EACA Guidelines on Account Conflicts

Introduction

The Communications Industry is going through a period of exceptional change driven by a variety of factors, which have made the generally accepted definition of conflicts in urgent need of revision:

- Consolidation of client companies across most sectors into ever-larger units through the process of merger and takeover.
- Trend in client demands from unbundling of communications disciplines into separate units (Media, Sales Promotion, DM/RM, etc) back to a requirement for one-stop shopping…the development of the Integrated agency.
- Emergence of new media and a requirement for total integration with conventional communications disciplines.
- Globalisation of brands, especially European-based, requiring agency servicing in all parts of the globe.
- Against this backdrop are conflicting and in some cases mutually exclusive client demands:
- Pressure on agency terms of business from clients offering global budgets, but requiring local in-market support and servicing.
- Demand for greater investment in the Planning resource, to provide consumer insights across continents.
- Continuing client demands, especially in emerging sectors for exclusivity on an ever wider geographical and cross-category basis.
- Pressure from global clients to provide “first world” standards, in third world markets.

The effect is that to satisfy client needs in the new era, agencies need to be able to expand, to add services and to form alliances, in order to provide the quality of service at realistic costs.

Many experienced clients, particularly those active on an international scale, have recognised the need to soften their attitudes towards agency conflicts of interests and encouraged by the more enlightened of agency search consultants, have either hired agencies they would not previously have considered, or consented to their agencies working in some capacity for competitors.

This process needs to be formally recognised, codified, and to be transmitted to all who may just be encountering the question of conflicts. It has to be said that the accelerating process of diversification by clients into other business sectors, consolidation into bigger units and the emergence of new national and international advertisers, particularly in the new technology fields, is running somewhat ahead of the process of liberalisation in conflict definitions.

In some cases, clients who once defined their category by just the major brands which they sat next to on a supermarket shelf, or which would be the consumer’s obvious substitute on any given purchase or consumption occasion, are now taking a wider view of the consumer’s choices in disposing of income.

Phrases like “share of throat” in the food and drink category and equivalents in financial, leisure and other sectors have created wider potential definitions of conflict, which need to be restrained.

Impact of Conflicts on the Agency Business

It is clear that in the past, mutual acceptance of conflict definitions has had advantages for both agencies and clients, although one might feel that the advantages have been heavily loaded towards the client side.

Generally speaking, agencies have enjoyed more stable client relationships through accepting exclusivity and clients have had the benefit of resources to expand and control their development globally.

However, it is clear that the past definitions of conflicts have combined with other factors to seriously hamper development of agencies in Europe. In comparison with USA and Japan, the average size of an agency unit in Europe is much smaller, and yet the same demands for services are made and the same pressure is applied to their revenues.

Budgets are proportionately lower than in USA and the need to provide fully functional agencies in each European country, rather than in a regional centre, is a massive overhead which agencies cannot offset by achieving the kind of growth that could only come from handling competing clients.

The most pressing problem in Europe is undoubtedly the need for agencies to achieve ever-higher economies of scale, without the means to achieve real scale, due to past restrictive interpretations of conflict situations.

The end result is that the agency business in Europe remains fragmented, despite the process of merger and consolidation which happens from time to time. No agency in Europe has a market share even approaching double figures, which is in stark contrast to the share-building mergers experienced in many client sectors.

The media-only sector, which is not the subject of this paper, seems to have already overcome many of these restrictive problems to achieve growth.

Conflicts: The realities

It is clear that in demanding exclusivity, clients are principally afraid of the possibility of betrayal of their plans or of use of their private information for the benefit of a competitor.

Less obvious and possibly more emotional reasons for demanding exclusivity are sometimes given as a test of "loyalty" or out of fear of not getting the agency's best team for the category.

It is possibly a sad comment that agencies have not succeeded in communicating the fact that the perceived dangers are, from a realistic standpoint, minimal and certainly no more than might be expected through other professional business partners, who do not seem to fall under quite so much suspicion.

Clients believe that their strategic aims may be compromised and that tactical plans may fall victim to pre-emptive or "guerrilla" measures.

