctions which could impose substantial restrictions upon the Company’s future business activities, including provisions that could place the Company at a substantial competitive disadvantage.
D Other Costs

The negative impact on individuals who have been indicted and forced to stand trial is obvious, even when they prevail and are acquitted. The fear, worry and embarrassment can be devastating. Even if a person is acquitted, the person will incur legal expenses. In a somewhat different way, a company facing criminal charges goes through a similar agony.

Civil suits and enforcement actions can be as bad. The worry and uncertainty that pending civil lawsuits cause, along with attorneys’ fees and the other costs of litigation, are only part of the toll. A company embroiled in antitrust litigation may have its business affairs disrupted for months and even years. Company personnel will spend huge amounts of time helping to defend the case; time which could be better spent promoting the company’s business. The cost of the hours spent working with the lawyers; locating, reviewing and explaining documents in files; giving depositions; and testifying in court can be staggering. The value of business opportunities lost because a defendant company’s employees are helping with a lawsuit will rarely, if ever, be known.

The Company may be prohibited from contracting with the government following any criminal or civil violation of state or federal antitrust laws especially where the violation involved the submission of bids to the government.

Remember, antitrust laws do not apply only to Sysco. The antitrust laws also exist to protect Sysco. If you see your Company’s business being adversely affected by anticompetitive conduct, report such activities to the management of your Company. The Company may then be in a position to do something about improper activity.
RESPONDING TO THE GOVERNMENT AND OTHER INQUIRIES
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You should refer any government inquiries you may receive to your Operating Company’s Senior Management and to Sysco’s Legal Department. The government official should be told that company policy is to cooperate fully with government investigations, but that its cooperation has to be coordinated through counsel.

You should not provide business information to third-parties without clearance from your Operating Company’s President or Sysco’s Legal Department. If contacted by an attorney or by a previous employer, notify your Operating Company’s Senior Management and Sysco’s Legal Department of such contacts and try to avoid any response unless authorized by Sysco’s Legal Department.
RECORD KEEPING
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Desk calendars, pocket diaries, personal computer disks, expense reports, travel itineraries, telephone logs and bills, memoranda, and your “personal notes” that relate to the business of the corporation are all business records of the Company and are subject to subpoena. Notes kept at your home, and even your private telephone bills, if they relate to the business of Sysco, can also be obtained by subpoena in antitrust investigations by public authorities and by litigants in private litigation. Labels like “confidential,” “company private,” “restricted,” and “proprietary” do not necessarily protect documents from being obtained through proper legal process.

BECAUSE ALMOST ANY RECORD YOU CREATE CAN EVENTUALLY BE OBTAINED BY LEGAL PROCESS, THE RECORDS YOU CREATE SHOULD BE ACCURATE, FACTUAL AND DIRECT.

Records that include conjecture, hyperbole and exaggerated accounts about how you or your company “vanquished the competition”, for example, can easily be misperceived. Ask yourself as you are reading through the document you are creating whether you would be willing to repeat and explain what you have written in your daily newspaper or favorite business journal. Read what you have written, not what you think you have said. It is much easier to correct the document as you are writing than it is to explain later to people who may be skeptical of any efforts to explain that you meant something other than what plainly appears in your document. Also, as time passes, it is more difficult to remember details of a remote transaction or discussion, one that may be similar to hundreds of others, so accuracy and clarity at the time records are created is most important.

Absent specific legal requirements, you are not obligated to retain documents which no longer have any legitimate business need. You should, however, follow any and all retention policies established by Sysco or your operating company.
RELATIONS WITH COMPETITORS
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Generally stated, any agreement or understanding between competitors which unreasonably or unduly restrains trade is illegal. As a general rule, unilateral action is not prohibited by the antitrust laws. Actions that are in concert with another person or company are prohibited. However, agreements between Sysco Operating Companies (even when competing) are not illegal. No formal offer or acceptance is required to form an agreement or understanding. An illegal agreement need not be in writing. It may be oral and may even be inferred from a course of business conduct which does not involve direct communication by the participants.

