

TSANet, Inc.

COMPETITION COMPLIANCE POLICY MANUAL

Prepared for TSANet, Inc.

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1 TSANET COMPLIANCE POLICY GUIDELINES

TSANet, Inc. (“TSANet”) is a trade association of support organizations that manufacture and/or support hardware and software. The organization is formed under the laws of the State of Delaware, and involved in providing a wide array of not-for-profit activities and services to its membership for educational, philanthropic and membership support purposes. In the course of its activities, TSANet assists its members with maintenance and support arrangements that are intended to enhance mutual customer support within the industry, and provide member’s customers with vendor neutral approaches to problem escalation and resolution. TSANet’s vision is to be the organization of choice for facilitating seamless global collaboration between TSANet members addressing end customer technical issues. TSANet is committed to focusing on the multi-vendor support needs of TSANet members to provide reliable vendor neutral customer support in the industry.

TSANet is an organization that enables global IT companies to work together to increase end-customer satisfaction. TSANet does this by providing access to a recognized code of conduct, framework for membership interaction, and a database containing the processes procedures that have been specifically designed to enable co-operation between TSANet members. TSANet is not a third-party service provider.

TSANet’s objectives are to:

- enable TSANet members’ end customers to minimize downtime;
- promote the value and effectiveness of TSANet to TSANet members;
- evolve and maintain a dynamic infrastructure that supports TSANet’s vision; and
- think and act globally with local mutual customer focus.

“Competition law” is the term used in many countries (including the European Union and its member States) to refer to rules governing restraints of trade and similar types of activity. (In the United States, “competition” law is referred to as “antitrust” law.) Competition laws have many different facets. Some people think of “competition law” as price-fixing; others think of it in connection with mergers or acquisitions; while for others, “competition law” involves controlling monopoly. Antitrust laws cover all of these, and more. A basic objective of many competition laws is to preserve and promote a freely-competitive market in which all relevant decisions are governed by supply and demand, without improper restraints.

TSANet is committed to full compliance with all applicable competition laws and will take all appropriate steps to effect compliance.

FULL COMPLIANCE WITH THE LAW IS THE POLICY OF TSANET AND MUST BE THE GOAL OF EVERY MEMBER IN PARTICIPATING WITHIN THE ORGANIZATION.

2 WHEN TO READ/CONSULT THESE GUIDELINES

Who are these guidelines relevant to?

These guidelines apply to all TSANet members equally and regardless of membership level including:

- open group members;
- closed group members;
- the TSANet product community; and
- the TSANet service community.

This compliance manual is intended to help you understand:

- what competition law means for TSANet members;
- why it is essential to comply with them; and
- how to comply with them in practice.

What do these guidelines apply to?

- TSANet membership activities;
- TSANet meetings;
- TSANet open and closed groups;
- Use of TSANet's contact database;
- Formal and informal alliances between TSANet and other organizations;
- TSANet membership agreements and legal documents;
- Internal and external communications by TSANet;
- Contact between TSANet members and end customers; and
- Any contact between TSANet members.

The information in these guidelines is intended to assist you in complying with both competition laws and TSANet's own policy by describing and discussing some key situations that could involve antitrust considerations. In some instances, the guidelines require conduct beyond what might be required by competition laws, but they will help ensure that TSANet, you, and your company steer clear of serious legal problems in areas where a particular action may be subject to ambiguity or misunderstanding.

Please read these guidelines carefully. If you are in doubt about their application to any set of circumstances, consult your company's legal adviser or discuss the matter with TSANet's President, who may in turn ask that TSANet's legal advisers be contacted.

If the issue involves your company or other companies, including competitors, we recommend that you contact your own company's legal department to make them aware of your concerns.

If the issue involves or impacts TSANet in any way, please also ask the President for TSANet's legal advisers to be contacted.

3 COMPLIANCE “OVERVIEW”

Competition law is a complex area and this overview is not a substitute for detailed review of specific issues that may arise in the course of your work as a member of TSANet, or the additional information in the sections which follow below. This overview is only intended to remind you of what may trigger scrutiny, and as such it is intended to remind you of conduct that you MUST avoid. For further information on what is permitted and when you need to consult legal advisors, you must read and be familiar with the rest of these guidelines.

What’s forbidden?

You MUST NOT discuss any of the following with another member’s representative(s):

- a member’s prices for the products or services your member offers;
- market sharing (e.g. one member agreeing with another not to enter each other’s sales territories to provide support services);
- exclusionary conduct (e.g. refusing TSANet membership to a company that fulfils TSANet’s membership criteria);
- service capacity (e.g. the details of your plans to expand a member’s support operations in a geographic area).

You MUST NOT participate or remain in any meeting with TSANet members where there is any discussion about whether, where, to whom, or at what price any of them will sell or provide their services.

You MUST NOT agree to divide or share markets or business opportunities with other TSANet members.

You MUST NOT disclose to or exchange your member’s confidential business information with another member’s representatives.