It is probably realistic to say that if betrayal of plans occurs, there are almost certainly sources which are far more likely to be responsible than advertising agencies, whose interests lie in the success of the plans to which they are a party.

The actions of the media and of the grapevine which seems to exist within all sectors must be far more culpable than agencies in passing information. It is an inescapable fact that information within agencies does not flow particularly easily across account groups and that agency personnel usually identify themselves as closely with the brand as do client people.

Agencies know that their own clients rarely if ever alter their own plans to counter what they hear of competitive intentions, although the practice is not completely unknown. They also know that most clients take a very dim view of information which may be offered to them from agency sources, casting doubt as it inevitably would on the security of their own plans.

It often puzzles agencies that clients will enter into agreements to manufacture, package or distribute each other's products, which must necessitate almost complete fore-knowledge of intentions, but still insist that the agency arrangements are separate.

The aversion to dealing with an agency which handles a competitor seems to have more of an emotional than a rational basis and is something that in the long term is not in the interests of either party.

If motivated on the grounds of ensuring loyalty, then it is not only misguided, but unworthy. Agencies deal with many clients, across all categories, both near to each-other and widely separated. They are capable of being loyal to each and every client, almost irrespective of budget.

Experienced clients know that the best guarantee of dedicated and loyal service is a close and harmonious working relationship with the agency team. In an agency of any size there should be no question of "first" or "second" teams. Clients should simply ensure that they are totally satisfied with the team allocated to their business.

Conflicts: A Solution

It is clear that the way forward is to define a bilateral system in which both sides can have confidence and work with clarity and confidence. The present arbitrary system damages and restricts agencies, in Europe at least and in the final analysis, detracts from the cost-effectiveness of the service clients wish to receive.

The following principles are recommended for agencies handling other than media-only services, which are subject to entirely different trading conditions:

More use should be made of non-disclosure agreements, as supplements to existing contracts. NDAs should serve as a reminder to all parties of the need for security. They should be signed by individual members of agency staff and restrict them even after leaving the Agency, for a specific period.

Agencies should show that they are able to make provision for greater secrecy, by more stringent filing, locking and segregation than is perhaps now the case. The "Chinese walls" should be made more tangible.

Where conflicting accounts are handled within different branches of a single agency, whether in the same country or overseas, care must be taken that marketing information is not passed from one unit to the other. It must be a Management responsibility to see that this does not happen.

In general, exclusivity should be restricted to key named competitors only, not to complete sectors. The degree of exclusivity demanded by a client must be reflected in the remuneration terms offered to the agency.

Definitions of conflict should not go above agency brand level, ie to sister agencies within the same global communications group. Neither should they extend laterally across promotional disciplines, nor to subsidiaries of the agency, if separately housed or managed.

Only in exceptional circumstances should global exclusivity be requested. In line with other sectors like PR, a base level of $10 million agency income is suggested as a starting point for consideration of exclusivity on more than a local or regional basis. In these cases the client should rigorously enforce use of the aligned agency locally.

Exclusivity must be two-sided. Agencies must not be prevented from handling business in countries, or market sectors, where they are not used by the client. In instances where a client operates in a particular country and does not use the aligned agency, they may not prevent that agency from handling a competitor.

Conclusions

The level of conflict sensitivity shown by many clients, though improving, remains an unjustifiable restraint on trade for agencies. Its negative effect on agency revenues can only have an impact on ability to deliver the quality of service and professionalism which clients demand.

The real risks are vastly overstated and are far less than in some of the marketing cooperations formed between competitors themselves. There should be an honest attempt by all parties to come to agreements based on rational, rather than emotional, appraisals of the risks involved.

Agencies need to be more open about how they are able to control situations which, whether justified or not, are known to worry clients. More extensive use should be made of client confidentiality agreements, which all agency staff should sign.

Clients should take a more liberal view, especially in the case of sectors in transition from local to global, or in the process of consolidation. In principle, they should not impose exclusivity demands in any category or country where they do not actively and continuously use the agency.

Exclusivity has a price and it can be a relatively high one. Where this is required, the remuneration should reflect the business, or business opportunities, given up by the agency. There should be absolute clarity over which named competitors and countries the exclusivity applies to.

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