Contact with a competitor could present antitrust problems. For example, a meeting of competitors (anyone who bids for the same business or sells to the same Customer as Sysco) in which one or more of the competitors make statements or provide information designed to influence the competitive business costs, strategy of the others can be used to prove an illegal agreement. Discussions of price, costs, terms of sale, geographic territories, production, Customers or marketing plans are prohibited. Discussing these topics with competitors may result in serious risks of exposure, both personal and corporate. Illegal price fixing may manifest itself as bid rigging, price signaling, and information exchange on prices. Be aware of suppliers that also distribute to our customers because to the extent of that distribution, they are also competitors and therefore subject to the rules described above. Discussions or agreements with suppliers concerning their competitive distributing functions are to be avoided unless cleared by Sysco’s Legal Department.

Some contacts are unavoidable and perfectly legitimate. For example, when a competitor is also a supplier or customer, it is proper to carry on business dealings as you would with any other supplier or customer. However, your discussions should be limited to the terms of the transaction at hand.

THE SAFEST WAY TO AVOID UNLAWFUL AGREEMENTS IS TO AVOID MEETINGS AND OTHER COMMUNICATIONS WITH COMPETITORS UNLESS IT CAN CLEARLY BE DEMONSTRATED THAT THE MEETINGS ARE FOR A LAWFUL PURPOSE.
A  Price Fixing

As antitrust case law developed, certain conduct was consistently shown to be unreasonably anti-competitive and without any redeeming virtue. Today, these practices are called “per se illegal” which means “automatically illegal” without analysis of potential business justifications for the prohibited acts. Price fixing is one such conduct considered “per se illegal” and is the most frequently prosecuted type of antitrust violation.

Any agreement or understanding among competitors directly or indirectly affecting price is a violation, regardless of justification. This includes agreements to raise prices, lower prices, peg prices or stabilize prices. In addition to agreements to raise or lower prices, the following types of agreements between competitors to tamper with prices are also considered price fixing:

- Agreements to use a common formula or method of calculation to determine prices.
- Agreements to use a common asking price or starting figure in negotiations with customers, even though downward revisions are likely to take place.
- Bid rigging, which may take the form of agreements to rotate contracts among potential bidders or to submit complementary bids (to make a bid knowing it is unacceptable or knowing it is higher than a competitors bid, intending the competitor to be awarded the sale or contract).
- Agreements to establish uniform or similar discounts or to eliminate discounts.
- Agreements to establish standard credit, warranty or return policies.
- Agreements on the timing or announcements of price changes.
- Agreements that establish a profit margin.
- Understandings between competitors regarding shipping or other special charges.

CAREFUL DISTINCTION SHOULD BE MADE BETWEEN PRICE FIXING, WHICH IS STRICTLY ILLEGAL, AND A COMPANY’S INDEPENDENT (AND PERFECTLY LAWFUL) DECISION TO MATCH A COMPETITOR’S BUSINESS INITIATIVES. MERE IMITATION OF A BUSINESS
BEHAVIOR OF COMPETITORS IS NOT ILLEGAL UNLESS THERE IS SOME AGREEMENT OR UNDERSTANDING TO FOLLOW THE LEADER.

B  Exchange of Price Information
An exchange of information of price of products may allow the inference of a price fixing agreement. As a result, no such exchanges should take place without the approval of Senior Management and Sysco’s Legal Department. Indeed, in an industry such as the food distribution industry, no public dissemination of current or future pricing information should be made without a legal review to make sure that a legitimate business justification exists for the announcement. Information you obtain through legitimate market channels, such as information from customers, should be documented as to the source. Further, it is not appropriate to ask our suppliers for a competitor’s price list.

DO NOT AGREE UPON OR EVEN DISCUSS Sysco’s PRICES OR TERMS OF SALE - EITHER WHAT WE CHARGE OR WHAT WE PAY NOW OR IN THE FUTURE (OR EVEN WHAT WE PAID IN THE PAST) - WITH COMPETITORS.

C  Exchange of Other Information
Agreements among competitors concerning credit terms are forbidden. Thus, exchange of credit information should be supervised by counsel (for example, at counsel-monitored credit association activities) and should be limited to past credit performances of specific accounts when this information is unavailable from other sources.

D  Division of Markets
The per se rule again applies to an allocation of markets by competitors, whether by area, by customer, or by some other classification (example: agreement between Sysco and its competitor XYZ that all accounts on the west side of the river belong to Sysco and all accounts on the east side of the river belong to XYZ). Agreements to limit production or to avoid product innovation are also illegal.

