# NEXANS ANTITRUST GUIDELINES

## INTRODUCTION:
## PURPOSE OF ANTITRUST LAWS AND THESE COMPLIANCE GUIDELINES

These guidelines are designed to help you.

- Be aware of the general purpose and compliance principles of antitrust laws and of the sanctions both for the company and the persons in case of breach;
- Comply with antitrust laws in the way you do business; and
- Identify situations that can lead to antitrust laws violations.

Antitrust laws may vary from one country to the other but these guidelines contain the basic principles of antitrust laws common to most countries and jurisdictions. **Therefore these guidelines should be applied everywhere**, and **in particular**:

- **whatever the country of destination of the products**;
- **nationality of the parties** ; or
- **business domain**.

**In case you are in doubt , always be cautious and speak with your Market Line/Business Group Presidents or Country Manager (outside of Europe) and/or consult your Legal Advisers before you act**

These guidelines are divided as follows:

- **Part A** provides an introduction to Competition and Antitrust law generally, as well as the context for the Nexans Compliance Program of which these Antitrust Guidelines form an integral part.
- **Parts B, C, D and E** provide you with practical information for application of these guidelines to your business, and the annexes provide further documentation regarding the application of these guidelines to your business.
- **Part F** will cover the subject of dawn raids, investigation and request for information from antitrust authorities.

Of course, these guidelines are not designed to give you an exhaustive picture of any and all applicable antitrust laws; the laws are quite complex. These guidelines are intended to help you recognize the kinds of conduct that the antitrust law address, to guide Nexans' employees away from conduct that could create even an appearance of antitrust concern, and to enable you to identify situations in which you should seek legal advice.

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# 1.1 PART A: Context and Background

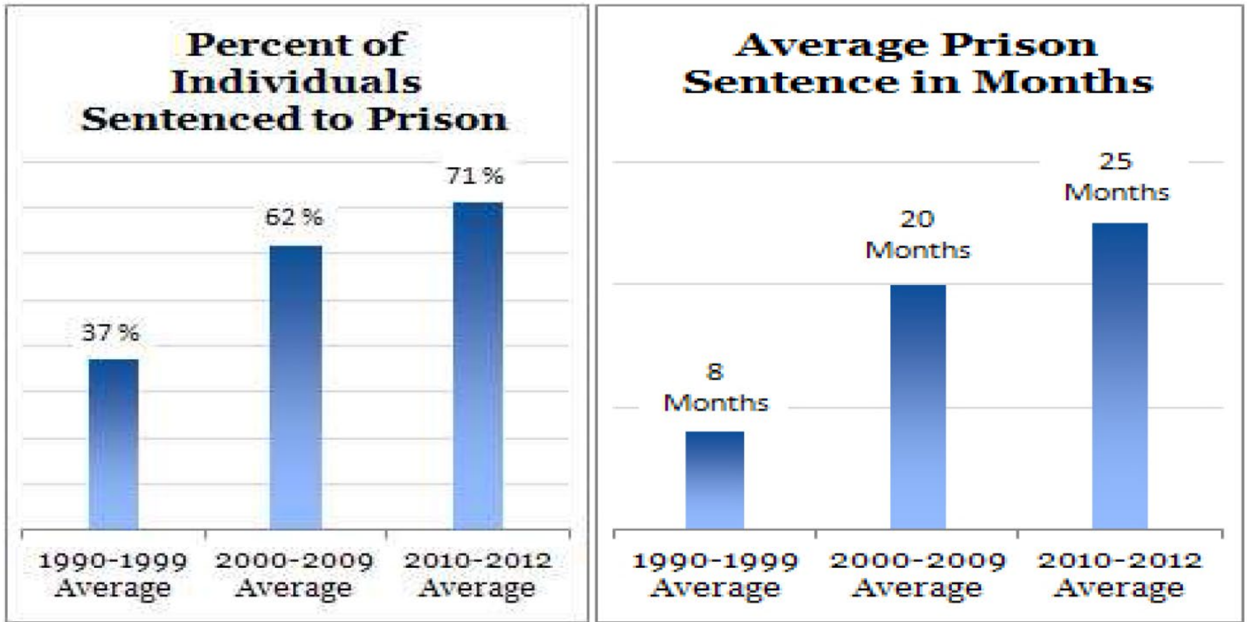
## 1.1.1 Penalties for violation of antitrust laws

**An antitrust violation can severely penalise not only the company but also the individual involved**

There are severe criminal and civil penalties for violations of antitrust laws.

***PRISON SENTENCES*****:** in many countries including France, Germany, the United Kingdom, Ireland, the United States, Canada, Australia, South-Africa, Japan and Brazil, prison sentences of several years per offence **(up to 4 years in France and up to 10 years in the USA)** may be imposed on any employee, as well as officers and directors, found guilty of an antitrust offence.

*Increasingly, more individuals sentenced to prison in the United States, and for longer prison terms (also applies to* ***Non-US*** *Citizens)*




In 2012, foreign defendants faced average prison sentences of 16 months in the United States, including two 36 month sentences imposed on individuals from Taiwan for a cartel.

Foreign citizens from **Canada, France, Germany, Sweden, Switzerland, the Netherlands, Norway, the United Kingdom** and **Japan** have served or are currently serving, prison sentences in U.S jails for violating US antitrust laws.

