



Competition Compliance Policy

Policy No. BAPCORP023
Effective date: 22 July 2020
Last review date: 18 November 2021
Recommended by: George Sakoufakis – General Counsel
Authorised by: Darryl Abotomey – CEO & MD

Competition Compliance Policy

1 Bapcor's Commitment

Bapcor is committed to conducting business in compliance with all laws, regulations, codes and organisational standards, including the provisions of the *Competition and Consumer Act 2010 (Cth)*, *Commerce Act 1986 (NZ)* and *Fair Trading Act 1986 (NZ)* (the **Competition Acts**). Compliance with the Competition Acts is not just a legal requirement, it is integral to Bapcor's core value: "we do the right thing". Bapcor's commitment to compliance applies to all of its business activities, including dealings with customers, suppliers, competitors as well as consumers.

This Policy outlines the obligations of each Bapcor team member under the Competition Acts in relation to prohibited conduct, incident reporting, the consequences of non-compliance and the interaction between this Policy and other key Bapcor compliance policies.

This Policy applies to all team members of Bapcor Limited, its subsidiaries and related bodies corporate (together **Bapcor**) and is available on Core (Bapcor's intranet site).

Other policies referred to in this document can be accessed on Bapcor's Intranet – "Core".

2 Roles, responsibilities and training

Bapcor requires all team members to comply with the Competition Acts at all times. Any contraventions will not be tolerated and any deliberate or reckless breach of the Competition Acts or this Policy will be treated as serious misconduct which may result in disciplinary action, including dismissal.

All Bapcor team members have a responsibility to:

- a) familiarise themselves with the terms of the Policy at the commencement of their employment with Bapcor;
- b) attend or complete such training as may be applicable to them; and
- c) comply with any incident reporting obligations applicable to them as described in section 5 of this Policy.

Bapcor's General Counsel is responsible for the development, implementation, monitoring and recording of training of team members in relation to this Policy. Bapcor's General Counsel will conduct an annual review of this Policy and keep records to verify and demonstrate that team members receive appropriate training.

3 Prohibited Conduct

Bapcor team members should be aware of the following conduct which is prohibited by the Competition Acts. Please note that the following is only a summary of certain conduct that Bapcor team members may encounter in their day to day roles and is intended for information purposes only. If team members have any specific concerns they must consult with a member of Bapcor's in-house Legal team.

1. You cannot stop customer discounting - (Resale Price Maintenance)

- Any attempt to prevent a customer from discounting is **absolutely prohibited**.
- Customers must at all times be **free to set any minimum price** for our products that they determine, and to determine at what price they **advertise** our products.

DO	DON'T
Communicate RRPs to customers and ensure they understand that prices are only recommendations	Require a customer to sell at or above a particular price (including an RRP)
Use <i>maximum</i> resale prices where appropriate to ensure that promotional support is passed through to consumers, but if you supply direct to your customers' customers, speak to Legal before imposing any maximum resale price.	Make supply or price support conditional on the customer agreeing to certain minimum or actual retail pricing
Establish clear and accountable execution metrics that are unrelated to the pricing set by the customer	Punish or treat a customer less favorably in response to discounting (or provide benefits to customers who do not discount)

2. You cannot make agreements or collude with competitors - (Cartel Conduct and Concerted Practices)

- Any arrangement, agreement or understanding between Bapcor and its competitors regarding pricing, markets, outputs or engagement with customers and suppliers is absolutely prohibited.
- Arrangements, agreements or understandings can be informal – a “nudge” or a “wink” is enough.
- Exchanging competitively sensitive information without a legitimate reason may also be enough, even if there is no consensus about what is to be done with it.
- Bapcor’s wholesale customers can also be competitors of Bapcor where Bapcor also sells directly to customers.

DO	DON'T
Make decisions about pricing and supply independently from competitors	Discuss pricing, discounts, credit or other customer issues with competitors or make any deal with competitors regarding pricing, discounts, etc.
Compete hard to win customers through competitive pricing and best service	Discuss the allocation of customers or territories or the level of output with competitors
Seek advice if you are unsure and report any inappropriate contact with competitors to Legal	Exchange price, customer lists or other sensitive information with competitors

3. Exclusive arrangements (including third line forcing) are generally OK, but check them with Legal - (Exclusive Dealing)

- Exclusive arrangements are generally where customers agree **only to supply Bapcor’s products** (and no, or a limited amount of, competitor products).
- Another type of exclusive dealing, called third line forcing, is where we only supply, or give a particular price or discount, on *condition* that our customer buys goods or services from an unrelated third party.
- These arrangements are only illegal if the **combined effect (or purpose) of exclusivity is anti-competitive**.
- This position is periodically reviewed by the Legal Department.



