

# AM/NS INDIA

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## COMPETITION COMPLIANCE GUIDELINES

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### 1. INTRODUCTION

ArcelorMittal Nippon Steel India Limited (“the Company” or AM/NS India”) works in highly competitive industries, which requires it to compete vigorously for its customers. Most countries in which AM/NS India does business have competition laws, and trade regulations designed to protect competition and consumers, not competitors. In accordance with AM/NS India’s Code of Conduct, AM/NS India is committed to compliance with all applicable laws and regulations including those relating to competition.

These Competition Compliance Guidelines<sup>1</sup> (“Guidelines”) prohibit any conduct which violates, or which might create the appearance of violating, the underlying principles of competition laws as set out herein. The information contained herein will provide you with guidelines you must follow in your day-to-day business practices to prevent or reduce competition risk for you and AM/NS India, and to ensure full compliance with the law.

AM/NS India, its affiliates and their officers and / or employees (together their “Representatives”) must adhere to all applicable laws at all times irrespective of whether they have had legal training or not. All Representatives must, regardless of level, understand and strictly implement these guidelines and no Representative shall act contrary to these guidelines. Non-compliance with these guidelines will result in (i) disciplinary action being taken against the violator and/or (ii) termination of the violator’s position with AM/NS India.

These guidelines explain the basic principles of competition law. Additional information can be found in the annexures to these guidelines. These guidelines do not deal with specific rules applicable to mergers & acquisitions, IP licensing or State Aid.

**If in doubt advice should be sought from AM/NS India’s Legal Department.**

### 2. WHY IS COMPETITION LAW SO IMPORTANT?

**Fairness:** Competition laws seek to ensure that businesses and companies compete fairly with one another. This encourages enterprise and efficiency, creates a wider choice for consumers and helps reduce prices and improve quality.

**Lower prices:** The simplest way for a company to gain a high market share is to offer a better price. In a competitive market, prices are pushed down. Not only is this good for

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<sup>1</sup> For the purposes of these guidelines the term “competition” is used in place of “antitrust” as these terms are generally used interchangeably

consumers - when more people can afford to buy products - it encourages businesses to produce and boosts the economy in general.

**Better quality:** Competition also encourages businesses to improve the quality of goods and services they sell in order to attract more customers and expand market share. Quality can mean various things: products that last longer or work better, better after-sales or technical support or friendlier and better service.

**More choice:** In a competitive market, businesses will try to make their products different from the rest. This results in greater choice so consumers can select the product that offers the right balance for them between price and quality.

**Innovation:** To deliver this choice and produce better products, businesses need to be innovative, for example in their product concepts, design, production techniques and services.

**Better competitors in global markets:** Competition helps to make companies stronger thus enabling them to compete better against competitors.

### **3. BACKGROUND**

Competition laws regulate conduct that affects or seeks to affect the normal economic effects of demand and supply in a free market on such matters as price, volume of production, marketing territory, sources of supply and channels of distribution. Competition laws apply to all economic activities taking place within or having an effect in a country. It is therefore possible that third country legislation may apply and all Representatives should familiarise themselves with such laws as may be required.

Whilst certain prohibitions are clear and unmistakable, this is not the case in all circumstances. AM/NS India and its Representatives shall at all times form their own commercial decisions based on its best interests, independently from any understandings or agreements with competitors.

The underlying principles of competition laws prohibit any kind of understanding or agreement between competitors regarding pricing, conditions of sale, strategy, division of markets, allocation of customers, suppliers, types of goods/services or territories, collusive tendering or any other activity that restrains competition and could be harmful to the

general economic interest of consumers. No Representative shall make any agreement with its competitors regarding prices, terms of sale, strategy, division of markets, allocation of customers, suppliers, types of goods/services or territories, collusive tendering or any other activity that restrains competition.

Breaches of competition laws can result in significant administrative, criminal and/or civil penalties for both AM/NS India and its Representatives, including sizeable fines: Penalties for breach of competition laws can in certain jurisdictions amount to up to 10% of the worldwide turnover of the group or twice the gain or twice the harm derived from a violation. The amounts often depend on the type/gravity of violation and the duration of the infringement. In case of recidivism, the fines can be significantly increased.

In addition, in certain jurisdictions, such infringements can expose individuals to prison terms of up to 14 years. Furthermore, competition law violations can lead to private damage actions that allow private parties (e.g., customers, suppliers and/or competitors) the ability to recover damages caused by unlawful conduct up to an amount equal to three times the amount of proven damage plus fees.

Additional sanctions such as the disqualification of a company's directors and restrictions from participating in public tenders may also apply.

In summary, the various sanctions and financial and non-financial consequences can severely damage the reputation of a company in the marketplace and thereby negatively impact a company's business – it is therefore imperative that all competition laws are complied with at all times.

#### **4. COMPETITORS**

Arrangements, understandings or agreements between two or more competitors regarding their behaviour towards pricing or other terms of trade, commercial policies, customers or business pursuits commonly trigger competition law issues. Such issues can also affect arrangements between joint venture parties which are competitors with respect to business outside of that JV and companies in which minority interests are held (see dedicated Q&A in Annexure 3). "Competitors" means independent companies or groups of companies, which offer - or are capable of offering within a reasonable period of up to 2/3 years - the same or similar products or services to those offered by AM/NS India and

all its subsidiaries. Agreements between companies controlled by the same ultimate beneficial owner(s) are not caught by this prohibition.

With Competitors:

<b>[X] DO NOT</b> make agreements on price (including agreements on price components, e.g. surcharges, rebates) or other terms of trade
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<b>[X] DO NOT</b> agree to allocate markets, customers, geographic products or responses to tender
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<b>[X] DO NOT</b> agree to "not attack"/not to compete independently against each other
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<b>[X] DO NOT</b> agree to boycott suppliers or customers
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The above prohibitions apply even where there is no formal (written or oral) agreement. "Agreements" may be inferred from circumstantial evidence (concerted conduct) and include any cooperative or coordinated conduct between competitors that replaces their independent action. Such actions are not permitted even where there is no or little effect arising out of the concerted or agreed practice.

These prohibitions are called "hard core" or "per se" infringements and apply even where the companies involved in the end did not apply the content of such arrangement. The mere existence itself of such an arrangement constitutes a violation and such prohibitions apply to all companies. No defences are available (other than as set out below) and as mentioned above the penalties can be significant. Even one way and/or one time /occasional communications are caught. The principle is that independent behaviour must be the norm – any concerted practice between competitors, even if not based on specific agreements, is strictly forbidden.

In addition to the above hard core infringements, any agreement, practice, arrangement or understanding with a competitor is unlawful if it has the effect of substantially preventing or lessening competition in a market. There are a small number of exceptions that may apply to the above prohibitions such as technological efficiencies and other pro-competitive gains, which could outweigh the anti-competitive effect; all these are very fact specific. In these cases, a defence might be available; however, the onus is on the company to prove an exemption.

The principle of independent behaviour also prohibits any exchange of sensitive business information with competitors. This applies regardless of whether exchanges are unilateral, bilateral or multilateral, whether frequent or isolated. The concern is that even without any agreement, exchanges of sensitive business information will impact market behaviour and therefore affect competition.

The risks around collusion are complicated by the fact that common economic pressures apply to all competitors in the same market often producing parallel conduct in the marketplace. While this parallel conduct may well be entirely lawful, it regularly attracts the attention of competition authorities and may trigger an investigation, in particular where the conduct is accompanied by evidence of communications and contacts between and among competitors. It is therefore of the utmost importance to avoid any contact with competitors that might infer collusion or exchange of information between parties.

Contact with competitors should always be conducted at all times as if in the public view so that no questions /doubts can be raised as to the intent or outcome of such contact with competitors.

Representatives:

<b>[X] MUST NOT</b> have with competitors that could result in agreements or concerted conduct being inferred, whether oral or in writing
<b>[X] MUST NOT</b> exchange sensitive information (including price, components of price, commercial terms, customer/supplier information, capacities, production volume, commercial strategy) with competitor, including during trade association meetings

Please note that customers and suppliers of AM/NS India may also be competitors, it is not unusual for the group to purchase products and/or services from, or supply AM/NS India products and/or services to, competitors. In this situation, if the customer /supplier is also a competitor horizontally (in the same market) and/or vertically (in a downstream / upstream level):

<b>[✓] DO</b> exchange and discuss only information which is strictly necessary to conclude the commercial relationship at hand (i.e. price, product/services specifications, delivery and application terms and conditions)
<b>[X] DO NOT</b> request, or respond to a request for goods or services, or an offer of goods and services from a competitor unless there is a genuine intent to enter into a specific commercial relationship.

[X] <b>DO NOT</b> exchange or discuss commercially sensitive information beyond that information which is strictly necessary for concluding the specific commercial relationship at hand
[X] <b>DO NOT</b> exchange or discuss with a competitor (that also acts as customer or supplier) detailed information about other offers received from other (internal or external) suppliers and/or offered to other (internal or external) customers
[X] <b>DO NOT</b> discuss/agree on pricing regarding the market where Parties compete and/or at downstream/upstream level
[X] <b>DO NOT</b> prohibit or limit competition between parties at a downstream/upstream level
[X] <b>DO NOT</b> include vertical restrictions relating to resale prices or territorial or customer allocations in your arrangements with customers and suppliers unless signed off by legal counsel

Please refer to section below on business conduct and Annexure 1 on trade association meetings for additional guidance.

## 5. SUPPLIERS, CUSTOMERS, DISTRIBUTORS

Although collusion between competitors constitutes the most obvious violation of competition laws, agreements with customers, suppliers, or distributors can also trigger issues with competition laws (vertical restraints). A thorough analysis of the market context and circumstances is required to assess whether such restrictions could benefit from certain exemptions or would be prohibited before being included in any agreement.

The following would likely be found to be unlawful where they have the effect of substantially preventing or lessening competition in a market and no exemption applies:

- setting your customer's pricing policies (e.g., minimum or fixed resale price maintenance, binding recommended prices which are enforced by sanctions, threats or promises, discounts, payment terms, minimum or maximum volumes, profit margin or any other trading conditions for business with third parties)
- market partitioning by allocating specific sales territories (e.g., export restrictions) or customers/suppliers (excessive/long term exclusivity arrangements; sole supplier status etc)
- prohibition of passive sales (i.e. responding to unsolicited orders from) outside a sales territory allocated to a trader or a reseller (parallel trade)
- prohibition of selling competing products imposed on a trader or reseller



The AM/NS India's Legal Department should be consulted before concluding any arrangement with a supplier or customer which might have a negative effect on competition and/or grant any preferential or special right (whether in favour of a customer or supplier or AM/NS India).