This does not mean, however, that there are not valid reasons for refraining from doing business in certain areas or with certain customers, as long as that decision is unilateral and not made in conjunction or agreement with a competitor.
E  Refusal to Deal/Group Boycotts
Any communication with a competitor about problems with a customer could lead to an inference of group boycott if the Company and the competitor stop dealing with the customer. Examples of concerted refusals to deal, which are illegal, include joint refusals to buy from a particular supplier until the supplier reduces prices and agreements among competitors not to sell to a customer unless the customer discontinues buying from other competitors. The fact that the target of a boycott may have engaged in unethical or illegal conduct will not justify the boycott.

The fact that a buyer is a “credit risk” would give each supplier, acting independently, a right to refuse to sell to him. However, it would be illegal for a group of competitors to take collective action to boycott the buyer. Each company must decide its own course of action independently.

DO NOT AGREE WITH COMPETITORS TO SPLIT UP TERRITORIES, CUSTOMERS OR PRODUCTS OR TO LIMIT PRODUCTION, SALES OR PURCHASES. DO NOT EVEN DISCUSS WITH COMPETITORS WHERE WE SELL, WHO OUR CUSTOMERS ARE, OR WHAT OUR PRODUCTION LEVELS OR SALES CAPABILITIES ARE.

F  Trade Associations
The fact that competing firms come together to discuss business concerns presents antitrust risks. Companies often erroneously believe that subjects which could not otherwise be discussed by competitors are somehow permissible if undertaken within a trade association. This is incorrect. Your Operating Company’s Senior Management must be made aware of all participation in trade association activities. Associates should be instructed to leave any meeting at which prices, market conditions, costs, customers, geographic territories or production are discussed. Minutes of all such meetings must be obtained and reviewed by Operating Company’s Management and legal counsel.

IN FOLLOWING THESE GUIDELINES, DO NOT FEEL AWKWARD ABOUT APPEARING “UPTIGHT”. THE STAKES ARE TOO HIGH TO WORRY ABOUT THE ATTITUDES OF OTHERS.
ANY INCIDENT INVOLVING AN ATTEMPTED COMMUNICATION OR AN IMPROPER SUBJECT SHOULD BE REFERRED TO YOUR OPERATING COMPANY’S SENIOR MANAGEMENT AND Sysco’s Legal Department.

G Joint Bidding and Teaming Agreements
Bidding in conjunction with another company or teaming together to perform a single project often raises substantial antitrust issues, particularly where each bidder or team member could perform the contract or project alone. Consequently, legal advice should be requested with respect to any proposed joint bid or teaming agreement. WHEN BIDDING INDIVIDUALLY, NEVER DISCUSS OUR BID WITH A COMPETITOR.
RELATIONS WITH SUB-DISTRIBUTORS OR CUSTOMERS
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Sub-distributors and customers are independent business concerns and, as such, are entitled to make their own decisions as to the manner in which they conduct their activities. Any attempt to deprive them of freedom to determine prices, terms, and conditions of resale, or to place undue limitations on their freedom to operate independently, involves a risk of violation of the antitrust laws.

A  Price Discrimination

Under the Robinson-Patman Act, Sysco products are to be made available to customers on a fair and equitable basis, without discrimination in price, unless a lower price is justified by a demonstrable cost savings to Sysco (and then only to that extent) or is believed in good faith to be necessary to meet an equally low price of a competitor.

Explanation

While the antitrust laws generally are designed to promote free and open competition, the Robinson-Patman Act is somewhat different. The Robinson-Patman Act prohibits price discrimination. It was designed to inhibit large purchasers from using their leverage to force lower prices than those offered to small buyers. Despite this purpose, it is aimed primarily at sellers.

While the Act is complicated and very difficult to apply, some general rules and guidelines may be stated:

Seller Liability; Discrimination Between Customers

It may be unlawful to sell the same product to competing customers at different prices where the effect is to injure competition. Competing customers should be treated on an equal basis when setting prices and granting sales promotions, promotional discounts, advertising allowances or assistance in the form of services and facilities.

Discrimination in prices or services offered to competing customers is not per se illegal. That is, in some situations the law permits differentials which are justified under the following exceptions specified in the Act:
- Price differences which are justified by cost savings to the seller. The savings must be real, and volume alone does not mean that a differential is justified, although volume discounts reflecting cost savings which are functionally available to any purchaser are not prohibited.

