



# **Nippon Gases Antitrust and Fair Competition Policy**



- Antitrust and Fair Competition Policy ..... 3**
- 1. Introduction..... 3
- 2. Contact with Competitors..... 3
- 3. Banned Subjects..... 3
- 4. Legitimate Contacts: Authorizations ..... 4
- 4.1 Single Contacts..... 4
- 4.2 Ongoing Contacts..... 5
- 5. Handling Competitors’ Information..... 5
- 5.1 Competitors’ Proprietary Information ..... 5
- 6. Dawn Raids ..... 6
- Ten Key Takeaways for Dawn Raids ..... 6
- Annex 1 – The 10 Key Concepts Regarding Antitrust Laws..... 9**
- The Content of Internal Documents..... 9
- Annex 2 – Guidelines for Working with Trade Associations and Other Organizations ..... 10**
- 1. Procedure for Participating in Organizational Meetings ..... 10
- 2. Reports Disclosed by Industry Associations..... 10
- 3. Anticompetitive Practices in Business Associations..... 11
- Annex 3 – Guidelines for Managing Joint Ventures ..... 12**
- 1. Negotiation Phase ..... 12
- 2. Operational Phase..... 12



## Antitrust and Fair Competition Policy

### 1. Introduction

**Upholding antitrust regulations is a core feature of Nippon Gases' code of conduct** at all times and in all places where the company operates.

It is essential to keep in mind the impact this has on our business activities, our competitive environment, and the communication and documentation of certain kinds of contact and communication with competitors, as well as on our participation in industry associations, professional associations, and standardization and certification organizations.

Any violation of these principles can harm Nippon Gases' reputation with its customers, shareholders, and the general public.

Not only is it important to avoid infractions, but also to avoid giving the appearance that infractions may have occurred, and, in this way, preventing the wrong kind of corporate image from being projected.

The key rules are summarized in [Annex 1](#).

### 2. Contact with Competitors

Number One Rule:

**AVOID CONTACT WITH COMPETITORS**

The antitrust authorities view any contacts between competitors as suspicious. When such contacts occur, they reverse the burden of proof: it is the company that must show that it had legitimate reasons for the contact and that, during the contact, no issues that might reduce competitiveness were addressed.

### 3. Banned Subjects

As employees, each of us must comply with antitrust regulations.

No improper promises or agreements may be made with competitors. It is important to avoid any behavior that might lead others to believe that improper agreements or contacts exist. As such:

- You must not engage in conversations with competitors, especially in relation to:
  - prices or price lists (real or future)
  - sales conditions
  - customers
  - territories



- production costs
  - production volumes
  - business plans and business development (including expansions, closures, slowdown strikes)
  - or any other sensitive matter in terms of competition.
- You must **minimize your contacts with competitors** and keep your communications with them to a minimum. In all cases, your communications must be limited to legitimate topics.
  - You must ensure that **there is a legitimate business reason** for engaging in such contacts and communications.
  - You must obtain **prior authorization from management** in order to participate in industry **associations**, professional associations, standardization and certification organizations, and other organizations in which competitors are involved; and
  - You must **follow Nippon Gases' directives** regarding participation in industry associations and in other organizations in which competitors are involved, even if said participation is not being made as a company representative.
  - You must report to the Compliance Champion/Legal Department any contact or communication with competitors.
  - You must notify the Compliance Champion/Legal Department of all meetings (with the proposed agenda) before they are held. Following the meeting, minutes must be sent to the Compliance Champion/Legal Department.

#### 4. Legitimate Contacts: Authorizations

Even though the general rule is to **avoid contact with competitors**, exceptions can be made for legitimate reasons, i.e:

- Associations (for details, please go to [Annex 2](#))
- Day to day management of production Joint ventures (for details, please go to [Annex 3](#))
- Product supply agreements
- Safety issues

**PRIOR AUTHORIZATION** is also needed in all these cases.

Nonetheless, even in these allowable areas, the conversation will be related solely to the legitimate business purpose in question.

Legitimate contacts may be:

##### 4.1 Single Contacts

In the event you need to contact or hold a meeting with a competitor, you must request authorization from your manager and you must communicate the contact in advance to the Compliance Champion/Legal Department.

