



# Anti-trust and Competition Policy

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NYRSTAR GROUP POLICY



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## 1. Introduction

As a global mining and metals company, Nyrstar is committed to free and fair competition. This Anti-trust and Competition policy constitutes an integral part of Nyrstar's **Code of Business Conduct** and applies to all Nyrstar employees and anyone else performing services for Nyrstar. Anti-trust and competition laws prohibit cartels, (in)formal anti-competitive agreements between independent parties (competitors, customers or suppliers), monopolization, anti-competitive corporate transactions and the abuse of a dominant position. Competition law enforcing regulators (both at national and international level, such as the EU) have the power to impose large fines on companies that violate competition rules. Companies may also be sued for damages, and in some places violating anti-trust rules may be a criminal offence and employees may be imprisoned. For all these reasons, Nyrstar is strongly committed to competing in a fair and ethical manner and to complying fully with all applicable anti-trust and competition laws.

Even the appearance of activity that restricts competition can lead to an extensive investigation by multiple national and international regulators. Consequently all employees must consider whether the communications or transactions in which they are involved may have an impact, or a perceived impact, on free competition in the relevant market. This policy highlights the specific anti-trust and competition risks to our offices and operations. Certain risks underlined in this policy are particularly relevant to certain departments, given the nature of their job duties.

This anti-trust and competition policy is applicable to all Nyrstar employees globally and all others working for, or on behalf of, Nyrstar.

## 2. What is anti-competitive behaviour?

Anti-competitive behaviour means any communication (by any means, whether electronic, written, verbal or otherwise), agreement (by any means, whether formal, informal, contractual, non-contractual, written or verbal) or other form of co-ordination or cooperation with any other competitor (whether past, present or potential) that is unlawful or otherwise restricted or prohibited under applicable competition law and regulations.

Anti-competitive behaviour can take many forms. As a general rule any type of behaviour which falls within one of the following categories may be prohibited:

- Agreements or understandings between competitors to restrict or eliminate competition in a market;
- Some types of restrictions on a buyer's freedom to resell;
- Certain acts by "dominant" entities i.e. companies that hold or control a substantial market share. Consistently high market shares may be treated by regulators as an indicator of such power and therefore be subject to scrutiny.

You must never engage in these types of activity (please note this is a non-exclusive list of examples):

Conduct	Example
<b>Price fixing</b>	Agreeing with a competitor, the final price you will charge a customer or any element of the price. This includes agreeing minimum prices or commission levels, setting price ranges, agreeing discounts or obligations not to offer discounts, surcharges and price premia (e.g. for logistics costs).
<b>Dividing territories and customers</b>	Agreeing with a competitor to stay out of each other's territories or away from each other's customers, to negotiate with a competitor to maintain certain market shares, to share profits or avoid to competing with each other.
<b>Boycotting</b>	Agreeing with a competitor to refuse to deal with a customer or supplier to exclude them from any market.
<b>Restrict output or capacity.</b>	Agreeing with a competitor on each other's production levels, supply quotas or storage capacity, to reduce or close capacity or manage supply, for example, to "stabilise the market".
<b>Bid rigging</b>	To agree with a competitor in advance regarding who will win a bid.
<b>Reciprocity</b>	Agreeing to buy from a seller if the seller buys something in return from us.
<b>Predatory pricing</b>	Setting a very low price for a product with the intent to drive competitors out of the market.

## 2.1 Internal guidelines

### 2.1.1. Inspections by authorities

In most of Nyrstar's jurisdictions, it may occur that regulatory authorities carry out un-announced inspections (often referred to as '*dawn raids*') at the premises of a Nyrstar's site or office location if they suspect that (someone within) the company is, or has been, involved in certain anti-competitive activity. The legal and compliance departments supervise these inspections. It is of utmost importance that everyone within Nyrstar fully cooperates with such inspections in case they occur.

### 2.1.2. Antitrust guidelines

As our counterparties are often also our competitors you must be careful when exchanging information, even in an informal setting.

Areas acceptable for discussion:

- Information genuinely relevant to a potential transaction with that counterparty (i.e. the price and other terms at which you would be willing to buy or sell);

- Discussion of information already in the public domain such as:
  - Information produced by market analysts;
  - Performance of public indices;
- Logistical issues directly related to shared facilities e.g. a shared refinery;
- Discussing new legal or regulatory developments.