- Price differences based on changes in the market or marketability of a product (e.g., discount on a product approaching the end of its shelf life where the seller has a larger inventory than needed)

- Price differences which occur as the result of a seller meeting the equally low price of the competitor.

- One time introductory offers to attract new customers.

A number of technicalities govern the application of these justifications, and therefore, Sysco's Legal Department should be consulted if a question arises under a situation described above.

*Buyer Liability; Purchases by Sysco*

Although aimed primarily at sellers, the Robinson-Patman Act prohibits buyer from knowingly inducing or receiving an illegal discrimination in prices or services. However, associates can and should bargain for and obtain the lowest lawful price for goods and services purchased by the Company.

**Guidelines**

Don’t charge two similarly situated competing customers different prices for the same goods unless:

- You are meeting a competitive offer our customer has received from some other supplier.

- Market conditions have changed since the first sale was made.

- You can verify that the lower price reflects actual costs savings based on volume or some other element of the sale. This is a complex area of law that only arises in limited situations. As a result, Sysco's Legal Department is prepared to counsel you regarding this issue.
B  Resale Price Maintenance

Resale price maintenance may be illegal under the antitrust laws. This includes agreements between a seller and its distributors setting a ceiling, floor, or fixed price at which the distributor will resell products. Where this practice has historically been treated as “per se” or automatically illegal, a recent Supreme Court decision eliminated “per se” treatment and found that such price restrictions could be justified for reasonable business purposes. Ordinarily a supplier cannot agree with a distributor on the distributor’s resale prices and cannot force adherence to specified resale price levels, except by unilaterally announcing a price policy and then simply terminating those who do not adhere or if there is a reasonable business justification for the price restriction which outweighs the anti-competitive effect of such restriction. This remains a very gray area and generally should be avoided. Before engaging in any activity involving resale price maintenance, you should seek review or approval from Sysco’s Legal

Discussions or communications regarding prices may permit a fact finder to infer an agreement or understanding. To avoid even the appearance of possible illegal resale price maintenance, oral and written communications with suppliers regarding their prices to competitors should be kept to a strict minimum and should be reviewed by Sysco’s Legal Department.

IN GENERAL, LEAVE SUPPLIERS WHO SELL US OUR PRODUCTS FREE TO RESELL THE PRODUCTS TO COMPETITORS AT WHATEVER PRICE THEY CHOOSE, AND CUSTOMERS WHO BUY FOR RESALE FREE TO RESELL THE PRODUCTS TO THEIR CUSTOMERS AT WHATEVER PRICE THEY CHOOSE.

C  Requirements Contracts and Exclusive Dealing Agreements

Grants of exclusive territory to dealers and distributors are usually lawful where they involve no more than a commitment by the supplier not to appoint another distributor or dealer in the same geographic area. Exclusive dealing contracts are prohibited if their effect is anticompetitive. The situations in which these issues might arise for the particular company should be analyzed under the rule of reason, under which the fact finder considers the anticompetitive intent and action’s impact, together with the stated business justification. The fact finder considers whether the restriction is the least restrictive means by which to accomplish legitimate business objectives.
Requirement contracts, under which a buyer is committed to purchase all or most of his requirements from the seller, may raise issues similar to exclusive dealing arrangements and should also be reviewed by Sysco’s Legal Department. **Sell items to people that they want in the quantities they want, regardless of what else they buy from others.**

**D  Tie-in Agreements**

A supplier may not require its customers to purchase one product (the “tied product”) to be able to purchase another product (the “tying product”) if the supplier has substantial economic power in the tying product market; and a “not insubstantial” amount of commerce in the tied product area is affected. A similar standard may apply in some circumstances to reciprocal dealing when instead of using market power as a supplier to force purchases of another product, a company uses its purchasing power to force a supplier to purchase the supplier’s needs from it.