***FINES IMPOSED ON COMPANIES***: *most countries provide for very significant fines for antitrust violations.*

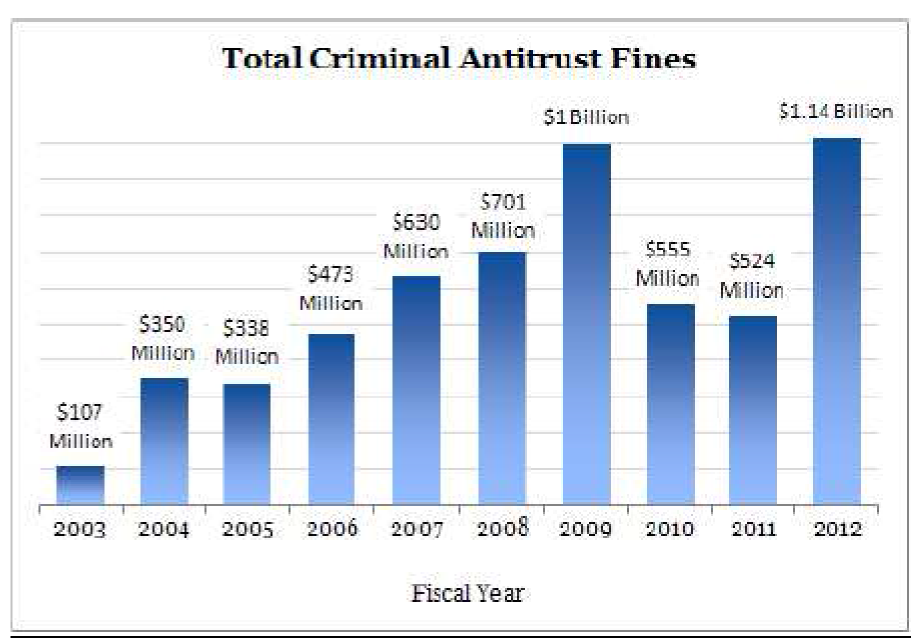
**In Europe:**

*Ten highest cartel fines per undertaking*

| Year | Undertaking** | Case | Amount in €* |
|---|---|---|---|
| ++2008++ | Saint Gobain | Car glass | 715 000 000 |
| 2012 | Philips | TV and computer monitor tubes | 705 296 000<br>of which 391 940 000 jointly and severally with LG Electronics |
| 2012 | LG Electronics | TV and computer monitor tubes | 687 537 000<br>of which 391 940 000 jointly and severally with Philips |
| 2013 | Deutsche Bank AG | Euro interest rate derivatives (EIRD) | 465 861 000 |
| 2001 | F. Hoffmann-La Roche AG | Vitamins | 462 000 000 |
| 2013 | Société Générale | Euro interest rate derivatives (EIRD) | 445 884 000 |
| 2007 | Siemens AG | Gas insulated switchgear | 396 562 500 |
| 2014 | Schaeffler | Automotive bearings | 370 481 000 |
| 2008 | Pilkington | Car glass | 357 000 000 |
| 2009 | E.ON<br>GDF Suez | Gas | 320 000 000<br>320 000 000 |

***In the United States:***

*Total Criminal antitrust fines imposed (in million dollars) period 2003-2012*



In the U.S., fines of up **to $100 million for each criminal offence** (or more) may be imposed on a company and of up **to $1 million on each individual** convicted of antitrust offence.

**PRIVATE DAMAGES ACTIONS:** In the U.S. and many more countries, including EU member states, in addition to fines and other sanctions described above, a company alleged to be involved in antitrust violations may be sued by third parties (mainly clients, for instance through "class actions"). If successful, such private suits may even require the involved company or individual to pay punitive damages. In the United States, this could be of up to three (3) times the amount of the damages actually suffered by the customer even if a different company made the sale (joint liability for damages caused by a cartel for instance). Such civil antitrust litigation is burdensome, expensive and time-consuming for all concerned, even if the outcome is ultimately favourable.

**INJUNCTION:** In civil proceedings a decree can be entered against a corporation and its officers and employees not only to prevent the company performing specified illegal activities, but it can also prevent other legitimate business activities of the Company.

**OTHER COSTS AND CONSEQUENCES :**

- Harm to corporate image and reputation.
- Individual's own distress: an individual involved in the violation will face possible **home searches**, **travel restrictions** and, if indicted for criminal offence, **possible arrest**, and will undergo considerable personal emotional and financial issues.
- Director disqualification (for up to 15 years) applicable in some countries for directors who knew (or should have known) about the anticompetitive activities.

**Sanctions are not "legal theoretical risks" for the Group:** on April 2, 2014 the European Commission has imposed a fine of **70 670 000** euro on Nexans France for alleged anti-competitive behavior in the high voltage submarine and underground power cable sector and is still subject to competition authority investigations in the same cable sector in the United States, Canada, Brazil, Australia and Korea, which consequences, as publicly disclosed could have a material adverse effect on the results of Nexans and its financial situation.

## 1.1.2 Prohibited practices under antitrust laws

### 1.1.2.1 Common basic rule:

**Agreements or concerted practices with competitors whether written or oral, express or implied, formal or informal that have or may have or may have, as an object or effect, the prevention, restrictioin or distorsion of competition on the market, are strictly prohibited.**

**This means that Nexans employees must never discuss, communicate or agree, expressly or implicitly, with any competitor on any element of price, including pricing policies, bids, discounts, credit terms, freight, respective terms and conditions of sale, share or division of markets by allocation of customers, suppliers, territories, production quotas or any other competitively sensitive information.**

### 1.1.2.2 Types of Prohibited Agreements / Concerted Practices or Behaviours

Agreements or concerted practices or behaviours including exchange of information between competitors are strictly prohibited where these aim to:

- **PRICE FIXING** is any agreement with competitors that has the effect of raising, depressing, fixing, rigging or stabilizing prices of any products or any services.

  ☹**It is illegal to:**
  - Agree with a competitor to fix or offer to fix prices, to stop discounts, to fix or offer to fix price ranges, or components of prices like profit margins, or adopt a standard formula for the computation of selling prices;
  - Agree with a competitor to raise prices, or fix or offer to fix price increases (and/or percentage of price increases);
  - Notify competitors on price levels (up and/or down);
  - Maintain floor prices as part of an explicit or implied agreement with a competitor;
  - Agree with a competitor on uniform price discounts, predetermine price differentials between quantities, types, or sizes of products;
  - Agree with a competitor on common credit terms;
  - Discuss pricing policy, including cost information with a competitor.

  **It is legal to:**
  - Take into account competitors' behaviour to individually set prices provided of course that such behavior does not result from an agreement with your competitors. ;
  - Obtain information about competitors from customers, suppliers, or public sources (if you do so: document the legitimate source – e.g., from a customer);
  - Unilaterally set and amend prices;
  - Publish your prices on your internet to inform your customers;

- **MARKET TERRITORY / CLIENT / BUSINESS ALLOCATIONS**

  ☹**It is illegal to:**
  - Agree with competitors to allocate/protect certain territories/ market/ clients/ types of products/supply sources/contracts;
  - Discuss/ fix sales or import volumes/quotas with a competitor;
  - Agree on maximum production or sales quantities or to limit production output with a competitor;
  - Agree with a competitor to use differentiated discounts aiming at allocating customers.

- **BID RIGGING** Collusion among bidders (through price rigging, joint offers etc) for tenders is illegal

  ☹**It is illegal to discuss/exchange information and/or agree with competitors to:**
  - Submit "cover bids" or "false bids" or "sham bids" or not answering or partially answering to the bid to favour a competitor;
  - Take turns on bid opportunities ("bid rotation") or to allocate bids according to territories, customers or product types. Antitrust authorities will study bid patterns for evidence of rigging;
  - Agree to subcontract part of a tender to a competitor in order to avoid competition with the competitor.

**● DISCLOSING/ EXCHANGING/ DISCUSSING COMPETITIVELY SENSITIVE INFORMATION**

Exchanging such information with competitors could lead to price stabilisation or increases.

