battenfeld-cincinnati

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Anti-Trust Guideline

(Status: 21st March 2023)

Sustainable
Solutions
Worldwide.

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1. Purpose and Scope

It is one of the fundamental principles of battenfeld-cincinnati (i.e. BC Extrusion Holding GmbH all companies directly or indirectly owned by BC Extrusion Holding GmbH) (together referred to as "battenfeld-cincinnati") to strictly observe all laws and regulations of the jurisdictions in which battenfeld-cincinnati is operating and to maintain high ethical standards in conducting its business. This also applies to all sister companies within the Extrusion Technology Group B.V.

It is the strong belief of battenfeld-cincinnati's management board that not only the interest of battenfeld-cincinnati, its employees and various stakeholders but also the interest of society is best served by a policy ensuring fair competition. Therefore, it is the policy of battenfeld-cincinnati to strictly comply in all respects with the anti-trust laws and regulations which strive to protect fair competition from any anti-competitive behaviour.

This Anti-Trust Guideline ("guideline") comes into force with immediate effect and is binding on all directors, officers and employees ("employees") of battenfeld-cincinnati and replaces all previous version.

Please refer to the summary overview in **Annex 1**, which is also available as a notice.

2. What is Anti-Trust Law?

Anti-trust law is intended to enable and ensure fair competition to the benefit of the entire economy (and ultimately, consumers most of all). To keep markets functioning properly, antitrust law prohibits all forms of collusion or concerted practices that can eliminate, distort, or restrict competition.

The prohibition of formation of cartels applies most especially to price fixing, alignment of other terms and conditions of business, collective calls for boycotts of certain suppliers or customers, restriction or control of production, sales markets, technical developments or investments, division of sales markets or sources of supply, allocation of customers or customer territories, and collusion among bidders in public or private bidding processes. Even sharing information that is sensitive in terms of competition between competitors can constitute a violation of antitrust law.

Collusion and concerted practices take various forms, including by e-mail and phone, at business meals, trade fairs, and private meetings, etc. Any "joint understanding" reached either formally or informally (such as in the case of a "gentlemen's agreement") can be construed as constituting concerted practices. In terms of violations of antitrust law, it is also immaterial whether the agreement or concerted practice is in fact implemented – the agreement itself is already prohibited, even if no one ultimately abides by it.

3. Compliance with Anti-Trust Laws Is Unconditional and the Personal Responsibility of Every Employee

It is the unconditional policy of battenfeld-cincinnati to fully comply with all applicable anti-trust laws worldwide and to enforce compliance throughout battenfeld-cincinnati.

The guideline summarizes the basic rules of the anti-trust laws prevailing in the main jurisdictions where battenfeld-cincinnati is active ("Basic Rules").

All employees of battenfeld-cincinnati must be familiar with and strictly observe the basic rules and the specific anti-trust regulations of the relevant jurisdiction, in which they are operating or which are affected by their operations. Every employee is held *personally* responsible to fully comply with the basic rules and the relevant specific anti-trust regulations. Non-compliance will be taken very seriously by the management board of battenfeld-cincinnati and will lead to personal consequences for the relevant employees.

4. Serious Consequences of Violation of Anti-Trust Laws

Violation of anti-trust laws can lead to very serious consequences.