**Promote ‘the sale of each separate item we sell on its own worth. It is all right to offer packages of separate items for sale, but in general, do not force someone to take something of ours that he or she does not want as a condition of obtaining something of ours ‘the customer does want.**

**E  Distributor Complaints**

If a supplier takes action on distributor complaints, especially regarding underpricing, it could be considered as evidence of an unlawful agreement with the complaining distributor. If a distributor is terminated as a result of a complaint from another distributor, the fact may constitute part of the required evidence “that tends to exclude the possibility that the manufacturer and non-terminated distributors were acting independently” and “that reasonably tends to prove that the manufacturer and others ‘had a conscious commitment to a common scheme designed to achieve an unlawful objective:’” Complaints from multiple distributors are particularly dangerous, as they pose the risk of involving the supplier in a horizontal conspiracy at the distributor level.

**As a result, you should not, alone or in concert with other distributors, complain about the pricing practices of a competing distributor. However, you can question the prices at which your supplier is selling to a competing distributor.**
Distributors should not be used as the source of pricing or marketing information concerning other distributors. Under no circumstances should a complaint from a distributor be reported directly to the distributor complained about. Suppliers should make clear that any action will be taken based on compliance with the suppliers’ policies, not as a result of complaints. Any documentation of a termination decision should describe those policies and the steps to determine the dealer’s compliance.

WHEN DISTRIBUTORS COMPLAIN ABOUT ANOTHER DISTRIBUTOR’S PRICING, SIMPLY TELL THEM IT IS ILLEGAL FOR YOU TO ACT ON THE COMPLAINT! NEVER TELL DISTRIBUTORS TO STAY OUT OF EACH OTHER’S ACCOUNTS. REMEMBER THAT HEALTHY COMPETITION IS GOOD FOR BUSINESS.

F Territorial and Customer Restrictions

Explanation

Although Sysco is generally not selling products for resale, it should be noted that it may be illegal to limit the territory within which a customer is allowed to sell. However, Sysco may assign areas in which a customer is expected to concentrate its sales efforts, and it may also designate the location from which a customer will sell.

Guidelines

- Never attempt to prevent a customer from selling outside a particular geographic area without first consulting Sysco’s Legal Department.
- Never suggest to a customer that other customers will not sell in its area.

Confining your customers to reselling Sysco’s product in a particular territory or to specified customers or classes of customers are restraints which could be illegal. The legality of such restrictions will turn on a multitude of factors, including Sysco’s market power, whether the restraint facilitates collusion or forestalls entry into the market, and whether the restriction enhances competition and efficient distribution of the product or service. As a result, you should seek the advice and assistance of legal counsel before restricting your customers’ use or resale of Sysco’s products. Do not restrict customers from reselling whenever and to whomever they want.
RELATIONS WITH SUPPLIERS
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The same rules that apply to us when we are dealing with our customers apply to our suppliers when they deal with us. If our suppliers convince us to agree to some anti-competitive scheme, we can be sued along with our suppliers even if there was no benefit to us. It is not a defense that we felt “coerced” to agree to the scheme, so you must remember to check with Sysco’s Legal Department if some supplier asks you to agree to restrict our ability to do what we want with our purchases and to deal with other suppliers as we please. Even if you have no objection to restricting our freedom to deal, someone else outside Sysco might.

A  Agreements Affecting Price
A customer who agrees with a supplier’s demand to resell items at a minimum price, or a maximum price, or pursuant to “standard” terms and conditions can be held just as liable as the supplier if the arrangement is found to be illegal. SET OUR RESALE PRICES UNILATERALLY AND WITHOUT ANY INFLUENCE FROM OUR SUPPLIER.

B  Agreements Affecting Where and To Whom We Resell
Just as we might be justified in some circumstances in asking our customers to restrict where and to whom they will resell, it may be permissible for our suppliers to ask us to agree to such restrictions.

IN GENERAL, DO NOT AGREE TO RESTRICTIONS ON OUR RESELLING METHODS. IF ASKED BY A SUPPLIER TO AGREE TO LIMIT OUR SALES TO A GIVEN AREA OR TO A GIVEN CLASS OF CUSTOMERS, CHECK WITH YOUR SENIOR MANAGEMENT AND Sysco’s Legal Department.

C  Reciprocal Dealing
Any situation in which a business utilizes its purchasing power to gain customers (“you buy from me and I’ll buy from you”) may raise antitrust issues, if carried to the point of coercion. If a supplier is compelled to make purchases in order to acquire or keep a sales account; the practice could be found to violate the antitrust laws. MAKE PURCHASING DECISIONS BASED ON PRICE, QUALITY AND TERMS.
D  Exclusive Dealings and Output Contracts

Our suppliers are subject to the same rules when dealing with us as we are when we sell to our customers. Sysco will not, of course, agree with any supplier to restrict our right to buy freely from others unless there is some good business justification and we are satisfied that it is legal to do so.

