INTRODUCTION

1.1 POLICY STATEMENT

Compliance with competition law is mandatory at Balfour Beatty. Each employee is required to respect and comply with competition laws. Ignorance of the law is not a valid defence.

The construction industry has been the focus of significant attention from competition law regulators. As one of the largest building and construction group in the UK, we can expect an even greater degree of scrutiny than some of our peers. Consequently, we need to ensure at all times that we not only meet the high standards required of us under the law, but that we avoid even any perception of wrongdoing. Our international businesses also expose us to competition law regimes around the world, and this means we need to be even more vigilant in our efforts to ensure compliance with competition laws in every country in which we operate.

Many kinds of conduct are automatically illegal under the law, regardless of the impact on the market or whether or not Balfour Beatty profits from the conduct. The fact that Balfour Beatty's competitors are engaged in anti-competitive practices is no excuse for us to follow suit. On the contrary, it could even aggravate any case against Balfour Beatty and result in heavier fines.

Violations of competition law can lead to:

- significant fines for an individual Balfour Beatty company and/or for Balfour Beatty plc, as fines can be imposed on the parent company solely for the activities of its subsidiaries. Under EU and UK rules, a fine of up to 10% of the Group's annual turnover for all products and activities can be imposed;
- significant monetary fines or imprisonment for individual members of management and/or employees and disqualification of directors;
- customers or others (including our customers' customers) claiming damages for losses suffered as a result;
- invalidity of agreements or clauses within agreements;
- exclusion from participation in certain tenders/procurement processes; and
- significant utilisation of resources (management time, legal fees, etc).

Just as importantly, breaches of competition law can lead to adverse publicity and significant damage to the reputation of Balfour Beatty around the world with its customers, suppliers and other stakeholders.

Remember, it takes decades to build a good reputation, and only one event to destroy it!

1.2 EMPLOYEE OBLIGATIONS

This European Competition Law Compliance Policy is applicable to all employees within the Balfour Beatty group of companies. Its purpose is to give employees an understanding both of the main competition law prohibitions which affect our business and of their responsibilities in relation to those prohibitions. Employees need to be able to recognise situations where competition law issues arise and then work with their in-house lawyer to resolve those issues. For example, employees must know what to do if they discover a breach of the law, what to do if they are contacted by a competitor, and the precautions they should take if they attend a trade/industry association meeting. As well as providing a brief summary of the laws in this area, this policy should help employees by providing positive guidance about what to do in certain situations.

However, given that the line between legal and illegal conduct may be difficult to draw in individual situations, it is essential that employees consult with their in-house lawyer or the Group Head Office legal department if they have doubts. This policy should help employees to recognise situations for which input from their lawyer is necessary or desirable.

To further promote understanding of the competition rules, each company will organise training sessions on a regular basis, at which attendance is compulsory for all applicable employees. In addition, the company or internal audit may undertake competition law audits in order to assess compliance with this policy and identify problem areas. Full cooperation with such audits is required.

Remember, compliance with competition law does not prevent Balfour Beatty or any of its companies from competing. Balfour Beatty aims to compete fairly, and is committed to competing successfully within the bounds of law.

2. APPLICABLE RULES AT A GLANCE

There are three main areas in which competition law concerns can arise:

- First, contacts with competitors can lead to potentially anti-competitive agreements or concerted practices (these are known as “horizontal issues” see Section 3 below).
- Second, relations with suppliers and customers may lead to potentially anti-competitive agreements (these are known as “vertical issues” - see Section 4 below).
- Third, companies with significant market power (i.e. “dominant” companies) have special obligations under competition law (see Section 5 below).

3. CONTACTS WITH COMPETITORS

3.1 OPPORTUNITIES FOR CONTACT

As part of their day to day business, employees may come into contact with competitors regularly, either as part of project joint ventures or consortiums, through meetings at trade associations or where competitors are suppliers, subcontractors, purchasers or customers. It is in these dealings and interactions with competitors that employees are most at risk of inadvertently breaching competition law.

This section deals with contacts with competitors and highlights areas of unlawful conduct. It also explains particularly difficult grey areas where the illegality of the conduct may depend on the circumstances.

For the purposes of this section, “competitor” includes both actual and potential suppliers of the services provided by Balfour Beatty (or, in some of our businesses, products). Potential suppliers include companies that could realistically start supplying such services (or products) within the short to medium term (generally speaking, less than two years) – for example, companies which might currently be active in different geographies but could conceivably expand.

The rules apply to not only agreements, but also to less formal forms of collusion, known as “concerted practices”. The rules could capture gentlemen’s agreements, a “wink and a nod” or even pure exchange of information between Balfour Beatty and one of its competitors. An agreement or concerted practice will be illegal where it has the object or effect of restricting or otherwise distorting competition. For a more detailed explanation of concerted practices, see section 3.2 below.