- The anti-trust authorities impose *high fines* against companies that violate the anti-trust regulations, in particular regulations prohibiting price cartels. Under European law companies can be fined up to 10% of their group-wide annual turnover. Even if the illegal arrangement concerns one out of several of products only, the fine is measured against the total turnover of the entire company with all of its products. Furthermore, violations of anti-trust law, which have an effect in more than one country, may be (and often are) fined in several countries in parallel. The fines imposed have been steadily increasing during the last years and have reached a size which jeopardizes the survival of companies involved in cartels.
- In addition to the fines, companies violating anti-trust laws may be sued for *damages* by third parties (for example, customers) directly or indirectly affected by the illegal behaviour. While in Europe (different from the US) damage claims have not been very common for a long time, the anti-trust authorities in Europe have started some years ago to encourage such private damage claims (often called "private enforcement"), and there is a clear tendency that such claims have been substantially increased and will further increase in terms of numbers and claimed amounts.
- The *reputation of battenfeld-cincinnati* may be damaged seriously by bad publicity if battenfeld-cincinnati or any of its employees is found to have infringed the anti-trust laws.
- The payment of fines, damages and related costs as well as the adverse publicity resulting from any violation of the relevant anti-trust laws may clearly jeopardize the long-term survival of battenfeld-cincinnati. Therefore, the management board of battenfeld-cincinnati will not tolerate any behaviour of any employee who is not in full compliance with the basic rules or the relevant anti-trust laws. Any employee violating the basic rules or the anti-trust laws will face *disciplinary action (*up to and including immediate dismissal for cause).
- Some countries, such as the US and UK and in certain cases also Germany and Austria also impose *criminal sanctions against individual employees* involved in arrangements violating anti-trust regulations. Criminal prosecution does not include only personal fines (in addition to the fines levied against the companies), but also imprisonment for varying terms (in the U.S. you can usually expect one year imprisonment, possibly up to three years, and also in Germany and Austria bid-rigging is a criminal offence which may lead to imprisonment).

Clauses not in line with the various anti-trust laws and regulations are *null and void*, which may render the whole agreement to be invalid and unenforceable. In particular companies that are no longer "happy" with an agreement may look for reasons to get out of their contractual obligations and use the "anti-trust violation argument".

5. No Safe Harbour Anymore

There is no safe harbour anymore. In the meantime, many jurisdictions, until today more than 100, including jurisdictions in Asia, have enacted anti-trust laws. And, even more important, violations of anti-trust laws are increasingly vigorously pursued and compliance with anti-trust laws enforced by the relevant authorities.

Furthermore, business behaviour still legal in certain jurisdictions may have anti-trust impacts in other countries. It is decisive to note that the mere effect on other markets is sufficient for a possible infringement of the respective anti-trust law. For example, in a global economy, even actions outside Europe or the US may have an impact on the European and US markets and, as a consequence, fall under the strict European and US anti-trust laws. Therefore, all employees – even in countries not having or not practically enforcing anti-trust laws – must observe the basic rules.

6. Leniency Policy

In Europe, the most effective instrument to detect anti-trust violations and to enforce compliance is the leniency policy of the EU Commission. Most of the EU member states (like Germany and Austria) and the US have adopted similar policies.

Underlying principle of the leniency policies is that any company, which is the first to inform the relevant authority about and hitherto unknown cartel arrangement and supports the authority in pursuing the other cartel members, will be immune from prosecution or benefit substantially from a reduction of fines. By far most of the cartel investigations of the EU Commission over the last years were triggered by such "whistle-blowers" who informed the commission in exchange for immunity from fines.

Therefore, every employee must be aware that any violation of anti-trust laws is highly likely to come to the attention of the anti-trust agencies at a certain point of time. As a result of the leniency programs, the probability that a violation of anti-trust law will remain secret over a longer period of time is very low indeed.

7. The Three Core Rules of Anti-Trust Law

Notwithstanding any differences in detail, for practical purposes anti-trust law can be reduced to three fundamental rules:

- Do not in any way coordinate your market behaviour with (potential) competitors.
- Do not unreasonably restrict the commercial freedom of customers or suppliers in any sale or supply contracts.
- Do not misuse your market power to exclude other competitors from the market or impede them without good reason or otherwise manipulate the market.

In addition to these basic rules, which address the *behaviour* of the relevant persons or entities in a market, most of the anti-trust laws have also provisions dealing with *structural* changes of the markets by mergers or acquisitions of companies or businesses. The respective merger control regulations are only briefly covered in the guideline because they vary very much from jurisdiction to jurisdiction.

8. Agreements, Concerted Practices; Decisions and Recommendations

Anti-trust laws do not prohibit only agreements, which have an anti-competitive purpose or effect, but also concerted practices as well as decisions and recommendations of trade associations or undertakings which have a similar effect.