## **6. DOMINANT POSITION OR MONOPOLY POWER**

Competition law also prohibits certain abusive unilateral conduct by "dominant" companies or companies having "monopoly power". "Dominance" means a position of economic strength which enables a company to prevent effective competition in a relevant market. "Dominant" companies are therefore subject to additional restrictions on their conduct. As a consequence, it is important to ascertain whether the AM/NS India company in question is to be considered as "dominant". This analysis can vary as between group entities and can change based on market conditions. "Dominance" may be found when companies have a high market share (generally 40+% in a specific product and geographic market, the exact threshold varying from country to country) in respect of a particular product or service and customers/suppliers are unlikely to switch to another product or service as a result of a small but permanent price increase. The determination of the relevant "product market" and the relevant "geographical market" is consequently an important step in the determination of a dominant position.

It is important to note that being in a dominant position is not illegal. It is the "abuse" of such market strength which is illegal and can lead to hefty sanctions. Behaviour is usually considered "abusive" where it is (i) "abnormal"/ "unreasonable", i.e. behaviour that cannot be explained by customary commercial behaviour and (ii) negatively affects competition.

Dominant companies are free to compete aggressively against their competitors for so long as that competition does not lead to foreclosures or an elimination of competition that would ultimately negatively impact consumers. Conduct that is perfectly legal for a firm that is not "dominant" may be unlawful ("abusive") when engaged in by a firm that is "dominant".

The following are examples of prohibited behaviours for dominant companies:

- Predatory pricing - proposing below cost prices with the intent of reducing competition/eliminating competitors, which could lead to prices increases once competition was eliminated

- Selection / rejection of customers / suppliers (refusal to supply) - in order to damage their businesses where no alternative can be easily found by the purchasers. Refusal to supply is, however, permitted when justified (unavailability of material, breach of contract such as non-payment by customer, absence of creditworthiness)
- Excessive Prices or other discrimination between similarly situated customers / suppliers without justification. Price differences can be justified due to, for example, remoteness of markets resulting in higher cost of transportation or volume discounts when increased volumes lead to effective cost reductions in production or transportation
- Rebates / discounts not linked to efficiency gains and identifiable cost savings, for example, fidelity discounts / loyalty rebates, whereby companies compensate customers for exclusive or quasi-exclusive relationships leading to market foreclosures / lock-out of competitors. However, quantity rebate systems linked solely to the volume of purchases made from a dominant company are generally considered not to have the foreclosure effect and do therefore not infringe competition laws
- Engaging in exclusionary acts, acts that impede or prevent a firm from entering into or expanding within a market, like requiring or inducing a supplier or customer not to deal with a competitor or refusing to supply scarce goods to a competitor when the supply of such goods is economically feasible;
- Tie-ins and bundling of product ranges that have no cost saving effects and where the company is dominant in one of the products, i.e. when a dominant supplier of one product requires a customer always to buy a second product to the detriment of competitors (unless beneficial to the customer);
- Refusal to give a competitor access to an “essential facility” when it is economically feasible to do so, i.e. to an infrastructure or resource that cannot reasonably be duplicated and without this access, competitors cannot reasonably provide goods or services to their customers.

Severe competition penalties are applied to all such types of violations as set out above.

## **7. BUSINESS CONDUCT- PROTECT YOURSELF AND THE GROUP**

Whilst there are many competition prohibitions to avoid, conducting day-to-day business in accordance with the following can reduce the risk for both yourself and AM/NS India and its subsidiaries:

<p>[✓] <b>DO</b> be accurate and clear in what you write in all internal and external correspondence, emails and memoranda about the businesses in which AM/NS India competes, competition, customers, suppliers and competitors. Perfectly lawful conduct can become suspect because of a poor choice of words. Careless and inappropriate language in company communications can have an extremely adverse effect on the company's position in a competition investigation or lawsuit. It is easy for what we write to be taken out of context and provoke incorrect inferences about our commercial conduct and/or the markets in which we compete</p>
<p>[✓] <b>DO</b> use clear, concise and complete language and avoid hyperbole and exaggeration</p>
<p>[✓] <b>DO</b> limit memoranda, e-mails or letters dealing with the subject of competition or competitive prices to statements of fact and always provide the source of the information</p>
<p>[X] <b>DO NOT</b> overstate AM/NS India's market position and/or its market strategy</p>
<p>[X] <b>DO NOT</b> write inter-office memoranda in a way that could infer AM/NS India is engaging in predatory anticompetitive activity, that there is some sort of collusive understanding among competitors or that AM/NS India is otherwise acting with anticompetitive intent</p>
<p>[X] <b>DO NOT</b> make false or disparaging remarks about competitors</p>
<p>[✓] <b>DO</b> carefully prepare meetings with competitors and agree attendance with the head of the relevant business involved and with the full consultation/involvement of the legal department</p>
<p>[X] <b>DO NOT</b> (other than with prior consultation of the AM/NS India Department) enter into joint purchasing and/or joint selling arrangements as these can affect competition</p>
<p>[X] <b>DO NOT</b> enter into Benchmarking (see Annexure 2) which can affect competition</p>
<p>[X] <b>DO NOT</b> discuss with a competitor the state of the market in which you operate or the perception thereof</p>
<p>[✓] <b>DO</b> protect at all times the confidential business information of AM/NS India</p>
<p>[✓] <b>DO</b> avoid individual conversations with competitors</p>
<p>[X] <b>DO NOT</b> exchange or reply to enquiries from competitors regarding current price information as this alone may be found unlawful</p>
<p>[X] <b>DO NOT</b> confirm with any competitor price information that you may have received from another source (i.e., a customer / a supplier)</p>
<p>[✓] <b>DO</b> obtain all information for your market intelligence data from lawful sources and never request confirmation regarding this information from competitors</p>

**[X] DO NOT** discuss or exchange commercially sensitive information or commercial policies with a competitor (irrespective of whether or not such information is public knowledge or if it is necessary to justify a claim of any kind).

**[✓] DO** make it clear at all times to your competitor that you cannot and will not discuss competitively sensitive information

**[✓] DO** immediately object to any discussion that relates to any of the aforementioned, continue only if the objectionable discussion ceases immediately, and when you are comfortable the discussion has resumed a proper direction

**[✓] DO** divorce yourself immediately and deliberately from any conversation that veers toward any of the above listed subjects or any matter related to competition between competitors. Note that competition agencies generally presume that when a company receives commercially sensitive information from competitors (be it orally in a planned or unplanned meeting, by mail or electronically) it has accepted the information and adapted its market conduct accordingly unless it responds with a clear statement that it does not want to receive such data.

**[✓] DO** immediately report to AM/NS India's Legal Department any improper discussion with, or contact by, a competitor

## **8. INVESTIGATIONS**

Competition authorities and government agencies have wide powers to launch an investigation and request information from companies and/or to interview officers and employees. An investigation in this context means any non-routine enquiry by a law enforcement agency related to corporate activities of AM/NS India or its subsidiaries regarding possible criminal or civil violations of any laws or regulations, and in particular in this case regarding possible violation of any competition laws.

These authorities may conduct at any time unannounced on-site inspections ("dawn raids") in any premises of AM/NS India and/or private cars or houses.

The "Dawn Raid" Guidelines (see Annexure 5) should be followed in case of on-site inspections conducted by competition authorities.

It is AM/NS India's policy to cooperate in all appropriate ways with all authorized governmental authorities in connection with any investigation conducted by them in the proper performance of their duties.

It is important that any non-routine government investigation, whether competition related or otherwise, be coordinated within AM/NS India and handled in a prompt and orderly manner.

**[✓] DO** immediately inform AM/NS India's Legal Department and AM/NS India's General Counsel when an employee is approached by any person or authority conducting a government investigation regarding possible violations of competition laws

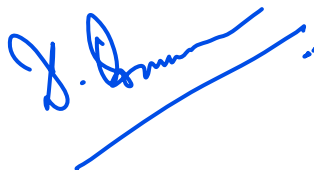
**[✓] DO** immediately inform AM/NS India's Legal Department where there are allegations, be it from competitors, customers, suppliers or any other source, that AM/NS India is involved in illegal behaviour

**[X] DO NOT** destroy or alter any AM/NS India record or file during a government or internal investigation. The destruction of any AM/NS India records or files should always be completed in compliance with AM/NS India's policies and procedure on the retention of documents and records

**[X] DO NOT**, without the prior approval and review of AM/NS India's Legal Department, furnish information concerning AM/NS India's business, whether oral or written, as it is imperative such information is provided in a complete and correct form and in a coordinated manner.



**Compliance Officer** is Mr. P. Ashok Kumar, VP, Legal. Email ID: [ashok.kumar1@amns.in](mailto:ashok.kumar1@amns.in)



**Approved by:** Mr Dilip Oommen, CEO

**ANNEXURE 1: TRADE ASSOCIATION, PROFESSIONAL ASSOCIATIONS AND  
OTHER INDUSTRY GATHERINGS**

Trade associations, professional associations and other industry gatherings perform useful and legitimate functions and are appropriate under certain circumstances.

These meetings, however, provide opportunities for both formal and informal gatherings of competitors and, consequently, expose each person and company present to a greater risk of an inference of collusion if such gatherings are followed by parallel action.

Please note that decisions of trade associations of current or potential competitors (including in the case where non competitors are also represented in these trade associations) are regulated by competition law on the same basis as agreements, arrangements or practices between competitors and the principles set out in the Guidelines apply equally with regard to trade and other associations of competitors.

Face-to-face meetings generally involve a higher risk of potential competition law infringements. This means that no exchange, disclosure or discussion of information shall include prices and/or price parameters such as base prices, extras, surcharges, transport costs and customer discounts, or production quotas, even if the information could in principle be considered to be highly aggregated. Even exchanges regarding general but current tendencies in the market (e.g. capacity, utilisation, lead times, status of order books) can be illegal.

The fact that certain pieces of information are contained in presentations given during trade association meetings does not entitle meeting participants to freely discuss this information further or comment on it.