3.2 “HARD CORE” OR “OBJECT” RESTRICTIONS”

Hard core restrictions such as bid rigging (including cover pricing), market sharing and price fixing are the most serious infringements of competition law. Suspicions of bid rigging/market sharing/price fixing are

likely to result in investigations by competition authorities and, if those suspicions are confirmed, lead to heavy fines. They could also be the basis of criminal investigations into individuals involved.

It should be noted that arrangements that can lead to a violation of competition law do not need to be in writing or even verbal. Even informal arrangements or so-called "concerted practices" can be enough to create a violation. For a more detailed explanation of concerted practices, see section 3.7 below.

3.3 BID RIGGING (INCLUDING COVER PRICING)

Bid rigging or collusive bidding occurs where you coordinate with any competitor(s) on your response to an invitation to tender (or any other method of appointing a contractor) from a customer. Unlawful coordination generally takes place by:

- agreeing with a competitor the terms (e.g. price) on which you will respond to an invitation to tender, or sharing information that would facilitate a tacit agreement of this nature; or
- agreeing with a competitor that it will pay a loser's fee if you let it win the contract (or vice-versa); or
- agreeing with a competitor that only one of you will respond to an invitation to tender.

The practice known as "cover pricing" also constitutes bid rigging. Cover pricing occurs when a tenderer does not want to win the bid and obtains information from another competing tenderer to ensure it does not submit the lowest bid. The information it obtains is a bid price which is slightly higher than the bid the competing tenderer will submit. The customer does not know that this information has been exchanged.

Where a customer is given prior notice of coordination (e.g. a bidding consortium or joint bid) the conduct usually does not constitute illegal bid rigging (see the section on "Joint Ventures" below). However, there are some countries where even disclosed coordination could breach both competition and public procurement rules. Therefore, always check with your in-house lawyer before making a joint bid with a competitor.

Any joint bidding arrangements should always be disclosed in advance to customers and should first be checked with your in-house lawyer.

AN EXAMPLE OF BID RIGGING

The commercial managers working for four main contractors in a large provincial city are aware that for each of their companies there is extensive cost in putting together estimates on projects of the style and size which the companies each find the most profitable. In informal discussions they agree that there is only so much work of this nature to be undertaken in the region and that they should take steps to take it in turn as to who is likely to win the project in competition and that the company which wins will, from its profitable contract, pay the others something towards their costs of giving the impression of a competition.

This agreement includes elements of bid rigging, including the payment of losers' fees, and would be a serious infringement of competition law.

What to do if a competitor contacts you about a tender?

Unless you are legitimately forming a consortium with the competitor for a bid or are not bidding as main contractor and are approached for a sub-contractor role, you should:

- not disclose whether you intend to participate in the tender;
- not disclose any information about prices, costs, suppliers, or any key terms specified by the client;

- explain that the enquiry is inappropriate;
- politely terminate the conversation; and
- take a record of anything discussed and alert your in-house lawyer immediately.

Where you are forming a consortium for the tender, this should first be discussed with your in-house lawyer, and clear protocols with respect to appropriate discussions with the competitor regarding the tender should be put in place.

3.4 MARKET OR CUSTOMER SHARING

If we agree with a competitor that each of us will only undertake work for (or will not work for) a certain group of customers or in a certain territory, that reduces choice for customers and therefore is a serious and prohibited restriction of competition.

AN EXAMPLE OF "MARKET SHARING"

A Manager of Balfour Beatty, A, and his counterpart at a competitor, Z, meet up for their weekly round of golf. During the game, A reveals that Balfour Beatty only wins 1 in every 20 tenders it submits in the North of the country while Z's company wins 1 in 3 tenders in that region. In the South of the country, on the other hand, it appears that Balfour Beatty wins far more tenders than Z's company. But prices in both areas are being driven down as a result of competition between them. On the basis of this information, A agrees with Z that A will cease pricing tenders in the North of the country and that Z will cease pricing tenders in the South, or will price them at very high levels.

This agreement includes elements of market sharing and bid rigging and would be a serious infringement of competition law.

3.5 PRICE FIXING WITH COMPETITORS

If a company agrees the prices it will set with a competitor, competition in the marketplace is restricted and a customer's choice is thereby limited. Any agreement between competitors on prices or even any discussion of current or future prices is illegal and must be avoided.

Prohibited pricing arrangements include, in particular, agreements between competitors:

- to set prices at a certain level, within a certain range or above a specified minimum level;
- to change prices by a certain amount or percentage;
- not to grant discounts or rebates;
- to grant discounts or rebates only at a specified (maximum) level of sales or under specified conditions; and
- to sell with a certain (minimum) margin (including differential margins between multiple products/services).

If your competitor starts discussing pricing, rebates, discounts or margin levels with you, you should refuse to discuss it with them, and report it immediately to your in-house lawyer.

