



GF-LI Antitrust Practice Group

Antitrust guidance note

Pricing strategies:

Recommending prices to distributors
(including funneling)

Granting discounts or rebates to customers

Power and productivity
for a better world™



ABB's Code of Conduct requires you to:

Compete fairly

We believe in a competitive, free enterprise system because it guarantees that our hard work and innovation will be rewarded. We will lose the trust of our customers if we treat them differently from one another or conspire with competitors against them.

This system, as the basis of a free market economy, is protected and promoted by competition law. Consequently, our actions must always comply with all applicable antitrust and other laws regulating competition. While these laws vary from country to country, the ABB minimum standard can be defined as follows:

- We compete openly and independently in every market. We do not make any agreements – formal or otherwise – with competitors to fix or set prices or allocate products, markets, territories or customers.
- We do not obtain or share with competitors current or future information about price, profit margins or costs, bids, market share, distribution practices, terms of sales, specific customers or vendors.
- We do not agree with or require a customer to resell our products at certain prices.
- We do not act in a manner that unfairly favors or benefits one customer over another competing customer.

The Golden Rules (1)

Remember the Golden Rules set out in the other Antitrust Guidance Notes for:

- Trade associations, professional associations and other industry gatherings;
- Benchmarking; and
- Competitive intelligence gathering versus commercially sensitive information exchanges (the CSI Antitrust Guidance Note).

Rule 1:

A competitor is not a legitimate source of Competitive Intelligence.

Rule 2:

Do not directly or indirectly (through a Trade Association, independent consultant or other third party), discuss, obtain from, or share with our competitors, their employees or representatives any Commercially Sensitive Information.

Rule 3:

Do not exchange directly or indirectly with a competitor information on individualized intentions concerning future conduct regarding prices or quantities (e.g., intended future sales, market shares, territories, sales to particular groups of customers....).

Rule 4:

Do not receive from a supplier detailed information about its offer to a competitor of ABB.

Rule 5:

Do not receive from a customer detailed information about a competitor's offer or bid unless the customer has structured the bidding process in an open and transparent way, giving all market participants equal access to the information.

Rule 6:

Every ABB employee has the responsibility to pro-actively distance ABB from inappropriate conduct.

The Golden Rules (2)

Additional Golden Rules set out in this Antitrust Guidance Note:

Rule 7:

Seek advice from local GF-LI if you want to allocate a territory or customer group to, or enter into an exclusive or non-compete arrangement with, a trade partner of ABB.

Rule 8:

We do not agree with or require a customer to resell our products or services at a certain price.

Rule 9:

We do not recommend a resale price, or provide a maximum resale price, to a customer who is not a distributor.

Rule 10:

Do not take actions which cause a recommended or maximum resale price to - in practice - become a fixed or minimum resale price.

Rule 11:

Do not grant a discount or rebate to a customer if you suspect ABB might be dominant (contact GF-LI for guidance).

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Pricing strategies

Introduction

Manufacturers have different ways to bring their products or services to market. A manufacturer can sell its products or services directly to its end-customers. Within ABB, the Power Grids Division for example generally sells its power products and/or power systems directly to utilities or to EPCs (Engineering, Procurement and Construction companies), which integrate these ABB power products/power systems into their own offering.

Conversely, a manufacturer may choose to rely on other companies to distribute its products or services. These arrangements, often referred to as [vertical agreements](#), are generally between companies operating at different levels in the supply chain (e.g., between ABB and a wholesaler) and relate to the conditions under which the parties may purchase, sell or resell certain goods or services. Within ABB, the Electrification Products and the Discrete Automation and Motion Divisions for example sell their products to wholesalers or other distributors for resale to their customers.

Often the way by which a manufacturer brings its product/service offering to market is a mixture of these models. For example, the Electrification Products Division will also sell its products directly to:

- Customers such as panel builders or system integrators, which integrate ABB products into their offering and then sell a finished product to end-customers; or
- Directly to end-customers, such as hospitals.