☹**It is illegal to discuss/exchange information and/or agree with competitors to exchange in any way competitively sensitive information such as:**

- past or present prices
- cost/market information
- profit margins
- plans for development or production, distribution, or marketing of a particular product

**● AGREEING WITH COMPETITORS TO PREVENT THE ENTRY OF NEW COMPETITORS**

☹**It is illegal to agree with a competitor to refuse to sell accessories to a new competitor to prevent his entry onto the market for the main product.**

**● AGREEMENTS TO LIMIT SUPPLY OR SERVICE OR BOYCOTT CUSTOMERS**

☹**It is illegal to agree with a competitor to refuse to deal with or terminate a specific customer or supplier.**

**An “agreement” among competitors may take any form – any understanding – spoken or unspoken – or even “non-verbal” signs of agreement, is enough to infer an unlawful conspiracy. An agreement can be inferred from conduct, speeches, statements to the press, informal discussions in a social setting, etc. Conduct will be judged not necessarily by what was intended.**

## 1.2 PART B: Business with Competitors: guidelines for legal agreements

**Prohibited contracts cannot be made legal under the cover of apparent licit agreements such as consortium or subcontract agreements even if they are known by, or disclosed to the client.**

### 1.2.1 GUIDELINES FOR PURCHASES FROM COMPETITORS

Because it intuitively appears to be contrary to a company's strategic interest to purchase from a competitor (who should normally prefer to sell directly to the customer), competition law and competition authorities will generally consider such operations suspicious in nature **unless there is clear lawful factual justification for them such as:**

(1) **when there is no alternative because of**: -**Nexans insufficient capacity** to satisfy delivery time required by the customer: -**lack of technical ability** to manufacture the product; -**customer's own express requirement**;

(2) **supply will generate efficiency gains** After an internal evaluation of manufacturing versus outsourcing, Nexans determines that outsourcing the cable will increase the competitiveness of its offer by lowering the price proposed to the customer as opposed to the price Nexans could have offered had it manufactured the cable itself (efficiency gains for the benefit of the customer), such lower price analysis to be documented.

The following guidelines provide practical recommendations on the process to be followed within the Group to ensure compliance with competition laws when deciding to purchase from a competitor **and preserve justifying evidence as needed**. Given the possible **criminal and financial sanctions** applied to individuals for an infringement of competition rules it is not only in the company's interest but also in your personal interest to ensure proper documentation of these operations when needed, as recommended hereafter. In many cases, documented compliance with Group rules on purchasing and purchasing best practices will generate the justification without the need for legal department consultation and analysis.

**These Guidelines apply to all items identified to be likely purchased from competitors within the Group as of the date of publication, which are the following:**

- Components & raw materials not sold as finished goods (e.g. rod, copper wire, fiber, plastics);
- Finished goods meaning products to be re-sold as such by Nexans (e.g. cables, accessories, drums etc);
- Services (cutting, installation, armoring).

**KEY RULE:** In all instances the decision to buy from a competitor **will only be legal to the extent that it does not in its objet or effect restrict competition in any way. In particular and without limitation Nexans shall in no way prevent its competitor/ supplier from quoting directly to customer**

**HOW TO ASSESS POSSIBLE EFFECTS IN PRACTICE?**

To assess possible effects, always think about what the competitive situation would be in the absence of the agreement. If there would be more competition in the absence of the agreement, it is likely that the agreement restricts competition, in which case you should consult Legal Department **before entering into any discussion**.

**SITUATION 1: PURCHASE OF FINISHED GOODS OR SEMI-FINISHED GOODS (COMPONENTS & RAW MATERIALS)**

- o Compliance **with KEY RULE (i.e. competitor not prevented from competing on sale to the same customer)**; and
- o To be managed **by Purchasing Department and subject to 3 quotes above 25 K€;** and
- o **Applying rules of the Antitrust Guidelines** for relations/meetings with competitors in Part D, including having an agenda, minutes of meeting, and confine discussions to the sole purchase at stake.
- o **Applying** below **PROCESS RULES.**

**SITUATION 2: PURCHASE OF MANUFACTURING PROCESS SERVICES (BUT NOT GOODS)***

- o Compliance **with KEY RULE (i.e. competitor not prevented from competing on sale to the same customer);** and
- o To be managed **by Purchasing Department and subject to 3 quotes above 25 K€;** and
- o **Applying rules of the Antitrust Guidelines** for relations/meetings with competitors in Part D, including having an agenda, minutes of meeting, and confine discussions to the sole purchase at stake.

**SITUATION 3: PURCHASE/SUBCONTRACT OF ANY ITEM BECAUSE NEXANS DOES NOT MANUFACTURE THE COMPONENT, MATERIAL OR PRODUCT ITSELF**

- o No issue from competition law perspective **as long as it does not contain exclusivity arrangements (SEE PART C BELOW “PURCHASES FROM NON COMPETITORS”)**; but

- o **Apply rules of the Antitrust Guidelines** for meeting and discussing with competitors and confine discussions to the sole purchase at stake.

## PROCESS RULES

1 Purchase to be managed **independently from sales manager by Purchasing Department** in accordance with purchasing procedures (requiring 3 quotes above 25 k€);

2 Record of justification by filing **Purchasing Form (see below) to be stored in the Publication module of the Purchasing Communication System**;

3 Where **individual purchase exceeds 1 M€:** documents supporting the justification indicated in Purchasing Form to be stored **in the Publication module of the Purchasing Communication System**;

4 Where purchase from same competitor is recurrent and is expected to exceed **5 million euro/year**, **justification to be submitted to Legal and Purchasing Departments**;

5 **Legal Department** to be consulted for the pre-approval of **any frame agreement** with competitor;

6 For **subcontracting** (i.e. part of Nexans contract will have to be performed by competitor) for which competitor will have to know about the project **prior to bid award,** consultation of Legal Department **prior to** entering into any discussions with the competitor[1].

7 For Joint-Venture Agreements, consortium projects and specialization agreements with competitors, always consult Legal Department **prior to making any contact** and see above Guidelines for Consortia and Joint Venture Agreements.

[1] **In any situation where competitors are in contact relating to a bid or offer prior to its submission or award competition authorities may presume collusion.**

## PURCHASING FORM FOR PURCHASE FROM COMPETITOR

**DATE:_______________**

**Name of Purchasing Coordinator in charge who must ensure proper record in the Publication module of the Purchasing Communication System of all needed justifying elements (in capital letter): _______________**

**Name of Nexans Purchasing legal entity (in capital letters): _______________**

**Name of Supplier: _______________**

### TYPE OF ITEM PURCHASED

**1. Components & raw materials not purchased as "finished goods"**

☐Rod ☐Copper wire ☐Fiber ☐Plastics ☐Others:_____________ Description:

**2. Products or services purchased as "finished goods" to be re-sold "as purchased" (i.e. without being further processed by Nexans)**

☐Cables ☐Accessories ☐Drums ☐Services[2] ☐Others:_____________ Description:

### REASON FOR PURCHASE

- ☐ Lack of internal technical competence to manufacture;
- ☐ External purchase cost lower than internal supply
- ☐ Production capacity limits, preventing internal manufacture
- ☐ Inventory not available
- ☐ Written customers' preference

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[2] **including manufacturing services**

### 1.2.2 SALES TO COMPETITORS

☺**Sales to competitors for finished products (like cables, drums, joints, terminations, connectors, accessories or optical fibre) OR services (cutting, installation, armouring) are lawful PROVIDED :**

- (a) the end-user or customer of our competitor is unknown to Nexans, or
  (b) in the case the customer is known to Nexans, Nexans can document that the competitor is fulfilling a customer contract commitment which has already been awarded or for which Nexans has no possibility to compete;
- The sale is not made at a lower price than prices offered to other customers;
- Other conditions are not more favourable than those offered to other customers ;
- Only information which is absolutely necessary on the sale at stake shall be given to the competitor (ONLY price for the product being purchased by the competitor and not any other prices);
- The sale is arranged through the competitor's purchasing department only.