Accordingly, AM/NS India employees may only join trade associations where (i) management has determined that the association serves an important and proper purpose and have approved the membership and (ii) the trade associations practices have been approved by the Legal Department.

In any event, trade associations, professional associations and other industry gatherings must have a written commitment to comply with antitrust law (e.g. a code of conduct or equivalent guidelines). In addition, procedures must be in place to ensure that this commitment is put to practice, by for example: (i) having the trade association appoints its own competition lawyer

to provide advice on its activities and assist in all meetings and relevant discussions and/or (ii) having participants confirm at the beginning of each meeting to comply with antitrust law. Membership in trade associations, professional associations and other industry gatherings should be periodically reviewed by management. When attending trade association, professional associations and other industry meetings sanctioned by AM/NS India, the Guidelines with respect to contact with competitors must be strictly followed.

In addition, the following special precautions should be taken:

<input checked="" type="checkbox"/> <b>DO</b> consult with local management before joining a trade association, professional associations or other industry gatherings and obtain its required approval
<input checked="" type="checkbox"/> <b>DO</b> insist on a draft agenda well in advance of each meeting setting out what will be discussed with sufficient clarity to assess appropriateness of the discussion in light of the audience. Only participate based on a clear agenda.
<input checked="" type="checkbox"/> <b>DO</b> contact AM/NS India's Legal Department in case of doubts about upcoming trade association, professional association and other industry meetings well in advance and with enough information to confirm the purposes of the meeting and who will attend, review the agenda, and assess whether AM/NS India representatives should attend as well
<input checked="" type="checkbox"/> <b>DO</b> remember that industrial self-regulation is not well regarded by antitrust authorities
<input checked="" type="checkbox"/> <b>DO</b> strictly follow the agenda – its use as an accurate record of the purpose and subject matter of the meeting is undermined by discussion of off-agenda items
<input checked="" type="checkbox"/> <b>DO</b> ensure that minutes of the meeting are taken in draft form and thereafter reviewed before being finalized
<input checked="" type="checkbox"/> <b>DO</b> promptly review minutes for accuracy especially the content relating to you and/or AM/NS India. If minutes are not accurate, voice your objection immediately and in writing. <b>DO</b> ensure that the corrections are incorporated.
<input checked="" type="checkbox"/> <b>DO NOT</b> discuss prices, other terms of trade, customers/suppliers, bids, or plans or other commercially sensitive information
<input checked="" type="checkbox"/> <b>DO NOT</b> discuss the state of the market in which you participate or the perception thereof with any competitor at the meeting
<input checked="" type="checkbox"/> <b>DO NOT</b> engage in side discussions at the trade association meeting or at ancillary social events or meals by yourself with one or more representatives of competing companies on commercially sensitive information – there is strength in numbers so stay with other colleagues of AM/NS India where possible.
<input checked="" type="checkbox"/> <b>DO NOT</b> provide AM/NS India commercial data or any other information (or agree to receive data or information) to a trade association or other industry gathering where that

trade association or other industry gathering prepares industry statistics, unless this has first been vetted and approved by the Legal Department

**[X] DO NOT** participate in discussions involving commercially sensitive information and if an inappropriate topic arises and/or commercially sensitive information is provided during a trade association meeting, you must immediately stop the conversation and point out that it is AM/NS India's policy to comply with competition law. If the discussion persists, immediately leave the meeting, where possible ensuring your objection and departure have been recorded. Immediately inform AM/NS India's Legal Department of the incident and your actions in writing, and determine with the help of the Legal Department what additional steps need to be taken

**[✓] DO** familiarise yourself with these guidelines and attend related training prior to attending trade association meetings

Even a passive presence during inappropriate discussions can lead to an adverse inference of collusion or other intentional misconduct being attributed to AM/NS India. The following topics may legitimately be discussed and/or developed at trade association meetings:

- Legislative initiatives at local, state, national or supra national levels
- Industry-related public relations or lobbying initiatives (e.g. products/ services concerns, industry image)
- Non-confidential technical issues relevant to the industry such as health and safety standards
- Technology in general, such as characteristics and suitability of a particular technology (but not a particular company's adoption of specific technology solutions)

Information sharing can raise competition concerns where it reduces the strategic uncertainty in the market and changes the incentives for competitors to compete, thereby enabling companies to coordinate their market strategies and/or otherwise restrict competition. Thus, any exchanges, disclosures or discussions of information should adhere to the following rules:

- The exchange, disclosure or discussion of information is permitted whether:
  - It is historical (for individual company data older than 12 months)
  - It is highly aggregated. Be conservative when qualifying information as being highly aggregated, e.g. there must be data from a minimum of 5 different participants in a particular market
  - It is related to regulatory or other non-commercial aspects (e.g. customs regulations, safety regulations, environmental regulations, Anti-Dumping / Anti-Countervailing measures) is permitted



- The exchange, disclosure or discussion of information is forbidden insofar as it allows - alone or in combination with other generally available information - drawing conclusions in respect of the competitive situation and actions of individual competitors. This will generally not be the case where the information is historical or merely concerns a topic that is not commercially sensitive
- Outlooks and forecasts are prohibited with the exception of highly aggregated information or, if the said outlooks and forecasts merely concern a topic that is not commercially sensitive
- The exchange, disclosure or discussion of sales prices for products/services, or margins, or output (incl. production capacity, utilization rates and inventories) is forbidden unless the information is historical or of a highly aggregated nature
- The original source of the information (public/private) is not determinative of whether it can be shared. The fact that a given piece of information is publicly available does not justify that it is freely exchanged, disclosed or discussed between trade association members.

**ANNEXURE 2: BENCHMARKING AND MARKET INTELLIGENCE****1. Benchmarking**

Benchmarking consists of the comparison and, in most cases, an exchange of information between companies in order to measure/evaluate companies' performance. This can relate to products, services, production or other organizational processes and procedures, environmental or technical performance, purchasing processes, etc. The aim is to compare a company's performance against best practices in the sector/industry, to extract learning, identify gaps, and develop best practices and areas for improvement to achieve better performance and efficiencies.

One can argue that benchmarking should lead to increased efficiency, better products/services and increased competition and therefore can be beneficial to consumers. However, some types of benchmarking can also lead to serious restrictions of competition and would be considered as illegal and thereby can lead to high fines imposed on companies and/or individuals and even constitute criminal offenses leading to imprisonment.

The topic is complex and legislation and enforcement from competition authorities is evolving towards tougher rules and enforcement. Therefore, involvement from the outset of the Legal Department is important.

Benchmarking with competitors of AM/NS India is in principle NEVER permissible other than:

- through an outside consultant (which could also be a trade association for example). The institution will serve as black box and will store information in an appropriate form
- involving only technical or non- market/strategy related information (e.g., H&S or environment) and consequently, is without impact on the competitive behaviour in the market.

Nevertheless, even in these latter cases, strict rules apply.

All exchanges of information between competitors regarding market prices and/or other terms or conditions of sale, plans to increase/decrease/maintain capacity or production, market positions and strategies, specific customers could lead to illegal coordination between competitors and/or reduce uncertainty about the future conduct of competitors and

thus reduce the likelihood of independent competitive behaviour. These should be excluded.

In addition, any exchange of recent individualised competitively sensitive information or concerning future intentions is per se illegal. In case where a benchmark with recent information is envisaged, such exchange shall mandatory pass through an outside consultant (black box), which will consolidate / will aggregate the gathered data in order to avoid the disclosure of any individual recent information.

Exchanging information on costs is also sensitive in particular if costs are an important element of pricing. Whether certain cost information can be shared depends on the percentage of the product's price that the costs under consideration represent. As this percentage increases, competition authorities become concerned that competitors, armed with knowledge of competitors' production cost structure and public information on price, could calculate each other's margins and directly or indirectly coordinate future prices.

Lastly, the information shall be disseminated carefully on a "need to know" basis. For example, while providing line production managers with information on the production costs of a benchmarking partner may enhance efficiency and competition, it is difficult to justify providing the same information to managers or staff involved in setting prices, which could produce anti-competitive results.

The exercise has to be:

- limited to what is required within the pre- defined scope of the benchmarking (which must be established carefully in compliance with competition law)
- voluntary and framed by a Non- Disclosure Agreement
- based on written guidance and processes developed in advance
- conducted in writing (avoid face-to-face meetings) and passed through an outside consultant

**[✓] DO** contact AM/NS India's Legal Department before engaging in any benchmarking exercise

If a site visit is organized in the context of a benchmarking exercise:

**[✓] DO** apply the basic rules for exchange of information between competitors

**[✓] DO** prepare a clear record of: (i) information that was exchanged between parties; (ii) meetings and discussions (minutes); and (iii) circumstances of exchanges (in the framework of benchmarking)

No agreement or even the appearance of an agreement on any future business conduct between competitors should result from a benchmarking exercise. There should be no discussion between the participants about the results of the benchmarking exercise, or common conclusions between competitors. AM/NS India must unilaterally decide how to use, and act upon, the information and conclusions received as a result of a benchmarking exercise.

In conclusion:

**[✓] DO** establish appropriate mechanisms and procedures to avoid prohibited exchanges

**[✓] DO** avoid any discussions or actions that could lead to or imply an intention to restrict trade/competition

**[X] DO NOT** exchange recent data (<1 year old), ongoing projects or forecasts or other information about future commercial intentions

**[X] DO NOT** discuss actions that could lead to or imply an interest in trade/competition restriction

## **2. Market Intelligence**

Market intelligence forms an essential part of functioning competition. It is not only a necessary requirement for efficient allocation of resources; it is also indispensable for developing sustainable and efficient corporate strategies. This holds particularly true for information regarding the competition and the competitors. It is precisely this information that encourages competition on the merits.

You can obtain market intelligence only from sources other than a direct contact with our competitors, such as commercial publications, marketing brochures, annual reports, websites, press releases and mass media, non-confidential version of filings / decisions with public regulators, analyst reports, market research reports, trade association publication or reports, etc.

Even if those sources do not give you as much information as you may want or need, you should **NEVER** go to our competitors for it. A direct contact with a competitor is not a legitimate source of market intelligence.

Equally, you should not encourage customers or suppliers to provide you with your competitors' prices or information on their commercial policy. If a customer or supplier happens to provide you with such information in the course of commercial negotiations, please keep a written record of the source of such information and the circumstances in which it was provided to you.