4 HOW THIS MANUAL WORKS

This compliance booklet is designed to help you understand competition laws in many countries, among them the United States, the European Union and others, including:

- **what conduct is forbidden under the competition law of many countries;**
- **what is generally permitted under these competition law; and**
- **when you need to seek out assistance or advice about competition law.**

The concepts in this manual are broadly stated, and specifics can make a difference in interpretations or impacts of these laws from country to country. So there is no substitute for seeking out counsel on specific issues as they arise. If the risk area involves your member or other members, including competitors, contact your own company’s legal department. If the risk area involves or impacts TSANet in any way, also ask for TSANet’s President, who may in turn recommend that legal advisers for TSANet be contacted.

To underscore, this booklet is not a substitute for specific legal advice. Please ask for advice if you think you need it!

5 WHY DO WE NEED A COMPETITION COMPLIANCE MANUAL?

5.1 To help you understand the law and avoid “getting it wrong”

This manual is intended to help you understand how competition law applies to TSANet and TSANet’s activities so that you can identify and avoid the types of arrangements or behavior which are or may be prohibited. An understanding of competition law will also help TSANet and TSANet members to identify potential problems early and seek any necessary legal advice as soon as possible.

“Getting it wrong” could mean any of the following:

- heavy fines;
- damages claims (i.e. proceedings by government representatives, and law suits by third parties);
- bad press and negative publicity;
- disqualification of directors or other senior personnel;
- imprisonment;
- people getting fired; and/or
- unenforceable agreements.

5.2 To help you spot when other companies are not complying

TSANet or your member may be the victim of anti-competitive agreements or behavior by other members, including competitors.

It is possible that companies could use their membership of TSANet to carry out their anti-competitive activities and if you don’t know the law, you won’t be able to protect both your member’s and TSANet’s interests. Since each member acts within TSANet through people who are the member’s representatives, it is imperative to understand how the competition laws may impact what you do or say within the TSANet organization, and at any functions where you are a member representative.

5.3 The growth of TSANet

The community of vendor support organizations has grown significantly since the membership organization of Technical Support Alliance Network, Inc. (the “**Alliance**”) was first formed as a not-for-profit corporation in Utah 1993. The Alliance then grew to over 150 unique members throughout the world. The Alliance, like TSANet became a global organization: in 2006/2007 companies based in Brazil, China, India, Japan and Russia joined the Alliance and this growth led to the formation of TSANet, increasingly serving the needs of its members and their end customers on a global basis.

As more businesses become TSANet members and use its services, the risk of any one of TSANet’s members inadvertently breaching competition law increases. Many of the countries

that TSANet or its members operate in have their own national competition law. With more laws to comply with, this also increases the risk of TSANet or a TSANet member breaching competition law.

Competition laws are not static, they change and evolve all the time. The trend over the last five years has been an increase in the level of fines for infringements of competition law and the introduction of criminal penalties in a number of jurisdictions (for example, the United Kingdom). This trend is likely to continue and it is more important than ever to ensure that TSANet and all its members comply fully with competition law.

6 WHAT ARE THE COMPETITION LAWS?

6.1 Anti-competitive agreements

Under US antitrust law and European competition law (and under the competition laws of states within the US and of each of the 27 member states of the European Union), as well as the laws of many other countries, certain agreements and arrangements which prevent, restrict or distort competition or are intended to do so **are illegal**. This applies to **all** formal or informal agreements (including so-called “gentlemen’s agreements”) whether written or oral.

You should appreciate the breadth of what constitutes an agreement under competition laws of the various countries. Unlike legitimate agreements or contracts, which in most instances must meet definite criteria before they are legally binding, illegal agreements can be found to exist under antitrust law without being formalized or explicit. While commercial agreements must have clarity, no such clarity is required for an agreement to be in violation of the competition laws. *Under competition law, an agreement does not need to be in writing, nor does it even have to be based on a handshake. An illegal agreement may be inferred from your conduct.*

· Cartels

The most serious example of an anti-competitive agreement (and the one to avoid at all costs!) is a cartel, where companies agree not to compete with each other -- e.g., price-fixing, bid rigging, or allocation or division of markets or territories. Cartel arrangements are usually secret and not in writing.

Typically, cartel members’ arrangements cover one or more of:

- prices;
- discounts;
- credit terms;
- which customers they will supply;
- which areas they will supply; and/or
- who should win contracts or tenders.

· **Price-fixing**

Any arrangement between competitors which seeks to fix prices (either directly or indirectly, for example through agreements on discounts) is illegal. Members must make their own independent pricing decisions.

· **Market sharing and customer allocation**

Agreements which seek to divide or allocate customers or areas between competitors are illegal. Members must compete for customers and territories.

This list is NOT exhaustive.