If you have any doubts as to why the competitor is buying cables from Nexans, contact your legal advisor. It may be justified to refuse to sell to the competitor.

☺**Sales to competitors for semi finished (like rod) / compound products or components are lawful PROVIDED :**

- The sale is not made at a lower price than prices offered to other customers
- Other conditions are not more favourable than those offered to other customers
- Only information which is absolutely necessary on the sale at stake shall be given to the competitor (ONLY price for the product being purchased by the competitor and not any other prices)
- The sale is arranged through the competitor's purchasing department only.

If you have any doubts as to why the competitor is buying cables from Nexans, contact your legal advisor. It may be justified to refuse to sell to the competitor.

☹**If you do not fall within the lawful cases described here above or if you are in doubt, speak with your Manager and /or consult your Legal Adviser before you act.**

### 1.2.3 CONSORTIA AND JOINT VENTURE AGREEMENTS WITH COMPETITORS

**STEP A Justifiable Reasons to enter into a consortium or joint venture**

A Consortium or Joint venture involves two competitors bidding as one entity instead of bidding against each other. Such an arrangement removes one competitor from the market. An agreement amongst competitors to not compete is usually illegal. As an exception, the only Justifiable Reasons to enter into a consortium or a joint venture are as follows:

1 **Insufficient capacity (cannot bid alone);** OR
2 **Lack of technical ability (cannot bid alone);** OR
3 **Explicit Customer Request**; OR
4 **Insurmountable economic constraints (will not bid alone):**

For approval to enter into discussions on a consortium or joint venture, the Justifiable Reasons listed above must be outlined in a note or email to the relevant Nexans Legal Department.

**STEP B First Contact with Competitor about bidding intention/capacity is always lawyer to lawyer**

**I.** Where Nexans initiates contact due to lack of capacity or lack of technology: Provide to relevant Nexans Legal Department all documents relevant for the Justifiable Reason (see STEP A above).

- **Nexans legal contacts legal dept of competitor:**
  - **a. If response** from competitor is **NEGATIVE, stop all communications with the competitor**
  - b. **If response** from competitor is **POSITIVE, Proceed to step III.** If competitor requests return confirmation, **Nexans Legal Department may return confirmation.**

**NB: BECAUSE THIS CONTACT HAS BEEN INITIATED ON THE BASIS OF NEXANS INABILITY TO BID ALONE, NEXANS CANNOT REVERT ON THIS ASSESSMENT AND LATER DECIDE TO BID ALONE!**

**II.** Where competitor initiates contact due to lack of capacity or lack of technology:

- Where **competitor is first to contact Nexans**, individual must then inform Nexans legal dept:
  - **a.** After analysis of Justifiable Reason under STEP A above, **if Nexans cannot bid alone on the project, Nexans Legal Department may send confirmation to competitor; Proceed to step III.**
  - **b. If Nexans is not interested or does not have a justification**, Nexans Legal Department to inform competitor that Nexans is not interested in pursuing discussions and all discussions must stop. Nexans may bid alone.
- **After receipt by Nexans lawyer of clear confirmation of competitor's inability to bid alone or other justification, Nexans to inform customer** of proposed cooperation:

c. **If response** from customer is **POSITIVE**, proceed to step set forth in STEP C below, – Management of Consortium/ Joint Venture.

d. **If response** from customer is **NEGATIVE, stop all communications with the competitor**

**III.** For consortium or joint ventures with competitors based on Customer request

- **Customer on its own and sole initiative requests Nexans to join a consortium with a competitor**; after receipt of written customer request, Nexans legal dept to contact competitor's legal dept:

  a. **If response** from competitor is **POSITIVE**, proceed to step set forth in Step C below – Management of Consortium/ Joint Venture

  b. **If response** from competitor is **NEGATIVE**, stop all communications with competitor

## STEP C Management of Consortium/Joint Venture Bid by dedicated Team for Bidding proposal and Project Management -post Bid award

1 Set up team limited to those necessary to prepare the bid proposal and later, project (project manager, technical manager);

2 Sign a NDA including a competition compliance (see below "NDA and Consortium Agreements – Clauses for competition compliance");

3 Limit exchange of information to necessary information only including price, delivery, capacity, etc. for the specific project only; **No discussions of any other consortium/joint ventures or projects**;

4 Apply Guidelines for Relations/meetings with Competitors (Part D) (having agendas, minutes, etc)

- **AND** the presence of a lawyer is recommended for meetings/contacts on highly sensitive commercial issues which could relate to future projects, such as capacity constraints

## STEP D RECORD OF CONSORTIUM JUSTIFIABLE REASON

In addition to the above, each Sales Director or General Manager shall keep a record of all documents supporting the Justifiable Reason for the Consortium as well as the corresponding Note to File (See below "Project File")

## NDA AND CONSORTIUM AGREEMENTS– CLAUSES FOR COMPETITION COMPLIANCE

*The Parties agree to only exchange that confidential information which is necessary for the proposed cooperation and will not share information on production costs or capacity constraints, or bids on other projects.*

*The Parties agree that only the individuals named in the annex to the NDA will be authorized to receive and share the confidential information, and the Parties agree that the confidential information will not be shared with other individuals other than those necessary for the preparing of the joint consortium/joint venture bid.*

NB: It is also strongly recommended to recall the justification for the consortium/joint venture in the preamble of the consortium contract.

## PROJECT FILE

A Project File **to be kept for at least 10 years** shall be created for each possible project by the Sales Director and/or General Manager in a collective database and the following elements shall be recorded therein:

**1) Note to File containing**

-a description of the project, **AND**

-a description of the Justifiable Reason i.e. Insufficient capacity (cannot bid alone), Lack of Technical Reason, Explicit Customer Request or Insurmountable economic constraints (will not bid alone):

- For Insufficient capacity and the impact it may have on the delivery date: it would be advisable to include in the joint bid a **comparison between the delivery date** achieved by each competitor on its own and the delivery date achieved thanks to the cooperation.
- If technical reasons justify creating a consortium, then an **explanation as to why the project could not be completed by a single competitor** on its own should also be either included in the bid or internally prepared by Nexans at the time of the bid.
- Insurmountable economic constraints: This type of justification only arises in rare cases and requires legal approval.

**AND**

**2) Documents supporting the Justifiable Reason**

The documentation of the consortium agreement has a preventive function. It will enable Nexans to provide full justification of the consortium if and when a competition authority undertakes an inquiry.