Antitrust agencies are generally concerned about the impact agreements between competitors (so-called [horizontal agreements](#)) have on competition. Conversely, they usually consider [pure vertical agreements between non-competitors to enhance efficiency](#) as these arrangements generally [increase competition among different brands](#) (so-called [inter-brand competition](#)). This pro-competitive effect of vertical agreements would on balance often outweigh any reduction of competition resulting from price, territorial, customer or other exclusivity restrictions imposed by the manufacturer on the individual members of its distribution network (i.e., loss of [intra-brand competition](#)).

[It is therefore important to assess whether a company with whom ABB wants to conclude an agreement is in a competitive relationship with ABB.](#)

Pricing strategies

For example:

- Where ABB produces a power product under a brand label agreement for a non-ABB company, which produces/sells these products elsewhere in the world, this arrangement generally is viewed as a horizontal agreement between competitors;
- Where ABB sells Low Voltage (LV) products to a third-party system integrator or panel builder, ABB may be considered to be a competitor of this customer if ABB also offers such systems or panels;
- Where ABB sells LV products to, for example, an industrial vacuum cleaner manufacturer, ABB and this customer would not be in a competitive relationship on either level of the supply chain.

Dual-distribution situations are situations where a manufacturer of products or services, such as ABB, not only sells its products/services through third parties, but also itself acts as a distributor of these products/services downstream. A specific case of a dual distribution situation are wholesalers. Antitrust agencies have considered that a manufacturer generally does not compete with wholesalers for the same customers or same supply of products, and therefore the manufacturer would not be considered to be a competitor of the wholesaler in the same market.

The above description of different commercial relationships does not cover all factual or commercial scenarios. If you are in doubt whether ABB is in a competitive relationship with a customer, please contact a member of Group Function - Legal & Integrity (GF-LI) in your country for specific guidance.

Agreements with a competitor

To the extent that you want to enter into a Buy-Sell Relationship with a competitor, please refer to the guidance provided in the [CSI Antitrust Guidance Note](#).

To the extent you want to enter with a competitor into:

- A joint research & development agreement;
- A joint production agreement (including specialization agreement);
- A joint procurement agreement;
- A joint marketing agreement (including distribution agreement);
- A consortium or joint venture; or
- Any other agreement with a competitor

contact a member of the GF-LI in your country for specific guidance on the antitrust and other issues (including proper management of information flows) raised by these agreements.

Pricing strategies

Vertical agreements with distributors

Manufacturer-imposed requirements: General

Manufacturers will market a product/service in function of notably its characteristics, positioning (high, medium or low market segment), branding and the chosen channel to market.

A manufacturer, who decides to use distributors to market and sell its products/services, interacts with its distributors to ensure the competitiveness of its product/service offering against those of other competing manufacturers ([inter-brand competition](#)). This can for example be in the form of training of the distributor's employees, providing promotional/advertising material to the distributors, participating in joint promotional/advertising activities, or allowing the distributor to make use of the manufacturer's trademark or brand. Many of these initiatives are generally non-problematic from an antitrust point of view.

The word "[distributor](#)" (e.g., wholesaler, distributor or dealer) used in this Antitrust Guidance Note refers to a company or group of companies, which:

- Purchases goods/services from ABB for the purpose of re-selling these to another third party;
- Does not manufacture these goods/services in competition with ABB (i.e., does not compete with ABB in the upstream market); and
- Where ABB does not compete with this company or the group of companies in the downstream market.

A manufacturer may also choose to incentivize a distributor to focus on the marketing and sale of the manufacturer's product/service offering by for example granting special discounts or rebates (see dedicated chapter of this Antitrust Guidance Note) or imposing certain requirements on the distributor such as:

- Implementing pricing strategies including recommending resale prices or imposing a maximum resale price;
- Allocating a specific territory or customer group to the distributor; or
- Requiring the distributors not to market and sell competing products.

Pricing strategies

Although antitrust agencies consider that these type of manufacturer-imposed requirements have the pro-competitive effect of [enhancing inter-brand competition](#), these requirements may on balance (rule of reason) restrict competition, and therefore raise antitrust concerns. This is especially the case where these restrictions result in foreclosure of other market players (due to the position of the manufacturer or the distributor in the up-, respectively, downstream market) and/or restrict customer choice (softening of competition or facilitating collusion at manufacturer or distributor level).