6.2 **Monopolies and dominant companies**

The competition laws of many countries prohibit anticompetitive exclusionary or “abusive” conduct by a company which has a monopoly, or substantial market power. Such exclusionary or abusive conduct may take many forms. Under US law, “monopolizing” practices are generally those with no legitimate business purpose and which are followed simply to harm a competitor. In the EU and elsewhere, “abusive behavior” can take many forms, but generally involves any conduct by a dominant firm that appreciably distorts competition or exploits customers in the market in question. Companies with a monopoly or dominant position may be forbidden from doing things which other companies are permitted to do. Examples of conduct by a firm with monopoly power or a dominant position that may be considered anticompetitive, depending on the facts, include:

- predatory pricing ;
- refusing to deal with a competitor without a legitimate purpose for refusing to deal;
- refusing to deal with someone on the grounds that they refuse to stop dealing with a competitor;
- entering into contracts with suppliers in order to deprive competitors of essential supplies; and
- buying up competitors to achieve a monopoly position.

6.3 **Who enforces competition law?**

In the U.S., it is the Department of Justice, the Federal Trade Commission and State attorneys general. In the U.S., Justice has a broad national and in certain circumstances international reach. US competition laws can have a broad national, even international reach (including illegal conduct occurring outside the US that affects US consumers). In the EU, the European Commission is the primary competition authority. It is particularly focused on detecting, punishing and preventing international cartels. In the EU, all 27 member states of the EU also have their own competition authorities whose role is to enforce their individual national competition laws. These laws are based on EU competition law and will apply in broadly the same way to the types of arrangements or behavior covered in this manual. Many other countries also have competition laws resembling those of the US or EU.

6.4 Other competition laws

In addition to the laws on anti-competitive agreements and dominant businesses, competition law also covers certain mergers, state aid and public procurement. These areas are not addressed here.

As TSANet expands and develops, it is increasingly coming into contact with other organizations and companies. It is possible that such contacts, for instance where they result in an alliance or any formal arrangement, may “trigger” the applicability of competition law. TSANet’s legal advisers will need to be consulted when this happens.

If you have any questions about this, please consult your company’s legal adviser or ask that TSANet’s legal advisers be contacted.

7 YOUR MEMBERSHIP IN TSANET

7.1 TSANet meetings and conduct of meetings

TSANet is committed to focusing on the multi-vendor support needs of TSANet members to ensure that they can provide efficient, reliable support in the industry. The purpose of TSANet member or board meetings is for TSANet members to be part of the decision making process and the future strategy of TSANet. Meetings also provide a platform for the exchange of ideas and experiences when dealing with the challenges facing the IT support industry, or other topics of interest to the organization as they will develop from time to time.

TSANet meetings, seminars, training courses and/or any other event in connection with TSANet are operated to pursue the stated objectives of TSANet, and **MUST** not be utilized for any other purposes.

Some natural persons, who are the designated representatives of TSANet members also sit on TSANet’s Board of Directors. TSANet members include many businesses and companies who are well known in the computer hardware and software industry. Among them are Sun, Novell, Red Hat, Symantec, Citrix, EMC, Oracle, HP, Dell, IBM, and Microsoft. Even though some TSANet members are direct competitors, these members come together in TSANet as an organization for the legitimate purpose of enhancing member-vendors’ resolution of mutual customer problems. As such, it is vitally important that the meetings of TSANet’s Board of Directors are only used to discuss TSANet business and not spillover (either at official meetings or informal gatherings) into competitive relationships outside the focus of TSANet.

If you have any concern over any aspect of TSANet’s operation, this should be raised immediately with TSANet’s management who may then seek the necessary advice from TSANet’s legal advisers.

7.2 Pricing

TSANet meetings must not be used to fix or set prices between competitors or as an occasion for such agreements. Pricing is a critical element of competition. Companies must determine their

own pricing policy independently. Any arrangement which seeks to agree or fix prices (either directly or indirectly) will be prohibited. Price fixing can take many forms, including agreements on:

- minimum and/or maximum prices that the members charge for their own services;
- fixing part of a price (e.g. agreeing with competitors to charge the same price for maintenance services, even if the competitors price independently for the main product or service);
- profit margins (whereby parties agree to base prices on a set profit margin); and/or
- consultation (e.g. where one party agrees not to quote a price without consulting its competitors);
- linking one product to the sale of another.

Price fixing can be a criminal offense under the laws of certain countries (including the US and UK).

EXAMPLE 1

During a TSANet meeting a presentation is proposed to be given in which prices could be a topic of discussion. The slides provide information on membership pricing and list various factors about the basis for membership pricing. General and non-specific discussions on pricing and pricing conditions of the trade association's membership pricing are permitted. Precise discussions on prices charged by individual companies to individual customers by members could be impermissible and should be avoided.

7.3 Sharing information

Some TSANet members can be seen as direct competitors in certain business segments, for example, Sun, IBM and Microsoft. It is of particular importance that commercially sensitive information concerning interoperability of the member's products or the services associated with support being provided to resolve mutual customer problems, beyond that needed to achieve the goals and objectives of TSANet, is not shared between TSANet members who are also competitors.

You should be aware that the prohibition against sharing commercially sensitive information also applies when assisting in the resolution of a mutual customer problem, and when preparing for TSANet meetings. For example, when preparing joint presentations on the implementation of TSANet, you should guard against sharing data that deals specifically with the pricing models for a TSANet member's own customer support services. Information that may be sensitive could, for example, include pricing of individual members for service levels.