### 1.2.4 JOINT RESEARCH AND DEVELOPMENT AND DEVELOPMENT AGREEMENTS WITH COMPETITORS

☺**Joint Research and development agreements are lawful:**

- **If** they clearly result in a pro-competitive effect (i.e. introduction of a new technology, cost reduction effect, improvement on environmental aspects); **AND**
- **If** they allow access to R&D Results to all participants in the R&D Project; **PROVIDED that there is always a written agreement which has been approved by your Legal Adviser.**

☹**If you are in doubt about a joint agreement with a competitor, speak with your Manager and /or consult your Legal Adviser first.**

### 1.2.5 JOINT PROCUREMENT OF PRODUCTS AND SERVICES WITH COMPETITORS

**Purchasing products or services jointly with a competitor** (drums, facility management, IT systems) **may be lawful in limited circumstances**. Always submit any joint purchasing proposal to your Legal Adviser for review and approval.

## 1.3 PART C. – Guidelines for purchases from non competitors

Purchases from non-competitors do not usually raise concerns under competition rules **to the extent that they do not impose restraints on the supplier**, or on **Nexans as the purchaser**. Any restrictions between firms or individuals at different levels of the production and distribution process and relating to the conditions under which the parties may purchase, sell or resell certain goods or services are called "Vertical restraints". Vertical restraints are to be distinguished from so-called "horizontal restraints," which are found in agreements between horizontal competitors (for purchases from competitors please see hereabove Part B section 1).

Restraints which can be agreed for purchases from non competitors can take various forms, such as **exclusive dealing** agreements, whereby a purchaser would prevent its supplier from selling to certain territories or to certain customers.

**Now if they do contain such restraint it does not necessarily mean that they are prohibited**, but that an **individual assessment with a competition lawyer is necessary**.

**PURCHASING AGREEMENTS WHICH COULD RAISE AN ISSUE UNDER COMPETITION RULES**

Agreements **containing any of the following restrictions/conditions**:

1. **Minimum resale price maintenance i.e. the supplier fixes the minimum price at which you can re-sell a finished product ; or**
2. **Territory restrictions : i.e. you prevent supplier from selling directly to certain territories** or
3. **Customers restrictions : i.e. you prevent supplier from selling directly to certain customers, such as your competitors ;** or
4. **Non-compete obligations** during contract execution **exceeding 5 years or surviving expiration of the agreement.**

If your contemplated purchase does contain one of the above restrictions, it does not necessarily mean that it is prohibited under competiion rules butr you should contact a competiion lawqyer to have a specific assessment made **PRIOR TO ENTERING INTO ANY AGREEMENT**

## 1.4 PART D – Guidelines for relations / meetings with competitors

**Be aware that the mere fact of entering into discussions with a competitor for a joint offer which proves to be unjustified will make it impossible for the parties to legitimately submit bids separately afterwards as they will be deemed to have colluded.**

### 1.4.1 DISCUSSIONS-MEETINGS WITH COMPETITORS WITHIN THE CONTEXT OF LAWFUL COOPERATION

☺ **Discussions-meetings with competitors are lawful provided:**

- **Discussions with competitors regarding sales or customers can start only if** the contemplated agreement clearly falls (and is accordingly documented) within the **lawful** cases cited here above or has been first discussed and "cleared" with your Legal Adviser as described above;
- **Discussion and exchange of information** with competitors **shall always be strictly confined** to the contemplated project between designated authorized representatives;
- **For all meetings with competitors, you must ensure that the rules outlined in the annex are followed:** See attached Appendix A "WHAT TO DO BEFORE, DURING AND AFTER A MEETING WITH A COMPETITOR"
- **If improper topics come up at formal meetings or social gatherings, you should immediately protest, and if the topics are not dropped, leave. Your objection/departure should be noted in the meeting minutes**.

☹ **Otherwise:**

- **No meeting, discussion or exchange of information related to commercial matters** can take place with competitors unless the proposed cooperation has been first checked, cleared and documented with an internal or external **legal adviser**.
- **Competitors' teams should never** share the same offices except in very limited circumstances:
  - For APPROVED Project teams only;
  - Limited to the duration of the execution of the Project **AND**
  - Provided that no commercial teams unrelated to the project have access to the shared offices **AND**
  - Only **when** and **where** the competitors on the project do not have existing separate offices.

**Written communications must be clear and explicit: be cautious with your written expressions, since careless language can lead to the inference of wrongful motive or conduct, regardless of the true state of facts.**

### 1.4.2 MEETINGS WITHIN THE CONTEXT OF TRADE / PROFESSIONAL ASSOCIATIONS AND INFORMAL MEETINGS WITH COMPETITORS

**Trade associations** and other industry gatherings such as **industry fairs** can provide a forum to discuss legitimate areas of common interest. However, as they bring competitors together, they are viewed with a high degree of skepticism by antitrust authorities. Therefore it is crucial that you comply with the following rules when attending such meetings and do not get involved in any discussion that may give rise to even an inference that Nexans may be involved in any suspicious activity.

☺**Matters that can generally be discussed**:

- Non-confidential and non-commercial technical issues relevant to the industry such as standards, hygiene and HSE issues, environmental concerns, and matters related to corporate social responsibility and regulatory compliance;
- General promotional opportunities (but not a particular company's promotional plans);
- Industry public relations or legitimate lobbying activities

☹**Matters which must NEVER be discussed**:

- **Pricing or any element of pricing**, including, but not limited to, individual company or industry practices (whether current or future pricing), price differentials, margins, price changes, price mark-ups, discounts, allowances, profits or profit margins, rebates, commission rates, credit terms, capacity, price changes, advertising, sales terms and conditions;
- **Market allocation,** including matters relating to individual customers, intentions to bid or not to bid, intentions to enter or not enter certain markets, or other forms of sharing or allocating a market with competitors;
- **Bids, including proposed or future bids, whether or not Nexans or its competitor is bidding for the customer's business**;
- **Business data and costs**, including production or distribution costs, cost accounting formulas, methods of computing costs, individual company figures on sources of supply, inventories, sales etc.;
- **Future business activities and plans** as individual companies;
- **Any other competitively sensitive information** such as suppliers, contractors or customers you will or will not deal with, or the terms and conditions of trade.

**KEY RULES FOR TRADE ASSOCIATION AND OTHER INDUSTRY GATHERINGS AND INFORMAL MEETINGS:**

- ***DO NOT TALK TO COMPETITORS ABOUT MATTERS WHICH MUCH NEVER BE DISCUSSED (listed above)***
- ***IF YOU ARE INVOLVED IN A MEETING WHERE COMPETITORS START TO DISCUSS THESE ISSUES YOU ARE REQUESTED TO:***

    - ***IMMEDIATELY AND CLEARLY SAY THAT YOU CANNOT DISCUSS SUCH MATTERS, REQUEST THAT THE DISCUSSION STOPS, AND REQUEST THAT SUCH ACTION BE NOTED IN THE MINUTES OF THE MEETING;***
    - ***IF THE DISCUSSION PERSISTS, LEAVE THE MEETING IMMEDIATELY AND REQUEST THAT YOUR ACTIONS BE NOTED IN THE MINUTES OF THE MEETING;***
    - ***IMMEDIATELY INFORM YOUR COMPANY CEO OR GENERAL MANAGER (as well as Market Line/Business Group Management).***