In order to ensure an increased pull-through of its products/services a manufacturer, such as ABB, can also opt to directly address customers of its distributors (e.g., installers of LV products). In doing so, ABB would provide direct technical support to, and devise the optimal solution for, these users, and/or provide these users with assurances that the resale price applied by its distributors will not exceed a certain level (i.e., a maximum (or “ceiling”) price) for a specific project or opportunity of such a user, so-called “[funneling](#)”.

The objective of these efforts is to ensure that ABB’s (multi-brand) distributors have the right incentives to sell ABB’s products/services at competitive conditions.

Note: ABB sometimes also reaches out to customers of its distributors by means of a point or loyalty program. The simplest form of such a program is where a customer earns points from purchases with a distributor that are redeemable for additional products or services, or other prizes (e.g., towels, iPads etc.). As these initiatives fall under specific local laws (e.g., lottery), contact a member of GF-LI in your country for specific guidance on such initiatives prior to implementation thereof.

In this Antitrust Guidance Note, the questions surrounding pricing guidance given by manufacturers to their distributors are discussed under the chapter “[The Do’s and Don’ts in relation to the distributor’s resale price](#)”. Guidance on the practice of funneling is provided in the chapter “[The Do’s and Don’ts of funneling](#)”.

Note: [These chapters only apply to distributors, but not to cases where ABB is contracting with a competitor.](#)

Pricing strategies

Manufacturer-imposed requirements: Exclusivity arrangements (such as territorial & customer restrictions and non-compete arrangements)

A manufacturer, such as ABB, may choose to enter into exclusivity arrangements with (incl. allocate territories or customer groups to, and/or agree non-compete arrangements with) its distributors as an incentive for these distributors to make the necessary investments to promote the ABB products and/or services. These restrictions often serve the legitimate purpose of incentivizing and protecting investment and brand promotion, and as such are generally permissible. However, they may also raise antitrust concerns where they on balance (rule of reason) result in foreclosure of other market players (due to, for example, the duration of the exclusivity arrangement or the position of the manufacturer or the distributor in the upstream and, respectively, downstream market) and/or restrict customer choice.

The European Union (EU) is more restrictive than other jurisdictions on the legality of territorial/customer restrictions. This is because the objective of creating a single integrated European market would be frustrated if companies could re-establish private barriers between the EU member countries, who have abolished their state imposed trade barriers. As a result, in the EU, an exclusive distributor:

- Can be prohibited from **actively** seeking to sell the products it distributes to an exclusive territory reserved to the manufacturer or another distributor; but
- Cannot be prohibited from responding to unsolicited requests from customers located outside of this distributor's allocated territory (these so-called "**passive sale restrictions**" are illegal in the EU).

Last, there are additional ABB specific requirements that apply for example where ABB would want to grant exclusivity to one of its trade partners (see notably GD/LI-06 and GD/LI-43).

Therefore, in cases where you would want to enter into exclusivity arrangements with (incl. allocate territories or customer groups to, respectively agree exclusive supply or purchase commitments or other non-compete arrangements with) a trade partner of ABB, contact a member of GF-LI in your country for specific guidance.

Pricing strategies

Discounts and rebates

Granting discounts and rebates (also called for example customer bonus, reward, Earned Volume Incentive) is a common practice for a company, such as ABB, to incentivize its customers to procure its products or services. In practice, both terms are used interchangeably and often create confusion as to what they are meant to cover. That is why for the purpose of this Antitrust Guidance Note:

- A **Discount** is a sales price reduction agreed between ABB and the customer up-front at the time of conclusion of the contract and applied at the time of invoicing for the goods purchased by the customer (i.e., in advance of payment of the invoice by the customer); and
- A **Rebate** is an after the fact return of a portion of an invoiced amount by ABB to a customer subsequent to the payment of the full invoice amount, typically relating to the purchase of a specified quantity, or value of goods within a specified period.

