

# Collaborating with a competitor

These partnerships are not for the faint of heart.

In an increasingly complex global economy, companies of all kinds find themselves considering joint ventures and other collaborative efforts, many of which involve competitors. The concept of collaborating with a competitor initially sounds both illogical and potentially illegal. To understand how collaborating with a competitor can help a business, *Smart Business* interviewed Marian Pearlman Nease, a transactional lawyer specializing in collaborative ventures.

## Why has collaborating with competitors become increasingly common?

We live in a complex, interconnected world. And businesses have an urgent need to find ways to legally gain a competitive advantage. Such advantages often can occur when two competitors in one market join together to pursue another market. Or a group of competitors can band together to promote their industry over a competitive industry.

## But isn't cooperation among competitors illegal?

It certainly can be, such as when two competitors collaborate to set prices, or to engage in other anticompetitive behavior. But there are a host of perfectly legal activities that competitors can do, as long as they exercise proper diligence in establishing and maintaining the collaborative effort.

## Why would one want to collaborate with a competitor?

There are a great number of situations where legally collaborating with a competitor can be good for you and good for a competitor. Not all competition is the classical win/lose. Opportunities to create win/win situations abound. And if the win for you is strategically important, the fact that it also benefits a competitor may not matter that much.



**Marian Pearlman Nease**  
Transactional lawyer  
Berger Singerman

## Give us an example where collaborating with a competitor could be strategically beneficial.

Our very own firm benefits from referral relationships with other law firms who, in a macro sense, compete with us. Major firms send us clients on which they have a conflict because they know we will do a super job for their client while also honoring their client relationship. So, on a given day, you may see us slugging it out in court with a competitor law firm while at the same time other lawyers in the firm may be working with that same firm and its clients on unrelated matters.

## Where do you see the greatest growth in collaboration among competitors?

I believe the greatest growth will be in industries where intellectual property is paramount. No entity has a lock on all of the great ideas needed to meet the challenges of this century. Competitors who have discovered partial solutions will often benefit by partnering with others who have discovered complementary partial solutions. The entire life sciences area is an area where partnering arrangements will be the key to enhancing the quality of

life and to saving lives. Sometimes, the partnering will — by necessity — be with competitors.

## Partnering with competitors sounds very tricky.

Well, it is certainly not for the faint of heart. One must have very clear business objectives. And one must be very careful in structuring the transaction so that it does not run afoul of antitrust laws.

## How long have you been interested in this area of the law?

For more years than I care to admit. As a young lawyer in Washington (D.C.) at the Department of the Interior, I was thrown into negotiating collaborative ventures on a national basis. I then was counsel to a multistate regional economic development organization where, once again, much of my time was devoted to crafting win/win solutions, this time among very competitive states. And since being in private practice, a significant part of my practice has involved helping clients find ways to create win/win solutions. A fair number of these situations have involved entities that competed in some fashion with one another but who saw the benefit of collaborating for a limited and well defined purpose.

## What final words of advice on this subject would you give to a business executive?

Almost every business must collaborate with other businesses in order to gain and maintain competitive advantage. Sometimes, the optimal collaboration will be with a competitor. Be open to exploring the benefits of such collaboration, but be sure to do so carefully with experienced legal counsel.

**MARIAN PEARLMAN NEASE** is a transactional lawyer who focuses on collaborative ventures, often between nonprofit and proprietary entities. Read more about how Berger Singerman is helping executives position their companies for success, online at [www.bergersingerman.com](http://www.bergersingerman.com).