What's forbidden

Sharing information between competitors is or may be of concern when:

- the type of information being shared is non-public and commercially sensitive from the standpoint of competition; and

- there are few players in the industry.

Therefore, in order to steer clear of problems, do not disclose or share any confidential or non-public commercially sensitive information about the company you work for, your customers or your intentions, regarding:

- pricing or other terms given to customers;
- sales details;
- revenues;
- any individual company's costs;
- financial terms on which you usually do business with customers;
- future products or services;
- service capacity of individual companies;
- company specific business plans, marketing initiatives, intentions, market share data; and/or
- any other confidential or non-public commercially sensitive information.

The exchange of information already in the public domain generally does not constitute an infringement of competition law.

7.4 **Open and closed groups**

The TSANet model allows TSANet members to join open or closed groups. The common elements of **open** groups include:

- TSANet members must have mutual customers;
- TSANet members must agree to either isolate the problem or resolve it;
- TSANet members must be involved in post-sales products in the field; and
- TSANet members use TSANet as a vendor-neutral mutual customer problem escalation point.

At least two open groups exist: Mission Critical Customer and Linux group.

TSANet also offers TSANet members the opportunity to establish **closed** or private groups. Closed groups are generally used when open groups are less desirable. For example, they can serve an industry segment, or they can serve a member's line of products or services. A higher level of response and input is or may be required involving different elements amongst vendors who share a common member. Closed groups are also used to encourage the development of technology ideas. A number of closed groups currently exist with several more in the implementation stage.

Open and closed groups enable appropriate TSANet members to share information. It is not illegal for TSANet members to join open or closed groups. Members must be aware that the more information that is exchanged beyond that needed to solve mutual customer problems, the greater the risk. Members should always proceed in these groups with a view toward compliance with competition laws. As discussed in section 7.3 above, it is of particular importance that sensitive non-public commercial information only be shared between TSANet members in a

manner that is intended to promote competition by efficiently solving the problems of mutual customers.

7.5 Benchmarking

TSANet membership provides an opportunity to learn about multi-vendor support issues and benchmark other TSANet members' multi-vendor/co-operative support operations and mutual end customer experiences. Provided the information used for benchmarking is anonymous, and does not enable any individual company to be identified and does not deal with prices a member charges for its own products or services, benchmarking may well be permitted. Any benchmarking activities, programs or initiative should first be approved by TSANet's legal adviser.

EXAMPLE 2

During a TSANet meeting a report is circulated detailing the findings of research carried out by TSANet in relation to its success in resolving multi-vendor disputes. The data is presented in response to a series of questions. A chart showing the proportion of all TSANet members' interactions with TSANet resulting in resolution improvements, would be an acceptable way to present the research findings.

Any benchmarking should be limited to meeting TSANet's objectives of providing an effective support service to customers in the vendor-neutral environment within which TSANet operates, and, in any event, should be approved by TSANet's legal adviser.

7.6 Standard setting

TSANet provides access to a uniform framework of intra-member agreements to provide mutual customer support services and a recognized code of conduct by which members will interact with one another to enhance customer support within the industry. The TSANet model provides an industry with perspectives in how to efficiently offer a "level playing field" between vendors, which is to say that the organization enables efficient contact between each member's customer support personnel - including those who are competitors. TSANet also enables problem solving to provide an opportunity for TSANet members to resolve interoperability issues. This process is by nature a voluntary, consensus-driven activity, carried out by and for TSANet members, based on openness and transparency, leading to the adoption of techniques for addressing certain customer problems in the industry. TSANet does not have an interest in excluding manufacturers from participation in the organization.

By its nature, TSANet does not seek generally week to establish industry standards, To the extent it does so, TSANet's structures and procedures for setting standards should be designed to allow openness, transparency and member participation. TSANet procedures should encourage independence from any vested interests either from within TSANet or outside. Participation in the technical work of TSANet should be open, but also sensitive to the justifiable interests of its members in proprietary or trade secret information. TSANet members affected by a proposal should have the opportunity to participate in the formation of any new group offerings.

7.7 What's forbidden at TSANet meetings?

TSANet meetings should not be used to discuss:

- any pricing;
- market sharing (e.g. an agreement between TSANet members that they will only focus on a particular sector of the market);
- exclusionary conduct (e.g. TSANet members agreeing between themselves to refuse a rival competitor membership to TSANet);
- service capacity (e.g. ability of your company's support operations to respond); or
- business opportunities or customers.

7.8 What should you do if these points are discussed?

If any of the above prohibited areas are raised during a meeting at which you are present, including in a telephone conversation or an informal conversation/meeting, you must make clear that you cannot discuss these subjects and must leave if the discussion continues. This also applies to social events or casual conversations.

Remember that there is no such thing as an "off the record" discussion to the competition enforcement authorities, and that other participants in such discussions may disclose them to the authorities, even if you seek to keep them quiet. For guidance on what language to avoid using, please see section 12 below.