It is legitimate to receive market information from customers and suppliers, to ask and discuss how to improve the offer, to have indication(s) on the price level or target price to meet in order to win the contract. However, AM/NS India should not engage in systematic sharing of detailed competitors' offers with customers or suppliers and should not provide details obtained from suppliers to other suppliers. This can lead to inferences of organised exchanges or doubtful parallel conduct as well as breaches of confidentiality obligations.

Attending trade associations meetings also creates opportunities to obtain market intelligence. Please note that in this situation, the appropriateness of a particular exchange, disclosure or discussion of information depends on three core aspects: the topic, the timeliness of the information and its level of aggregation. Please refer to the guidance contained in the Annexure 1 regarding trade associations.

Trade associations or other third parties such as independent consultants, university research centres and other entities that are not competitors of AM/NS India may compile industry statistics based on company data (including commercially sensitive information) of individual members or participants. Such collation of Industry Statistics is often pro-competitive as it allows industry participants to make better informed choices to adapt their strategy more efficiently to market conditions.

Nevertheless, to the extent the collation of industry statistics involves the collection of commercially sensitive information from competitors, safeguards must be in place to ensure that the information does not flow and/or is not discussed, between the participants, and the resulting report sufficiently aggregates and anonymizes the data considering the market characteristics and type of information involved. General guidance is provided at

Annexure 4 on Collection & publication of statistical information by Trade Association Procedure.

Lastly, market intelligence can be obtained from other AM/NS India group companies. Our group is a vertically integrated company and generally information that is obtained legitimately from a competitor in the context of a commercial relationship by one AM/NS India business can be, subject to applicable confidentiality obligations, shared with another AM/NS India business active in an up- or downstream market.

Nevertheless, this internal sharing could also adversely affect competition in the up- or downstream market, in particular in situations of highly concentrated markets. Consequently, some precautions regarding the internal presentation of the information shall be taken (e.g. anonymizing the document). If you are in doubt with respect to what conduct would be appropriate in this specific case, contact the Legal Department for further guidance.

In any case, a legal entity that receives an offer must always make sure to comply with confidentiality obligations in that offer, which, for example, could prevent the receiving legal entity from sharing the offer with the other AM/NS India companies.

In conclusion:

<b>[✓] DO</b> obtain necessary market intelligence from public sources and NOT directly or indirectly from your competitor
<b>[✓] DO</b> keep written record of the source of any such information and circumstances in which it was provided to you
<b>[✓] DO NOT</b> meet with, or in any way correspond directly or indirectly (through a trade association, independent consultant or other third party) with your competitor in order to obtain non-public individualised information confirming the market intelligence

**ANNEXURE 3: BEING A DIRECTOR IN A BOARD OF A JOINT-VENTURE (JV) OR A COMPANY IN WHICH AM/NS INDIA HAS A MINORITY STAKE (MS)- RIGHTS AND OBLIGATIONS**

*JVs and MS can have negative effects on competition, either by reducing the shareholder's incentives to compete against each other (unilateral effects), or by facilitating collusion (coordinated effects).*

*As competition law protects competition, directors of JVs and MS should keep these risks in mind and work actively to avoid or mitigate them.*

- **What information should and can I receive from the JV/MS during or before the board meeting?**

As a board member you must keep yourself well informed on the undertaking's activities, review board packs provided, participate actively in board of directors' meetings, ask questions, apply considered business judgment and, where necessary, bring a matter to the board's attention.

You have a legal right to be provided with and access to information on the business dealings of the JV/MS and resources needed to adopt decisions in the best interests of the JV/MS.

Please request a copy of the shareholders' agreement, if any, and constitutive documents (example, Articles of Association) of the company before attending any board meetings in order to fully understand the powers of the board and the shareholders.

- **What interest should I represent when taking decisions as a board member?**

All decisions must be taken in the best interest of the JV/MS, on whose board you serve, while acting as a director of that undertaking.

A Director may incur personal liability for breaches of duty of professional care, duty of loyalty or for failure to satisfy other applicable legal requirements. So, act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the JV/MS (even if AM/NS India has appointed you).

Any scheme, action or decision against the interests of the JV/MS or against applicable laws, committed or supported by a board member, deviating from the action of a conscientious, honest and responsible director and normal business practices, could lead to civil and/or criminal liability for you. Any conflicts you encounter or questions that arise in that respect

while being on a board, should be raised with your line manager and/or the legal department, if there is no company secretary or suitable person within the JV/MS to assist, and you should be careful how you deal with confidential information if the matter is discussed with third parties. You might also be obliged to recuse yourself or abstain from transactions in which both the JV/MS and AM/NS India are a party. The Articles of Association, the by-laws and/or other laws will provide rules on how to manage conflict of interests.

- **Can I receive information / data regarding the activity of the other JV/MS shareholder(s)?**

As a board member, you should receive **only information which relates to the activity/operations of the JV/MS and which you need to fulfill your mandate as board member.**

If the other shareholder(s) is/are competitors of AM/NS India or its subsidiaries at any level, any receipt or exchanges of commercially sensitive information not strictly related to the JV/MS operations but related to the shareholders' competing businesses would be in breach of applicable antitrust laws

*If the other shareholder(s) is/are a customer/supplier of AM/NS India, the provision or exchanges of information between the shareholders could also negatively impact competition (e.g., if the information contains commercial details about transactions with competitors of AM/NS India which are also suppliers to the customer).*

It is therefore advisable not to exchange any information that relate to the business of the shareholders.

- **Can I provide information to the board regarding AM/NS India's strategies (market prices, production rates, marketing conditions ...)?**

**No, your discussion must be limited to the JV/MS strategy** in particular if competitors, suppliers or customers are also sitting on the board.

*You are in this board in order to ensure that the JV/MS activity is properly managed according to the direction of the board of directors.*

According to our own guidelines, AM/NS India's confidential information should only be shared outside AM/NS India on a 'need to know' basis and after following due process.



In addition, exchanges of competitively sensitive information about the AM/NS India activity with competitors will result in an infringement of applicable competition laws.

- **Can I develop a common commercial strategy with our JV/MS or influence the JV/MS's strategy to avoid a conflict with AM/NS India strategy?**

**This is only possible in very limited circumstances.**

**First, from a company law point of view**, you can only do so to the extent that you will be acting in the interests of the JV/MS and not disclosing confidential information of AM/NS India.

**Then, from a competition law point of view, a common commercial strategy can only exist between companies controlled by the same ultimate parent.**

Control means the legal or de facto power to exercise a decisive influence on the appointment of the majority of the directors or on the orientation of the policy / strategy of the company. There is an irrefutable presumption of control when it results from holding the majority (> 50%) of the voting rights attached to the issued share capital of the relevant company; unless control is specifically excluded (case of co-control for example).

**In order to not infringe applicable competition laws**, the development of a common commercial strategy with a co- controlled JV is possible only if the co- controlling shareholders put all relevant activities into the JV and do not continue to compete with the JV or continue to have material business upstream or downstream of that JV.

**In case shareholders and the JV are continuing to compete with each other in the same markets (geographic / product / customers),**

- You must strictly comply with these Guidelines i.e. only information regarding the commercial activity of the JV can be exchanged between the board members.
- The strategies of the shareholders and those of the JV must be determined and implemented strictly independently.

**A common commercial strategy between AM/NS India and a MS is impossible.** Every independent economic operator must determine autonomously the strategy, which it intends to pursue in the market.

- **Can I diffuse within AM/NS India and its subsidiaries the strategy developed/decided during the JV/MS board of directors?**

**When the strategy / commercial policies of the JV/MS are discussed within the board meeting, such information is principally confidential to the JV/MS:**

- The information is provided to the board members during the meeting in the interests of the JV/MS.
- As a general rule, all information provided in or for a board meeting is strictly confidential as long as this information has not become public and board members have to keep such information confidential. It should therefore not be shared with third parties, including with AM/NS India, which is with regard to the JV/MS: a third party. From a company law perspective, sharing this information could be a breach of a fiduciary duty if the information is confidential

Nevertheless, to enable AM/NS India to maintain its rights linked to its shareholding, you should obtain - in the absence of anything else – approval that the information discussed in the JV/MS board may be disclosed to shareholders. Disclose confidential information without this approval will result in a breach of a directors' duty in most jurisdictions.

- **How to act in a situation where the board of the JV/MS is going to adopt a resolution, which goes against the strategy/interests of AM Group?**

**You must act in the interest of the JV/MS.**

Consequently, you should only oppose (and in the case of a co-controlled JV, thereby block) the decision if it is not in the interest of the JV/MS.

*In the case of substantial disagreement relating to the direction or the strategy of the JV (deadlock situation) and/or MS, you should refer to the constitutive documents or shareholders agreement where these issues can be dealt with – for example with the requirement of certain approvals at the shareholders' level.*

- ***What is my role as board member?***

**You must exercise oversight and control over the management of the JV/MS, i.e.:**

- Promote the best interests of the JV/MS by providing general directions for the management of the business.
- Ensure compliance with all applicable laws, company documents and agreements including Shareholders' Agreement, Articles of Association, Share Purchase Agreement, and Commercial Agreements.

The board member's role in exercising effective control over the administration of the JV/MS is very important if you want to ensure that you cannot be held responsible when something goes wrong. In order to avoid any problem, it is important that you exercise your rights of access to relevant information.

Non-compliance by a JV or a MS can have an impact on the reputation of AM/NS India but can also expose AM/NS India and/or its representatives on a board, to financial risks/ (criminal/civil) liabilities / penalties etc. E.g., if the JV/MS infringes competition or anti-bribery laws, AM/NS India (as shareholder) and individual board members can be held criminally liable for illegal acts of the JV/MS, even if AM/NS India does not fully control it.

- **Can a competition authority require a copy of documents made in order to prepare a board of directors' meeting?**

**Yes, it can request copies of board documents and presentations prepared for board meetings.**

There are usually two situations in which such copies can be requested:

- When a submission is made to a competition authority in order to obtain clearance for a merger / acquisition / JV creation, a customary provision requires that parties must provide copies of all presentations reviewing/assessing the notified transaction and which were prepared by or for any members of the board of management, the board of directors, or the supervisory board, as applicable or other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted). The same rules are applicable to shareholders' meetings reviewing/analyzing the notified transaction.
- A similar request can also be issued during an investigation relating to anticompetitive practices or state aids.