DO	DON'T
Vigorously compete to secure the best possible ranging for the best possible investment within approved parameters	Place undue influence on a customer to accept a greater level of exclusivity than the customer wants
Allow customers to freely choose the level of exclusivity to which they want to commit	Unduly leverage the strength of Bapcor brands to require a customer to provide additional ranging to Bapcor
Recommend the goods and/or services of preferred third parties to our customers, but check with Legal before making this a condition of supply	

4. You cannot mislead or deceive - (Misleading or Deceptive Conduct)

- Misleading or deceptive conduct in all business interactions and content is prohibited, including advertising, sales, contract negotiations, product packaging and social media.
- It can be misleading to stay silent if there is an obligation to disclose something. It also doesn't matter if the conduct is not deliberate or intentional.

DO	DON'T
<p>In all your commercial dealings, make sure the overall impression created by your conduct or advertising materials matches the facts</p> <p>Ensure that advertising materials and any claims that promote our products are truthful, accurate and not misleading, and can be substantiated at the time we make them.</p> <p>Follow guidelines & training provided by Bapcor Legal in relation to what is appropriate in advertising materials</p> <p>If in doubt, check with the Legal team before publishing any advertising materials.</p>	<p>Publish any content or advertising materials without first considering:</p> <ul style="list-style-type: none"> • What is the dominant/overall impression created? • The impact of images used, as well as words. • Is it accurate? • Are all claims substantiated? • Has anything been left out?

5. You cannot incentivise customers to break contracts with other suppliers - (Inducing Breach of Contract)

- Bapcor can be liable to our competitors where we **actively encourage or incentivise customers to break existing contracts** and deal with Bapcor.
- If we know that a customer is already contracted, **the customer must independently decide** to walk away from any existing contract.

DO	DON'T
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Seek to understand the existing contractual commitments that a customer may already have	Require a customer to break an existing contract as a condition of signing with Bapcor
Present compelling offers to customers for the ranging of Bapcor products for whenever the customer is able to accept those offers	Offer to provide a customer with extra investment to compensate them for any payments they would have to make to competitors under their other contracts
Ensure that customers understand that any decision to break an existing contract is made independently	

6. You should not try to stop Bapcor’s rivals from competing on the merits, particularly where Bapcor has a powerful market position - (Misuse of market power)

- A company with a substantial degree of market power is prohibited from engaging in conduct that has the purpose or likely effect of substantially lessening competition in a market.
- Bapcor is not prohibited from obtaining a substantial degree of market power. Nor is Bapcor prohibited from ‘out-competing’ its rivals by using superior skills and efficiency.

DO	CHECK WITH LEGAL BEFORE
Respond to competition (e.g. by lowering prices in response to a competitor’s pricing)	Restricting how suppliers can deal with competitors.
Attempt to make efficiency gains	Refusing supply, or imposing unreasonable supply terms, if that will stop someone competing on the merits
	Pricing below cost

7. You must not engage in business behaviour that is particularly harsh or oppressive, and is beyond hard commercial bargaining - (Unconscionable conduct)

- To be considered unconscionable, the conduct must be more than simply unfair— it must be against conscience as judged against the norms of society. Generally unconscionable conduct involves the exploitation of a party in a weaker / more vulnerable position.
- Businesses must not engage in unconscionable conduct when dealing with other businesses or their customers.

DO	DON'T
Compete vigorously and drive a hard bargain.	<p>Impose conditions on a weaker party that are not reasonably necessary to protect Bapcor’s legitimate interests.</p> <p>Use undue influence, pressure or unfair tactics against the other party when negotiating the terms of an agreement or contract.</p>

4 Competitor Communications Protocol

From time to time, it is anticipated that Bapcor representatives may meet or be in contact with representatives of other businesses who may compete with Bapcor in some markets for the supply and/or acquisition of goods or services, whether at the retail, wholesale or trade level (**Competitors**).

To ensure Bapcor's compliance with the Competition Acts, Bapcor has established a *Competitor Communications Protocol* which establishes basic principles for the conduct of communications and meetings between Bapcor and its Competitors. A copy of the *Competitor Communications Protocol* is included at Schedule 1 to this Policy.