You must communicate the following details:



- Persons in attendance
- Date of the contact or communication
- Place where the contact or communication will take place
- Reason for the contact or communication; and
- Type of contact or communication

After the meeting, you must send the minutes, the topics covered with the competitor, and other information to your local Compliance Champion. You may receive follow-up requests for further information or clarifications.

If you attend an unplanned meeting or are contacted by a competitor's employee, you must avoid making any comment about any of the sensitive subjects<sup>5</sup>. If you are asked any question related to a sensitive subject, you must put an immediate end to the conversation or contact and you must make it known to the Compliance Champion/Legal Department.

## **4.2 Ongoing Contacts**

Given your level of responsibility, you may need to periodically hold meetings with competitors, for example, employees working in operations, or distribution (exchange of products). In such a case, you will receive an ongoing-contact authorization in order to have contact with competitors solely for the purpose of the subjects listed by the authorization, and you will not have to request a new authorization each time you talk about those subjects with competitors. Beyond those subjects, you must request a single-contact authorization.

## **5. Handling Competitors' Information**

### **5.1 Competitors' Proprietary Information**

No employee may exchange sensitive information with competitors.

Under no circumstances may you ask a third party to provide us with competitors' confidential information.

In the event that a third party (a customer, a distributor, etc.) provides documents from a competitor that contain "sensitive subjects", you must record the source from which the document was obtained so that the origin of the information is certified as being legitimate. For example, it is possible that a customer might provide us with a competitor's offer in order to force us to make a counteroffer. However, we must document that such offer was received from a customer. Under no circumstances may a third party receive compensation or an incentive for providing us competitors' confidential information.

If you receive a request from a third-party for company information that is considered a "sensitive subject" outside the regular course of our business activity, you must make it known to the Compliance Champion/Legal Department.



## 6. Dawn Raids

The European Commission and other regulatory authorities could conduct surprise onsite inspections in company premises called “dawn raids”. When the Commission and/or local antitrust authorities suspect the existence of anticompetitive agreements or other conduct potentially violating antitrust law, they are entitled to appear at the company’s HQ (or any other company work center) without prior notice. They are able to search for incriminating paper and digital documents in the employees’ computers as well as their phones, personal calendars and note pads. However, in order to access company premises to conduct a search, the authorities must bring a search warrant issued by a judge or court of law.

A dawn raid can put a lot of pressure on the company’s employees and can give rise to fines if they do not comply with certain rules during the inspection. Even if the company is not found guilty after the investigation, it can face heavy sanctions as a consequence of an obstructive behavior towards the authorities in the course of the dawn raid.

These guidelines are intended to give employees a clear idea of what their behavior should be during an eventual dawn raid. If there is anything you do not understand clearly, please address your legal department for clarification.

### Ten Key Takeaways for Dawn Raids

#### 1. Train the receptionists:

- Officials will arrive unannounced. The first person they see will most likely be the receptionist.
- Receptionists need clear instructions on how to proceed and who they should alert first.
- They should seat officials in an empty room and contact the legal department and senior management.

#### 2. Contact the legal department – senior management immediately:

- If in-house lawyers are not available, immediately contact senior management.
- Inform Officials of the estimated time of arrival of legal counsel (they will usually be prepared to wait). If they will not wait, agree with a member of the legal department (over the phone) where they should start their investigation.

#### 3. Appoint one person as point of contact with the inspecting authority.

#### 4. Check the scope of the warrant and get copies:

- If the warrant includes electronic documents, contact a senior member of the IT group. Critical answers you need from the warrant include the following:
- Does it apply to our company(ies)?
- What is the scope of the investigation?
- Does the Officials have the relevant identification?

#### 5. Call headquarters:

- Notify your headquarters and, unless Officials specify otherwise, also other Nippon Gases companies if there are parallel investigations in the warrant.



6. Form a team and allocate a person to each inspector:

- Do not leave inspectors alone in a conference room or unescorted.
- Ensure documents searched are within the scope of the investigation.
- Do not destroy documents and ensure no official seal is tampered with.

7. Make copies of files or documents examined, take notes:

- Officials are likely to provide a list of the documents they are taking away at the end of the dawn raid, but also keep a separate record.
- Take notes on all questions asked and answers given.
- Ask whether it is possible to receive a copy of the minutes Officials have drafted

8. As a rule, Officials should not review legally privileged correspondence:

- Do your best to avoid Officials reviewing legally privileged materials
- If Officials refuse to consider certain documents as privileged, recommend holding those documents separately in a sealed envelope for later determination.

