

KAEFER Antitrust Law Rule

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Purpose

The aim of this rule is to make sure that all KAEFER employees are aware and comply with their country's antitrust laws (also referred to as competition laws), rules and regulations and with those of any other country or group of countries which are applicable to KAEFER's business.

This rule outlines the basic principles of Antitrust Law. This rule is designed to make Employees aware of the basic principles and how these affect themselves, the BU and the KAEFER Group. It is also designed to make Employees aware that their business behaviour in making commercial decisions can also be caught under antitrust laws, regulations, and rules.

Furthermore, the aim of this rule is to avoid antitrust violations. Besides the cost of defending an antitrust charge or investigations plus the respective sanctions can be extremely costly. Violations can cause tremendous disruption of KAEFER's business operations and any settlements can result in an entry of consent decrees or commitments that substantially limit KAEFER's freedom of future business activities.

Instructions and concrete actions

This rule applies to all Business Units (BUs) within the KAEFER Group and to all directors, officers and employees of the KAEFER Group including interns and temporary employees (hereafter jointly referred to as "Employee(s)").

Managing Directors (MD) are responsible to implement this rule appropriately, consistent with local laws, rules and regulations and to communicate its content to all Employees.

Local Compliance Officers (LCO) are responsible to support the Managing Directors with such tasks and guidance if and when required.

Corporate Compliance, Consulting & Audit (CCA) is the owner of this rule and responsible for maintaining and updating this document.

This rule sets out global principles on which all Employees of the KAEFER Group should deal fairly with each other and with KAEFER's suppliers, customers, competitors¹ and any other third parties.

In case of any questions, concerns or doubts please contact your Local Compliance Officer.

¹ Competitors include but are not limited to customers, contractors, subcontractors and supplier companies which conduct business on the same Market as KAEFER.

1 Introduction

1.1 Antitrust Law

Antitrust laws are designed to protect competition. They prohibit business behavior which has the objective or the effect of preventing, restricting or distorting competition.

1.2 European Union (EU) Competition Law

EU Competition Law applies to all companies and individuals doing business within the Member States or which may affect trade between the Member States of the European Economic Area regardless of whether these companies are established in one of these countries or not.

1.3 United States (US) Antitrust Law

US Antitrust Law applies to all companies and individuals doing business in the US or affecting US commerce.

1.4 National Competition Laws

There are national competition laws to be considered when doing business in the corresponding country. These national competition laws are generally similar to EU Competition Law and/or US Antitrust Law. If necessary, you should contact your local legal advisor concerning any questions regarding applicability of local laws, regulations and rules.

1.5 Employees Responsibilities

Compliance with antitrust laws is the responsibility of every KAEFER Employee. KAEFER Employees are forbidden to engage in practices that violate antitrust laws.

1.6 Effect of Antitrust Law Violations

Violations of antitrust laws may, among others, result in:

- > Serious penalties and fines up to 10% of the annual worldwide group turnover of the undertakings involved;
- > Any agreement becoming void;
- > Criminal corporate charges and/or civil enforcement proceedings;
- > Convictions of the involved Employee(s);
- > Claim for damages from Competitors, customers and consumer`s associations;
- > Damage to KAEFER`s reputation; and/or
- > Exclusion from private and public tenders (blacklisting).

2 Eliminating or Restricting Competition

All agreements or understandings between two or more companies which have as their objective or effect the prevention, restriction or distortion of competition are prohibited. Special attention must be paid to all interactions with Competitors wherever they may take place. The form of agreement is of no importance. Not only written agreements are deemed to fall within the scope of antitrust law, but also verbal agreements or so-called coordinated practices, i.e. deliberate and intended collaboration between individual companies for the purpose of eliminating or restricting competition in a certain Market², may be actionable.

You may find the following overview of relevant sensitive areas, including possible examples for allowed and prohibited behavior, useful. Kindly note that those are taken from EU experiences. These may differ in your relevant jurisdiction and as such your local legal advisors` consultation is required.

² Market refers to both a relevant (1) product and (2) geographic market.

- (1) A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products` characteristics, their prices and their intended use;
- (2) A relevant geographic market comprises the area in which the companies concerned are involved in the supply of products or services and in which the conditions of competition are alike.

2.1 Information Exchange

The exchanging of market-relevant information between Competitors has different impacts on competition and as such must be evaluated on a case-by-case basis.

