

## Competition Law Compliance Policy

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### INTRODUCTION

Competition laws, also known as antitrust, anti-monopoly or fair trade practices laws (collectively, "**Competition Law(s)**"), can apply wherever Telesat Canada and its subsidiaries (collectively, the "**Company**") do business in the world. It is the policy of the Company to comply with Competition Laws. This policy represents the Company's commitment to assist its employees in adhering to and complying with Competition Laws.

There is no single global Competition Law. Consequently, all employees should realise that wherever they do business in the world, they must adhere to applicable national Competition Laws. That said, most Competition Laws address similar kinds of conduct and share a common underlying philosophy. Their common theme is that competition benefits consumers by providing the best products at the lowest prices, and productive resources are allocated most effectively when companies are subject to the rigors of the competitive market.

Each employee, regardless of the position he/she holds, is responsible for compliance with this policy and Competition Laws. Specifically, this includes employees, whose duties involve contact with competitors, customers and suppliers; selling, pricing, purchasing, and establishing pricing policies or terms of sale; bidding or other marketing responsibilities. It is every employee's responsibility to review this policy carefully, to become sensitive to Competition Law issues and to be aware of the practices and procedures described herein for complying with such Competition Laws and this policy.

The Company is concerned even with the appearance of questionable conduct under Competition Laws as investigations and defences are costly both financially and in time and effort, and may reflect negatively on the Company's reputation. As such, whenever any Competition Law concerns arise it is imperative that you consult the law department immediately. Early consultation is critical in order to avoid problems and to assure that the business plans and undertakings of the Company achieve lawful objectives.

This policy is not intended nor designed to provide definitive legal or business practice advice. It is provided as a reference source; to allow employees to identify potential Competition Law problems in their day-to-day dealings on behalf of the Company; and to provide information on how to avoid and prevent actions, which would violate this policy and Competition Laws.

You should consult the law department if you have any questions about this policy, about the status or consequence of an intended act or about a practice or procedure outlined herein or if you become aware of a possible breach of this policy or a Competition Law.

## **TYPES OF COMPETITION LAW OFFENCES**

While Competition Laws vary from country to country, most Competition Laws prohibit some or all of the behaviours listed below. It is important to note that when the terms "agreement", "arrangements", "understandings" or similar terms are used in this policy, such terms are not restricted to formal written contracts. Unwritten agreements or arrangements, "gentlemen's agreements", so-called "off-the-record" conversations and even unspoken understandings that two or more companies will act in a certain way may constitute agreements for the purposes of this policy and Competition Laws.

### **Abuse of Dominance**

An illegal restriction of competition may occur when a company or group of companies abuses a dominant position or its substantial market power in a way that is detrimental to competition. This may occur where a dominant competitor consistently uses its leverage to force other competitors from the market or prevent them from entering.

A dominant position exists when a company has the power to behave to an appreciable extent independently of its customers, competitors and suppliers. Having such a position is not prohibited in itself. It is the abusive behaviour of a company in that position that constitutes the violation.

Examples of abuse of a dominant position are as follows:

- Predatory Pricing  
Under many Competition Law regimes, a company that has a dominant position is not allowed to force competitors out of the market by means of predatory pricing: selling below cost in order to drive a competitor

out of the market, with the intent of charging higher prices and gaining larger profits once the competitor has left the market.

- Price Discrimination

In many jurisdictions, it is illegal for a company having a dominant position in the relevant market to enforce different prices or other trading conditions upon different customers in similar situations (e.g., same quantity and quality of product and/or service) without objective justification.

- Tying

Often it is illegal for a company, having market power or a dominant position in the market to make the sale of a product or service conditional upon the purchase by the customer of other products or services, which the customer might well obtain from other suppliers at similar or better terms or conditions.

## **Bid-rigging**

It is illegal for companies to engage in “bid-rigging”.

Bid-rigging occurs when:

- there is an agreement between two or more companies whereby one or more of the companies agrees not to submit a bid in response to a request for bids, or agrees to withdraw a bid submitted in response to such a request; or
- the submission in response to a request for bids is arrived at by agreement between two or more bidders, and the agreement is not made known to the person requesting the bids.

It is not bid-rigging if a company determines on its own to put in a bid and the amount and other elements of the bid. It is also not bid-rigging if a company decides on its own not to bid.

## **Customer and Market Allocation**

Unless implemented in furtherance of a legitimate collaboration, strategic alliance or joint venture or is reasonably necessary to give effect to a

broader and lawful agreement, it is generally illegal for competitors to agree to allocate sales, territories, customers or markets for the production or supply of products or services.