9. Get the Communications department involved right away:

- Prepare to manage communications about the investigation internally and externally by contacting your Communications department.
- Appoint a qualified individual to deal with media inquiries and draft key messages and a press release to ensure consistency of message.
- Secure Corporate Communications review and approval.

10. Stay calm and cooperate with the Officials

DO's	DON'Ts
<ul style="list-style-type: none"> <li>• Ensure that all necessary employees have received appropriate training</li> <li>• Check the authorization documents</li> <li>• Immediately contact in-house lawyer and/or external legal counsel and ask the Officials to wait until lawyers arrive (but do not insist on it)</li> <li>• Establish a team of "shadowers" to accompany the Officials during the dawn raid</li> <li>• Ensure that an internal IT expert is available to assist</li> <li>• Ensure that a clear record is kept of everything that happens (including documents reviewed/copied/seized, any questions asked and answers given)</li> <li>• Prepare follow-up strategy and further steps to be taken</li> </ul>	<ul style="list-style-type: none"> <li>• Be hostile to Officials or obstruct the dawn raid by refusing to cooperate</li> <li>• Try to destroy or hide any documents, files or data (hard copy or electronic)</li> <li>• Contact anyone outside the company to inform them that the dawn raid is taking place or to discuss any aspects of it</li> <li>• Do not leave the Officials unsupervised at any time</li> <li>• Give any documents or information which has not been expressly requested by the Officials</li> <li>• Refuse to supply information or documents (unless advised to do so by a lawyer)</li> </ul>



Madrid, March 29, 2023

Nippon Gases Euro-Holding S.L.U.  
Eduardo Gil Elejoste  
President

DocuSigned by:  
*Eduardo Gil*  
0D0AB22E47E0473...

**Questions or additional information:**

Should you have questions regarding this policy, direct inquiries to:

European Legal Director

E-mail: [laura.zanotti@nippongases.com](mailto:laura.zanotti@nippongases.com)





## Annex 1 – The 10 Key Concepts Regarding Antitrust Laws

What follows is a basic list of principles, standards, and policies that summarize this policy:

- I. Strict **compliance with Nippon Gases standards** when dealing with competitors **is a duty for employees**. Violating antitrust laws poses a serious risk to Nippon Gases.
- II. You must **avoid any contact or communication** with competitors' employees that is of an **unnecessary** or inappropriate nature.
- III. When there is a legitimate business purpose for contacting or communicating with a competitor, you must obtain **prior authorization** and an assessment by your supervisor and the Compliance Champion/Legal Department.
- IV. In **any contact** or communication that is **approved**, limit yourself strictly to those matters that are necessary for the legitimate business purpose that was the subject of the approval.
- V. With assistance from the Compliance Champion/Legal Department, **communicate and document, without delay**, any contact with a competitor in which any sensitive subject in terms of competition took place, even if it was planned or involuntary.
- VI. Under no circumstances may you engage in **any conversation** with, or respond to any questions from, a competitor, regarding **prices, customers, costs, business conditions, production, business plans**, or other sensitive subjects in terms of competition.
- VII. If you receive **confidential information**, or information that is in any way sensitive in terms of competition, under circumstances which may appear to be questionable or which may give the appearance of unsuitability, **go straight to the Compliance Champion/Legal Department**.
- VIII. You must **obtain prior approval from management** to participate in industry associations, professional associations, standardization and certification organizations, and other organizations in which competitors may possibly participate.
- IX. If you have any **doubt** as to whether a behavior or action violates the law or violates Nippon Gases' standards on dealing with competitors, **get in touch with your manager** or with the Compliance Champion/Legal Department.
- X. If you do not feel comfortable discussing this subject with your superior, call Nippon Gases' Compliance Hotline.