Bapcor requires that all team members follow the guidelines contained in the *Competitor Communications Protocol*.

5 Franchising Code compliance

As a franchisor, Bapcor must also comply with the Franchising Code of Conduct (**Franchising Code**) – a mandatory industry code prescribed under the Australian Competition Act. The Australian Competition and Consumer Commission (**ACCC**) regulates and enforces the Code. The Competition Acts also apply to franchise arrangements in Australia and New Zealand.

Bapcor team members that work for Bapcor's franchise businesses must follow Bapcor's established franchise processes and attend or complete such training as may be applicable to them in order to ensure they comply with the Franchising Code in their day to day dealings with franchisees. In particular, team members must comply with the Competition Acts and the Franchising Code when engaging in the following practices:

- Promoting the franchise system and network;
- Negotiations and discussions with franchisees;
- Disclosure of information to franchisees;
- Making changes to the franchise agreement;
- Communications made to franchisees and the broader franchise network; and
- The exercise of contractual rights under franchise agreements (including issuing notices of breach to franchisees, decisions to renew or not renew the franchise agreement and decisions to terminate or end the franchise agreement).

All documentation of agreements with franchisees must be prepared by Bapcor's legal team.

6 Incident reporting and compliance failures

All Bapcor team members are required to report if:

- a) they become aware of circumstances that may constitute a contravention of the Competition Acts;
- b) another team member provides information to them about circumstances that may constitute a contravention of the Competition Acts; or
- c) they receive or become aware of any complaint or allegation made by a supplier, customer or competitor of Bapcor that Bapcor has, or may have, contravened the Competition Acts.

(together, a **Possible Compliance Failure**).

The obligation to report the conduct outlined above may be fulfilled by making a report under Bapcor's Whistleblower Policy (which provides for anonymity and confidentiality in respect of a report) or by reporting such conduct to the Chief Executive and Managing Director, Chief Financial Officer, Executive General Manager – Human Resources, any member of the Group Leadership Team (GLT) or the General Counsel.

Bapcor will investigate all Possible Compliance Failures reported, and where that investigation concludes that Bapcor may have contravened the Competition Acts or that there was a serious breach



of any aspect of this Policy, Bapcor will consider the appropriate action to take (including reporting such conduct to a regulator) and whether any changes should be made to this Policy or Bapcor’s compliance training to reduce the likelihood of the conduct representing the Possible Compliance Failure re-occurring.

7 Breaches of this Policy

All team members, contractors and representatives of Bapcor are required to comply with the Competition Acts in their day-to-day activities and must not engage in any conduct that breaches the Competition Acts or this Policy.

A breach of the Competition Acts can have serious consequences for both Bapcor and individuals involved including substantial fines, damages and imprisonment. Individuals may be personally liable to pay such fines and damages. Further, Bapcor cannot indemnify individuals in respect of such costs, or the costs of any associated Court proceedings.

In addition to financial and other penalties on companies and individuals, a breach of this Policy may result in disciplinary action for team members, contractors and representatives of Bapcor including termination of their employment or relationship with Bapcor.

8 General

This Policy will be reviewed annually by Bapcor’s General Counsel, with any updates or amendments to be approved by the CEO of Bapcor Limited.

On an ongoing basis, the General Counsel will monitor:

- amendments to the Competition Acts and other relevant legislative developments;
- ACCC and New Zealand Commerce Commission (**NZCC**) guidance and template compliance documents, ACCC and NZCC enforcement activity (including relevant court judgments) and other issues affecting the ACCC’s and NZCC’s regulatory focus;
- changes to Bapcor’s commercial practices, operating environment or risk exposure.

Bapcor will implement practices to promote compliance with the Policy (such as further training for particular team members) as appropriate in between each annual review of this Policy.

The only team members authorised to speak to the ACCC or NZCC or any competition regulator on behalf of Bapcor are the Chief Executive Officer, the General Counsel and any other person approved by the Chief Executive Officer. If any team member is contacted by the ACCC or NZCC or any other competition regulator they must immediately refer the matter to the CEO or General Counsel.