A flip side to this coin is the “output” contract, where we might ask a given supplier to let us have its entire output of something. The same rule of reason analysis must usually be made to decide whether it is lawful to enter into such an agreement.

BUY ITEMS FROM SUPPLIERS IN THE QUANTITIES WE WANT REGARDLESS OF OTHERS TO WHOM THEY MAY BE SELLING. DO NOT AGREE TO RESTRICT OUR PURCHASES FROM OTHER POTENTIAL SUPPLIERS WITHOUT ADVANCE APPROVAL FROM YOUR OPERATING COMPANY’S SENIOR MANAGEMENT AND Sysco’s Legal Department.
RELATED PRINCIPLES OF UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES
RELATED PRINCIPLES OF UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICE’S:

The Federal Trade Commission Act (FTC Act) and many state laws (“little” FTC Acts) prohibit “unfair methods of competition” and “unfair or deceptive acts or practices.” Violations of the antitrust laws may also violate the FTC Act. The FTC or state governments may also bring enforcement proceedings to halt practices not regarded as antitrust violations, such as deceptive or misleading advertising or unfair merchandising practices, in order to protect both competition and the general public.

The specific conduct prohibited by the FTC Act is not capable of precise definition. Words such as “unfair” or “deceptive” are subject to different interpretations in different contexts at different times. The following are examples of conduct which have been found to violate these broad prohibitions:

- Commercial bribery, including payments made by a seller to its own or a competitor’s customer in order to induce purchases of the seller’s products;
- Coercion, intimidation or scare tactics directed against customers, prospective customers, competitors, or suppliers;
- Acquiring a competitor’s trade secrets by unfair means, including various types of espionage;
- Making false or deceptive comparisons of one’s own product with another company’s product (e.g. safety, effectiveness, durability);
- 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;
- Making an affirmative product claim in advertising without a reasonable basis; and
- Passing off one’s products as those of another manufacturer, such as by imitating a competitor’s advertising labels or trademarks.
INVESTIGATIONS

Government antitrust actions may begin with a subpoena or “Civil Investigative Demand” requiring production of company records and other information. A government investigation may also start more informally, for instance with a letter or telephone call by a Department of Justice or Federal Trade Commission attorney or an investigator from a state attorney general’s office seeking to interview associates. Sometimes these requests concern the activities of companies that are customers, suppliers or competitors of Sysco Corporation. Sysco Corporation’s policy is to cooperate fully with reasonable requests of government investigators seeking information for antitrust enforcement and other purposes. At the same time, the Company and its associates are entitled to all the safeguards provided by law, and it is most important that all investigatory inquiries be referred immediately to Sysco’s Legal Department. Often the time to respond to legal papers such as summons, complaints, subpoenas, writs or notices is very short.
CHECKLISTS

Avoiding the Appearance of Improper Conduct:

☐ Avoid using guilt words (“Please destroy after reading”).

☐ Avoid exaggeration or ambiguous statements about the market (“This program will destroy the competition”).

☐ Do not misdescribe competition as something unexpected or improper, such as referring to price cutting as “unethical” or “chiseling” or to a lost customer as one “stolen” by a competitor who has “invaded our territory.”

☐ When discussing competition and prices, avoid giving a false impression that Sysco is not competing vigorously or that its practices are based on anything other than its own business judgment (“It looks like everyone will be going to $14 after the 1st”).

☐ When discussing the prices or plans of competitors, clearly identify the source of your information so that there will be no suggestion that the information was obtained by a collusive arrangement with a competitor.

☐ Avoid suggesting that special treatment is being accorded to a customer or class of customers.

☐ Do not disparage the products of your competitors.

☐ Avoid using words that may falsely imply that Sysco is pursuing a course of action as a matter of “industry agreement” or “industry policy” rather than as a matter of its own self-interest.

☐ Don’t write anything that suggests that Sysco has an agreement or understanding with any competitor on pricing, terms, production, customers, geographic territory or any other competitive variable, or that Sysco has ever communicated with, or has otherwise obtained knowledge of any competitor’s policies or strategies in regard to such policies.