AN EXAMPLE OF "PRICE FIXING"

A Balfour Beatty contract manager A is attending an industry function, and sees his peer from a competitor B, at the bar. Both managers are complaining about how customers are insisting on discounts

for lower skilled maintenance work, and how it is killing their margin. They agree that they won't offer these discounts on future work.

This is an example of price fixing and is absolutely prohibited by competition laws. Even if they had not formally agreed not to offer discounts on future work, the conversation could still be illegal.

3.6 FURTHER HARDCORE RESTRICTIONS

In addition to the above-mentioned restrictions, the following types of agreements with competitors are also prohibited:

- agreements on important non-price terms (e.g. credit facilities provided to customers or suppliers, minimum orders, refusal to provide retentions);
- capacity and, in our businesses that produce products, output limitations (e.g. agreements on production levels or supply quotas, inventory/stockpiling arrangements, future investment to expand capacity, plans to reduce or close down capacity); and
- collective boycotts (i.e. whereby there is an agreement with a competitor(s) not to deal with a certain customer or supplier).

AN EXAMPLE OF FIXING AN IMPORTANT CONTRACTUAL TERM

A large city bank invites Balfour Beatty and four other construction companies to tender on the construction of its new headquarters. The bank is notorious for imposing tough contract terms on the contractors it uses and, in this case, it demands a very tight programme from each tenderer. The bank indicates that ability to deliver in a tight timescale is very important to its choice of tenderer. Before the tenders are submitted, the bank invites the tenderers to a site visit. At that site visit, the representative from Balfour Beatty uses the opportunity to discuss the bank's required programme with its competitors and convinces each bidder to lengthen the anticipated programme duration so that each bidder is on a "level playing field" and has less onerous terms on which it must bid.

This conduct would amount to fixing an important contractual term, and as such, would be a serious infringement of competition law. Contact with competitors should be kept to an absolute minimum and at events such as joint site visits, special care should be taken to ensure that business discussions with competitors do not take place.

3.7 SITUATIONS THAT MAY GIVE RISE TO PROBLEMS: AGREEMENTS OR "CONCERTED PRACTICES"

Any contact with a competitor should be carefully assessed to avoid competition problems, even where this contact does not give rise to an "agreement" in the traditional sense.

Competition law prohibits companies from making agreements (whether written or oral) that prevent, restrict or distort competition or are intended to prevent, restrict or distort competition. It also prohibits any other form of agreement with a similar purpose or effect, whether it is binding or non-binding, formal or informal (such as a "gentlemen's agreement").

In addition, less formal forms of collusion – so-called "concerted practices" – are also prohibited. A concerted practice exists if there is consensus between competitors i.e. where there is practical cooperation between competitors instead of competition between them. This can be brought about by direct or indirect contact. The mere exchange (or even unilateral disclosure) of confidential information with a competitor, for example, may be illegal.

Another indicator of possible concerted practices would be parallel behaviour (e.g. similar price increases in response to increased costs). However, where this arises from wholly unilateral decisions by each company with no discussions or collusion, such behaviour is not, in and of itself, unlawful. Remember, the more contacts between competitors that take place and the shorter the intervals between those contacts, the more likely it is that competition authorities will suspect that any parallel behaviour is agreed or the result of a concerted practice, and the more the onus may be on you to prove that the contact was for a legitimate business purpose or that the behaviour was unilateral. Therefore, it is generally preferable to keep any contacts with competitors to the strict minimum necessary.

AN EXAMPLE OF A CONCERTED PRACTICE

Balfour Beatty and a competitor have been invited to tender for a construction project. An estimator of Balfour Beatty, A, sends his counterpart at a competitor, Z, a copy of a tender document which he intends to send to the client. On the basis of the document, A expects Z to price his tender at the same level. Z reviews the information and takes it into account in preparing his bid.

Even though there is no explicit agreement between A and Z to price fix, it is clear that A is seeking to influence Z's conduct on the market in relation to price. As such, it amounts to a concerted practice to fix prices and is a serious infringement of the competition rules. Note however, that even if A had not intended to influence Z's behaviour, this would still be likely to be illegal: there is no requirement that conduct is carried out intentionally.

The following types of interaction with competitors should therefore be carefully assessed in each circumstance.

3.8 EXCHANGE OF CONFIDENTIAL INFORMATION WITH COMPETITORS

Any exchange of business information between competitors may result in prohibited coordination of the competitors' market behaviour. You should, therefore, not exchange confidential business information with competitors (even post tender), in particular on:

- prices (rebate policy, current prices, planned price increases/reductions, etc.);
- customers (identity, number, location, etc.);
- sales to certain customers or regions (by value or volume);
- production/supply capacity/volumes; and/or
- costs.

Even unilateral disclosure of confidential information to a competitor may violate competition rules. It may indicate an intention to behave in a certain way, or it may be used by competition authorities as evidence of a concerted practice or wider arrangement.