To avoid incorrect inferences about the JV/MS conduct, board packs should follow the below guidelines (and board members should require that such guidelines are followed):

- Language should be clear, concise and factual and avoid risk of inferences about JV/MS's conduct and/or AM/NS India's conduct,
- Always provide the source and circumstances of all commercially sensitive information,
- Don't ever overstate JV/MS's market position or strategy,

- Avoid suggesting any impropriety or guilt,
- Avoid the exaggerated use of power words (e.g. “This program will ‘destroy’ competition” or “if we can accomplish this, we will have a ‘dominant position’” or “that a customer will ‘have no choice’ but to accept our terms” or “with this agreement, we prevent the entry of a new competitor”),
- no speculation as to the legal propriety or consequences of conduct,
- Avoid words that would falsely imply that a course of action was being taken by the JV/MS as a matter of “industry agreement” or “common practice”, rather than a decision by the JV/MS, based upon its own business interest.

*In case of questions or doubts, do not hesitate, to contact the Legal Department.*

**ANNEXURE 4: PARTICIPATION IN A SURVEY AND/OR COLLECTION & PUBLICATION OF INFORMATION PROCEDURE**

Many trade associations and/or third independent parties (like consultants, specialized press editors, industry gatherings...) provide services to their members/customers (and often to the public when the results are rendered public) by collecting and diffusing data on volumes or values.

Competition laws acknowledge that the collection and distribution of statistical or other data by trade associations and/or third independent parties is legitimate when are being complied with strict safeguards.

Thus, these undertakings and associations are entitled to receive sensitive information from their members/customers in order to issue market surveys and/or statistics. Nevertheless, they must follow minimum requirements and rules in order to comply with competition laws. Do not provide any data to trade associations and/or third independent parties without first verifying that the collection & publication process complies with competition law requirements.

This notice will help you to determine if the practices of collection and publication and/or circulation of information comply with the main applicable laws. Exchange of statistical data complying with these safeguards is unlikely to cause anti-competitive harm.

Nevertheless, do not forget that each publication has to be analysed according to their objectives and context and other specific rules could apply in some cases and/or countries and lead to certain exchanges of information being illegal even if the rules below are complied with from a competition law point of view. Be aware that the periodicity of the diffusion of information (frequency of diffusion, i.e. on a punctual or a yearly basis) could be an element considered in an investigation of the competition authorities. Be aware also that competition authorities will be evaluating whether sharing such data has pro or anti competitive effects.

In principle, the trade association and/or third independent party issuing these data are professional and should be aware of these general rules as well as local rules, which are mandatory. Nevertheless, it is strongly advisable to seek confirmation in order to avoid being in breach with competition law by negligence.

The ignorance of the law is not an excuse. In case of doubt, do not hesitate to contact your Legal Department.

## **1. MINIMUM RULES TO COMPLY WITH REGARDING THE COLLECTION OF INFORMATION**

- No data collection about the future (data highly confidential)
  - Do not accept to provide information about future volumes of production / delivery (as for example production forecasts, sales previsions ...) and/or future prices and/or elements of a future pricing policy (e.g., discounts, margins, terms of trade and rates, dates of change ...).
  - This information is highly confidential and such exchanges with competitors (including through a trade association and/or third independent parties) in all likelihood will be considered as anticompetitive.
  - According to competition law, all companies should be in a state of uncertainty as to their competitors' future behaviour.
  - If you face a particular situation where such information exchanges are supposed to take place, please contact your Legal Department before any action in this respect.
  
- Data collection shall always relate to a sufficient minimum number of operators
  - The number of participants in a survey / collection of statistical data shall be sufficient in order to avoid that companies can deduct their competitors' individual data.
  - Therefore, when it involves homogenous products, a minimum of five operators participating in the survey / statistical collection should ensure that data input remains anonymous.
  - In order to preserve the confidentiality of individual information shared with a trade association and/or a third independent party (like consultants, specialized press editors, industry gatherings...) AM/NS India requires that the "participants rule" be confirmed before participating in a survey and/or statistic collection.
  - Nevertheless, in case where this minimum of participants cannot be met, please contact your Legal Department in order to determine the risks involved when participating in such a survey/data collection with less participants or with imports data considered as participant.

- The involvement of only 3 participants can be acceptable in certain cases, depending on the local rules in the involved jurisdictions and context/markets involved.
- Data collection shall always be protected by a confidentiality clause
  - Information collectors must serve as “black box” and ensure the confidentiality of data provided.
  - You have to ensure that individual and current information you provide to trade associations and/or third independent parties is kept confidential and not shared with competitors without prior redaction /aggregation to make data anonymous.
  - Trade associations and/or third independent parties can collect individual current / recent statistical data but they cannot disclose them as such.
  - In certain countries, in order to avoid any infringements with competition law, trade associations and/or third independent parties can collect individual information only when data is older than 3 months. Please verify this point with your Legal Department.

## **2. MINIMUM RULES TO COMPLY WITH REGARDING THE DIFFUSION OF INFORMATION**

- Recent information can be shared only presented in an aggregated form
  - Individual recent/current information sharing (such as capacity utilisation, production and deliveries, bookings, prices, costs, stocks, customer relations, market shares) may raise competition concerns due to the sensitivity of this information if diffused as such. This information is usually confidential.
  - By contrast, diffusion in an aggregated form is possible, as long as it does not allow deducting individual data.
  - Generally, recent / current information is information less than one year old. However, in certain countries, the publication of individual data older than 3 or 6 months might be possible.
  - Given the different local rules that are applicable according to the context, AM/NS India advises to only participate in surveys and/or collection of statistical data when it is guaranteed that the information less than 1 year old distributed to competitors is in aggregated form only.
  - The aggregated figures shall always relate to at least five operators, unless exception duly approved by the Legal Department

- In any situation, presentation in an aggregated form shall not allow deduction of individual data.
  - There is no objection to aggregated data subdivided by product, by country or by period, as long as no individual data can be deducted from this presentation. Be aware that some local regulations could require additional criteria in order to be sure that no individual information could be deducted from an aggregated publication. Thus, it could be requested that publications do not contain companies representing a major share (e.g., of 85% or more) in any category in which the collected data is presented in (rules existing within some European countries), or that no individual participant accounts for more than e.g. 25% on a weighted basis of the statistics reported (rules applicable in the USA).
  - It is important to verify that a diffusion of statistical data collection and/or results of a survey do not infringe local regulations.
  
- Diffusion of historical Information in a disaggregated form should be possible only if this exchange cannot influence the current / future behaviour of the companies competing in the market.
  - Diffusion of historic information in a disaggregated form should not infringe with competition law since the data is only of historical interest. AM/NS India considers that information is historic when it is minimum 1 year old based on European competition law.
  - It is important to be able to explain why sharing disaggregated data with competitors through the publication of a trade association or any third independent entity is not anti-competitive and could promote competition in the marketplace through better knowledge of the historic market situation.
  - Diffusion of historical information in a disaggregated form should be possible only when this diffusion cannot influence the current / future behaviour of the companies in the market.
  
- In any case, specific sensitive information can never be exchanged in an individualised form, including historical information
  - Thus: - Historical, current and future prices/offers to a specific customer / from a specific supplier can never be exchanged between competitors because this type of information exchange is generally considered as influencing the behaviour on the market. Indeed, prices/offers to a specific customer/from a specific supplier are sensitive information, which indirectly informs on your



bargaining power with this specific customer/supplier. - Individual historical sales by volume, by turnover and/or by type of products could potentially be exchanged but never by customers / suppliers, - Costs of production or of supply must always be presented as global costs (without detail by type of products and/or by suppliers).

Be attentive and verify that all trade associations of which AM/NS India and its representatives are a member and/or all third independent parties, which provide market survey to AM/NS India and its subsidiaries, apply these main rules.

Should you have any comments or questions on this topic, please contact the AM/NS Legal Department.

**ANNEXURE 5: DAWN RAID GUIDELINES****1. SCOPE**

These guidelines are relevant to local management / site coordinator (which have to be ready in case of dawn raid) and all employees of AM/NS India and its subsidiaries (who have to be cooperative by preserving the AM/NS India's rights).

These guidelines outline the procedures to follow if AM/NS India or its subsidiary company receives an unannounced visit (or "dawn raid") by officials from the competition authority/ies. They are to be implemented by local management with the support of the legal department for each business site/office.

They address mainly the cases where the officials have a warrant or judicial decision authorising them to proceed, but it also is possible to receive a simple visit of officials without such warrant.

In any case, the AM/NS India policy is to cooperate fully with the Authorities leading these investigations.

Each country has its own procedural rules, e.g. with respect to legal privilege, the right to interview individuals or the possibility to place documents or offices under seal, which must be complied with. Each business unit should thus make sure that additionally to these guidelines, applicable national procedural rules are being taken into account. Please refer to the India specific Guidance Note on the Dawn Raids at Note 5.

In order to be ready in case of an investigation, it belongs to each local management/site coordinator with the support of the legal department to identify a local team ("dawn raid team") which will help during any investigation, notably regarding the coordination and supervision of the investigation. This team should include an internal or external legal counsel and an internal IT expert (see Note 2).

The business unit contacts list shall be kept regularly updated and must be at all times available to reception/security of each AM/NS India and its subsidiaries site/office.

**2. IMPORTANT – TO DO:**

In order to be ready in case of a dawn raid, AM/NS India and its subsidiary companies site/office should complete the template included in specific notes with local contacts.

Below, in case of urgency, you will find a quick reminder of all "Do's and Don'ts".