7.9 What's permitted?

TSANet members are free to use TSANet meetings to:

- provide feedback on TSANet;
- to discuss general industry trends; and
- provide ideas as to how to best deal with multi-vendor support issues.

At a TSANet meeting, you may discuss, when in connection with approved agenda items, such matters as:

- purely technical / non-commercial issues, e.g. multi-vendor support issues;
- regulatory changes and compliance (such as proposed changes in legal or regulatory requirements which apply to everyone);
- government or European policy;
- industry lobbying and promotion initiatives;
- health and safety information;
- industry employment and training issues; or
- research and development.

In short, information that is publicly available about the market for member support services, which is not commercially sensitive, or company or site specific, may be discussed with other

TSANet members, when in connection with approved agenda items but care should be taken to frame the discussion in a way that does not violate competition laws.

7.10 When you need to seek out counsel or advice

There is or may sometimes be a fine line between what might be considered by the competition authorities to be the legitimate activity of TSANet and/or TSANet's members, and questionable or unlawful activity. If you have any concerns or doubts, particularly about the type of information being shared, please seek guidance from your company's legal adviser or ask for TSANet's President who may also involve legal advisers for TSANet.

8 CONTACT WITH OTHER TSANET MEMBERS

These guidelines apply to any contact that your member's representatives may have with other TSANet members. TSANet members use the service provided by TSANet to help address multi-vendor support issues. In order to do this, TSANet members are often in contact with other TSANet members who may be their competitors.

TSANet uses a contact database in which TSANet members look up and contact other TSANet members who are then contacted to assist them with resolving a multi-vendor support issue in a timely manner. TSANet members register their contact details with TSANet which are then stored in the secure TSANet database to enable other TSANet members to contact them as and when required.

These guidelines are designed to provide guidance with the goal that when contact is made between TSANet members, competition law is not broken.

8.1 Pricing

Contact between TSANet members should only be in relation to dealing with end customers' multi-vendor support problems. Such contacts are unlikely to deal with the issue of individual member's pricing. In any event, TSANet members should not be talking to each other about pricing of the member's own services! Pricing is critical in terms of competition and companies must determine their own pricing policy independently, including independently from information that may be gleaned from competitors in conversations at TSANet sponsored activities or meetings. Any arrangement which seeks to agree or fix members' own prices (either directly or indirectly) can run afoul of competition laws, and discussions about such prices must be avoided to eliminate even the suggestion of such an agreement. Note that discussions of pricing as regards what TSANet charges its members or limited members to participate in TSANet is, however, permissible.

Price fixing is a criminal offense under US and UK competition law.

For further guidance on pricing, please see section 7.2.

EXAMPLE 3

You are contacted by another TSANet member. Both of your companies provide technical support services to a major international airline. You ignore the cooperative codes and agreements in place within the TSANet organization, and then agree that your member companies will not provide any further quotes for each of your own goods to this client without consulting each other. This activity could raise the potential for concerns about any attempts to illegally fix prices. Price fixing must be avoided, as price fixing is one of the hard-core offenses that is likely to result in significant fines and potential criminal charges for those involved.

8.2 Market sharing or customer allocation

Prohibited discussions about market sharing may occur where one or more competitors agree to divide a market so they each get an equal or agreed share. Customer allocation occurs when Company A and Company B agree with each other to only do business in one area of the market or with one group of customers.

Contact between TSANet members should only be in relation to dealing with end customers' multi-vendor support problems. These conversations should not deal with market sharing and TSANet members must not become involved in inappropriate agreements or understandings to share markets, customers or business opportunities with other TSANet members.

TSANet members must make their own decisions about how and where their company operates. This includes whether to bid for contracts, terms of any such bid, and the price(s) and condition(s) that the TSANet member will offer any customer or prospective customer.

Except as specifically required to address a mutual customer problem, do not enter into any discussion, understanding or agreement with any other TSANet member on the particulars about issues relating to how or where you operate, whether you will or may bid for business, or the terms or conditions of any tenders or responses to requests for quotes or proposals.

This not only applies to bidding for contracts but also to any other business opportunities.

Market sharing can be a criminal offense under US and UK competition law.

8.3 Boycotts or refusals to do business

A boycott occurs when two or more competitors agree not to do business with a particular company. It may be illegal for competitors to agree with each other that only one of them will refuse to do deal with a specific company. It may be illegal for two or more competitors to threaten or force one company not to deal with another company, such as a competitor or supplier.

TSANet members must make their own business decisions about who they deal with and must not engage in any conduct or enter into any agreement (whether formal or informal, oral or in writing) with anyone else to refuse to deal with a particular firm or individual for improper reasons

8.4 Sharing information

These guidelines apply to contacts TSANet members make with each other and apply at all times, rather than just when attending TSANet meetings. You must only contact TSANet members outside TSANet meetings through TSANet's contact database or in furtherance of TSANet business. Similarly, the database contacts must only be used to assist in providing service to end customers with multi-vendor support issues, or to further the business of TSANet.