AN EXAMPLE OF AN INAPPROPRIATE EXCHANGE OF INFORMATION

A local authority invites Balfour Beatty and five of its competitors to tender on the construction of a new school. Shortly after submitting its tender, Balfour Beatty is informed by the local authority that it has not been successful. A curious Balfour Beatty estimator decides to contact the other competitors to find out the prices they quoted, so that he can determine where Balfour Beatty went wrong. When asking what each competitor has bid, the estimator also discloses the price at which Balfour Beatty bid.

Price information is clearly commercially sensitive and should not be exchanged with competitors, even after the tender has been awarded. Even if, in practice, such information cannot be used to assist Balfour

Beatty in determining how to price future jobs, the appearance of exchanging such information should be avoided and the estimator should not put himself and the company in a position where we have to explain his conduct. By contrast, if the client itself provides such information, competition concerns will not arise.

If one of your competitors unilaterally discloses confidential information to you:

- report it to your in-house lawyer;
- send the information back to the competitor with a note that you have deleted it permanently from Balfour Beatty's systems and do not consider this kind of communication appropriate;
- do not disclose any confidential information yourself;
- do not record or forward the information, unless your in-house lawyer asks you to do so for competition compliance purposes. In these circumstances, when you record or forward the information that you received, make sure you state:
    - how you received the information;
    - that you did not ask for it;
    - that you do not intend to act on the information (and why); and
- do not change your market behaviour in response to the disclosure.

AN EXAMPLE OF A RESPONSE TO AN INAPPROPRIATE DISCLOSURE

Sales people from Balfour Beatty and a competitor have a conversation. During the conversation, it becomes apparent that Balfour Beatty's competitor is planning to increase prices for certain track products by 5% on 21 August. Balfour Beatty's sales person had also anticipated increasing prices, but does not reveal this fact to his competitor. The conversation ends.

The sales person should contact his/her in-house lawyer to inform them of the conversation and competition concerns. Any increase Balfour Beatty makes to its prices must only be to the extent that there is a documented economic justification or other independent motivation. Care should be taken, as it may be difficult to prove that Balfour Beatty's increase was not influenced by the information from its competitor. Balfour Beatty should never itself communicate its intention to increase prices to its competitors (unless the information is provided because the competitor is also a customer).

Whilst competition law will generally not prohibit disclosure of information between companies who are not competitors, it is possible in certain circumstances for the disclosure of information to non-competitors, such as subcontractors or suppliers, to infringe competition law. This is the case where the sub-contractor/supplier is used as a conduit for the flow of information between competitors. In other words, the information is being provided to the sub-contractor/supplier by one competitor with a view to it being shared by that sub-contractor/supplier with other competitors to make them aware of pricing or other key terms.

Where information, particularly pricing information, in respect of a wider project is provided to supplier/subcontractors, it should always be done on a confidential, "need to know" basis. Similarly, if Balfour Beatty is acting as a subcontractor, it should maintain any information provided by principal contractors in confidence and not share such information with other contractors who may ask it to bid for subcontract work.

3.9 SOCIAL CONTACTS WITH COMPETITORS

You should be very careful with social contacts with competitors, since such contacts expose you to the risk of finding yourself involved in unwanted, anticompetitive discussions or exchanges of information.

3.10 TRADE ASSOCIATIONS

Involvement in the activities of trade associations can often provide opportunities for the informal discussion of confidential commercial matters, which could give rise to (or be regarded as) illegal collusive conduct (i.e. agreements or concerted practices with the object or effect of restricting competition). While involvement in the activities of trade associations generally causes no problems, there are nevertheless occasions when competition concerns may arise. As a result, the following should be avoided:

- restrictive agreements with third parties made by the association on behalf of members (e.g. the trade association prevents its members from dealing with company X);
- recommendations by the association to its members on matters such as prices or standard terms and conditions; and
- formal or informal bi- or multi-lateral collusion (including through sharing of information) which could arise via a trade association.

Care must be taken to ensure that:

- membership of the association is reviewed and if necessary approved by Group Head Office or the relevant Balfour Beatty company;
- membership of the association can be justified as a proper means of promoting Balfour Beatty's legitimate business concerns;
- meetings of the association do not involve discussions of prices, customers or commercial strategy;
- all meetings have formal agendas and minutes, and attendees who are appropriate in light of the agenda;
- any sharing of information is subject to separate legal advice or supervision;
- compliance with any technical standards set by the association can be properly justified;
- potential applicants meeting fair and objective criteria are admitted to the membership; and
- the conversation should be about matters of concern to the industry generally and not about particular projects, companies or customers.

If, during a trade association meeting, the conversation does stray into an anti-competitive area, any Balfour Beatty employees present should object to the conversation continuing and, if the inappropriate conversation does not stop, the employee(s) should immediately leave and contact their in-house lawyer.

Continued attendance at the meeting could implicate both the employee and the Group. If there are minutes of the meeting, ensure the objection you made is minuted and that the record shows when you left the meeting.