- ***PARTICIPATION AT SOCIAL GATHERINGS WITH COMPETITORS OUTSIDE STRUCTURED MEETINGS ARE STRONGLY DISCOURAGED AND IN ANY EVENT NO DISCUSSION WITH A COMPETITOR SHOULD TAKE PLACE IN SUCH INSTANCE WITHOUT THE PARTICIPATION OF A THIRD PARTY WITNESSING THAT THE DISCUSSION REMAINS LAWFUL***

- ***Your mere presence at meetings, events or industry social occasions where unlawful activities are discussed or where competitively sensitive information is exchanged even if you did not actively participate-may involve Nexans (and you) in allegations of breach of antitrust laws.***

**See attached Appendix A "WHAT TO DO BEFORE, DURING AND AFTER A MEETING WITH A COMPETITOR ?"**

### 1.4.3 3. BENCHMARKING

☺**Benchmarking is LAWFUL :**

- **IF** between affiliated companies of the Group or between non-competitors;

- **WHERE** benchmarking arrangements involve actual or potential competitors **ONLY IF** the benchmark **DOES NOT INVOLVE** the exchange of "**competitively sensitive information**" **between competitors** (i.e. any exchange which increases market transparency by revealing market position or strategies of the companies involved. This includes information that gives an insight into the market conduct -or likely market conduct-of individual companies); **OR**

- **IF** Benchmarking is confined to technical, Health, Safety or Environmental discussions.

**KEY RULES FOR BENCHMARKING WITH COMPETITORS:**

- Benchmarking must be conducted by **an independent third party consultant**;
- Appointed consultant may collect individual information from each company but should only report the collected data **in aggregated form in such a way that participants do not have access to/or reconstitute underlying individual data;**
- In order to allow for proper segregation, there must be a sufficient number of participants (at least 5 if they are all competitors) and no individual competitor's data represents more than 25 percent of the total on a weighted basis;
- Benchmarking should only be on historical data (i.e., more than 1 year old) and never be on current or future prices or price-related information;
- Benchmarking must not include recommendations on business conduct to be adopted or conclusions as to recommended future business strategies.

In general, obtain prior written approval from Nexans Group Legal Department before entering into benchmarking activities with a competitor.

**The fact that the benchmarking is carried out through a third party does not relieve the participating company from its obligation to ensure compliance with applicable antitrust laws**

## 1.5 PART E - Relations/Contracts with Distributors/Customers and Suppliers

The concept of a company acting alone is important in customer relationships. From Nexans' viewpoint, it means that Nexans may choose its own customers to deal with or refuse to deal with in nearly every case without antitrust risk, so long as it makes that decision independently. Nexans may adopt a business strategy designed to provide its selfinterest, and then act consistent with that strategy—so long as it does so by exercising its own independent judgment.

There are some limitations to this general rule, especially if Nexans is deemed to be dominant in any market.

### 1.5.1 KEY RULES

☹**It is illegal to:**

- Impose any conditions on clients or suppliers which may appear as having been agreed with a competitor, for example differentiated discounts;
- Impose **minimum resale prices** for your products on distributors;
- Grant your distributors (in the European Union at least) **absolute territorial protection**.

Relations with distributors can be complex and competition authorities will examine closely distribution arrangements for breaches of competition law. If you are in any doubt, ask your legal adviser or general manager.

Further detailed information and guidance available in Nexans Competition Distribution Compliance Guidelines (see section 5.3).

### 1.5.2 MARKET POWER – ABUSE OF DOMINANCE

Nexans may gain "market power" in certain markets through organic growth or acquisitions. While it is not illegal to have "market power" it increases the exposure to antitrust issues because companies who are deemed "dominant" have a duty not to "abuse" that dominance. Therefore be even more cautious and prudent in your business relationships with distributors, customers and suppliers in markets where Nexans may be dominant. Assessing dominance is complex – if in any doubt, ask your legal adviser or general manager.

Where a company is dominant, it may not:

- discriminate against clients or suppliers by applying unequal treatment when purchases or supplies are similar or identical;
- refuse, without justification, commercial relationships of supply or purchasing,
- condition the sale or purchase of a product or service on the buyer's purchase of another product or service unrelated with the initial one ;
- try to tie up customers or suppliers with exclusive contracts for terms longer than necessary or usual ;
- adopt aggressive behaviors such as below cost pricing in order to drive a competitor out of business or otherwise substantially lessen competition ;
- force customers or distributors to maintain resale prices or respect set margins without a reasonable, pro-competitive justification ;
- require a customer not to buy competing goods.

This list is **non-exhaustive**.

### 1.5.3 VERTICAL RESTRICTIONS IN DISTRIBUTION CONTRACTS

Distribution contracts are a classic sales' channel of our products and also an optimization tool of our supply chain. From a competition law point of view, restrictions in these contracts are usually efficiency enhancing, since they normally aim at increasing the competitiveness of the distribution system. Therefore, absent a high market share, such restrictions on the distributor are allowed – except for certain non permitted restrictions described below, which are sometimes referred to "Vertical Restraints" in competition law. For more information you may consult the Guidelines for Distribution Contracts attached at Appendix C, and in any event, contact your legal advisor if you have any doubt before you act.

**A. KEY RULES**

In Europe, the US and most countries, in a typical one-way distribution agreement, so long as both Nexans and the distributor do not have high market power (no more than 30% each of the market) :

☺**It is legal to :**

- recommend the price at which the distributor sells Nexans products
- ask the distributor not to sell competing goods for a limited period of time
- appoint a specific distributor as an exclusive distributor for a certain product or customer, after having obtained relevant legal approval[3]
- provide the distributor with technical and sales support in exchange for exclusive an working relationship

☹**It is illegal to:**

- Enforce the resale price of its products by the distributor
- Tell the distributor where he can sell Nexans products (except for legally approved exclusivity as mentioned above)
- Where Nexans and the distributor are competing for the same end user, to agree with the distributor on who will bid to the end user.

For further information on the permissible types of restrictions, please refer to the Appendix C Guidelines for Distribution Contracts

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[3] While the GMP4 recommends the use of non-exclusivity in distribution contracts, it may be permissible under competition laws and can be envisaged in certain limited cases

## 1.6 PART F – Dawn Raids, Investigation Powers, or Requests for Information from Antitrust Authorities

- **Information that the antitrust authorities can collect during a dawn raid includes professional and personal emails and files (reconstituted from the servers, even where email/document was erased), faxes, documents on hard-drives, minutes of meetings, diaries, expenses receipts/accounts including secretary's notes, phone invoices, records of phone calls, witness testimonies);**
- **During dawn raids competition authorities have extensive investigation powers INCLUDING HOME SEARCHES;**
- **Do not destroy any documents or information during or after a dawn raid.**

Nexans' policy is to cooperate with antitrust authorities in case of dawn raids or information requests. When responding to such requests, however, Nexans is entitled to all safeguards and rights of defence available by law, including representation by counsel. Therefore in case of dawn raid in your office or if any representative of an official authority executes a search warrant, serves a grand jury subpoena, or visits your home, you should contact your legal adviser and adhere to the instructions set forth in Appendix B attached hereto.