It is irrelevant on how the information is exchanged (verbal, written, direct or indirect).

Do	Don't
<ul style="list-style-type: none"> > obtain information about Competitors' pricing, products, operations, and strategic plans from public sources etc. > note in written documents the source of any information about a Competitor's prices or other strategic information that you receive from a customer, distributor, supplier, etc. so that there can be no ambiguity about the source of the information. > assume that everything you write may be disclosed publicly. > exercise caution in all forms of communication to avoid even the appearance of impropriety or unlawful motive. 	<ul style="list-style-type: none"> > discuss or exchange competitively sensitive information or business plans with Competitors, except with legal counsel's oversight, including pricing; <ul style="list-style-type: none"> ○ discounts; ○ marketing and strategy plans; ○ customer and supplier selection; ○ product or service offerings and innovation; ○ business operations and performance; ○ growth and contraction plans; or ○ current or future wages, salaries, benefits, or other compensation terms and policies.

2.2 Vertical Agreements

Vertical agreements or coordinated practices refer to restricting competition between companies acting on different levels of trade, e.g. relationships with distributors and customers, licensees, suppliers or licensors that restrict the competition freedom of the partners or third companies.

2.2.1 Supply Agreements

Many clauses in supply agreements do not affect free competition.

Allowed	Prohibited
<ul style="list-style-type: none"> > to agree to an exclusive supply agreement if the buyer's Market share is below 30% and the supplier is not dominant > to establish requirements and arrangements referring to quality, specifications, quality control, raw materials, packing materials, quantities, terms of delivery and the like > to oblige the supplier not to use the know-how and/or technical means for other purposes than for the supply to the buyer, if the protection of the buyer's know-how is the sole purpose of the restriction 	<ul style="list-style-type: none"> > to agree an exclusive supply agreement if one of the parties is dominant > to agree the exclusive supply of the ordered product if the supplier is capable of producing the product in question without the know-how and the auxiliaries of the buyer > to forbid the competition by the buyer or the seller with their own developed products, improvements or new applications of the technology in question in so far as these are severable from the know-how of the supplied product > to take any influence on the resale prices charged by the buyer

2.2.2 Exclusivity

When entering into agreements to buy exclusively from one source or to supply exclusively to one customer (exclusive distribution, purchase, franchise or licence agreements) certain general principles must be considered:

Allowed	Prohibited
<ul style="list-style-type: none"> > to grant an exclusive distribution, purchase, franchise or licence right in a certain territory or to a certain group of customers > to prohibit an active marketing policy outside the agreed territory. Therefore, outside the contract territory and in relation to the contract goods, the partner can be obliged to refrain from actively seeking customers, establishing any branch or maintaining any distribution depot. However, the partner may not be prohibited from advertising on the internet or fulfilling orders not solicited by the partner 	<ul style="list-style-type: none"> > to prevent wholesalers or distributors from accepting orders from outside the agreed territory > to forbid a distributor to supply the products to other distribution channels upon corresponding orders > to refuse orders from distributors exporting the products with the argument of territorial restrictions > to forbid internet promotion by a distributor

2.2.3 Non-Compete Clause

Allowed (subject to having obtained prior legal advice)	Prohibited
<ul style="list-style-type: none"> > to forbid the manufacturing and selling of competing products during the first five years of the duration of a distribution or licence agreement 	<ul style="list-style-type: none"> > to forbid the manufacturing and selling of competing products in a distribution agreement for a duration of more than five years from the start of the agreement > to purchase from the supplier more than 80% of the buyer's total purchases of the contract goods > to forbid the manufacturing and selling of competing products beyond the duration of the agreement > to forbid the manufacturing and selling of competing products in a licence agreement including the distribution of the licensed products for a duration of more than five years from the start of the agreement

2.3 Horizontal Agreements

Horizontal agreements or coordinated practices refer to agreements between or among companies acting on the same level of trade, e.g. relationships between actual or potential Competitors that restrict the freedom of the partners or third companies to compete.

2.3.1 Price-Fixing

A practice whereby Competitors enter into agreements (either formal or informal) on specific prices but also on maximum or minimum prices, discounts, rebates or credit terms. This also includes an agreement inferred from conduct or other circumstances.