#### Areas to be wary:

- When receiving information about a competitor's prices or trading terms from a third party;
- When attending industry meetings such as trade associations or social events where competitors will be present;
- Any proposal to establish a joint venture;
- Any proposal to conduct joint marketing;
- Any proposal to undertake any joint tender bids;
- Proposal for exclusive supply/purchase agreements.

#### Areas that should never be discussed:

- The overall market position of Nyrstar or the counterparty;
- The current or future trading strategy of Nyrstar or the counterparty;
- Discussions of any sensitive business information such as prices, trading terms, margins, credit terms, tender processes or discounts;
- Discussions relating to quantities to be sold to or produced for particular customers, or the Nyrstar's confidential planned levels of capacity;
- Discussion regarding any arrangement to limit production, distribution or supply; or
- Discussions regarding any arrangement to share geographic markets or to divide or allocate customers either for the purchase or sale of goods or services.

The potential repercussions of anti-competitive behaviour are severe, including fines of up to 10 percent of a company's worldwide turnover, and potential criminal liability and fines imposed on individuals. You should always seek guidance from compliance in any situation where you are unsure of the competition risks.

## 2.2. Market intelligence

For every company, it is critical to have reliable, competitive intelligence in order to decide upon strategy and ensure Nyrstar remains competitive. Although the exchange of sensitive data amongst competitors is prohibited, Nyrstar is entitled to gather market intelligence (excluding

sensitive information) from legitimate sources namely business press, internet, customers, and consultants and to unilaterally decide its commercial strategy. Information about a competitor may however only be obtained from public sources (such as industry studies, trade journals, market publications, competitors advertising).

Please note that suppliers and subcontractors cannot be used as an intermediary to obtain sensitive information from, or about, competitors. In all cases, receiving competitive information is very sensitive and could be a violation even if received by accident.

Pay particular attention when attending meetings or seminars where competitors are present, such as seminars or trade association meetings. Even though industry wide initiatives, such as associations, can serve legitimate purposes, they may, at the same time, raise concerns because of sensitive topics being discussed. Competitors are always extremely interested to receive business related information on issues such as prices, strategies, recoveries or costs (which is all confidential), in order to have a competitive edge. Participation at seminars or industry meetings needs prior approval from your manager.

We must avoid all meetings and discussions with employees or representatives of a competitor unless a legitimate business purpose is involved.

### 2.3. Key rules to remember

- No price fixing;
- No discussion of sensitive subjects (treatment) charges, prices, surcharges, costs, etc.);
- No division of market or allocation of customers;
- No exclusion of competitors from the market;
- Participation in industry wide meetings or trade associations only after approval by your manager;
- During meetings with competitors, never discuss business sensitive topics;
- Never use an intermediary (supplier/subcontractor) to get market intelligence;
- If you inadvertently receive competitively sensitive information, contact compliance ([compliance.officer@nyrstar.com](mailto:compliance.officer@nyrstar.com)) or legal ([legal@nyrstar.com](mailto:legal@nyrstar.com)).

## 3. Speak-Up helpline

The key to our culture of ethical conduct is honest, transparent communication. If you have any questions or become aware of, or suspect that, a breach of this policy, has occurred or may occur in the future, you must report your concerns to your manager or to the compliance officer ([compliance.officer@nyrstar.com](mailto:compliance.officer@nyrstar.com))

Where a concern remains unresolved through the above local channels, or should you, for whatever reason and at any time, feel uncomfortable utilising the local channels for resolution of your concern, you can also raise it, also anonymous, via the 'Speaking-Up Helpline'. The helpline is managed by an external partner of Nyrstar, and can be reached 24/7 by phone and internet ([www.nyrstar.ethicspoint.com](http://www.nyrstar.ethicspoint.com)).

#### 4. Consequences

If you breach Nyrstar's Anti-Trust and Competition Policy, you may be subject to appropriate disciplinary action, up to and including termination of employment. You may also face civil and/or criminal sanctions, including imprisonment. Failure to comply with the policy may also result in serious consequences for Nyrstar, including heavy fines (up to 10% of our annual global turnover), costly litigation, unenforceable contracts and reputational harm.