ANTITRUST POLICY

Released by	Management Board: ☒ CEO ☒ CFO
Governed by	Corporate Legal and Compliance
Applicable for	All Employees[1] of DencoHappel Holding GmbH, DencoHappel GmbH and all Group companies
Effective from	16 December 2015

[1] The term “Employees” within the meaning of this Antitrust Policy includes all layers of management functions such as presidents, vice-presidents, directors, officers, executives and managers and any other employees.

Content

1. Introduction

Competition laws aim at safeguarding free and effective competition in the marketplace. Such laws therefore generally prohibit behaviour by companies which injures the competitive process. Competition laws are sometimes also called antitrust or cartel laws.

Violations of competition laws can lead to very serious sanctions and other negative consequences including:

- High fines, e.g. fines imposed by the European Commission or the German Federal Cartel Office of up to 10% of the total annual turnover of the group; the U.S. Department of Justice, too, can extract substantial fines in criminal cases; in some cases, fines in the hundreds of millions of EUR/USD have been imposed;

- Damage claims by purchasers or competitors, including in the United States treble damages, plus costs and attorneys' fees;

- Voided illegal agreements;

- Particularly in the United States, affirmative injunctions requiring the offender to undertake actions to "open" competition closed by the unlawful conduct;

- Exclusion from public contracts; and

- Loss of reputation and goodwill.

For the employees and the management of companies involved in competition law infringements, negative consequences include:

- Personal fines (in some jurisdictions, e.g. in Germany);

- Criminal law sanctions including imprisonment for serious competition law violations, e.g. cartels (in some jurisdiction, e.g. in the UK, France, Ireland, USA, Canada) or bid rigging (e.g. in Germany); U.S. antitrust enforcers in particular seek imprisonment for "hard core" competition violations (e.g. cartels, bid-rigging), such jail time is sought with increasing frequency and severity, up to 10 years of imprisonment is possible;

- Debarments from participating in certain lines of business; and

- Various personal damages claims.

DencoHappel GmbH, DencoHappel Holding GmbH and any of its affiliated group companies (hereinafter referred to as “DENCOHAPPEL”) may be subject to a jurisdiction’s competition laws if its employees’ or agents’ conduct causes substantial effects in that jurisdiction, even if DENCOHAPPEL personnel never set foot in that jurisdiction. More than 90 countries have competition laws, including virtually all industrialized countries. The focus of this Antitrust Policy is on EU and U.S. law. Competition laws in countries outside the EU and U.S. usually follow the same basic concepts, but may differ in detail.

2. DENCOHAPPEL’s Commitment

DENCOHAPPEL is committed to comply with the competition laws of all jurisdictions it is active in or its activities may substantially affect. DENCOHAPPEL relies on performance, customer orientation and quality of its products and services. It does not enter into agreements or practices that illegally restrict competition and does not abuse its market position in an unfair or anticompetitive way. Neither does DENCOHAPPEL support such behaviour by other companies.

3. Basic Rules

3.1 No Restrictive Agreements or Practices

Competition law prohibits agreements and concerted practices between enterprises which aim at or effect the restriction of competition. In particular, competition law prohibits

- The direct or indirect fixing of purchase/selling prices or any other trading conditions;
- The allocation of customers, markets or sources of supply; and
- The limitation or control of production, markets, technical development, or investment.

Examples are agreements among competitors on prices or customers (horizontal agreements, see below 4), and agreements between suppliers/manufacturers/customers which restrict the competitive freedom of one party by obliging it to do business exclusively with the other party (vertical agreements, see below 5).

Restrictive agreements that are on balance economically positive (e.g. because they allow companies to cooperate with a view to developing new products which they could not develop on their own) are under certain conditions exempted from the prohibition. In the United States, the framework is somewhat different: Only certain "horizontal" agreements are automatically prohibited without exception, while others must be demonstrated to be unlawful under a multi-factor "Rule of Reason". As for vertical agreements, in the United States almost all are tested under the "Rule of Reason."

If you have any concern whether a particular practice implicates the competition laws, you should contact the Legal Department.

3.2 No Abuse of Market Power

Companies that have strong or even dominant market positions may not abuse – singly or jointly – their market power. Abusive behaviour includes:

- Exploiting customers, e.g. by imposing unfair prices or other unfair trading conditions;
- Unfairly hindering competitors;
- Applying dissimilar conditions to equivalent transactions with different parties;
- Refusing to supply to some customers without legitimate reason; and
- Making contracts subject to acceptance of supplementary obligations which, by their nature or according to commercial usage, have no connection with such contracts.