If you are contacted by a government's representative, before agreeing to any interview or supplying any information to a governmental agency, you must contact your Legal Adviser. It is absolutely within your rights to refer government attorneys to attorneys for Nexans, or to inform government attorneys that you wish to speak with lawyers for Nexans before responding to their inquiry.

Each Company CEO or General Manager (as well as Market Line/Business Group Management) is asked to adhere to Nexans' policy in case of a dawn raid or document request. Those instructions are to be put on the local intranet, if any, or in clear view on the office premises.

**Do Not Act as Your Own Lawyer – In case of doubt contact your Company CEO or Country Manager or your Legal Adviser**

**Questions may arise which may fall in "grey" areas of antitrust laws.**

**In case you are in doubt, consult with your Legal Advisor before you act.**

**APPENDIX A: WHAT TO TO BEFORE, DURING AND AFTER A MEETING ?**

**APPENDIX B : WHAT TO DO IN CASE OF A DAWN-RAID, OR REQUESTS FOR INFORMATION FROM ANTITRUST AUTHORITIES ?**

**APPENDIX C : ANTITRUST GUIDELINES FOR DISTRIBUTION CONTRACTS**

# APPENDIX A:

## WHAT TO TO BEFORE, DURING AND AFTER A MEETING WITH A COMPETITOR ?

### 1. WHAT TO DO BEFORE attending the meeting:

- An agenda should be circulated in advance. If you are uncertain about any agenda item and require advice, contact your Legal Adviser;
- If you are invited to speak at a conference your presentation must only include matters/items that may legitimately be discussed between competitors (See Section hereunder).

### 2. WHAT TO DO DURING the meeting:

- Be vigilant as to what is discussed bearing in mind the rules herein described [as summarized in the "DO's and DON'T'S" in the Antitrust Guidelines. In this respect, you are asked to verify that such trade association has set up competition rules which comply with the rules herein described. If this is not the case, you must immediately inform your Legal Adviser and suspend your participation as long as the activity is not compliant with the rules;
- DO KEEP ALL DISCUSSIONS DURING THE MEETING TO THE AGENDA CIRCULATED AHEAD OF THE MEETING;
- PARTICIPATION IN "off the record" chats, side-meetings or social gatherings before, during or after the formal meeting are strongly discouraged and in any event no discussion with a competitor should take place in such instance without the participation of a third party witnessing that the discussion remain: in many cartel cases the unlawful discussions have occurred outside the scope of the formal meetings, for example at the bar or over dinner.

### 3. WHAT TO DO AFTER the meeting

- Promptly review the formal minutes for accuracy, and set the record straight if the minutes are inaccurate (if you do not raise your objection quickly, it will be difficult to argue subsequently that the minutes are inaccurate).

### 4. SPECIFIC ISSUE OF STATISTIC GATHERINGS WITHIN TRADE ASSOCIATIONS

The trade association should ensure and you should be vigilant about it applying following rules:

- That the participants who submit their data do not disclose any data to any other participants – this means that an employee of a participating company should not collect any individual data from any of the participants;
- Maintain complete confidentiality of the individual data submitted;
- Collect and disseminate aggregated data, which does not expressly identify the date of any particular participant and does not permit the data applicable to any individual participant to be deduced from the collected data. Consequently there should be a minimum of 5 participants in any relevant group and no individual participant's data can represent more than 25 percent of the total on a weighted basis, to avoid any risk of transparency in that grouping;
- That all information exchange include only historic data (i.e., 1 year or older) such as historic and aggregated production, sales, stock levels. No current or future pricing information shall ever be exchanged.
- That the information exchanged is NEVER accompanied by commentary or recommendations as to market conduct.

# APPENDIX B

## WHAT TO DO IN CASE OF A DAWN RAID, OR REQUESTS FOR INFORMATION FROM ANTITRUST AUTHORITIES ?

**Instruction for Dawn raids** :

- IMMEDIATELY, inform your legal department and/or your Company CEO or Country Manager;
- Request investigators to await arrival of company's lawyer
- Examine scope of investigation stipulated in the investigators search warrant, and ensure the raid stays within this scope;
- Accompany inspectors at all times and be courteous. Be aware of the company's duty of active cooperation;
- Do not destroy any documents;
- Copy the documents required by the inspectors twice (one copy for the legal department, and one copy for the inspectors);
- Do not "chat" but be aware of inspectors' powers to ask for on the spot explanations;
- Take extensive notes of all questions and conversations from inspectors

**For USA** :

**Responding to an FBI Search warrant:**

- IMMEDIATELY, inform your legal department and/or your Company CEO or General Manager
- Request identification and notify the agent in charge that you are represented by counsel
- Obtain a copy of the search warrant and provide it to counsel
- Do not interfere with the search or attempt to destroy or delete documents (if you do, this can constitute the separate crime of obstruction of justice)
- Do not idly chat or give on the spot explanations to the agents – you are free to speak to them, but without counsel present you should any statements you make will be used against you.
- Request an inventory of any items removed from the company
- Take careful notes of everything said

**Responding to FBI Subpoenas or Other Legal Process :**

- If anyone attempts to serve a subpoena, summons, or other legal document to you, notify your in-house counsel immediately
- Do not agree on behalf of the company to accept any document or consent to receive anything from the agent or process server

Simply ask the agent or process server to wait until counsel or another company official arrives.

## APPENDIX C

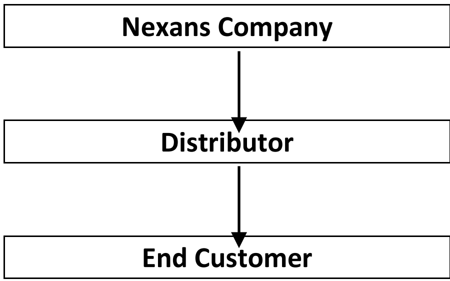
## ANTITRUST GUIDELINES FOR DISTRIBUTION CONTRACTS

These guidelines aim at assisting you in determining the lawful types of restrictions on your distributor customer that you may consider negotiating in contracts (i) in Europe, (ii) in the US, (iii) in other countries, so as to increase the promotion of Nexans products on the market. But you will always need to contact a legal advisor in order to ensure the contract properly reflects the permissible types of clauses, especially where the contract deviates from the standard Nexans contract.

# I. Types of Distribution Contracts

### a) Simple Distribution Contract

First, a simple distribution contract is a contract between a manufacturer and a company that will sell the manufacturer's product without much interference by the manufacturer towards the distributor's strategy on customers or the territory.