### **False or Misleading Representations**

It is illegal for companies for the purpose of promoting the supply or use of their products or services or for the purpose of generally promoting their business interests to knowingly or recklessly make a representation to the public that is materially false or misleading.

### **Price/Product Fixing**

It is illegal for competitors to agree, whether directly or indirectly (for example through distributors), to fix, maintain, increase or control the price at which their products or services will be sold to third parties. Agreements or understandings between competitors that affect prices indirectly, such as on rebates or discounts, pricing methods, costs and terms of payment, may also be illegal. Competitors must make their own independent pricing decisions.

It is also illegal for competitors to agree to fix, maintain, prevent, lessen or eliminate the production or supply of a product or service.

### **Price Maintenance**

Competition Laws in most jurisdictions prohibit price maintenance between a supplier and its independent customers or distributors. In other words, a supplier is generally not permitted under law to impose on its distributor or customer a minimum resale price or to refuse to supply a product or service because of the low pricing policy of that customer or distributor.

### **Refusal to Deal**

In some jurisdictions, including Canada, it is illegal for a company to refuse to supply a product or service to a customer if:

- the would-be customer is substantially affected in its business by the refusal;
- the customer is unable to obtain adequate supplies of the product or service because of insufficient competition among suppliers (for example, the refusing supplier has a monopoly or a very strong market position);

- the customer is willing and able to meet the usual trade terms of suppliers;
- the product or service is in ample supply; and
- competition is adversely affected.

In these circumstances, a Competition Law authority may order the supply of the product or service on usual trade terms. Competition Laws do not prohibit a refusal to supply a product or service based on valid business reasons, such as the buyer not meeting the supplier's standard credit policies.

### **CONSEQUENCES OF NON-COMPLIANCE WITH COMPETITION LAWS**

The consequences of non-compliance with Competition Laws may include one or more of the following:

- Fines
- Damage claims against the Company
- Bad publicity
- Administrative actions including fines, penalties and disqualifications from doing business
- Criminal sanctions
- Imprisonment
- Unenforceable agreements

### **COMPLIANCE PROCEDURE**

This section provides you with guidelines that will assist you in complying with Competition Laws. If they do not apply to a particular fact situation, but you think that situation may raise legal issues, you should contact the law department for clarification.

### **Relations with Competitors**

It is against Company policy to have any discussion or communication with any representatives of a competitor concerning present or future prices, pricing policies, bids, costs or terms and conditions of bids, territorial restriction of operations or allocation of markets or customers. It follows, of course, that there must never be any agreement, express or implied, with a competitor concerning any of these areas.

All our prices must be determined independently in light of our costs and our view of market conditions.

### **Relations with Customers and Suppliers**

As a general rule, the Company is free to select its own customers and suppliers, but must do so independently of competitors. Any understandings or agreements, whether formal or informal, express or implied, with others to refrain from doing business with a third party are prohibited.

No bid or contract offer should be put forward unless it is a genuine bid on the particular contract, made with the intent to enter into a formal contract. Under no circumstances should a bid or offer be submitted merely because someone, even a customer, requests a non-competitive bid to satisfy someone else's requirements.

### **Trade Associations**

The Company belongs to some trade associations and regularly attends meetings of other trade associations of which it is not a member. Trade associations routinely involve meetings of competitors. Consequently, extreme care should be taken in attending such meetings so as to avoid discussion of any competitively sensitive matters. For this reason, the law department should be consulted before statistics or other information is submitted to a trade association or any of its committees.

Whenever in the course of a meeting of trade association members (whether the Company is a member or an invitee), discussions appear to be leading to an area which could result in a violation of this policy, you must immediately advise that you will not participate in the discussion. If it continues, leave the meeting and report the matter to the law department. Similarly, informal or social meetings or get-togethers of trade association members should be avoided, since such meetings could lead to conduct that is in contravention of Competition Laws, or at least, give the appearance of facilitating such conduct. If, during the course of any meetings, whether formal or informal, you find yourself caught in the middle of discussions which are in contravention of Competition Laws, advise the other participants that you will not participate in the discussion and, if necessary, remove yourself from the situation. Once again, if it continues you must leave and report the matter to the law department.

## Communication and Use of Language

Documentation often plays a pivotal role in prosecutions under Competition Laws. Governments typically rely on e-mails, text messages, handwritten notes, telephone messages, letters, tape recordings, videos and other forms of communication to provide evidence of illegal agreements or conduct. This means it is critical that all communications in which you are involved and all documentation you create, like your personal conduct, reflect compliance with this policy.