☐ Don’t use the following concepts, or anything to the same effect in discussing Sysco and/or any competitor of SYSCQ: to “enhance,” “stabilize,” or “depress” prices; to “orchestrate,” “cooperate on,” or “disrupt” price strategies; to jointly “maintain,” “support,” “bolster,” “undercut,” “undermine,” or “protect” price levels; to “notify,”
“indicate,” “communicate,” “follow,” “lead the way on,” or “signal” price changes; to “facilitate” price increases; to “divide,” “split” or “allocate” customers or markets; to “take out” a competitor.

☐ Don’t write anything that suggests that Sysco will achieve control over pricing, market power or “dominance” as a result of a proposed acquisition.

☐ Don’t write anything that suggests that one advantage of a proposed acquisition is that it eliminates a competitor.

**Do Not Agree With a Competitor:**

☐ To lower, stabilize or raise prices—even if the prices agreed upon are reasonable;

☐ To a minimum and/or maximum price;

☐ To a formula for computing prices;

☐ To fix elements of price and/or terms and conditions of sale such as discounts, rebates, freight charges, or credit terms;

☐ To sell or refrain from selling in any geographic area;

☐ To sell or refrain from selling to any customer or class of customers;

☐ To divide up or share a customer’s business with a competitor;

☐ To restrict or increase production;

☐ To refuse business with a particular customer or supplier based upon the understanding that a competitor will do likewise, including price cutters or specific bad credit risk customers.

**Do Not Discuss With a Sales Competitor**

(one who competes with Sysco in the sale to third parties);

☐ Credit terms except credit history of customers where necessary;

☐ Whether or not either of you will bid on any business, or how much or that terms to bid;
Going or not going after particular business (whether particular customers, or customers in a particular geographic area, or a particular kind of business);

Terminating business dealings with, or rejecting offers from, our respective customers;

Producing or not producing or offering or not offering, a particular product or service or the amount of quantity to be produced or offered;

Costs, margins, profit/loss, market share, or other business data concerning competitive performance;

The giving or withholding of, and/or the amounts of discounts, rebates, or promotions; or

Price lists or the timing of price changes.

**Do Not Discuss With a Purchasing Competitor**

(one who competes with Sysco in the purchasing of a product from third parties):

- Price, credit or other terms of a prospective or recent purchase by Sysco;

- Going or not going after particular types of purchase opportunities;

- Purchasing or not purchasing a particular product;

- Dealing or not dealing, or terms of dealing, with particular suppliers or competitors.

**Do Not Restrain a Customer:**

- By interfering with a customer’s right to conduct his or her business as he or she wishes;

- By requiring exclusive dealing contracts;

- By tying the sale of one product to a customer to another product;

- By setting a customer’s resale prices (although resale prices may be suggested);

- By imposing unauthorized restrictions on a customer to sell to certain customers or going outside of specified territories; or

- By charging similar customers who compete with each other different prices or giving them different credit or other forms of sale, unless the differential is to meet competition or justified by cost savings, or other valid economic reasons. These situations must be documented with proof and approved by Legal Counsel.

**Do Not Restrain a Supplier:**

- By interfering with a supplier’s right to conduct his or her business as he or she wishes;

- By requiring exclusive dealing contracts; or

- By imposing unauthorized restrictions on a supplier to sell to certain customers or going outside of specified territories.
Sysco® Corporation
Guide to Antitrust Compliance

I hereby certify that I have received a copy of the Sysco Corporation Guide to Antitrust Compliance and that I have read, understood and am in full compliance with all aspects of the Guide.

__________________________  _________________________
Name Printed               Department

__________________________  _________________________
Signature                  Date
These guidelines are intended to set forth Sysco's policy on antitrust compliance and as an aid to assist associates in fulfilling their responsibilities in connection with this important value. The obligation to follow the law applies to each associate as well as to the Company. Each associate's responsibility includes an awareness of situations which present antitrust risks, knowledge of Sysco's policy, and the obligation to seek the advice of Senior Management or Sysco's Legal Department. The fulfillment of this responsibility is basic to the satisfactory performance of every associate's job. THERE IS NO COMMERCIAL OBJECTIVE WHICH IS MORE IMPORTANT THAN OBEYING THE LAW.