

# ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS

## HOW WE DO THE RIGHT THING

We base our relationships with customers and suppliers on efficient and fair business practices that adhere to antitrust and competition laws and are in Viacom’s best interests.

### ✓ WHY IT MATTERS

For our business relationships to thrive, they must be grounded in trust and designed to provide mutual advantage. Trade practice laws support this by preserving a competitive economy and encouraging free enterprise and innovation to flourish. When we make business choices impacting our customers and suppliers, we must be sure they are always based on criteria and processes that are objective, fair and lawful.

### 👁️ WHAT IT LOOKS LIKE IN OUR DAY-TO-DAY WORK

- Familiarizing yourself with the guidance on this page (and the affiliated document in detail) if you are an employee who makes decisions in these areas to ensure we are always compliant with antitrust and competition laws

- Choosing the customers and suppliers with whom we wish to do business based on criteria and processes that are objective, fair and in Viacom’s best interests
- Entering into long-term agreements, including those with exclusivity provisions, only when they promote business efficiency and do not preclude others from competing
- Complying with applicable resale pricing laws, recognizing that the ability to control resale prices varies greatly in different jurisdictions both within the U.S. and internationally, and that the law is in a state of flux
- Shunning unlawful practices with regard to pricing, promotions and discounting

THIS SECTION OF THE STATEMENT IS NOT MEANT TO BE A COMPLETE OVERVIEW OF EVERY ASPECT OF DEALING WITH CUSTOMERS AND SUPPLIERS.

If your role involves making a business decision in any of the following areas, please review the pages below for additional guidance.

- Choosing the customers and suppliers with whom we wish to do business
- Entering into long-term agreements and exclusive arrangements
- Influencing the resale prices of our distributors
- Shunning unlawful practices with regard to pricing, promotions and discounting
- Negotiating appropriate “bundling” arrangements
- Negotiating non-price limitations on what downstream customers or upstream suppliers can do during distribution

# ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

## 👁️ WHAT IT LOOKS LIKE IN OUR DAY-TO-DAY WORK (CONT.)

- Never pursuing non-price agreements with our competitors and obtaining only appropriate non-price limitations on what our downstream customers or upstream suppliers can do as they distribute our product or supply inputs; and
- Never using illegal practices that obligate customers to buy or license products or services they do not want or need.

## CHOOSING CUSTOMERS AND SUPPLIERS

As a general rule, Viacom and its subsidiaries have the right to select customers and suppliers unilaterally. As long as our Company is acting alone, we may refuse to deal with or choose to terminate relationships with customers or suppliers for legitimate business reasons.

### **These can include:**

- Refusal to conform to reasonable standards of performance;
- Misuse or misrepresentation of Company products;
- Businesses that do not fit with Viacom's business model;
- Poor credit rating; or
- Other reasons with a demonstrable business justification.

## GUIDANCE FOR MAKING DECISIONS ON CUSTOMER AND SUPPLIER SELECTION:

- Shun agreements or understandings with competitors, customers or suppliers not to do business, or to set terms of business, with a third party; and
- Consult Company lawyers before any decision to refuse to deal with a new supplier or customer proposing a new platform that might compete with existing customers or suppliers.

## ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

### LONG-TERM AGREEMENTS AND EXCLUSIVE ARRANGEMENTS

Long-term exclusive agreements can raise significant competition law issues and should always be discussed in advance with Company lawyers.

Exclusivity may be treated differently in various jurisdictions (especially outside the U.S.) and therefore often requires analysis of its effect upon competition.

Advance legal guidance is not required for a simple, short-term agreement for the purchase or sale of goods or services on a previously approved form.

*For examples of agreements that need special care, see the sidebar.*

### EXAMPLES OF AGREEMENTS IN THIS CATEGORY THAT MAY BE LEGAL BUT NEED SPECIAL CARE INCLUDE:

- Granting exclusivity to an upstream supplier or a downstream distributor that holds a dominant position in its line of business;
- Granting exclusivity beyond the scope of what is typical for a particular business line (for example, a normal exclusive right to exhibit a movie or a series on a broadcast network for a limited period is common and pro-competitive and does not present concerns);

### EXAMPLES OF AGREEMENTS IN THIS CATEGORY THAT MAY BE LEGAL BUT NEED SPECIAL CARE INCLUDE:

- Granting exclusivity to an upstream supplier or a downstream distributor that holds a dominant position in its line of business;
- Granting exclusivity beyond the scope of what is typical for a particular business line (for example, a normal exclusive right to exhibit a movie or a series on a broadcast network for a limited period is common and pro-competitive and does not present concerns);
- Obtaining exclusivity to content where the effect may go beyond differentiating our programming from our competitors and preclude them from competing; and
- Supplying the Company's entire output of a particular kind of product, such as movies in a particular window, region or country (including any single country within the European Union) to a single customer or distributor (or means of distribution).

## ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

### INFLUENCING THE RESALE PRICES OF OUR DISTRIBUTORS

Viacom complies with applicable resale pricing laws, recognizing that the ability to control resale prices varies greatly in different jurisdictions both within the U.S. and internationally, and that the law is in a state of flux.

Analysis starts with identifying in each instance why it is in Viacom's interest to influence the prices at which Viacom's output is resold.

Analysis becomes more complex if our content is combined with other content and then resold at a bundled price. The analysis becomes still more complex if our customer is also a competitor, since controlling resale prices may run the risk of price fixing among competitors.

### GUIDANCE FOR MAKING DECISIONS ON CUSTOMER AND SUPPLIER SELECTION:

- Allow customers to decide, based on independent business judgment, whether to follow any pricing suggestions we may make in those states in the U.S. and in those international jurisdictions that prohibit resale price maintenance;
- Never make dealings with customers conditional on adherence to our suggestions in those jurisdictions;
- Do not otherwise coerce customers into following our pricing suggestions in those jurisdictions;

- Consult Company lawyers about using appropriate unilateral steps to influence resale prices, which, depending on the circumstances and the jurisdiction, may or may not include such things as setting our wholesale price at a level that influences retail pricing strategies; structuring our distribution arrangement so that the retailer becomes our commission agent selling at a price that we set; and linking the availability of cooperative advertising funds to not advertising our product at discounted prices; and
- Identifying why setting resale prices is in Viacom's interest and how its pro-competitive effect will outweigh any limitations on our retailer's flexibility in jurisdictions where resale price maintenance is not barred.

## ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

### SHUNNING UNLAWFUL PRACTICES WITH REGARD TO PRICING, PROMOTIONS AND DISCOUNTING

We must also take care when we determine pricing, promotions and discounts to avoid unlawful practices.

Because the laws regarding price discrimination and promotions are particularly complex, and because price discrimination laws provide various statutory justifications, it is important to review all new pricing plans, promotional plans and discount arrangements with Company lawyers.

### WHAT COMPETITION LAW PROHIBITS IN CONNECTION WITH PRICING, PROMOTIONS OR DISCOUNTING:

- Sellers of goods (but not services) may not charge different purchasers that compete with each other different prices for the same goods, if this would harm competition;
- Sellers of goods (but not services) may not treat one customer more favorably than a competing customer in providing promotional services or allowances, if such dealings would have a negative impact on competition; and
- Buyers of goods (but not services) may not induce sellers to engage in unlawful price discrimination.

The distinction between the sale of goods and the license or sale of services is often critical, especially for those businesses dealing with intellectual property rights. For example, the sale of a DVD is a “good” but the licensing of a motion picture to a theater owner is not. When in doubt, consult Company lawyers.

## ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

### NEGOTIATING NON-PRICE LIMITATIONS ON WHAT DOWNSTREAM CUSTOMERS OR UPSTREAM SUPPLIERS CAN DO DURING DISTRIBUTION

Viacom may obtain appropriate, reasonable, non-price limitations on what our downstream customers or upstream suppliers can do as they distribute our product or supply inputs, but may not seek or obtain such non-price agreements with our competitors. Like the law relating to influencing resale prices, the law relating to enforcing non-price-related limitations varies among jurisdictions, especially internationally. In each instance, it is important to identify why it is in Viacom's pro-competitive business interest to grant or agree to such restrictions.

### EXAMPLES OF CONTRACTUAL LIMITATIONS WHERE YOU SHOULD ALWAYS CONSULT WITH COMPANY LAWYERS:

- Limitations on the geographic areas or time period in which exclusive rights are granted;
- Restrictions on the transshipment or resale of product outside areas covered by distribution agreements;
- Limitations on the types of customers to which product can be resold;
- The creation of new "windows" in sequential distribution that may affect businesses in adjacent windows; and
- Limitations on handling competitive merchandise by customers.

# ADHERING TO COMPETITION LAWS WITH CUSTOMERS & SUPPLIERS (CONT.)

## DISTINGUISHING APPROPRIATE “BUNDLING” ARRANGEMENTS

Viacom will never use illegal practices that obligate customers to buy or license products or services they do not want or need. However, it is important to recognize subtle legal distinctions between “bundling” our content vs. “tying” our content, which have legal repercussions under competition law. The law distinguishes tough bargaining from improper coercion.

Most bundles *are* permitted, but the legal distinction may depend on:

- The business justification for the proposed arrangement;
- Viacom’s market position in the area covered by a contractual arrangement; and
- Whether and at what price competing products or services are available, and, more generally, upon the impact on competition as a result of the arrangement.

Therefore, consult Company lawyers before making any sale or license involving—or suggesting—any of these types of arrangements.

## DISTINGUISHING BETWEEN PRO- COMPETITIVE BUNDLING AND ANTI-COMPETITIVE TYING:

- “Bundling” arrangements offer an array of our products or services at an advantageous price or on other advantageous terms.
- “Tying” is the practice of *anti-competitively* using market power to coerce a customer to purchase or license a product or service in order to obtain another product or service.