The kinds of topics that are suitable for discussion at industry association meetings are:

- health and safety developments (provided costs of health and safety programmes are not discussed);
- shared technology platforms (provided proprietary information and costs are not disclosed);
- developments in legislation affecting the construction industry (again, provided costs or price responses are not discussed);
- trends in use of new materials, such as sustainable building (again, provided costs or price responses are not discussed);
- the economic environment generally; and/or
- other generic, non-project specific matters.

If in doubt about any topic on the agenda of a trade/industry association meeting that you are attending, please discuss it with your in-house lawyer before attending the meeting.

3.11 JOINT VENTURES

Joint ventures are very common in our business, but when we combine resources with one or more other companies to bid for the award of a contract, competition concerns may arise. This is because such an arrangement can lead to the inappropriate exchange of information between competitors and collusive conduct going beyond the scope of the particular contract being tendered. For example, joint ventures can lead to bid rigging if the customer is not aware of the joint bid or coordination of the competitive strategies of the two competitors. Such an arrangement may be particularly problematic if the parties are competitors, especially if the parties have a significant combined market share (e.g. 40% or more). In addition, in some countries even disclosed coordination between competitors in a tender process could be illegal under local competition laws and/or public procurement laws. It is therefore important to seek advice from your in-house lawyer on any potential collaboration with competitors.

Joint ventures may not be problematic if the parties are not competitors and/or, if one of the parties would be unable to bid for the contract on its own, e.g. it lacks the necessary expertise in a particular area, or the project is too large for one party to complete on its own. In addition, if efficiencies result from the collaboration between competitors, it may be possible to justify any loss of competition that results from the collaboration.

In order to avoid competition problems in joint venture situations, various steps should be taken:

- you should inform the customer of the existence of the joint venture;
- where the parties are competitors:
    - confidentiality agreements should be in place to limit the flow of information between the parties;
    - any other restrictions imposed on either party during the life of the joint venture must be necessary to ensure that the joint venture can function effectively and should be kept to an absolute minimum;
    - the agreement should not contain any post-termination restrictions on either party;
    - all discussions at the JV should be strictly limited to the specific project concerned;

- where the parties are competitors with a significant combined market share, the rationale for the joint venture must be to ensure the most competitive tender possible (rather than to reduce the customer's choice); and

- you should contact your in-house lawyer before entering into such an arrangement.

AN EXAMPLE OF A JOINT VENTURE

A customer has invited Balfour Beatty to tender for a £700 million contract. The size of contract (and required specialist expertise) means that Balfour Beatty would be unable to carry out the work alone. It therefore decides to establish a joint venture with two other companies and submits a bid on this basis. The consortium wins the bid.

Such a joint venture (which allows Balfour Beatty to carry out a job it would not be able to do on its own) will not infringe the European competition rules, provided the customer is aware of the arrangement, information flows are limited to the scope of the joint venture only and to only those Balfour Beatty employees/agents/contractors who need the information. However, your in-house lawyer should be consulted to confirm there are no specific national laws under which the collaboration would be illegal.

3.12 SUPPLY AGREEMENTS BETWEEN COMPETITORS

If two competitors enter into a customer/supplier relationship (e.g. a competitor of Balfour Beatty supplies it with specialist equipment needed to carry out a specific tender), the customer (in this case, Balfour Beatty) necessarily receives information on elements of the supplier's (the competitor's) prices. This may influence the future pricing policy of the customer in its capacity as a competitor. However, this exchange of information is unavoidable for the conclusion of the supply contract and does not (in the absence of other clauses or mechanisms restricting competition) raise competition law concerns.

Where confidential information (e.g. the price at which that competitor is tendering) is passed on to the customer and this is not necessary in the specific case, competition problems may arise.

If you are supplying a competitor, it is important to make sure that any exchange of information (pricing information, in particular) is limited to what is strictly necessary for the purposes of the supply relationship. In particular you should only send your competitor prices for products/services they are using/buying.

3.13 CUSTOMER INVOLVEMENT IN COOPERATION BETWEEN COMPETITORS

Coordination with competitors with the object or effect of restricting or otherwise distorting competition is unlawful, even if such coordination is actively encouraged and driven by the customer.

However, in some cases customers may request collaboration between Balfour Beatty and its competitors on non-competitive aspects of conduct (e.g. under a framework agreement). If a customer makes such a request, advice should be sought from your in-house lawyer and the following safeguards must be followed:

- ensure that you can demonstrate that the customer has requested the collaboration (preferably by way of documentary evidence);

- be clear on the extent to which, and the purposes for which, the customer wishes you to collaborate – do not discuss or exchange information relating to matters outside the scope of the customer's instructions;

- ensure that any information exchanges are restricted to those that are necessary for the customer's purposes;

- ensure that the customer is copied in on any correspondence and provided with copies of the minutes of all meetings;
- maintain a record of any meetings and/or discussions (i.e. who was present, what was discussed);
- only discuss the subject matter of that specific framework arrangement - not any other framework in which you might (both/all) be interested;
- do not engage in any discussions with competitors outside the formal meetings and discussions;
- notify your in-house lawyer immediately if:
    - the customer does not attend the meetings, or you are unclear about the scope of the customer's instructions; or
    - competitors (or any of them) try to engage you in discussions beyond the scope of the customer's instructions.