In the United States, the rules governing dominant firms are somewhat different: A monopolist or near monopolist, may not engage in "anticompetitive" conduct that protects or threatens to create monopoly power. "Anticompetitive" conduct under U.S. law, however, is in certain respects narrower than conduct that might constitute "abuse" of a dominant position. For example, in the United States, it is not unlawful to impose as high a price as the market would bear, to charge low, non-predatory prices, or in general to refuse to deal with rivals absent very unusual circumstances.

If you have questions concerning a practice, please consult the Legal Department.

4. Dealing with Competitors

Competition law prohibits cartels (4.1), but can allow under certain conditions other forms of cooperation among competitors (4.2), including (subject to appropriate safeguards) the sharing of confidential information (4.3).

4.1 Cartels

Participation in cartels is the most severe breach of competition law and frequently leads to high fines and other very serious consequences, including jail-time for the individuals involved. DENCOHAPPEL strictly refrains from all kinds of participation in any form of cartel.

Cartels are agreements or concerted practices among competitors regarding prices (e.g. minimum/maximum prices, price increases, calculation schemes, rebates), non-price conditions (e.g. liability periods), customers, sales territories, quotas, production (e.g. quantities, utilization rates, types of products), business strategies or bids in bidding procedures.

Cartels do not require formal or even written agreements. An informal “meeting of the minds” or “Gentlemen’s agreement”, i.e. a mutual understanding between the companies involved, is sufficient. In some cases, the mere exchange of information concerning current or future prices may support an inference that the parties engaged in unlawful price fixing.

Companies which have only passively participated in cartel meetings or other illegal behaviour may be fined. A fine does not require that a cartel has actually been successful. Such cartel agreements or concerted behaviour regarding bids in bidding procedures are often criminal offences and lead to personal criminal sanctions (imprisonment, fines).

Employees of DENCOHAPPEL must not participate actively or passively in any meetings with competitors, neither bilateral nor in a larger group, neither in formal settings like industry associations nor informally, at which the abovementioned subjects (prices, customers, markets, business strategies, etc.) are being discussed. If such discussions start, employees of DENCOHAPPEL have to leave the meeting immediately and inform the Corporate Legal Department. Employees of DENCOHAPPEL may attend meetings where competitors are present only if a written agenda has been circulated in advance, and if that agenda does not include problematic issues. Neither may employees of DENCOHAPPEL exchange confidential information (prices, customers, bids, etc.) with competitors (see below 4.3).

In order to detect cartels more successfully, numerous competition authorities have set up so-called leniency or amnesty programs, among them almost all competition authorities in the EU member states, in the USA, Canada and Japan. Under these programs companies that admit their involvement in a cartel and provide the authority with information that allows it to impose fines on the other cartel members are granted immunity from fines.

All issues relating to leniency or amnesty programs are handled by the Legal Department.

Because obtaining leniency or amnesty requires rapid contact with the appropriate enforcement officials, it is essential that you bring any suspected illegal cartel conduct to the attention of the Legal Department at the earliest opportunity.

4.2 Cooperation Agreements

Companies that compete against each other can under certain conditions cooperate lawfully in some areas, including

- Research and development;
- Licensing;
- Sourcing;
- Production; and
- Technical norms and standards.

Whether the conditions for a lawful cooperation are met can only be checked on a case-by-case basis. Consequently, DENCOHAPPEL businesses which consider cooperating with actual or potential competitors should contact DENCOHAPPEL's Corporate Legal Department. This should be done early in the process. This is particularly important because certain cooperation between competitors may be subject to regulatory waiting periods or approvals. For example, certain licensing agreements implicating the United States must be filed with the U.S. competition authorities and cannot be consummated until a waiting period expires.

4.3 Sharing of Confidential Information

Competition authorities take the view that an exchange of confidential information (that is, information relevant to how companies compete, such as information concerning price) among competitors may in some circumstances foster competition through increased market transparency, but can under certain conditions also facilitate illegal cartel-like behaviour. Whether the conditions for a lawful exchange of information are met can only be checked on a case-by-case basis.

Consequently, DENCOHAPPEL businesses that consider exchanging confidential information with competitors must contact the Legal Department before sharing or receiving any such information.