<p><b>At the beginning</b></p>	<ul style="list-style-type: none"> <li>- <b>DO</b> check and copy the <b><u>identity documents</u></b> of the inspectors</li> <li>- <b>DO</b> check the <b><u>correctness of warrant</u></b> re: (i) Accurate address; (ii) Accurate date; (iii) Identities of inspectors before allowing entrance <b><u>and copy it</u></b></li> <li>- <b>DO</b> check the <b><u>scope and purpose</u></b> of the inspection</li> <li>- <b>DO</b> appear to be <b>cooperative</b></li> <li>- <b>DO</b> check that inspectors are <b>clearly identified</b> for employees</li> <li>- <b>DO</b> contact internal or external <b><u>lawyers</u></b> and ask inspectors to wait for them</li> <li>- <b><u>DO try to delay</u></b> the answer of material questions until internal or external lawyers are present</li> <li>- <b><u>DO inform</u></b> all AM/NS India employees in the office inspected of the dawn raid if accepted by the inspectors</li> </ul>	<ul style="list-style-type: none"> <li>- <b><u>DON'T reject entrance</u></b> of inspectors if the warrant is correct.</li> <li>- <b><u>DON'T obstruct</u></b> the dawn raid with <b><u>lack of cooperation</u></b> (such as not calling requested persons of AM/NS India) or by <b><u>delaying</u></b> the inspection excessively (eg, officers will not accept to wait several hours for arrival of internal or external lawyers).</li> <li>- <b><u>DON'T hide, delete or destroy</u></b> any kind of documents</li> <li>- <b><u>DON'T contact people outside the company</u></b> (except external lawyers if required)</li> </ul>
<p><b>During</b></p>	<ul style="list-style-type: none"> <li>- <b>DO</b> establish a big enough team (with an IT expert) for <b><u>monitoring</u></b> the inspection activities.</li> <li>- <b><u>DO cooperate by giving access</u></b> to all requested documents, archives and rooms, answering questions if they are within the <b><u>scope and purpose</u></b> of the inspection</li> <li>- <b><u>DO keep a full written record</u></b> of everything that happens (discussions, questions, answers, key words used for searches, documents inspected and copies made)</li> <li>- <b>DO</b> invoke <b><u>Legal Privilege</u></b> if appropriate</li> </ul>	<ul style="list-style-type: none"> <li>- <b><u>DON'T</u></b> leave the inspectors <b><u>alone</u></b> during the dawn raid</li> <li>- <b><u>DON'T</u></b> give <b><u>more documents</u></b> than requested or documents out of the scope of the inspection</li> <li>- <b><u>DON'T hide, delete or destroy</u></b> any kind of documents</li> <li>- <b><u>DON'T obstruct</u></b> the dawn raid with lack of cooperation when supplying documents or answering questions</li> </ul>

		<ul style="list-style-type: none"> <li>- <b>DON'T</b> enter rooms which are <u>sealed</u> by inspectors.</li> </ul>
<p><b>At the end</b></p>	<ul style="list-style-type: none"> <li>- <b>DO <u>hold a final meeting</u></b> with inspectors to check carefully the accuracy of the <b>document records</b> taken during inspection (reference, number of pages, quality, etc).</li> <li>- <b>DO read carefully <u>the minutes</u></b> of the inspection and point out any <b>discrepancies</b> with them and with documents which should not have been taken (scope, legal privilege, etc)</li> <li>- <b>DO</b> if possible get feedback of the inspectors on the <b><u>good cooperation</u></b> of AM/NS India and whether there will be a press release.</li> </ul>	<ul style="list-style-type: none"> <li>- <b>DON'T</b> allow the inspectors to leave the premises <b><u>without holding the final meeting</u></b></li> <li>- <b><u>DON'T comment with people outside the company</u></b> (except external lawyers if any)</li> </ul>

**3. WHAT TO DO WHEN YOUR OFFICES ARE SUBJECT TO A DAWN RAID****A. Inspectors' Inspection**

Inspectors usually arrive in a team of four to six officials, which normally includes one or two IT experts. They arrive without any prior notice at the start of the day.

- **The business unit's reception / security must be trained to receive inspectors**

In principle, security rules prevent the entry of anybody into our sites and/or offices without invitation/prior announcement/involvement of an AM/NS India representative. Therefore, reception/security staff must ask for an identity document and/or business card in order to understand who is requesting to meet an AM/NS India representative.

If the visitors are inspectors from a competition authority, reception shall:

- Ask the inspectors to proceed to a meeting room where they can wait for the local management, the site coordinator and/or the legal counsel to arrive.
- Immediately inform the persons the investigators have asked to see and the persons on the contacts list it previously received.
- Provide distinctive badges to the investigators so that they can be easily distinguished from AM/NS India personnel. In case inspectors disagree to display distinctive badges, do not insist on it but this fact shall be reported to the person receiving the inspectors and/or the local management / site coordinator / legal department.

[Reception / security staff will have been informed about this procedure with the reception of the Note 1 on which local contact names are noted; It will also have been trained on how to react when faced with this situation.]

- **Dawn raid team as well as persons to be interviewed must know the procedures**

Once alerted that an inspection is on-going, the dawn raid team must:

- Enquire on what was done by reception/security on arrival of inspectors;
- Make sure that your internal and external lawyers and/or the local management / site coordinator have been contacted;
- Confirm asap your arrival in the meeting room where the inspectors are waiting;

- Arrive preferably with the local management/ site coordinator / legal department.

If inspectors announce that they have a warrant and want to investigate your office and your internal or external lawyer is not yet present, kindly request them to wait until the arrival of your legal. **Generally inspectors accept a short delay** (maybe 15-30 minutes) before proceeding with their inspection. *But bear in mind that they will not wait if an in-house lawyer is present.*

Do not insist on delaying the inspection until arrival of your external lawyer if they are delayed. Allow the inspectors to begin their work as soon as they demand to do so to avoid being considered as obstructing the investigating (which could expose the company to a fine).

#### **B. Review of the warrant/judicial decision**

On arrival the first step must be the review of the warrant/judicial decision authorising the representatives of the authorities to proceed with the inspection. Do not delay that review in case internal or external counsel has not yet arrived.

- Verify accuracy of the warrant/decision
  - Verify what authority issued the decision, what are the addressees, what is the authorised date for the investigation, the signatories of the document, the identity of the inspectors, its subject matter and purpose.  
**Please note** that the name and address of the company must be correct. *Mention immediately to the inspectors if any information is incorrect and oppose the start of the investigation.*
  - Verify the individual written authorizations of the inspectors and that their Identity documents correspond.
  - Only after these verifications have been confirmed, sign the acknowledgement of receipt for the decision.
  - Take copies of all the above documents, and send them to:
    - your internal and/or external lawyer, if they have not yet arrived;
    - to the Corporate legal department & the Compliance Officer
- **Make sure to understand the stated scope and focus of the inspection.**

Don't hesitate to ask questions in order to develop a better understanding of the investigation.

Confirm your full cooperation by organizing the visit and channeling communication to the extent possible.

To this end, request the support of the "dawn raid team" (which includes internal IT experts and internal counsels) and propose to send an internal email to the company's employees in order to ensure cooperation (please suggest the proposed message in Note 3).

*Inform inspectors of intention to send the email prior to sending any message. Any misunderstanding about the cooperation of the company shall be avoided. Don't insist if they oppose to such an internal email.*

Ask the inspectors to explain their procedures and the rules governing confidentiality of company documents.

Then, determine with them how to proceed:

- Which offices will be inspected;
- Which persons will be interviewed;
- Which documents or electronic files will be reviewed.

**Bear in mind that all of their requests shall be within the scope of the investigation as described in the warrant/decision.**

### **C. Organisation of the Inspection**

It is the policy of AM/NS India that each employee of the company **should cooperate fully** with the Authorities leading these investigations.

This policy requires each employee to:

- be cooperative and polite with the inspectors;
- monitor the officials throughout the inspection;
- be prepared to defend the company's legitimate interests in appropriate circumstances.

**You and/or local management / site coordinator / legal department must ensure that, from AM/NS India's perspective, the investigation will be undertaken properly.** In this respect:

- Indicate to the inspectors who will be their main contacts, i.e. you as well as your local management / site coordinator / internal and/or external lawyer.
- Ensure there are an appropriate number of local staff / internal / external lawyers / IT experts available to monitor the inspection and copy the documents; ***Inspectors shall never be alone*** including when/if they decide to operate in separate teams.
- Ensure that each AM/NS India staff accompanying the investigators **has a copy of the warrant/decision** describing the scope of the investigation and instruct them:
  - to verify that all actions of the inspectors remain within the scope of the investigation,
  - to not hesitate to politely indicate doubts in that regard, if any, and to request support from lawyers to confirm if needed,
  - to keep a full written record of the discussions/questions asked/responses provided/key words used and to note the progress of the inspection so that the company will have a full and complete record of the scope of the inspection, the places being searched, documents being copied, computers being imaged, management and employees being interviewed, as well as any explanation provided.

During the inspection:

- Provide the inspectors with all requested documents
- Give access to filing cabinets, archives, including specifically secured rooms or safes if requested;
- Set up a separate room for the investigators to gather and convene. Where possible, their review should take place in this separate room. Nevertheless, please note that the officials are not obliged to accept to use the separate inspection room and could prefer to do their review within the office of the interviewee. *Don't oppose this request.*

**Each AM/NS India staff accompanying inspectors must not hesitate:**

- to verify when providing the inspectors with copies of documents whether those are within the scope of the investigation;



- to verify that no documents under legal privilege (*i.e. any correspondence with external lawyers or any in-house legal advice when recognized locally as legally privileged*) be read and/or copied by an inspector. In case of doubt, AM/NS India staff must ask internal and/or external lawyers to review them before sharing with inspectors in order to confirm that they are covered or not by legal privilege. If the inspector wants to verify the authenticity of the legal privilege, please check with your internal or external lawyers the procedure to follow in order to preserve the defense rights of AM/NS India. Apply for example the procedure mentioned in the chapter related to legal privilege if possible locally. Don't hesitate to take advice from your lawyers on the way to address this issue.
- to verify that always two copies of any document or electronic file that is seized during the inspection are in the investigation's file (one for them and one for us). Inspectors generally do not seize original documents but take copies. Nevertheless, in some countries, they might take an original (eg, diaries). A copy must be made for the company (even if taking such copy might seem tedious);
- to check that the copy accurately reflects the original documents (double sided, with handwritten annotations , etc.). *All of these elements might help AM/NS India in any defense.*

Inspections can take several days. In this case, inspectors can seal offices. Please refer to the specific chapter hereafter regarding this topic.

#### **D. End of the inspection**

Before the inspectors leave, it is good practice to have a final meeting and make an inventory of copied documents.

- Compare this inventory with your own records and ensure you have:
  - a copy of all documents that have been taken and recorded.
  - full copy with the same quality as those taken by the officials, i.e. bearing any written annotations and/or erasures
  - same reference numbers added by the officials.