Be careful about the language that you use, whether in writing, e-mails, text messages or conversation. Always ask yourself how your language might be interpreted by a Competition Law authority. For example,

- (i) avoid using vocabulary that could be misconstrued as suggesting guilty purpose, such as "please destroy/delete after reading" or "no copies". Such phrases suggest the possibility of wrongdoing even though the objective is simply to preserve the confidential nature of a document. Wording such as "strictly confidential" is preferable;
- (ii) avoid power or domination vocabulary. Examples are "we will dominate the market" or "this program will destroy the competition". Such words may be interpreted as implying the use of market power to drive out competitors. Instead, refer to the Company as having a "significant" position or being one of the "leading" companies;
- (iii) do not speculate about the legal propriety or consequences of conduct. For example, "These arrangements may well breach competition law so discretion is required." This is not to condone efforts to cover-up potentially illegal conduct, but rather to recognise that such language implies a legal conclusion about the legality of certain arrangements, which is best determined by the law department;
- (iv) if a competitor attempts to involve you in conduct that would violate this policy, you should decline and then record all the details of that contact (e.g., when it was made, who made it, what specifically was discussed and, most importantly, that the invitation from the competitor was rebuffed). You should provide

the law department with this information immediately;

- (v) avoid statements that give the impression (however erroneous) that the Company is not competing vigorously or that its prices are based on anything other than its own business judgment; and
- (vi) state clearly the source of any price information (so it does not give a false impression that it came from discussions with competitors). It is recognized that your responsibilities may include obtaining, after a bid is awarded, the amounts bid by competitors. This information must be obtained from the relevant customer, never from a competitor. To avoid even the appearance of impropriety, it is as mentioned above important that you clearly identify in your notes the source of the information and when it was obtained so that there will be no suggestion that the information was obtained by a collusive arrangement with a competitor before a bid was submitted.

### **Government Requests for Information/Searches**

Requests: It is the Company's policy to cooperate with every reasonable request of government investigators seeking information respecting the Company's operations for purposes of Competition Law enforcement. However, the law department should be involved in responding to any request. If a government representative requests an interview with you or asks for information or copies of documents, the request should be immediately brought to the attention of the law department before responding, or agreeing to respond, to the request.

Searches: If at any time governmental authorities arrive to conduct a search of the Company's premises:

- (i) read the search warrant and contact the law department immediately;
- (ii) do not interfere with the execution by the officers of the search warrant as obstruction may be an offence. Generally speaking, such officers are entitled to review the Company's files and the computer databases, which should be made available to them. This includes unlocking cabinets, opening briefcases and demonstrating use of the computer system to allow the officers to



review the documents and computer files;

- (iii) no document, of any nature whatsoever, should be shredded or otherwise destroyed until the advice of the law department is obtained. Similarly, no document or other record is to be deleted or wiped from computer records. Destroying evidence may be a criminal offence. Even though the document may have no relevance to the subject of the search, the appearance of impropriety must be avoided; and
- (iv) do not, under any circumstances, engage with the government officers in a discussion of the matter that is the subject of the search. While they are usually entitled to review and seize the Company's documents and copies of computer records, the officers are often not entitled by a search warrant to interrogate you or ask you questions, nor are you required to respond if they do (other than indicating the location of files or computer records as described above). Any statements you make may be taken down and used against you and the Company in the future.

## **Litigation**

The Company's law department should be immediately notified of any competition investigation or litigation, begun or threatened, against the Company.

## **BREACH OF COMPETITION LAW OR POLICY**

If you believe there has been a breach of this policy or a Competition Law, you must bring the potential breach to the attention of the law department immediately. You may then be asked to assist the Company in conducting an investigation into the circumstances surrounding the potential breach of the policy. The purpose of that investigation will be to determine

- (i) whether in fact this policy or a Competition Law has been broken; and
- (ii) what options are available to you and the Company to resolve the matter.

If there has been a breach, it may be possible to resolve the matter internally, such as implementing new procedures to help you ensure compliance in the

future. Alternatively, both you and the Company may consider steps to bring the matter to the attention of the relevant government with a view to seeking immunity from prosecution. This option can be particularly important if you believe that third parties outside of the Company may be aware of the activity.

The Company must preserve its reputation and integrity. For this reason, any breach of this policy or a Competition Law will be taken very seriously. Depending upon the severity of the case, employees who have been found to have breached this policy or a Competition Law may face immediate discipline up to and including dismissal.