Generally, discounts and rebates are pro-competitive and beneficial to both consumers and businesses. Only where ABB enjoys such market power that it would be considered dominant in the relevant market could the granting of discounts, or of rebates, potentially fall afoul of antitrust law.

Guidance on the practice of granting discounts and rebates is provided in the chapter “[The Do’s and Don’ts when granting discounts / rebates](#)” of this Antitrust Guidance Note.

Note: [This chapter applies to any Buy-Sell relationship between ABB and its customers, irrespective of whether ABB is \(or is not\) contracting with a competitor.](#)

Conclusion

Any ABB employee involved in:

- Providing pricing guidance to ABB’s distributors;
- The practice of funneling; or
- Granting discounts or rebates to ABB’s customers;

has an individual responsibility to familiarize himself/herself with this Antitrust Guidance Note prior to commencing any such exercise.

This Antitrust Guidance Note cannot cover all facts and circumstances that you as an ABB employee may encounter in your daily business. If you have questions regarding the content of this Antitrust Guidance Note or compliance with antitrust laws generally, contact a member of GF-LI in your country for specific guidance.

The Do's and Don'ts in relation to the distributor's resale price

Introduction

Where a manufacturer, such as ABB, has opted to use distributors as a channel to market, it will interact with its distributors to ensure the competitiveness of its product/service offering against those of other competing manufacturers ([inter-brand competition](#)). As mentioned previously, these initiatives, insofar as they are non-price related, are often non-problematic from an antitrust point of view.

However, this interaction can restrict competition and therefore raise antitrust concerns [if it restricts the distributor's freedom to determine its own sales price \(i.e., the resale price\)](#).

This is specifically the case where a manufacturer requires, or agrees with, a distributor that the distributor applies a [fixed or minimum resale price \(Resale Price Maintenance or RPM\)](#) when reselling the manufacturer's products/services. RPM is generally viewed around the world as [illegal](#) by antitrust agencies because of the risk that it:

- [Reduces or eliminates intra-brand competition](#) (i.e., between ABB and all channel partners part of the ABB distribution channel); and/or
- [Softens competition and/or facilitates collusion](#) at the manufacturer level.

RPM can be [direct](#) (e.g., agreed in a clause of the distribution agreement), but can also be achieved through [indirect means](#) (e.g., by fixing the margin of the distributor).

The Do's and Don'ts in relation to the distributor's resale price

The [recommendation of a resale price](#) or the [imposition of a maximum \(or “ceiling”\) resale price](#) by a manufacturer, such as ABB, on its distributor(s) conversely is generally not regarded as restrictive of competition given its pro-competitive effects (e.g., enhancing inter-brand competition, protection of investments in brand image, etc.). This analysis changes in the following situations:

- If a recommended or maximum resale price [in practice morphs into a fixed or minimum resale price](#) because of indirect means (e.g., the manufacturer provides incentives to distributors for complying with, or imposes penalties on distributors not following, a recommended resale price). In this case antitrust agencies equate the recommended or maximum resale price with RPM and thus treat it as equally illegal as a directly agreed fixed or minimum resale price.
- If the manufacturer in the upstream market or the distributor in the downstream market have a strong market position (rule of reason). Where either party enjoys such a strong market position, the recommended or maximum resale price risks becoming a focal point for the distributors (i.e., followed by most or all of them thereby reducing or eliminating intra-brand competition) and/or softening competition or facilitating collusion between manufacturers. Countervailing powers (e.g., buyer power of wholesalers) can offset the emergence of a strong market position and thus address any such antitrust concerns.

The Do's and Don'ts in relation to the distributor's resale price

Some specific Do's and Don'ts

It is OK to:

- Directly or indirectly (verbally or in writing) agree with, or impose on, ABB's distributors a [maximum resale price](#) as long as this maximum resale price does not in practice become a fixed or minimum resale price. This covers both standard and promotional prices.

Note: If you wish to impose a maximum resale price on your distributors in Japan or Taiwan, please obtain prior advice from a member of GF-LI in your country for specific guidance, as in these countries the imposition of a maximum resale price is subject to additional considerations under the local antitrust laws.