Sharing information with other TSANet members in order to resolve multi-vendor support issues is permitted. However, sharing certain types of information may be an offense under competition law and TSANet members must be particularly vigilant not to share any kind of information with other TSANet members which would allow them to understand or estimate:

- current or future market position of a member; or
- short-to medium term commercial strategy.

For further guidance on information sharing please see section 7.3 above.

EXAMPLE 4

A member's representative is contacted by a representative working for another TSANet member. The predecessor knew this person well and had previously worked with him. They held regular meetings at a local golf club and arranged to speak on the phone each week. During these discussions, they informally agreed to a system whereby confidential information including company specific business plan pricing was exchanged, discussions about allocating territorial marketing initiatives, and agreements informally were made concerning ways to strategically divide markets in a manner that clearly runs afoul of the competition laws.

In this example, commercially sensitive information was being manipulated by the two parties to divide territories in an inappropriate manner, and to artificially fix inflated prices for the services for their own members' gain. While not all examples may be clearly in violation of laws, care should be taken at all times when having discussions with employees of rival companies about market sensitive data.

8.5 What's forbidden?

You must be particularly careful about dealing with other TSANet members, and **must not discuss** with any TSANet member the following to the extent revealing such information for your goods or services to common clients would reveal non-public or sensitive information not otherwise available to your competitor through legitimate business means:

- prices for the products or services your member sells or provides;
- price changes for goods or services in your member's segment of the industry;
- discounts your member may offer;
- costs;
- the price your member may charge for Warranties;
- confidential information, such as details of sales, revenue, contract terms,

- or business opportunities;
- terms of sale; or
- marketing initiatives.

Determining whether the party seeking the resolution of a problem under the TSANet escalation process by its nature requires a determination that the customer is a mutual customer for which such services are available. Any conversations beyond establishing that the party is a mutual customer with appropriate entitlement to services can be problematic and should be avoided. In event of any doubt about what may or may not be discussed, you should seek advice from your member company's representatives, including legal to avoid inadvertent disclosures that may run afoul of anti-trust laws and regulations.

You must not:

- discuss how to keep a company (e.g. a competitor) out of any market;
- agree to leave another competitor's customers, sites or opportunities alone; or
- make any agreement or reach any understanding with a competitor which allocates sales, territories, customers, tenders, opportunities or services between yourselves and that competitor or other competitors.

8.6 What should you do if those points are discussed?

If any of the above prohibited subjects are raised during a telephone conversation or an informal conversation/meeting, you must make clear that you cannot discuss these subjects and must leave if the discussion continues. This also applies to social meetings or conversations.

If the subject involves your company, your member may require you to contact your own company's legal department or take other steps. If the subject involves TSANet in any way, and the conduct appears to be continuing, you should discuss the matter with the TSANet President, and, if appropriate, the President may ask for a review of the matter by TSANet's legal advisers.

Be aware that certain crucial evidence for investigations by U.S., European and/or other national competition authorities may be found in manuscript notes of telephone conversations, or internal memos passing on information received from competitors. Remember also that there is no such thing as an "off the record" discussion in the view of these competition enforcement authorities and that other participants in such discussions may disclose them to the authorities, even if you seek to keep them quiet.

8.7 What's permitted?

Any contacts with competitors are a highly sensitive area from a competition law perspective. Contact between TSANet members outside meetings should only be in relation to addressing end customers' multi-vendor support problems. As a result you should please proceed with caution!

Discussions which are unlikely to have any impact on the commercial behavior of the parties are less likely to give rise to concern. Discussing the following, while sensitive, is unlikely to be problematic (as long as the discussion does not also cover other, potentially sensitive, areas), but

should occur after prior consultation with your own company's legal representative, including the legal department:

- purely technical / non-commercial issues, e.g. multi-vendor support issues;
- government or European policy;
- industry lobbying and promotion initiatives;
- health and safety information;
- industry employment and training issues; or
- research and development.

8.8 When you need to seek out advice

If you have any doubts whether the discussion is likely to:

- affect future commercial strategy, product or service composition as between members;
- lead to a change of commercial strategy in the short-to medium-term; or
- lead to an immediate or short-term change in behavior relating to prices, services offered; or discounts.

then seek legal advice before you enter into, or continue with, the discussion. If the area involves your company, contact your own company's representatives, including the legal department. If the area involves TSANet in any way, you should first contact the President, and where appropriate the President may involve TSANet's legal advisers.

If in doubt, get advice!

9 CONTACT WITH END CUSTOMERS

These guidelines also apply to any contact that you may have with your or other companies' end customers. TSANet members use the service provided by TSANet to help assist in multi-vendor support problems. In order to do this TSANet members are often in contact with each other's end customers, i.e. customers who have purchased products or services from one or more TSANet members. The market is increasingly shifting towards multi-vendor support service providers.

End customers today expect automated, proactive support from all of their suppliers. TSANet helps its members to meet these customer expectations but each TSANet member must not use its membership of TSANet inappropriately.