You should also be aware that, in a tender situation, the customer may seek to play the bidders off against each other. This is perfectly permissible under the competition rules – the customer is entitled to try and leverage the best deal for itself. However, you must not under any circumstances seek to verify what the customer is telling you by calling the competitor in question.

AN EXAMPLE OF PRICE FIXING AS A RESULT OF A FRAMEWORK AGREEMENT

A major utility has selected six utility contractors including Balfour Beatty as its "framework" contractors in a large geographical area. The utility encourages the contractors to share information, knowledge and technology wherever it will be of use to carrying out the framework contracts. Without telling the utility, the contractors expand this into a broad-ranging understanding and mutual exchange of information, as this cuts their costs and enables them to improve their returns.

This agreement includes elements of inappropriate information exchange (see above) and price fixing and would be a serious infringement of competition law.

4 RELATIONSHIPS WITH SUPPLIERS AND CUSTOMERS

Balfour Beatty has a vertical relationship with its suppliers (e.g. suppliers of raw materials or specialist services) and its customers. Some restrictions on competition in these relationships may be permissible, but there are some "hard core" restrictions.

4.1 HARD CORE RESTRICTIONS

Many of the following restrictions apply principally to the sale of products, and consequently will have little application to construction services. However, a number of Balfour Beatty companies do manufacture products (e.g. Balfour Beatty Rail and Balfour Beatty Ground Engineering), and all of them are involved in procuring materials. Those involved in procurement need to be aware of agreements with suppliers that may infringe competition rules.

4.1.1 RESALE PRICE MAINTENANCE

Agreements that establish, whether directly or indirectly, fixed or minimum resale prices are prohibited under EU and UK law. Recommended or maximum prices, on the other hand, are generally permissible (provided it is a genuine maximum and not an effective price floor – e.g. because of a very small increment to cost).

4.1.2 TERRITORIAL RESTRICTIONS

Impermissible territorial restrictions may include:

Export bans within the European Economic Area ("EEA[1]")

A supplier may prohibit a distributor from actively approaching customers inside a territory allocated exclusively or reserved to another distributor ("active sales"). It may not, however, prohibit so-called "passive sales", whereby a distributor responds to an unsolicited request from a customer.

Export bans outside the EEA

Clauses restricting the ability of a distributor to export a product outside the EEA will usually be acceptable, unless there is a realistic possibility that the goods could be re-imported into the EEA to compete on local markets.

AN EXAMPLE OF AN EXPORT BAN

A supplier of rail signalling equipment is negotiating with Balfour Beatty in Country A to sell it certain equipment to install in its rail systems. However, the company fears that Balfour Beatty will try and sell this equipment in Country B, where the market price is higher and where the supplier also has significant sales and the opportunity to undercut its competitors. In order to protect the sales and relationships the supplier has in Country B, the company says it will only sell to Balfour Beatty if Balfour Beatty promises not to supply the products to Country B under any circumstances. Country A and Country B are EU Member States.

An export ban such as this would constitute a serious infringement of the competition rules. Balfour Beatty should refuse to agree to this export ban as part of negotiations. However, if the supplier had reserved supply to Country B exclusively to itself and set this out in the supply agreement with Balfour Beatty, it would be permissible to ban active sales (though not passive sales).

Import bans

A territorial restriction in an agreement for the distribution of goods outside the EEA, prohibiting sales into the EEA, may breach competition law rules.

Customer restrictions

Restrictions concerning the customers or groups of customers to whom the distributor may sell are also banned. As in the case of exports, it is possible to prohibit a distributor from actively selling to particular customers, but it is illegal to prohibit "passive" sales.

4.2 VERTICAL AGREEMENTS THAT MAY GIVE RISE TO PROBLEMS

Certain potentially anti-competitive provisions in vertical agreements are exempted from the competition regime/rules, provided both the supplier and the buyer have a market shares below 30% on the relevant supply/purchase markets and provided there are no hard core restrictions (as described at Section 4.1 above).

Where the relevant market share exceeds 30%, it is necessary to assess whether the provisions have an anti-competitive effect.

[1] Namely Iceland, Liechtenstein, Norway and the EU Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom).

4.2.1 EXCLUSIVE PURCHASING AND NON-COMPETE OBLIGATIONS

An exclusive purchasing arrangement is where there is an obligation or incentive scheme that makes the buyer purchase practically all its requirements for a type of product from one supplier. A non-compete obligation is where the purchaser agrees not to sell competing products. Both arrangements are treated in the same way. Exclusive purchasing and non-compete obligations are exempted, if the supplier's market share does not exceed 30% and the obligation is not for longer than five years. Above the market share or five-year time limit, it is necessary to assess whether the obligation could have an anti-competitive effect.