It is only OK to:

- [Recommend a resale price](#) (standard or promotional price) to an ABB distributor or ABB distributors generally, if this recommendation and the method of implementation have been cleared [beforehand](#) by a member of GF-LI in your country. This includes, but is not limited to recommendations issued directly (e.g., a recommended resale price list given by the manufacturer to the distributor) or indirectly such as:
 - The case where a recommended resale price has been published in promotional or marketing material, which ABB provides to its distributors;
 - The marking of ABB's products (e.g., on the packaging or labelling) with a recommended resale price.
- Obtain from a distributor's customer information on the resale prices applied by an ABB distributor, to the extent that this information is aggregated (not project or sale specific) and is not used to coerce a distributor to apply a certain minimum or fixed resale price.

The Do's and Don'ts in relation to the distributor's resale price

Some specific Do's and Don'ts

Do not:

- Directly or indirectly (verbally or in writing) **agree with, or require an ABB customer to resell our products or services at a certain resale price**. This prohibition covers both standard and promotional prices. Insofar as the customer is not a distributor, the recommending of a resale price or the agreeing or imposing of a maximum resale price is also not permitted.
- Directly or indirectly (verbally or in writing) **agree with, or impose on, ABB's distributors a fixed or minimum resale price**. This prohibition covers both standard and promotional prices and includes, but is not limited to, agreeing with, or imposing on, the ABB distributor a fixed or minimum resale price:
 - Through **direct** means in for example:
 - The distribution agreement itself;
 - A side agreement between ABB and the distributor;
 - A letter, offer, order confirmation, invoice, email, messaging system (e.g., What's App), phone call or meeting between ABB and its distributor; or
 - Through **indirect** means by for example:
 - Providing ABB's distributor(s) with a formula to calculate the resale price;
 - Fixing the profit margin of the ABB distributor;
 - Prohibiting the ABB distributor from granting a discount, or fixing the maximum level of discount it can grant, from a prescribed (maximum or recommended) price;
 - Linking the resale price for ABB's products to the resale prices of competitors (e.g., oblige the ABB distributor to always sell ABB's products at a price which is 5% below the resale price applied to the competitor's product);
 - Setting a maximum resale price at such a level that it in practice amounts to a fixed or minimum price (e.g., where the maximum resale price is at a level which allows the ABB distributor no, or only an insignificant, margin);
 - Including a minimum or fixed resale price in advertisement or promotional material provided by ABB to the distributor;
 - Prohibiting an ABB distributor from advertising or displaying ABB's products below a specified resale price; or
 - Where the products delivered to the ABB distributor are packaged or pre-labeled and a specific resale price is printed on these packages or labels.

The Do's and Don'ts in relation to the distributor's resale price

Some specific Do's and Don'ts

Do not:

- Provide **incentives** to, or **put pressure** on, ABB's distributor(s) to observe, or **retaliate** against these distributors for non-observance of, a certain (e.g., maximum or recommended) resale price **such that this resale price in practice morphs into a fixed or minimum resale price**. This includes, but is not limited to:
 - Providing financial or other incentives to an ABB distributor to comply with a certain (e.g., maximum or recommended) resale price or resale price recommendation (e.g., granting an extra discount, bonus, or rebate for adhering to a specific resale price);
 - Making the granting of a rebate or reimbursement of promotional costs by ABB subject to the observance by the ABB distributor of a certain resale price or resale price recommendation;
 - ABB targeting and repeatedly contacting those ABB distributors that deviate from the recommended resale price to question their non-compliance;
 - Threatening, intimidating, issuing warnings, imposing penalties, delaying or suspending deliveries or terminating a distribution agreement where an ABB distributor is not observing a given resale price level;
 - Asking an ABB distributor to report (verbally or in writing) to ABB on the resale price, discount, rebate or margin it applies when selling the ABB products to its customer(s);
 - Obtaining from an ABB distributor copies of its invoices to its customer; or
 - Imposing on ABB's distributor(s) to report other ABB distributors that deviate from a recommended resale price.
- In a meeting attended by both the customer and an ABB distributor discuss resale prices.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for specific guidance.