## The Content of Internal Documents

**Emails** (as well as text messages, WhatsApp, etc.) serve as proof of what the company does. It is important that all written communications be clearly written, avoiding unnecessary commentaries or ambiguous expressions, so that, if they are analyzed years later by an antitrust authority, they cannot be misinterpreted or taken out of context. It is essential that you follow some guidelines:



## Annex 2 – Guidelines for Working with Trade Associations and Other Organizations

You must obtain prior authorization to participate in meetings held by industry associations of which Nippon Gases is a member. If you need to regularly attend meetings held by an association, you must obtain an ongoing-contact authorization. Company directors are responsible for:

- Approving meeting participation ahead of time;
- Ensuring procedural compliance as stipulated in this section and in Company policies;
- Ensuring that employees whose participation is approved and who attend the meetings at those organizations know the antitrust principles and regulations and receive periodic training in this area.

### 1. Procedure for Participating in Organizational Meetings

As a Nippon Gases employee, you may participate in meetings held by industry associations, professional associations, or standards and certification organizations, as long as you obtain authorization prior to the meeting or you obtain an ongoing-contact authorization.

In the event that you do not have an ongoing-contact authorization but you must participate in meetings held by industry associations, professional associations, or standards and certification organizations, the following requirements must be met:

- the organization must have sent a written agenda to all attendees before the meeting;
- you must have sent the agenda to your superior and to the Compliance Champion/Legal Department for review.

In the event that said meetings touch on “sensitive subjects”, you must follow these guidelines:

- Expressly **state** your **objection** to deal with such issues; request that your objection be noted in the meeting minutes, if minutes are being taken; and, if that discussion is not terminated, **leave the meeting immediately**.
- **Get in touch with the Compliance Champion/Legal Department** as soon as possible to debrief the details of the meeting.
- With assistance from the Compliance Champion/Legal Department, you must **document your objection** to the meeting and you must record the fact that you left the meeting.

You must also follow these latter guidelines if any sensitive subject is broached at an association where you are participating as a private individual.

### 2. Reports Disclosed by Industry Associations

**Before providing any sensitive information** to an industry association or other organization, or upon receiving such information, you must talk to the Compliance Champion/Legal Department.

Industry association shall only disclose information meeting the following requirements:

- Containing historical data (typically more than one year old).
- Containing aggregated data that does not allow any company to identify nor deduct XXX

If you are provided with information that does not meet the above requirements, immediately inform the Compliance Champion/Legal Department.



### **3. Anticompetitive Practices in Business Associations**

Here are some examples of subjects whose discussion at trade associations and professional associations is, or may be seen to be, an antitrust violation:

- Discussions regarding prices or any other business condition applied to customers.
- Discussions regarding production costs and production availability
- Exchanging information (the level of industry concentration, the level of data detail, the age and regularity of the data, and whether it is public or private).
- Restrictions on its publication.
- Standards and standard contracts
- The adoption of a common stance on the interpretation and application of industry standards.
- Recommendations on business practices.

Even discussing issues that are purely technical may be anticompetitive if it ventures into any of the topics mentioned above.



## Annex 3 – Guidelines for Managing Joint Ventures

With respect to managing joint ventures, there are two very specific phases:

### 1. Negotiation Phase

All contacts must be made under direct supervision and with prior approval from the Compliance Champion/Legal Department.

### 2. Operational Phase

Within the context of joint ventures, the following types of contacts may occur:

**Human Resources:** Contacts having to do with the full management of the joint venture employees, payroll management, and any other issues necessary for managing the joint venture staff.

**Finance Department:** Contacts for fully managing accounts payable and receivable, as well as tax-related matters. Contact may be made with the departments that handle financial matters.

**Compliance Champion/Legal Department:** Contacts for overseeing the joint venture operations, as well as for managing the joint venture's Main Office.

**Operations Department:** As far as these contacts go, discussing any particular customer's conditions or requirements is absolutely prohibited, unless they relate to a customer for whom the joint venture is working and are limited only to the provision of that service.

**Trade & Business transactions:** These kinds of contacts are strictly forbidden, except for those contacts that were previously authorized by the Compliance Champion/Legal Department. In all cases, expressly discussing a customer's conditions or requirements is prohibited, unless they relate to a customer for whom the joint venture is working and are limited only to the provision of that service.



## Revisions

Version	Date issued	Effective date	Content owner	Approved by
1.00	01.06.2019	01.06.2019	European legal Director	Nippon Gases Euro-Holding S.L.U. President
2.00	29.03.2023	30.03.2023	European Legal Director	Nippon Gases Euro-Holding S.L.U. President