AN EXAMPLE OF AN "EXCLUSIVE PURCHASING AGREEMENT"

Customer X in the UK agrees to purchase all of its requirements for certain speciality civil engineering services exclusively from Balfour Beatty Rail for the coming year.

This is an example of an exclusive purchasing obligation. If Balfour Beatty has a market share in excess of 30% in the UK in relation to those services, or if Customer X has a market share in excess of 30% in the procurement of those services, the agreement and market would need to be considered to ensure that no anti-competitive effects resulted. If Balfour Beatty's and Customer X's respective market share are less than 30% in the relevant supply and purchase markets, the restriction would be permissible.

4.2.2 EXCLUSIVE DISTRIBUTION

In an exclusive distribution agreement, the supplier agrees to sell his products only to one distributor for resale in a particular territory. At the same time, the distributor is usually prevented from actively selling into the territories of other exclusive distributors.

4.2.3 EXCLUSIVE SUPPLY

Exclusive supply arrangements are where there is a direct or indirect obligation causing the supplier to sell only to one buyer. For intermediate goods or services, exclusive supply means that there is only one buyer inside the EEA or that there is only one buyer inside the EEA for the purposes of a specific use.

Whether the agreements referred to above are exempt from the prohibition, depends on several factors (including market shares) and has to be assessed in each individual case. If in doubt, contact your in-house lawyer.

5. ABUSES OF A DOMINANT POSITION

Companies that are considered "dominant" in a particular market must maintain particularly high standards of behaviour in their relations with third parties.

Dominant companies must not "abuse" their dominance to the detriment of any third party (in particular, customers or competitors).

Under the EU rules and the rules of most European countries, a company is particularly likely to hold a dominant position if:

- its share of the relevant market is approximately 40% or more, although even an undertaking with a market share below 40% can be dominant, depending on the strength and number of its competitors; and

- the market share of the next largest competitor is considerably lower.

Most Balfour Beatty businesses are unlikely to be dominant in their markets, given the fragmented nature of the construction industry in the countries in which we operate. However, in certain specialist industries

where our market share is higher, there may be a greater risk of dominance. Whether or not your business is in a position of dominance, it is good to have an understanding of these rules, as some of the suppliers we deal with may be dominant in their particular industries. Should they try and abuse their dominant position with us, we should be aware that we can prevent them engaging in such anti-competitive behaviour.

Set out below are the some examples of types of abuse.

5.1 EXCESSIVELY HIGH PRICES

Charging prices that are excessive because they bear no reasonable relation to the economic value of the product supplied and are unfair, is an abuse. “Economic value” in this context is determined by reference to the cost of the relevant goods or services supplied, or by reference to the prices for comparable goods.

5.2 PRICE DISCRIMINATION AND DISCOUNTS

Price discrimination involves applying different conditions (normally different prices) to equivalent transactions. Price discrimination is often seen in the form of a differential discount policy. It may be regarded as abusive where its object or effect is to exclude or eliminate competitors in a way that goes beyond the normal conditions of competition.

5.3 PREDATORY BEHAVIOUR

Conduct such as very low pricing intended to drive out competitors so that prices can be increased without competition in the longer term is unlawful and prohibited. Where prices are below average variable cost, and even in some cases below average total costs, there is a presumption that they are predatory.

5.4 TYING

It may be an abuse for a dominant supplier to make the purchase of one product or service conditional on the purchase of another product or service. This can also consist of a requirement that the purchase or sale of a product be financed through a particular financial institution.

In contrast to tying arrangements, it is permissible for a seller to “package” products or services at a discount, so long as the seller does not use his power over one product to coerce the customer into purchasing another product.

5.5 MARGIN SQUEEZE

Generally, a margin squeeze can arise when a dominant company which is vertically integrated supplies an essential input to its wholesale customers, which are also its competitors in a downstream market. If that input is essential for downstream competitors, the dominant firm can, in effect, “squeeze” its downstream competitors in the retail market by charging them an excessive upstream price, charging an unprofitable downstream price, or a combination of the two. Conversely, it is unlikely that a margin squeeze will occur if:

- the downstream rivals have alternative sources of supply or there are substitutable inputs; or
- there is a legitimate justification for the losses made downstream by the dominant firm (based on the wholesale input cost it charges to third parties), e.g. because of bad market conditions that are expected to improve.

EXAMPLE OF “MARGIN SQUEEZE”

Let us imagine that a Balfour Beatty subsidiary, A, has a 70% market share in the manufacture and supply of specialised marine flots. Flots are used with piling rigs in various piling operations. Subsidiary A sells flots to another Balfour Beatty subsidiary, B, which engages in piling operations.