The Do's and Don'ts of funneling

Introduction

Funneling is part of a manufacturer's efforts to promote and increase demand for its products/services. The objective of these efforts is to ensure that ABB's (multi-brand) distributors have the right incentives to sell ABB's products/services at competitive conditions.

Funneling specifically refers to the situation where a manufacturer, such as ABB, directly addresses customers of its distributors to provide direct technical support to, and devise the optimal solution for, these users, and/or provide these users with assurances that the resale price applied by its distributors will not exceed a certain level (i.e., a maximum (or "ceiling") price) for a specific project or customer opportunity. For the same specific project or opportunity, the manufacturer can then also agree with its distributor:

- On a maximum resale price at (or below) which the distributor will sell the manufacturer's product(s) to the user in question; and
- To grant an additional deduction in the price at which the manufacturer sells its products to the distributor (Funneling Rebate) if the distributor is able to sell the manufacturer's product(s) to that user for that specific project or opportunity.

Even though the objectives of funneling are as such legitimate and pro-competitive, funneling can also raise antitrust concerns where:

- Funneling limits the freedom of distributors to compete and determine their own commercial offering, in particular to set their own resale prices; and/or
- Funneling limits the freedom of customers to choose the distributors they want to purchase from.

The Do's and Don'ts of funneling

Business Case

An ABB account manager meets with a representative of a multinational industrial group to discuss what solutions ABB could offer for the upgrade of a manufacturing facility of this customer situated in a remote area.

The customer is interested in the technical solution proposed by ABB. ABB has a global framework supply agreement signed with that customer for some (but not all) of the ABB products needed.

The customer however indicates that it does not want to procure the ABB products from ABB directly, but instead wants to buy these through distributors located close to the manufacturing facility to ensure just in time delivery during the ongoing upgrade. At the same time, the customer expresses concern that the upgrade stay within budget and clarifies that it is only willing to buy the ABB products if ABB guarantees that the customer can buy the ABB products from the distributors at a certain maximum price.

The following pages intend to give specific guidance on how to comply with antitrust law when funneling. You should also refer to the previous section on [“The Do's and Don'ts in relation to the distributor's resale price”](#).

The Do's and Don'ts of funneling

Some specific Do's and Don'ts

It is OK to:

- Meet with customers, including those of ABB's distributors, to provide them with technical advice on ABB products, whether such meetings are also attended by ABB's distributors or not.

It is only OK to:

- Negotiate a maximum resale price directly with the customer of an ABB distributor for a specific project or customer opportunity **if** it is made **expressly clear (verbally and in writing)** to this customer that the maximum resale price agreed between ABB and the customer is **not binding on the ABB distributor, but can only be imposed** on the ABB distributor as a **maximum resale price**;
- Approach the ABB distributors and impose a maximum resale price for this specific project or customer opportunity **if**:
 - All relevant ABB distributors are informed (verbally and in writing) of this business opportunity; and
 - It is made expressly clear (verbally and in writing) to all these ABB distributors that they remain free to conduct their own independent negotiations with the customer and ultimately set their own resale price;
- Incentivize the ABB distributor(s) by granting a Funneling Rebate if payment of the Funneling Rebate **is only made conditional** upon providing proof of the actual sale of the ABB products to the customer (i.e., not upon providing proof of the application of a certain resale price).
- Provide the customer with a list of relevant ABB distributors that the customer can approach to procure these ABB products while benefitting from the maximum resale price imposed on these distributors by ABB, **as long as the customer is free to choose a distributor of its choice**.

The Do's and Don'ts of funneling

Some specific Do's and Don'ts

Do not:

- In a meeting attended by both the customer and a distributor discuss the maximum resale price(s) applicable to this specific project or customer opportunity;
- Directly or indirectly (verbally or in writing) agree with, or impose on, the ABB distributor a fixed or minimum resale price – see previous section on [“The Do's and Don'ts in relation to the distributor's resale price”](#). In particular:
 - Do not make the grant of a Funneling Rebate to the ABB distributor conditional upon the distributor having concluded the sale with the end-customer at a fixed or minimum resale price; or
 - Do not ask for, or obtain from, the ABB distributor or the customer information about the specific resale price agreed between them (e.g., by obtaining from the distributor sales documentation evidencing the resale price at which the sale was concluded).
- Allocate any business opportunity to a specific ABB distributor; or
- Restrict the customer from choosing which ABB distributor it would like to deal with.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for further guidance.