If anything is missing, request that the inspectors correct the situation prior to leaving our premises and/or ensure it is mentioned in the minutes of the inspection.

- Read carefully the minutes of the inspection prepared by the inspectors before signing them. You have the opportunity to make your observations about issues

regarding the inspection process (eg, problems with copies of documents that you consider to be covered by legal privilege, visit of offices you consider outside the mandate, etc.). Please take advice from your internal or external lawyers in this respect if they are not present.

- Check that the acknowledgement of the inspectors regarding the documents they have taken contains the exact reference and the exact number of pages of the documents taken.

***Bear in mind*** that this final meeting takes time because you need to be sure that you have the exact complete mirror copy of the documentation as taken by the competition authority. This last task is crucial for the company's defense.

**Take advantage of this final meeting to:**

- gather an impression on the preliminary findings/understanding of the inspectors,
- discuss next steps of the proceedings;
- request the names of the case handlers or other relevant contacts within the competition authority to whom any follow-up questions should be addressed,
- understand whether a press release will be published by the competition authority.

Once the officials left the offices, convene a brainstorming / debriefing session with the AM/NS India team and external advisors **and immediately report how** the visit procedure was, your feeling about findings and any relevant information to the the Compliance Officer

#### **4. FORBIDDEN CONDUCTS**

##### **A. DO NOT destroy or hide documents or evidence**

Never:

- conceal, alter, shred, or otherwise destroy or remove documents or electronic files
- behave in a manner that could lead the investigators to believe that evidence is being destroyed or tampered with.

It is a criminal offence to hinder, oppose, obstruct or unduly influence any person exercising a warrant.

**B. DO NOT inform third parties**

In no case should third parties (competitors / customers / suppliers / other people) be informed of the inspections by any existing way (telephone, email, sms, texts etc.).

The inspectors can review your emails, and verify any contacts done with telephone and other devices.

The negative consequences of each of these actions could be serious for the company and employees.

**5. BE PREPARED TO****A. Defend the Group**

The inspectors are entitled to access all offices and review all files and documents (whether in paper or electronic form) including confidential materials, private documents, diaries, travel and expense reports or any HR files, that are within the scope of the inspection.

However, the Inspectors are ***not allowed to go beyond the scope of the inspection*** as outlined in the inspection decision.

**B. Assert Legal Privilege**

Documents that are covered by legal privilege should not be made available to the inspectors. “Legal privilege” in this context covers legal opinions by and requests for legal opinions from external lawyers, as well as some correspondence to and from external lawyers.

In some jurisdiction, but not all, the legal privilege may apply to internal legal advice.

Make sure the dawn raid team understands if internal legal advice is covered by legal privilege correspondence in your regions and/or countries.

**NOTE**

**EUROPE:** The European Commission does not recognise legal privilege for legal opinions/advice from internal lawyers. In Bulgaria, Czech Republic, France, Germany, Italy, Luxembourg, Romania, and in Sweden, in-house legal advice is generally not recognized as covered by legal privilege. In Austria, legal privilege exists only partially. In Belgium, Poland, Portugal, Spain, The Netherlands, UK, in house legal advice is recognized by local jurisdictions/authorities for correspondence seeking a legal opinion. Lastly, please note that in Slovakia, no legal principle is fixed.

**In Turkey,** communication between an in-house and the company’s employees is covered by legal privilege. In Switzerland, in-house legal advice is not protected by legal privilege.

**NORTH AMERICA:** In USA and in Canada, legal privilege is recognised for communication of in-house attorneys towards employees within the company when purpose is giving legal advice relating to interpretations of the law or advice as to the appropriate conduct to take in a given legal context and when the advice is confidential. However communications made by and to in-house counsel acting in a purely business-oriented (factual rather than legal) advisory role are not protected.

**SOUTH AMERICA:** In Brazil, attorney–client privilege applies to both in-house and external lawyers.

**SOUTH AFRICA:** The issue of legal privilege for in-house lawyers has not finally been settled in South African jurisprudence. There is textbook and High Court authority recognising the existence of privilege in certain circumstances and notably where the in-house legal adviser performs (independent) advisory functions akin to those of an attorney in private practice.

Be aware of these particularities. Don't hesitate to consult your legal department about this topic

Any article or document should be withheld if it is covered by legal privilege. Keep legal privilege documentation in a separate file, marked accordingly.

In any case, do not allow inspectors to see privileged documents and do not provide privileged documents to inspectors.

If you are asserting a claim of legal privilege and the inspectors insist they are entitled to see the documents, offer to seal the privileged documents in an envelope marked “legally privileged documents – inspection by authorities is only permissible with a court decision” if possible locally.

You will need to first photocopy the documents that you are claiming privilege for your record. After sealing the originals in an envelope, the inspector should sign across the seal and make a written record of taking the documents.

Thus, a court (or an ombudsman depending on the local procedure) will determine whether or not these documents are privileged.

In any case, take legal advice on the way to address this issue.

**C. Communication/ Media relations**

Try to ascertain whether the investigating authority is intending to or has already issued a press statement.

Don't make any statement. This is the task of our communication department.

The local communications/media relations department should consult with the legal department and the Corporate communications department before responding to any enquiries or publishing any press releases.

**6. POWERS OF THE COMPETITION AUTHORITY OR GOVERNMENT AGENCY**

Be informed that the competition authorities or government agencies possess the following powers, which they don't hesitate to use when investigating.

**A. Enter and search in any premises**

A warrant/judicial decision allows inspectors to enter and search in any parts of the premises covered by the authorization, including offices, buildings, sites, professional vehicle, ship, boat, vessel, aircraft or container.

Inspectors often are accompanied by police officers, who help them to enter into the premises. Thus, a police officer (not an inspector) may use reasonable force like breaking a door or a window to overcome resistance to the entry and search of the premises. Any such situation of forceful entry should be avoided.

**B. Examine any article or document**

A warrant allows officials to examine any document (hard or soft copies) located in any part of the premises covered by the warrant, except a document covered by legal privilege.

Inspectors can examine any file or document in your office, on your desks, in cabinets, file archives, company cars (even if these are also used privately), business files or documents, records, internal and external (also electronic) correspondence, file and telephone memos, diaries, accounting records, in particular expense reports, briefcases, laptops, address books, computers, other electronic devices including phones, tablets etc and any data on the company's servers.

Only documents of a purely private nature, documents and objects (e.g. vehicles) which belong to third parties not associated/affiliated with the company and legally privileged documents cannot be reviewed by the inspectors.

**C. Interview/request for oral explanations of facts or document**

The inspectors are entitled to ask any representative or member of staff for oral explanations of facts or documents relating to the subject-matter and purpose of the inspection and can record the answers.

No one is required to incriminate him/herself. Employees also can lawfully refuse to answer questions put in a way that the answer assumes the existence of a violation of the law.

However, employees have to answer factual questions (such as where to find certain documents, but only to the extent of their personal knowledge).

In conclusion:

- Answer the questions as precisely, concisely, truthfully and accurately, as possible;
- Do not volunteer information; wait for the inspector to ask their questions
- Do not to provide any incorrect or misleading information!
- Do not speculate.
- If you do not know the answer, say so;

Ensure that all questions and answers are carefully recorded.

#### **D. Computer and Server searches**

The Inspectors are entitled to examine electronic documents (such as any accounting records, e-mails, other Outlook folders or any other electronic data). The inspectors normally run specific searches with key words and phrases both on centrally held files (e.g., on dedicated servers) and on individual PCs/devices.

Acting under advice from the legal department, you should:

- I. Give access to individual PCs and personal devices of employees as long as they are used for business purposes;
- II. Provide access to a workstation which has full server access;
- III. Keep track of any documents retrieved through the search and files being copied;
- IV. Keep records of the key words being used by the inspectors since they provide a better understanding of the precise focus of the inspection.

It is important that an information technology (IT) expert is available to assist in this process and monitor its implementation.

#### **E. Seal off premises**

The Inspectors can seal off premises for up to 72 hours. These powers are exercised where necessary to prevent evidence being tampered with overnight.

In this situation, all precautions shall be taken to avoid any breach of the seal because any breach can be sanctioned with a heavy fine.

To this end,

- Ensure with clear warning signs that no one should attempt to gain access to the sealed room;
- Inform all overnight employees (guardian / cleaner / etc...).
- organize if necessary the surveillance of the sealed door by a security employee

#### **F. Searches within private homes and cars**

The inspectors are entitled to search private cars or premises belonging to company directors, managers, and other employees if that is specifically included in the warrant/judicial decision. Please consult the legal department immediately if the inspectors indicate that they wish to search private premises and private vehicles.

### NOTE 1: GUIDELINES FOR RECEPTION / SECURITY IN CASE OF UNANNOUNCED INSPECTIONS

(To be completed by each AM/NS India site/office)

In principle, security rules prevent the entry of anybody into the AM/NS India sites and/or offices **without invitation/prior announcement/involvement of an AM/NS India representative.**

Therefore, reception / security staff must ask for an identity document and/or business card in order to understand who is requesting to meet an AM/NS India representative.

If the visitors are inspectors from a competition authority, reception / security staff shall:

- Ask the inspectors to proceed to a meeting room where they can wait for the local management, the site coordinator and/or the legal counsel to arrive.
- Immediately inform the persons the investigators have asked to see **and** the persons on the contacts list below.

	Senior executive /Site coordinator	Legal department representative/ lawyer
Name		
Title		
Email address		
Extensions/emergency Phone numbers		

- Provide distinctive badges to the investigators so that they can be easily distinguished from AM/NS India personnel. In case inspectors disagree to display distinctive badges, do not insist on it but this fact shall be reported to the person receiving the inspectors and/or the local management / site coordinator / legal department.

In any cases:

- **be cooperative and polite** with the inspectors;
- **Immediately involve** local management/site coordinator and/or the legal department.

Normally, the inspectors only wait a limited period of time for the visited person/people, the local senior management / site coordinator and/or the legal counsel to arrive before starting their inspection. If visited person/people, the senior management/site coordinator/legal counsel do not arrive on time and the inspectors want to proceed, please confer with one of the individuals listed in the table above for instructions on how to proceed.



