

# COMPETITION MATTERS

## Fostering Fair Play in the Marketplace



## Summer/Fall 2014

### Attorney General's Office Adopts Self-Disclosure Policy

The Ohio Attorney General's Self-Disclosure Policy encourages vendors and others to self-report anticompetitive activities and offers lenient treatment to businesses that come forward to report wrongdoing that may violate antitrust laws.

Under the policy, the Attorney General's Office will not criminally prosecute a business that reports its own antitrust violation, nor will it refer the matter for prosecution by another agency. The Attorney General's Office also will not file a civil lawsuit for damages, penalties, or other remedies unless the business breaches the terms of the policy. In addition, the Attorney General's Office will refrain from seeking to debar or otherwise prevent the company from doing business in Ohio.

To qualify for leniency under the Self-Disclosure Policy, a business must meet several important criteria:

- It must either disclose wrongdoing that the Attorney General's Office did not know about or, if the Attorney General was already aware of the wrongdoing, the entity must be the first violator to come forward and provide information that supports a sustainable conviction or finding of liability that the Attorney General's Office did not have before.
- The self-reporting business must have taken prompt action to stop its own illegal behavior and must fully and candidly disclose all relevant facts to the Attorney General's Office.
- It must agree to cooperate with any further investigation of the matter, especially if the Attorney General's Office is pursuing the company's co-conspirators.
- It must not have been the ring leader of the conspiracy and must not have coerced any other business or individual to participate.
- Importantly, whenever possible the business must make restitution to injured parties, such as public entities that were victims of a bid-rigging or price-fixing conspiracy.

While several federal agencies have similar policies providing lenient treatment for businesses that self-report illegal activity, the Ohio Attorney General's Office Self-Disclosure Policy appears to be the first of its kind among the nation's state attorneys general. The policy also includes provisions covering consumer protection and charitable law violations.

The full text of the [Self-Disclosure Policy](#) appears on the Ohio Attorney General's website.

## The Informed Purchaser

From time to time, you may encounter terms or concepts unique to antitrust issues, competition, and schemes to exploit purchasers. Here are a few relevant terms and definitions:

- **Inelastic demand:** This occurs when the need for a good or service does not vary with a change in price. Examples of products with inelastic demand are gasoline, prescription medications, or other necessities.
- **Homogeneous/homogeneity:** These are goods, products, and services that are indistinguishable from the same items offered by a different supplier. Examples include agricultural, energy, and raw materials such as rock salt and metal ores.
- **Market allocation:** This occurs when competitors agree to divide markets between themselves. These markets may be delineated by geographic regions, allocated in ratios, or differentiated by types.
- **Sham bid/complementary bidding:** This is a bid submitted by a competitor in which the amounts are clearly too high for consideration or are riddled with unrealistic special conditions, forcing purchasers to select another bid. Sham bids allow competitors to provide the appearance of a legitimate competitive bid process.

## Have You Registered to Become One of our Partners?

Ohio Attorney General Mike DeWine's Partnership for Competitive Purchasing takes a proactive approach to bid-rigging detection. The partnership is a free, voluntary program open to all Ohio public entities — from cities to villages, from universities to state agencies, from public libraries to school districts. Through the program, staff with the Ohio Attorney General's Office search for evidence of bid-rigging and other anti-competitive practices. If such practices are uncovered, they can conduct an investigation of the contractor that may result in the recovery of funds. Registration for the partnership is free and easy. Just visit the [Partnership for Competitive Purchasing](#) page and select "[Enroll in the Partnership for Competitive Purchasing](#)."

## We Welcome Your Questions, Speaker Requests

We encourage you to suggest a topic or ask a question of the legal staff of the Ohio Attorney General's Antitrust Section. Questions will be addressed in future issues of *Competition Matters*. (No individuals' or organizations' names will be published.) Please submit your questions or suggested topics to Karen Pierson at [Karen.Pierson@OhioAttorneyGeneral.gov](mailto:Karen.Pierson@OhioAttorneyGeneral.gov).

If you have an upcoming conference or association meeting and would like a speaker from our office to talk about the Partnership for Competitive Purchasing, bid-rigging detection, or other antitrust issues, contact Karen Pierson at 614-728-2493 or [Karen.Pierson@OhioAttorneyGeneral.gov](mailto:Karen.Pierson@OhioAttorneyGeneral.gov).

## Tailor the Topics and Timing of Our Communications

You can tailor the topics and timing of email communications from the Ohio Attorney General's Office by visiting [www.OhioAttorneyGeneral.gov/EmailUpdates](http://www.OhioAttorneyGeneral.gov/EmailUpdates). In addition to receiving *Competition Matters*, you can sign up for other newsletters, learn about careers with the Attorney General's Office, and more. You also can choose the timeframe for delivery — when available, daily, or weekly.