The Do's and Don'ts when granting discounts / rebates

Introduction

Manufacturers can freely determine their own pricing strategy towards their customer (incl. distributors) and as such may offer discounts to a customer to incentivize a customer to buy from it instead of a competitor.

In the LV products business area, for example, ABB will have a gross price list, which it may release into the public domain. In its actual sales agreement with a distributor (e.g., a wholesaler), ABB will agree to discounts on this gross price list, which it will provide to this specific distributor based on, for example, early payment, delivery ex-works and similar.

Note: ABB sometimes reaches out to its customers (esp. distributors) by publishing a public gross price list (e.g., in a LV product catalogue). Issuing such a [public gross price list](#) is generally not an issue where:

- The product(s) concerned are standardized/homogeneous products;
- Your customer base is large/diversified;
- Customers enjoy sufficient alternative sources of supply;
- ABB is bound by these prices during their validity period as maximum prices (but is free to offer lower prices); and
- The public gross price list is published shortly before these prices are implemented.

In practice, companies often also provide rebates in order to attract more demand from their customers. Rebates can take the form of:

- [Volume or target rebates](#): These rebates are granted to customers if they reach a certain quantity or turnover in procuring the relevant products from a specific supplier.
- [Loyalty rebates](#): These rebates are granted to customers on condition that the customer exclusively or almost exclusively buys its requirements from the supplier granting the rebate.
- [Incremental rebates](#): These rebates are granted to customers on the additional purchase, once a threshold has been met (e.g. 10% rebate paid on any additional units the customer buys above the first 100, thus on units 101, 102, 103, etc.).
- [Retroactive rebates](#): These rebates are granted to customers on all purchases (below and above the threshold), once a threshold has been met (e.g. if you buy 100 units, 10% rebate paid on all 100+ units).

The Do's and Don'ts when granting discounts / rebates

In the LV products business area, for example, ABB will provide (in addition to the up-front discount on the gross list price) further rebates as incentives to develop certain product lines, or increase general sales of ABB's products to the distributor.

Both discounts and rebates have the pro-competitive effect to stimulate demand, lower prices and hence ultimately benefit consumers. [Granting discounts or rebates to ABB's customers will therefore, as a rule, not fall afoul of antitrust law.](#)

Only in instances where ABB were to be considered dominant, could the granting of a discount or rebate potentially pose an antitrust issue. Dominance in this context is understood to mean that ABB enjoys such significant market power in a relevant market over a period of time, that it would allow ABB to prevent effective competition in this market and to behave largely independently of its competitors, its customers and - ultimately - of consumers.

To conclude that a company, like ABB, is dominant in a relevant market would require looking at a combination of factors:

- [The market share of the company](#) as compared to that of its competitors is a useful first (but not final) indication for market power. In most countries, there is a legal presumption of a threshold under which a company is unlikely to be dominant;
- [However](#), the assessment of dominance must also take into account the [competitive structure of the market](#). Specifically, any countervailing power, which could offset a company being able to exercise significant market power (incl. where its market share is above any legal presumptions), need to be taken into account. These include:
 - Any [competitive constraints](#) imposed by actual competitors (expansion of supply) or potential competitors (market entry), whereby such expansion or entry must be likely, timely and sufficient;
 - The existence of [countervailing buyer power](#) (such as that generally enjoyed by wholesalers), which results from a customers' size or commercial significance to the manufacturer;
 - [Other considerations](#) such as lumpy demand, growth rate of the market, technological evolution and similar.

[A finding of dominance therefore is generally rare, and only in exceptional circumstances could ABB potentially be faced with the allegation that it is dominant in a relevant market.](#)

The Do's and Don'ts when granting discounts / rebates

Some specific Do's and Don'ts

It is OK to:

- Grant different discounts to different customers, whereby it is advisable to have a transparent, written and objective discount policy in place;
- Grant different rebates to different customers, whereby it is advisable to have a transparent, written and objective rebate policy in place.