**NOTE 2: GUIDELINES FOR INFORMATION TECHNOLOGY (IT) SERVICES IN CASE OF UNANNOUNCED INSPECTIONS**

During a dawn raid, the Inspectors are entitled to search electronic records and documents, including emails, calendars, accounting records or other electronic folders. They usually arrive with one or more IT experts. Consequently, it is of utmost importance that the AM/NS India team be assisted by its own IT experts at the same time. To this end, if possible, each IT expert from the inspectors' team should be accompanied by an internal IT expert.

The AM/NS India IT department will be informed about the arrival of the officials, by local management / site coordinator / lawyer, and/or by the visited person/people as soon as the AM/NS India Unit is aware that it is under investigation. Its task will be to name IT experts in order to monitor/follow the inspection and support the investigated people.

The IT experts must be available during the entire investigation and support as much as possible the inspected team.

These designated internal IT experts should:

- Give the inspectors **access to individual PCs/devices of the employees** of the AM/NS India site/unit/office;
- Provide access to a workstation which has **full server access**;
- Keep track of any documents retrieved through the search and files being copied by the inspectors;
- Keep records of the key words used by the inspectors doing the search.

This policy also requires them to:

- **be cooperative and polite** with the inspectors;
- **monitor/follow the searches** done by the inspectors on the company's computers;
- ensure that **no documents/records are altered, deleted, destroyed or removed during the investigation**;
- **liaise with the legal department** in case of any doubts.

They must know:

- the equipment, shared drives and mailboxes of the legal staff may contain legally privileged information due to the nature of their function. Requests for access to their information should only be granted after consultation with the legal staff.

- If a copy of a complete mailbox is requested, this should only be given after consultation with the internal or external lawyer.

The IT department must notably support the AM/NS India team in case it wishes to inform local employees of the fact that it is subject to an inspection. To this end, the IT department will be responsible for sending an email (neutral message - see **Note 3** of these Dawn Raid Guidelines) to the AM/NS India business unit / office under investigation. This neutral message will have previously been reviewed by the competition authority/ies and accepted by it. *It is important that the IT department receives confirmation of the competition authority/ies authorization before any message is circulated.*

Before the officials leave, an inventory of copied documents will be made during a final meeting, at which the IT experts would also attend.

After the inspection, once the inspectors leave the offices, the IT department will immediately report all elements and indications collected during this inspection to the AM/NS India team.

The IT department will send its final report to the Corporate legal department & the Compliance Officer.

**NOTE 3: INTERNAL MESSAGE TO EMPLOYEES**

It is the policy of AM/NS India that each employee of the company should cooperate fully with the authorities leading these investigations.

This policy requires each employee to:

- be cooperative and polite with the inspectors;
- immediately advise and involve senior management, the legal department and external counsel;
- monitor the officials throughout the inspection;
- be prepared to defend the company's interests in appropriate circumstances.

To this end, an e-mail should be sent to the AM/NS India business unit / office to inform the community of the fact that AM/NS India business unit / office is subject to an inspection and that no electronic data should be altered or destroyed during the inspection.

**Nevertheless, before any sending, please:**

- **ask for authorization** to the competition authority/ies, and
- **be sure** that you have **their agreement**:
  - on the sending, and
  - about the content of your message.

**Any misunderstanding about the cooperation of the company shall be avoided.**

You can propose the following text for their review:

*'Dear All,*

*We are currently being inspected by officials from [the competition authority/ies]. We would like to remind you that it is the policy of AM/NS India that each employee of the Company should cooperate fully with the authorities leading these investigations.*

*To this end, please do not delete or alter any items out of your mail boxes, or change or delete any existing documents until the inspection has been completed. You will be informed when this investigation will be finished.*

*In case of queries in this regard, please consult with the legal department.*

*Regards,*

*Systems Administrator and/or signature"*

If the competition authority disagrees with the proposition to internally send a message, don't insist.

It the competition authority/ies wants to modify the content of this message, please consult with your legal advisor(s) to determine if you can accept the suggested modification(s). Don't hesitate to inform the competition authority/ies of your disagreement, if any.

In the event there is no agreement, inform them that you will not send any message.

### NOTE 4: LIST OF CONTACTS (TEMPLATE TO COMPLETE BY SITE)

Even under the best of circumstances, an unannounced inspection by competition authorities is a stressful situation for all parties involved. Adequate preparation before the inspectors arrive will assist in reducing the stress and help guarantee that AM/NS India presents itself and acts appropriately.

**Please prepare your contacts list by site.** It is preferable to draft it in advance instead of composing it under the pressure of an investigation. Your list shall contain the names of (i) a local management / site coordinator, (ii) your legal contact (AM/NS India legal department and/or external law firm) and (iii) your internal IT experts. Lastly, the list should contain the Compliance Officer's contact, which shall be informed in any cases. Below, please find the proposed template to complete. The local senior management/ site coordinator / legal department and IT department of the site should have this list in hand, which also will serve to complete the list destined to reception / security staff (see **Note 1**).

### DAWN RAID

#### PEOPLE TO IMMEDIATELY INFORM DURING AN UNANNOUNCED INSPECTION

	Local management / site coordinator	Local AM/NS India legal department representative lawyer <sup>2</sup> or Compliance Officer or if there is no local/corporate legal department: the external local lawyer	Local AM/NS India IT expert or, if there is no local IT expert, the AM/NS India corporate IT expert
Name			
Title			
Email address			
Extensions/emergency Phone numbers			

In any cases, please inform the Compliance Officer

Last update: [Insert date]

<sup>2</sup> it belongs to the local lawyer involved in a Dawn raid to inform his/her regional relevant lawyer about this affair

**NOTE 5: INDIA SPECIFIC GUIDANCE NOTE ON DAWN RAIDS****INTRODUCTION**

1. Under the Competition Act, 2002 (the **Act**), the Competition Commission of India (the **CCI**) and the investigating Director General (the **DG**) have extensive powers to investigate suspected competition law infringements. The Act expressly provides the CCI and the DG with powers equivalent to a civil court in relation to, amongst other things, summoning witnesses, discovery of documents, and receiving evidence on oath.
2. The DG enjoys wide powers of investigation. The DG's powers are equivalent to that of an "inspector" under the Companies Act, 1956 with respect to obtaining documents/evidence and conducting search and seizure raids. If following the investigation, the CCI finds that AM/NS India has breached the Act, it could result in significant financial and other penalties for AM/NS India<sup>3</sup> as well as individual directors, managers and other officers.<sup>4</sup>
3. This India-specific Guidance Note should be read together with these Dawn Raid Guidelines.

**PROCEDURE OF DAWN RAIDS**

4. The DG may, with prior authorisation in the form of a search warrant from the Chief Metropolitan Magistrate, New Delhi, conduct a Dawn Raid where he has reasonable grounds to believe that documents may be destroyed, mutilated, falsified or secreted.
5. Before searching the premises, the DG Officials are required to ensure that two "independent and responsible" inhabitants of the locality in which the premises to be searched are situated are present as witnesses. Their presence, and their confirmation that the search was carried out in an orderly way, is recorded in the Search Memo (known as the *Panchnama*), completed at the end of the Dawn Raid. This is meant to safeguard against any possible abuse of power that may be committed by the DG Officials.

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<sup>3</sup> In India, cartel participants can be subject to a penalty of three times the profit or 10% of turnover, whichever is the greater, for each year of continuance of the cartel.

<sup>4</sup> Where a company is in breach, financial penalties may also be imposed on "persons in charge" and other directors, managers and other officers.

6. Where any documents/devices (hard copy or electronic) are seized, the DG Officials are required by law to make a list of such documents and the location where they were found. This list, which is annexed to the Panchnama, must be signed by AM/NS India, the two witnesses and the DG Official, and a copy provided to AM/NS India. It is critical that the Search Memo is reviewed by the AMNSAM/NS INDIA Team (with the help of the Monitors and external lawyers, if present) and a copy is retained by AMNSAM/NS INDIA. Please review the Search Memo/Panchnama very carefully and record all protests in it before agreeing to sign it. Register a strong protest (to be recorded in the Panchnama) if the DG Officials insist on reviewing privileged documents/folders, but do not resist beyond a point (the issue of professional privilege can be raised later with the CCI or the courts).
7. It should be noted that, under current CCI practice which is under challenge in the courts, the right of a client to have external lawyers present during questioning is limited. External lawyers may not actively advise the person during questioning but may be permitted to sit at a distance to ensure that the questioning is not oppressive.
8. The DG officials are likely at the outset to prohibit external communications. Indeed, they are likely to require mobile phones to be put into a pool where they cannot be used during the investigation. It is therefore important that communications to the external lawyers and to AM/NS India's Corporate Legal Department be sent right at the beginning before such communications are prohibited.

#### **LEGAL PRIVILEGE**

9. All communications exchanged between AM/NS India and external lawyers in the course of the provision of legal services are statutorily recognised as privileged information which need not be disclosed. Legal privilege should be claimed in relation to each individual document (including electronic documents) to which it applies. It does not extend to advice from in-house lawyers.
10. AM/NS India should claim legal privilege for the following documents:
  - (i) written communications regarding legal advice that arises within a relevant legal context, between external lawyers, and in-house lawyers/employees in relation to legal rights and obligations, whether or not litigation is pending or contemplated;

- (ii) written communications obtained by in-house lawyers or employees from third parties in contemplation of or in connection with litigation and communicated to external lawyers for advice; and
- (iii) documents brought into existence by in-house lawyers and communicated to external lawyers for enabling external lawyers to advise on prospects of making or resisting a claim, even if litigation has not commenced or is not imminent but is reasonably in prospect.

11. All documents which are privileged should be filed separately, marked as "*legally privileged and confidential*" in folders which should be password protected.

#### **Oral Questioning**

12. As seen above, external lawyers are currently limited in representing clients during examinations by the DG Officials. Internal counsel may be permitted to listen to the examination on oath and should make a careful note. If present on the premises, external lawyers may help to prepare individuals to be questioned and to debrief after questioning.
13. All oral communications with the DG Officials should be recorded in detail. The DG Officials are required to record the statements in writing. The relevant AM/NS India employee whose statement has been recorded on oath should be sure that the record is correct in all respects. In case of any inaccuracies, the DG Officials should be asked to correct them. Such statements may be used in evidence. The AM/NS India employee should therefore not sign any statement unless satisfied of its accuracy.