In the absence of a dominant position, every manufacturer is free to establish and change its own (non-predatory) prices, and in doing so, it may take account of, in the absence of any coordination, the conduct of its Competitors. However, it is a violation of antitrust law to agree or to cooperate in any way with Competitors through Price-Fixing.

2.3.2 Market Allocation

An agreement among Competitors to share or allocate Markets including market shares or customers in any form is forbidden under antitrust law.

2.3.3 Joint Ventures

Joint venture agreements between Competitors may produce useful efficiencies but can also affect or restrain competition. Consequently, such agreements must not be entered into without first obtaining legal advice from Corporate Legal & Insurance (CLI), your local legal department and/or local legal advisors.

2.3.4 Boycotts

The refusal by a group of Competitors to deal with one or more customers or suppliers to hinder the customer or supplier from conducting business in a Market (sales restriction) is prohibited under antitrust law.

3 Attendance at trade associations, industry meetings and standard bodies etc.

Attending industry meetings, (e.g. trade association sessions, trade fairs etc.), where Competitors meet up, is generally permissible. The contents under this header however applies to both official and unofficial meetings. Any meetings or other activity that involves sharing of information among Competitors can raise significant antitrust risks. It is important not to exchange commercially sensitive information (including pricing, sales and market share information) with Competitors.

If competitively sensitive information is exchanged at a such meetings by a third party,

- > immediately protest,
- > make sure that both your protest and your leaving are documented in the protocol,
- > leave the meeting,
- > and immediately inform your LCO to avoid an antitrust law violation.

Appropriate behavior is key when meeting up with Competitors.

4 Abuse of a Dominant Position

Being or striving to be in a dominant position is as such not illegal or prohibited. However, it is forbidden to abuse a dominant position.

A company having a dominant position is entitled to compete on the merits and to meet competition. However, a dominant company has a special responsibility not to hinder the Market entrance, the effective competition existing in the Market or the growth of that competition.

However, the definition of what is regarded as a dominant position may differ in other jurisdictions. You should contact your local legal advisors if needed.

5 Tenders

Agreements between Competitors on tenders, regarding the content of the bid as well as for the bid itself, are prohibited.

Arrangements or agreements between Competitors within the tendering procedure concerning e.g. terms and conditions, quality or prices are also prohibited, as is any arrangement or agreement on the participation in the tender itself.

As a participant in a tender process Employees are not allowed to influence in any undue way the tender process itself or any decision makers involved in any jurisdiction.

Throughout a tender process, in compliance with the respective local tender regulations, transparency must be maintained to avoid amongst other:

- > **Bid-Rigging:** (illegal practice in which competing parties collude to choose the winner of a bidding process while others submit uncompetitive bids. Bid rigging stifles free-market competition, as the rigged price will be higher than what may have resulted from a competitive bidding process)
- > **Joint Bidding:** (Two or more Competitors file a “joint bid” even though at least one of the Competitors could have bid on its own.)

violations from occurring. Violations in respect of any of the above mentioned may result in severe penalties and sanctions e.g. exclusion from future tender procedures.

Exceptions may apply to pre-bid agreements/consortia/joint ventures, where additional resources demand for Joint Bidding. Local legal advisors or CLI may be consulted for further guidance.

6 Intracompany Corporation Agreements

Agreements between affiliated companies do not, in principle, fall within the scope of antitrust law. Therefore, the above-mentioned rules of antitrust law are not applicable with respect to the relation of the parent company to its solely controlled affiliates or between sister companies belonging to the KAEFER Group.

Nonetheless, it is crucial that all information given by the parent company to its affiliates for its customers, such as price lists, internal calculating documents, marketing plans etc., must themselves meet the requirements of antitrust law.

7 Dawn Raid

KAEFER may become subject to an unannounced house search (also called dawn raid) by antitrust authorities usually accompanied by the local police. In the event of a dawn raid, the procedure as set out in your local dawn raid checklist will need to be followed carefully.

8 Reporting

Where Employees believe, in good faith, that there is a violation of applicable antitrust laws and regulations, the Employee should report the matter promptly to

- > its supervisor (or one of his superiors if deemed to be necessary);
- > a member of the KAEFER Compliance Organisation or
- > the KAEFER Compliance Helpline (anonymous if desired).

9 References

The following rules are additionally relevant:

- a) KAEFER Code of Business Conduct
- b) KAEFER Compliance Rules (as provided by CCA and published in KAEFER Rules System - KRS)