In contrast, if a customer sends DENCOHAPPEL confidential information, e.g. a price list of another supplier, the information may be accepted. However, it must be ensured that DENCOHAPPEL can prove that it has received the information from a customer, not from a competitor. To that end, it has to be documented – if possible on the document itself – from whom, when and in what context (e.g. request for an offer by a supplier) the information was received.

Information exchanges often are conducted in the context of trade association activities, and such activities have no exemption from the competition laws. Accordingly, if you participate in a trade association, take special care not to discuss sensitive commercial information with any colleagues from your competitors.

5. Dealing with Suppliers and Customers

5.1 General

Also in vertical relations between suppliers, manufacturers and customers, clauses that appreciably restrict the competitive freedom of a party may be void. Some so-called Black Clauses are generally void, including

- Restrictions of the freedom of the purchaser to set its own minimum resale price; and
- Restrictions of the area in which the purchaser may passively sell.

Other restrictions can be lawful, including

- Exclusive supply;
- Exclusive purchasing (80% or more of the total requirement);
- Selective distribution; and
- Most-favoured-customer clauses.

Whether the parties can use such clauses depends essentially on their market shares (which in turn depend on the correct definition of the relevant product and geographic markets), the existence of Black Clauses in the agreement, the duration of the agreement and some additional criteria. Again, these conditions can only be checked on a case-by-case basis.

Businesses within DENCOHAPPEL that consider using such or similar clauses should therefore contact the Legal Department before doing so.

Particular care should be taken in markets where DENCOHAPPEL may have been thought to have a dominant (or monopoly) position or in which smaller companies are economically dependent on DENCOHAPPEL. Companies with high market shares have to behave “extra fairly” towards smaller suppliers and customers.

In the United States, the applicable principles are somewhat different. With the exception of tying arrangements, agreements between a supplier and customer are judged under the “Rule of Reason,” whereby the legality of a restraint is based on its overall impact on competition. This includes restraints that would be considered “Black Clauses” in the EU and elsewhere. For example, in the United States, restrictions on the territory in which a customer sells generally have been upheld under the Rule of Reason. Tying arrangements – agreements by which one product's availability is conditioned on the customer taking another – are per se unlawful if the seller has market power and the tying arrangement affects a substantial amount of commerce. Apart from tying arrangements, as a general matter, the greater a firm's market share, and the greater the impact of the restraint on its rivals' opportunity, the greater the cause for concern under the Rule of Reason. On the other hand, the greater the efficiency justification for the restraint, the more likely the conduct is lawful.

As stressed, the analysis of such arrangements is case-by-case, and businesses within DENCOHAPPEL should consult the Legal Department before engaging in practices that may implicate competition laws.

5.2 Exception: Genuine Sales Agents

In cases in which DENCOHAPPEL's businesses make use of so called genuine sales agents for the distribution of their products, some of the above described competition restrictions concerning price fixing or assignment of exclusive areas do not apply. However, genuine sales agents are only those agents who do neither bear the marketing risk nor other business related risks (like appreciable investments in marketing campaigns or after-sales services). Moreover, genuine sales agents do not acquire property in the goods.

In case of doubt regarding the preconditions for a genuine sales agent, please contact the Legal Department.

6. Basic Rules for On-Site Investigations of Competition Authorities

Besides the knowledge about what is permitted and what is forbidden under competition laws, the correct behaviour in case of on-site investigations of competition authorities can be crucial. Since such investigations are a major challenge for the companies concerned as well as for their employees, the following basic rules should be strictly observed:

- **Contact immediately the Legal Department;**
- **Do not destroy, delete, amend or hide documents or electronic data;**
- **Stay calm and address the officials in a courteous way;**
- **Ensure that the officials are accompanied all the time;**
- **Note down all questions of the officials and the respective answers given to them; and**
- **Copy all documents and copies which are taken away by the officials.**

In the United States, there are no on-site investigations, but DENCOHAPPEL may be called upon to respond to subpoenas or other process served by competition enforcement agencies. In such cases, the Legal Department will assist you in complying with a subpoena.

7. Consult Legal Department

This Antitrust Policy is designed to raise awareness for competition law issues and to give an overview of the basic rules. It cannot replace a legal check on a case-by-case basis.

If you have questions regarding competition law, please consult the Legal Department.

This Antitrust Policy shall become effective on 16 December 2015 and replaces the previous version dated January 1, 2011.