It is only OK to:

- Grant rebates for aftermarket spare parts or service to a customer [after you have obtained clearance from a member of the GF-LI in your country](#);
- Grant rebates on ABB's entire portfolio, [if](#) you include in the relevant agreement a specific clause which substantially reads as follows:

“The Signatory commits to procure that [interested ABB affiliates] shall pay [description of rebate/discount] to [Customer]. However, [ABB affiliates] shall not be obliged to make any payment relating to an individual product/market where a court or similar jurisdiction issued a binding judgement or award ruling that ABB is in a dominant position relating to an individual product/market...”.

Do not:

- Grant a discount or rebate to a customer if you suspect that ABB might be dominant / be able to exercise significant market power in a certain market. In this case please contact a member of the GF-LI in your country for a proper assessment of ABB's position in that market.

If you are in doubt what conduct would be appropriate in your specific case, contact a member of the GF-LI in your country for specific guidance.

Definitions

What is “ABB”?

In this Antitrust Guidance Note the word “ABB” includes all companies belonging to the ABB group of companies.

What is a competitor?

A company or group of companies which offers (or is capable of offering within a reasonable period of up to 3 years) the same or similar products or services to those which ABB offers must be regarded as a competitor of ABB. For example:

- When we purchase from, or sell to, a vertically integrated company, such as Siemens, GE/Alstom, Mitsubishi, or Hyundai Heavy, we must treat our counterparts as part of a competitor given that other divisions of the same group compete with ABB;
- An EPC that does not manufacture products (e.g., ETA, Al-Fanar) will nevertheless compete with ABB on a systems level;
- A company in which ABB holds an interest (incl. a joint venture), which offers the same or similar products or services to those which ABB offers, is a competitor unless otherwise indicated by the head of the Antitrust Practice Group (GF-LI).

What is a discount?

A discount is a sales price reduction agreed between ABB and the customer up-front at the time of conclusion of the contract and applied at the time of invoicing for the goods purchased by the customer (i.e., in advance of payment of the invoice by the customer).

What is a distributor?

The word “distributor” (e.g., wholesaler, distributor or dealer) refers to a company or group of companies, which:

- Purchases goods/services from ABB for the purpose of re-selling these to another third party;
- Does not manufacture these goods/services in competition with ABB (i.e., does not compete with ABB in the upstream market); and
- Where ABB does not compete with this company or the group of companies in the downstream market.

Definitions

When is a company dominant?

Dominance is understood to mean that a company (ABB) enjoys such significant market power in a relevant market over a period of time, that it would allow this company to prevent effective competition in this market and to behave largely independently of its competitors, its customers and - ultimately - of consumers.

What is funneling?

Funneling specifically refers to the situation where a manufacturer, such as ABB, directly addresses customers of its distributors to provide direct technical support to, and devise the optimal solution for, these users, and/or provide these users with assurances that the resale price applied by its distributors will not exceed a certain level (i.e., a maximum (or “ceiling”) price) for a specific project or opportunity. For the same specific project or opportunity, the manufacturer will then also agree with its distributor:

- On a maximum resale price at (or below) which the distributor will sell the manufacturer’s product(s) to the user in question; and
- To grant an additional deduction in the price at which the manufacturer sells its products to the distributor (Funneling Rebate) if the distributor is able to sell the manufacturer’s product(s) to that user for that specific project or opportunity.

What is a rebate?

A rebate is an after the fact return of a portion of an invoiced amount by ABB to a customer subsequent to the payment of the full invoice amount, typically relating to the purchase of a specified quantity, or value of goods within a specified period.

What is Resale Price Maintenance or RPM?

Resale Price Maintenance or RPM is where a manufacturer requires, or agrees with, a distributor that the distributor applies a [fixed or minimum resale price](#) (Resale Price Maintenance or RPM) when reselling the manufacturer’s products/services.

Contact us

**If you have any questions regarding compliance with antitrust laws,
contact your Country Integrity Officer or a member of the Antitrust
Practice Group (GF-LI)**

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