9 References

Bapcor Values
 Bapcor Code of Conduct
 Bapcor Whistleblower Policy BAPCORP017

10 Version Control

Version	Amendment/s	Date created	Author
1.0	Establish policy	22 July 2020	General Counsel
1.1	Updated to cover New Zealand competition laws.	15 September 2020	General Counsel



1.2	Updated to include Competitor Communications Protocol	18 November 2021	General Counsel
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Schedule 1 - Competitor Communications Protocol

BAPCOR LTD

COMPETITOR COMMUNICATION PROTOCOL

Introduction

This *Competitor Communication Protocol (Protocol)* reinforces the commitment of Bapcor Limited and its subsidiaries (**Bapcor**) to conducting business in compliance with all laws, specifically the *Competition and Consumer Act 2010 (Cth)*, *Commerce Act 1986 (NZ)* and *Fair Trading Act 1986 (NZ)* (**Competition Laws**).

From time to time, it is anticipated that Bapcor representatives may meet or be in contact with representatives of other businesses who may compete with Bapcor in some markets for the supply and/or acquisition of goods or services, whether at the retail, wholesale or trade level (**Competitors**).

The Protocol is intended to establish basic principles for the conduct of communications and meetings between Bapcor and its Competitors which may occur from time to time, and to ensure the commitment of Bapcor to compliance with Competition Laws in the jurisdictions in which it operates.

Please note that the Protocol only applies to communications / meetings with “non-Bapcor” companies, being companies which are less than 50% owned by Bapcor and therefore not generally considered related to Bapcor. The Protocol does not apply to communications only between Bapcor group companies.

Guidelines

Other than as necessary to facilitate the legitimate purchase of goods and services by Bapcor from Competitors on an arm's length basis, as an independent purchaser and supplier (**Purchase Transactions**), Bapcor is prohibited from engagement in the following:

- 1. Discussion about pricing for mutual customers or suppliers**
There should be no discussion as to any aspect of the pricing of one or both of the parties' respective products for mutual customers or suppliers, including elements of pricing such as discounts, allowances, rebates, credits or incentives.
- 2. Discussions in dealings with customers, suppliers, third parties**
There should be no discussion as to the way in which one or both of the parties will or may deal with a customer, supplier or other stakeholder, without the prior approval or presence of our respective internal legal representatives.
- 3. Exchanging cost information or other competitively sensitive information**
There should be no cost information or other competitively sensitive information regarding the conduct of the respective businesses shared unless and until the general nature of the information proposed to be shared is discussed with, and approved by, Bapcor's legal representative.
- 4. Concluding any agreements, arrangements or understandings**
There should be no substantive agreement, arrangement or understanding reached on any matter unless and until execution of appropriate documentation approved by Bapcor's legal representative, at all times having regard to Competition Laws.
- 5. Confidentiality**
Any and all proposals, options or information raised, discussed or exchanged as part of any discussions, including the fact that discussions are taking place, must be kept strictly confidential, unless there is a requirement to disclose such information by law.
- 6. No meetings without formal agenda and legal representation**
Except for communications to facilitate the Purchase Transactions described above, all meetings must be governed by an agenda prepared in accordance with the template provided at Annexure A of this Protocol and circulated to relevant representatives of the parties (including Bapcor's legal representative) at least one working day prior to the proposed meeting.

Annexure A

MEETING AGENDA

- Place:** [#]
- Date:** [#], commencing at [#] and scheduled for [#] hours
- Subject:** Company A and Company B wish to have high level discussions about [insert – i.e. *Company B providing Company A with goods and services*] (the **Project**).
- Attendees:** Company A – Bapcor Ltd (or a Bapcor Ltd subsidiary entity)
Company B – [#insert Competitor entity#]
- Protocol:** The attendees note and will abide by the draft Communication Protocols that have been discussed in principle between Company A and Company B (copy attached to this agenda for ease of reference). In particular, the attendees note that:
- (a) certain topics (identified in the Communication Protocols) may not and will not be discussed at the meeting;
 - (b) no substantive agreement, arrangement or understanding will come out of the meeting or has come out of any previous meeting of the parties about the Project; and
 - (c) any agreement, arrangement or understanding as to the subject matter of the meeting will only arise upon execution of appropriate documentation approved by the respective legal representatives of Company A and Company B from a competition law perspective.
- The attendees further acknowledge that the draft Communication Protocols will govern any future meetings, negotiations, discussions and other correspondence between Company A and Company B in connection with the subject matter of the meeting.
- Agenda:** To discuss
- 1. [#]
- Minutes:** Draft minutes of the meeting to be prepared and circulated by [#]