Subsidiary A also sells the flots to C, another piling contractor. The price at which Subsidiary A sells the flots to Subsidiary B is three times lower than the price it charges to Company C and, as a result, C cannot compete effectively with B.

In light of Subsidiary A's high market share, it is likely that Balfour Beatty is dominant in the market for these flots. The differential pricing policy may amount to a margin squeeze unless there is an objective justification for the difference in price. This would then constitute an abuse of dominance.

5.6 REFUSAL TO SUPPLY

It may be an abuse to refuse to supply goods or services to an existing customer and, in some cases, to a prospective customer, without reasonable justification. Credit risk may constitute a reasonable justification, but the fear of competition from the buyer may not. To avoid allegations of abuse, a company in a dominant position should allocate any available quantities of supplies to its several buyers on a fair and reasonable basis.

5.7 EXCLUSIVE SUPPLY ARRANGEMENTS

It is very likely to be an abuse for a dominant company to impose exclusivity on its suppliers or purchasers. This applies not only to strict contractual exclusivity but also to "preferred supplier" arrangements, volume rebates and other mechanisms which have the effect of exclusivity.

6 DOCUMENT CREATION

6.1 "NOTHING IS CONFIDENTIAL"

There are numerous ways in which confidential company documents (including negotiations with customers), never intended to be public, may come to the attention of a competition authority or court. For example:

- the documents may be copied or seized during an on-the-spot investigation by a competition authority;
- Balfour Beatty may have to disclose them in response to a request for information from a competition authority or a document request in discovery proceedings before a court or in a merger review; or
- customers or competitors may provide them to a competition authority or court in order to support or defend a complaint.

It is therefore essential to draft non-public documents with the same degree of care as would be taken in drafting external documents.

Once a document has aroused the suspicion of a competition authority or court, it requires considerable time and effort to explain the true meaning and context of a suspicious statement. Suppressing it would be very dangerous and could be a criminal offence and result in severe penalties. A document containing incorrect information that could trigger competition proceedings should therefore be corrected in a written note that can be attached to the document in question.

6.2 A FEW GUIDELINES

In addition to understanding and following the rules on competition law set out in this policy, employees should keep the following guidelines in mind:

- Do not write anything that you would not be happy to have published;
- avoid all language that could be interpreted as indicating an understanding with a competitor (e.g. “XY chose not to bid as expected by us”);
- avoid hostile or ambiguous language, particularly with regard to competitors and customers (e.g. “kill”, “destroy”, “eradicate”, “block”, “foreclose”, “punish”, “put under pressure”, “discipline” or “disloyal”);
- avoid language suggesting that Balfour Beatty holds a dominant position (e.g. “dominate”, “control the market” or “dominant position”);
- avoid the use of words implying that there is something to hide (e.g. “Do not copy”, “Destroy after having read” or “off-the-record”); and
- when you report market information, always state clearly the source of the information (e.g. published information, information obtained from customers, hearsay or own estimates).

7 WHISTLEBLOWING / LENIENCY

If you suspect or become aware of any contravention of the competition rules involving Balfour Beatty, you must inform your in-house lawyer immediately.

In the EU and UK Balfour Beatty can take advantage of laws which give the first person to “blow the whistle” on anti-competitive behaviour the chance for immunity from penalties, and subsequent whistleblowers that provide additional evidence the possibility of a reduction in any fine imposed. In the UK and a number of other EU Member States (but not at EU level), there are also criminal sanctions against individuals for certain hard-core breaches of competition law. However, the first business (and the employees involved) to blow the whistle on a criminal cartel gain total immunity from fines and criminal prosecution.

If for any reason you feel you cannot inform your in-house lawyer or the Group Head Office legal department, or you are concerned that an issue you have raised is not being properly handled, you should contact Balfour Beatty’s Speak Up helpline via the web (www.balfourbeattyspeakup.com) or by telephone, using the number which is published in your workplace.

8 INVESTIGATIONS

EU competition law may be enforced by both the European Commission and national competition authorities. UK competition law is enforced by the Competition and Markets Authority.

The Commission or any national competition authority may begin an investigation on the basis of a complaint or on its own initiative. Their suspicions may be aroused through uncompetitive market conditions, trade press or information from another authority. In the case of cartels, cartel members may “blow the whistle” in return for leniency under various leniency programmes, and so provoke an investigation into other alleged members.

As part of the investigation process the Commission and national authorities have wide-ranging powers to enable them to gather the necessary information. The most simple of them is the request for information. Accordingly, the authority may require companies to provide answers and related documents in response to questions raised by the investigation. Failure to comply may result in fines. Their investigatory powers also permit them to carry out a “dawn raid” at the premises of a suspected business, as well as at the

homes of its employees. In conducting such an unannounced inspection, they may enter the premises, examine and copy the books and records of the company and take oral evidence from staff.

In the event of a dawn raid, please refer to the "Dawn Raids (BIT-RM-0101)". This guidance is available from your in-house lawyer or the Group Head Office legal department.