9.1 Permitted Activities Vary by Matter Escalated

TSANet members must hold information gained as a result of TSANet membership in confidence. You must be particularly careful when dealing with end customers that you have met as a result of your TSANet membership. Contacts with shared end customers should focus purely on resolving the customer's support issue. The following is unlikely to be problematic (as long as the discussion does not also cover other, potentially sensitive, areas):

- purely technical / non-commercial issues, e.g. multi-vendor support issues;

- regulatory changes and compliance (such as proposed changes in legal or regulatory requirements which apply to everyone);
- health and safety information; or
- research and development.

9.2 When you need to seek advice

When dealing with end customers you may be put under pressure by them to reveal data, including price sensitive data, about other end customers or other TSANet members. You should resist this pressure and not share any such confidential information with any end customer. This is crucial to avoid TSANet potentially or inadvertently being implicated as a conduit to exchange commercially sensitive information as part of some scheme that would be in breach of competition law.

If you have any concerns, please seek guidance from your member's legal adviser or discuss the matter with TSANet's President, who may seek to involve TSANet's legal advisers.

10 TSANET'S INVOLVEMENT AND RELATIONSHIPS WITH OTHER ORGANIZATIONS

TSANet has relationships with various other organizations. Examples of these organizations include the IT Service Management Forum and the Storage Networking Industry Association, among others. These guidelines also apply to any interaction with individuals or members in these organizations and should be carefully followed. It is possible that TSANet will enter into other relationships - whether formal or informal - with other organizations in the future. Care should always be taken while interacting with the membership of these other organizations so as not to run afoul of competition laws in the same manner as you would while attending meetings or participating in activities of TSANet.

EXAMPLE 5

TSANet is asked by another rival organization to concentrate only on providing a central point of contact for TSANet members, rather than the rival's member, and to develop standard legal terms for the multi-vendor support industry that would divide the industry along these predetermined lines. In return, the other organization will focus on promoting technology standards and best practices that would also divide the industry along these predetermined lines thereby segmenting the industry artificially to impose higher membership fees in return for these services. These activities could be viewed as having the net affect of artificially dividing the market for membership organizations which support interoperability in multi-vendor environments at a much higher cost.

This arrangement could raise risks under competition law. Care should be taken at all times when discussing opportunities with rival organizations and legal advice should first be obtained to ensure compliance with the law.

11 MONOPOLIES AND DOMINANT COMPANIES

Companies who are in a monopoly position, or are dominant in the market place, are subject to special competition laws. Concerns might arise if it were shown that TSANet's members exercised their own market dominance through their membership efforts. This is an area that TSANet members should pay particular attention to avoiding while furthering the business of TSANet, in order to ensure full compliance with competition law.

TSANet is an important multi-vendor support alliance. It is conceivable that a number of members in TSANet have significant market share in the specific markets in which the members operate. The TSANet model has also been seen as a leader in how to offer a "level playing field" between vendors including companies who are competitors. However, TSANet does not have monopoly or dominant power in any properly defined market. Nonetheless, to avoid any possible concerns that a violation may occur, it is important that TSANet and its members to avoid unfair conduct that might be characterized as "monopolizing" practices or "abusive" conduct.

11.1 Targeting competitors and their customers

TSANet members must be careful to ensure that they do not use their membership of TSANet to "eliminate" or "destroy" rival companies who are not TSANet members. TSANet members should also ensure that they do not use TSANet to introduce any standards which could be used to damage or otherwise exclude their competitors from the market.

If you become aware of activities targeting in this manner, please seek guidance from your member's legal adviser, or bring the matter to the attention of the TSANet President who may then also involve TSANet's legal advisers.

11.2 Pricing and discounts

"Predatory" pricing (including below-cost pricing) by a dominant company in an abusive manner can be prohibited conduct. Other forms of pricing and discounting behavior can be abusive if carried out by a dominant company. Members' discussions or sharing of information about the individual member's market motivations or policy for achieving pricing discounts is prohibited and should not be discussed in the course of association activities. This is obviously separate and distinct from any actions that the Board or membership may be asked to consider regarding TSANet's pricing for membership activities in TSANet, which should be generally outside of this prohibition by its nature.

If you have concerns over pricing and discounts being discussed by individual members for their own products or services, please seek guidance from your member's legal adviser.

11.3 Discrimination

Where a dominant business applies different conditions to the same or equivalent transactions without good reason, it can be an abuse and therefore unlawful under the competition laws of

certain countries. This may be the case where the terms offered are less favorable than those offered to other customers which are in the same commercial position.

11.4 Refusals to deal or license IP Rights

Refusal of membership to a business that fulfils TSANet's membership requirements may be prohibited in certain circumstances under certain competition laws, where the refusal is part of a strategy to not share important benefits of the organization with a competitor, in order to exclude that competitor from the market. The legality of such conduct, involving IP rights, often turns on a complex analysis, since members may have legitimate claim to confidentiality of IP, and these rights may trump a competitors rights to obtain access to that IP, even where a mutual customer's problem is in need of a resolution. Care should be taken to consult with the member's legal advisor on the extent to which IP should or can be shared, and any concerns about refusals to share IP in resolution of a mutual customer problem may be directed to the TSANet President, who may as appropriate involve TSANet's legal advisors in the matter for resolution.