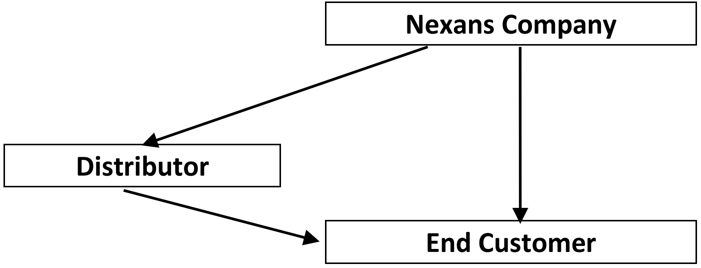

For such simple distribution contracts, the relationship is only a vertical one and less stringent rules on competition law will apply to any proposed restrictions.

Nevertheless, any restrictions imposed on distributor, even a simple one, will have to be carefully studied, as the distributor could also distribute competing products from Nexans' competitors. A restriction on the distributor may therefore also affect the competition on the market from the other competing products.

You will find below in section IV) A) details as regards "not permitted" and "permitted" restrictions in such a contract.

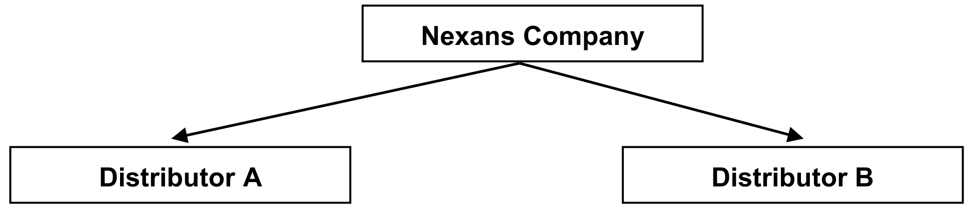
### b) Competing Distribution Contract

In other cases, distributors can be seen as direct competitor in the sense that Nexans may also distribute its own products to customers on the downstream market, as shown in the following graph :




Under competion rules, such an agreement between Nexans and the Distributor is considered to remain a vertical distribution agreement (and therefore not between competitors) so long as the distribution relationship between Nexans and the Distributor is **one-way only.** One way only means that the supply chain flows in one direction only – the Distributor distributes Nexans products, but Nexans does not distribute Distributor products. As a Competing Distribution Contract is still seen as a vertical agreement, restrictions may be permitted. However, much like the supply chain direction, the restrictions must not be reciprocal and must be reviewed according to the rules on non permitted restrictions as discussed below.

**c) Trilateral Distribution Contract – not recommended**




Finally, an agreement could be between three parties, Nexans and two different distributor companies (which are not within the same group of companies). Such an agreement raises several antitrust issues and is **highly discouraged and requires prior legal signoff before being signed. Any such arrangements must be discussed with your Legal Advisor.**

## II. Prohibited clauses in Distribution Agreements: Hard Core Restraints

### A) Distribution contracts in the European Union and European Economic Area Non Permitted and Permitted Restrictions

In Europe, certain restrictions in vertical agreements are always prohibited. These types of restrictions are called not permitted restrictions in these guidelines.

| HARDCORE RESTRAINTS | RESTRICTIONS NOT PERMITTED | RESTRICTIONS PERMITTED |
|---|---|---|
| Passive Sales | Nexans may not prevent the distributor from fulfilling an order of a customer from another territory where the customer seeks out the distributor<br>*Ex : Distributor appointed to France may not sell to any customer located in Germany* | Nexans may prevent the distributor from actively seeking out customers outside of his appointed territory<br>*Ex : Distributor appointed to France undertakes to not actively promote, advertise or otherwise seek customers located in Germany* |
| Retail Price Maintenance | Nexans may not force the distributor to sell Nexans products at a particular price<br>*Ex : Distributor shall distribute Product at a price of 150 Euros per meter.*<br>*Any sale below such price shall be considered breach of contract* | Nexans may recommend a price<br>*Ex : Nexans suggested price for Product is 150 Euros per meter.* |
| Non-Compete Clause/Exclusivity | Nexans may not have an exclusive relationship or non-compete obligation with the distributor that lasts longer than 5 years in Europe<br>*Ex : an exclusivity contract which automatically renews every 3 years.* | Nexans may have an exclusive relationship or non-compete obligation with the distributor for less than 5 years.<br>*Ex : Distributor agrees not to distribute competitor products for a period of 4 years from date of signature of the contract* |
| Customer & Territory Allocation | Nexans may not restrict to which customers and/or territories a distributor may sell unless under an approved distribution scheme.<br>*Ex : Distributor may not sell Product outside of the Territory* | Nexans may restrict to which customers or territories a distributor sells provided the distribution scheme is approved by a competition lawyer**.<br>*Ex : Distributor appointed in France shall sell only in France.*<br>*Distributor appointed in Germany shall sell only in Germany*<br>*** provided complies with rule on Passive Sales, listed above* |

## A. Market Share

Aside from the non permitted restrictions listed above, other restrictions may be permitted provided the combined market share of Nexans and the Distributor is low on the market for the products.

The first step in evaluating a distribution contract is the **market share**. Market share is calculated by taking the **products in question** and the **territory in question**. The market share of both the Nexans and the Distributor must be estimated using your best information.

- **Market Share below 15%**

  If the combined market share of Nexans and Distributor is below 15%, all restrictions other than Non permitted restrictions listed above are permitted in the distribution contract.

- **Market Share of Nexans ans of Distributor is below 30%**

  In general, so long as the market share of Nexans and its Distributor is each below 30%, most restrictions in the agreement will be allowed, such as exclusivity, suggested prices, territorial allocation, customer allocation, and non-compete obligations under 5 years, as discussed above in the Permitted column. Again, Non Permitted restrictions are forbidden.

  If there are no hard core restrictions in the agreement, any other restrictions in the distribution agreement are **presumed to be valid**. This does not exclude the possibility that occasionally the r erstrictions could still lead to an anti-competitive effect and so the distribution agreements where the market share is close to 30% should be approved by a competion law expert.

- **Market Share above 30% - prior legal approval needed for any proposed restrictions**

  If the market share of Nexans or of the Distributor, or combined, is above 30%, some restrictions may be included in the distribution agreement in order to create an efficient and beneficial distribution agreement, especially within the context of a larger distribution system. **However these restrictions will need to be individually carefully assessed by Nexans Legal Department to ensure full compliance.**

## B. Distribution contracts in the United States

In the United States, most restraints will be allowed in distribution contracts. Certain restrictions on price, such as the maximum or minimum price for the product to be sold at, may be allowed provided that Nexans and the Distributor have relatively low market shares. Unlike in the EU, there is no set definition of the permissible market, but a permissible market share would be under 30%, and, certain restrictions may be possible in some cases if the individual market share is below 50% but this will require a prior legal analysis.

In particular, in the United States, it may be permissible to indicate the price at which a product must be sold by a distributor. Other restraints will also be permissible, such as exclusivity, territorial restrictions, and customer and channel restrictions. Please contact your legal advisor to receive clearance for such restrictions.

## C. Distribution contracts in other countries

Outside of the US and the EU, it is recommended to check with your Legal Department regarding competition rules for tailored advice relating to your contract. However, in generally, using the guidelines for the EU will be acceptable. In some countries, the restrictions may be more like the guidelines for the United States.