AALBERTS INDUSTRIES

ANNEX - CODE OF CONDUCT | AVOIDING ANTI-COMPETITIVE CONDUCT

FURTHER EXPLANATION

Almost all countries in which Aalberts Industries is active have competition laws (or antitrust or anti-cartel laws). In essence the core of these laws is always the same: companies are not allowed to share any form of confidential information with their competitors. Of course price-fixing between competitors or agreeing (even informally) with competitors to respect each other's customer groups or focus is clearly prohibited.

The cartel prohibition even goes much further. Providing a representative of a competitor with information on our current policy, our intended action or even recent decisions relating to the commercial policy is a violation of the competition laws.

It is irrelevant whether the information is "important" according to us or whether the competitor was aware of the information already. Even the "confirmation" that the information a competitor has about our commercial policy is correct, will constitute a serious violation of the competition rules around the world. Sometimes you receive information via customers about the actions of competitors. The competition authorities have ruled in some cases that sharing information about the commercial policy of competitors via customers infringes competition law.

It may occur in daily practice that you meet with competitors. Talking to competitors is always very risky and if you choose to do so, it is your responsibility that no sensitive information is exchanged. The only alternative would be to forbid any communication between employees of Aalberts Industries and competitors regardless of the subject (even insofar as legally allowed). However, Aalberts Industries does not want to impose such an extensive prohibition because we trust that our employees act responsibly. In any case, you have to make absolutely clear in a conversation that you refuse to disclose or receive sensitive information even though such an information exchange may appear tempting or even useful for business.

The fines for violations of the competition rules are enormous and they apply to both the companies concerned and the individuals infringing competition law. In Europe, fines imposed on companies may be up to 10% of last year's group sales. To take Germany as an example, individuals may be fined up to EUR 1 million. In some of the countries where we do business people can even go to jail for violations of competition law. This will typically concern violations which involved contacts with competitors.

Naturally, there are areas of competition law which are more nuanced, like: can we co-operate with this competitor in R&D? Or can we buy input products together? Or can we ask for or provide exclusivity to a supplier or a distributor/customer? These are all questions which require a delicate legal and economic analysis. Please do not make any decisions on such issues without prior consultation with your manager so that legal advice can be obtained in advance.

Another aspect of competition law concerns control of companies having a strong position on a given market. If a company has a very strong position on a market (quasi-monopoly or dominance) the commercial freedom is significantly restricted by some of the competition laws. Market dominance is usually deemed to exist where we can set our terms and conditions without having great consideration to our competitors. Market share and the distance to competitors are the decisive characteristics to define dominance. If we believe that we have a market share of 20% or more, we have to consider our terms and conditions more thoroughly.

Can we still do exclusive deals or grant discounts to customers? If you are faced with such questions, make sure you contact your manager so that prior legal advice can be obtained.

EXAMPLES

Example 1: A trade association meeting is taking place. The issues discussed there pertain to, among other things, the current certification procedures and legislative proposals relating to product standards.

During a coffee break you get into a conversation with employees of two competitors. The conversation turns to the current annual negotiations with an important wholesaler. The latter claims higher rebates, extension of credit and return of goods terms, reduction of the minimum purchase orders, increase of advertisement support and contribution for various marketing activities. The colleagues tell you that they are faced with the same requests and that they will probably accept the requests relating to the marketing support but that they will definitely reject the other requests. Now they ask you how we will respond to the requests. You answer that we have not yet made a decision, but that you consider the envisaged strategy of your colleagues to be right. You state that, in your opinion, it would be helpful if at least the other requests could be rejected.

This conversation constitutes a serious violation of competition law. The competition authorities presume that the information exchanged in this conversation have an influence on the negotiations with customers and thus on competition. Such presumption can hardly be rebutted in competition proceedings. In this context, the fact that the wholesaler may have a strong position on the wholesale market is of no relevance.

What should you do when a competitor (even a former colleague, friend or relative) provides you with commercial information about his company?

Tell them that you are not allowed to talk about wholesaler requests, the state of negotiations with wholesalers or about our negotiation strategy. It is however permissible to talk about end customers satisfaction with the wholesaler or about the opening of a new wholesale warehouse or the location of wholesale warehouses. As a rule of thumb you should keep in mind for any contact with competitors that you are not allowed to exchange information which, as a result, may prompt us or any competitor to adapt our/his business strategy, prices, product portfolio, production process etc. or at least to consider doing so.

Example 2: You attend a meeting of an interest group. The interest group comprises various manufacturers of a market sector which markets a specific product type. The participants discuss what conclusions should be drawn from a jointly assigned product study. In the course of the discussions it becomes clear that several changes of the product and modifications of the manufacturing process will be required to comply with certain technical standards/norms. During lunch, a manufacturer tells you that the raw material prices and the results of the study will lead to a price increase. He states that, in his opinion, marketing efforts should focus on the improved product characteristics.

The meeting as such may be deemed legitimate but you must always keep in mind when having contact with competitors not to discuss any impermissible subjects. Anything going beyond the legitimate purpose of joint development and marketing of products (such as any information about the participants' own marketing activities, prices, markets or the exchange of information about production or purchase costs) is inadmissible. So if the conversation is about a price increase in raw material and its effects on production costs and prices, you have to distance yourself from such discussion and make clear that you do not want to participate in such an information exchange. This also applies to other sensitive information relating to customers, turnover, sales figures, capacities, investments, innovations and technologies. It may at best be admissible to talk about overall sales or business developments in general which do not allow any conclusions to be drawn as to specific products or individual manufacturers.

Example 3: You participate in a trade fair and present our products. An employee of a competitor visits your stand and introduces himself as an employee of the competitor. He says that he would like to learn more about product developments and asks about specific products exhibited at the stand. He wants to know prices, productions and development costs as well as the materials used. How should you react?

Do not disclose any information to that person other than that contained in the product brochures, price sheets, or other information already available at the stand or your company website. Information relating to market launch, production and development costs as well as know-how is highly sensitive business information. An exchange of this information constitutes a violation of competition law. Even if that person offers to disclose information about the competitor's product development etc., too, you are not allowed to provide him with such sensitive information.

Q&A

Question 1: I received confidential business information about a competitor. What should I do?

Answer 1: It is decisive where the information comes from. If, for instance, the wholesaler voluntarily provides you with information about the terms and conditions of your competitor, such information is legitimate and you can also use it in your own price negotiations. If such information is however received from a competitor, the principles explained in the examples above apply. Generally, you are not allowed to use such information. Immediately speak to the sales management or your manager about the situation.

Question 2: I am participating in a working group in which representatives of competitors also participate. I sometimes pick up relevant information at these events. What can I do with this information?

Answer 2: The principles explained in the examples above apply. In personal conversations you must reject such an information exchange. You are not allowed to use such information. Immediately speak to the sales management or your manager about the situation.

Question 3: We have a strong market position (usually more than 20%) in a specific product sector. A wholesaler requests higher discounts. We are willing to grant a significant discount because it is an important customer. May I grant such a significant discount? May I do this subject to the condition that the wholesaler delists one of our competitors?

Answer 3: Make sure you contact your manager so that prior legal advice can be obtained before agreeing with this customer on a discount, even though it is the wish of the customer. In many countries in which we do business, dominant companies are not allowed under competition law to set discounts freely. Without prior legal review, a dominant company also cannot initiate or force delisting of competitors.