12 COMMUNICATION AND USE OF LANGUAGE

12.1 TSANet communications

TSANet uses various forms of marketing, e.g. monthly e-messages to members in the US, EMEA and the Pacific rim. It also utilizes various other articles in magazines (itSMF-E-Service Talk, SNIA Monthly e-Newsletters, etc) to set out the benefits of TSANet and explain how TSANet works and what it does. TSANet and TSANet members must be careful in the language they use with each other and with end customers. The care applies to all documents including emails and text messages as well as verbal conversations. Always ask yourself how your language might be interpreted if it were being scrutinized by someone else, whether a stranger to the conversation, or even a competition enforcement representative. E-mails, texts and voicemail messages can be accessed by competition authorities or in legal proceedings. Simply deleting them is ineffective and may also be illegal. E-mail, texts and voicemail can contain damaging statements. An investigation or legal proceedings involving a third party may result in the review of many internal documents, even those which you might believe to be confidential, such as diaries, telephone calls or personal notebooks. The request for "Documents" may not be limited to papers, but may also include a variety of forms in which information is recorded: computer records and databases, e-mail, microfilms, tape recording, films and videos. Whether they can ultimately be examined may be left to the courts with an outcome that is not certain and may depend on a variety of factors that .

12.2 Guidelines

Consider your comments and what you are trying to accomplish. If you think it might be a sensitive area, you should err on the side of not taking action that would be contrary to competition, and speak to your legal advisers or TSANet's legal advisers before taking such action. Whenever you intend to write something down, consider how it might look to a third party. Remember that even if you delete an e-mail it can still be recovered. Always be as careful in writing an e-mail as you would with other forms of correspondence.

Caution should always be used when reducing comments to writing. The use of certain language, such as “please destroy” or “delete after reading” may only heighten interest in the subject matter. Nor should a person speculate in writing about whether an activity is illegal or not.

13 WHAT TO DO IF ANOTHER COMPANY IS NOT COMPLYING

The competition laws discussed in the previous sections apply to all businesses, including TSANet and its members. TSANet or TSANet members may be the victim of anti-competitive agreements or behavior by TSANet’s competitors or the competitors of TSANet’s members. If, believe that others are acting in a way that is inappropriate, you may consider consulting with your legal adviser.

14 COMPLIANCE IN A NUTSHELL

This summary should only be read in conjunction with the previous sections.

14.1 What’s forbidden in connection with TSANet membership and contact with other TSANet members?

- Never discuss the prices your company sets for its services, capacity, opportunities or customers with other TSANet members except in a context that is first approved by your member company’s own legal advisors and, where appropriate, the TSANet President.
- Never participate or remain in any meeting with TSANet members where there is any discussion about whether, where, to whom, or at what price any of them will sell their own company’s services in a manner that is in violation of competition laws.
- Do not agree to divide or share markets or business opportunities with fellow TSANet members, or agree not to do deal with certain customers, or discuss such subjects.

You should not disclose or exchange your confidential business information, except as agreed to support the escalation and resolution of a TSANet issue. Be careful not to discuss commercial plans or other sensitive information inappropriately. Care should be taken not to contact non-TSANet members who work at other companies in relation to TSANet matters.

TSANet escalation contacts must only be used to assist in facilitating the service of mutual customers with multi-vendor support issues or to conduct business of the organization on behalf of your member within the organization. In the event of concern about the conduct or activities of a member, you should have the matter reviewed by your member company’s own legal advisors and where appropriate the TSANet President. In the event of any doubt, the TSANet President may involve or seek the advice of TSANet’s legal counsel so as to guard the organization against running afoul of anti-competition laws applicable to the relationship

14.2 What's permitted?

Dealing with other TSANet members

Discussing purely technical multi-vendor support issues, or regulatory issues that involve information that does not also cover commercially sensitive areas in a way that is not authorized by the agreements your member company has in place with the mutual customer

TSANet meetings

Discussing issues of general interest to the industry, such as standard, regulatory changes, government or policy and industry perspectives that may form the topic of lobbying in the U.S., EMEA or the Pacific Rim with fellow TSANet members.

Dealing with end customers

Discussing any areas directly relevant to resolving the customer's multi-vendor support issue.

14.3 When you need to seek advice

Dealing with other TSANet members

You may need to seek advice before initiating a private relationship or a community relationship that involves collaborating or doing business with vendors which are competitors. As competitors, you may also need to seek advice if you are part of a closed group, so as to understand the relationships and possibilities to run afoul of anti-competition laws.

* * *

When in doubt, seek out the advice of your member company's own antitrust or competition law compliance officer, or legal advisors, and, where appropriate, the TSANet President. In the event of any doubt, the TSANet President may involve or seek the advice of TSANet's legal counsel so as to guard the organization against running afoul of anti-competition laws applicable to the relationship.