For anti-trust law purposes, the term "*agreement*" has a very broad meaning. "Agreements" may be written or oral, signed or unsigned, legally binding or not. Also a "gentlemen's agreement" is an agreement within the meaning of the anti-trust laws. In recent cases, it has often been e-mails that have given away the existence of an anti-competitive agreement.

Furthermore, from the perspective of the anti-trust authorities, the fact that an enterprise may have played only a limited part in setting up the "agreement", or that it may not have been fully committed to the implementation of the "agreement", or that it participated only under pressure from other enterprises does *not* mean that the relevant enterprise is not party to the agreement. Moreover, there is a violation of anti-trust law already at the moment when you enter into an anticompetitive arrangement, even if you never implement it in the marketplace.

Anticompetitive arrangements are also prohibited if they do not reach the stage of an "agreement" but take place in the form of a "*concerted practice*". A concerted practice is given if two or more enterprises exchange their views or any information about their past or intended behaviour in the marketplace or where one party attempts to influence the other party to act in a certain way. As a consequence, price increases or any other market initiatives should never be discussed with competitors or be announced to competitors. In contrast, a concerted practice is *not* given if the market behaviour of the competitors is only observed and analysed, and a conclusion is drawn independently therefrom in order to determine how battenfeld-cincinnati shall respond to the market moves of the competitors.

The prohibition of anticompetitive arrangements extends also to *decisions, rules or recommendations* of trade associations. This has an obvious reason: if it is illegal that companies agree on their prices, it must also be illegal for the companies to form a trade association and to have that association take a decision or recommendation regarding the companies' prices.

9. Contacts with Competitors in General

- Do not have any contact with competitors unless absolutely necessary. You must determine your market strategy independently of your competitors. Any contacts will raise suspicion by the competition authorities. However, you may observe the conduct of competitors and independently take that conduct into account when deciding on your own market strategy.
- Do carefully draft any correspondence (including e-mails) with competitors. Draft such correspondence as if anti-trust authorities were going to read it. Review and carefully draft the minutes of any meetings with competitors

(in particular meetings of trade associations) in order to avoid any misinterpretation as an illegal coordination between you and your competitors.

10. Price Coordination is Prohibited

- Do not discuss (or agree upon!) any prices or price elements with competitors. Price agreements (whether explicit or implied, including concerted practices) are considered the most serious anti-trust law violations and are improper under all circumstances. This includes agreements on minimum prices, target prices, price initiatives, price increases, surcharges and other individual price elements, discounts or rebates.
- Do not inform competitors about your prices or about any price increases or decreases you intend to make. You may, of course, inform your current and potential *customers* in the ordinary course of business.
- Do avoid any critical statements about the pricing policy of your competitors (such as "Company A has no price discipline") to avoid any misinterpretation of such statements by the anti-trust authorities.
- Do not discuss (and in particular do not agree upon) purchasing prices with competitors.
- Do not enter into joint-buying or joint-selling arrangements with competitors without having first obtained legal advice, because such arrangements are permitted only under very restricted conditions depending on the circumstances of the individual case.

11. Coordination with Respect to Market Sharing, Capacity, Production or Sales Volume is prohibited

- Do not discuss with competitors the possibility of limiting production, fixing production quotas or otherwise limiting the supply of any product or services.
- Do not discuss with competitors the possibility of splitting up a market, for example by territory, customers, product or industry.
- Do not discuss with competitors the possibility of exiting a market or closing a plant. Agreements with competitors having as their object the closure of a plant or the limitation of production capacity are illegal. Supply contracts with competitors in connection with the (planned) shutdown of a plant must be reviewed by legal counsel before negotiations begin.

12. Bid-Rigging is One of the Most Competition Law Offences

Do not discuss biddings or tenders to bid with competitors before first consulting with legal counsel. In many countries (such as Germany, Austria, the US and UK) bid-rigging is a criminal offence constituting or equivalent to fraud.

13. No Exchange of Information with Competitors

Do not exchange commercially sensitive information (including information on pricing, sales and market shares) with competitors. Information exchange systems for anonymous and historical data may be acceptable under certain restrictions but setting up or acceding such systems require prior "green light" by outside legal counsel. This applies also to information systems organized by third parties (in particular trade associations or service providers), which you may want to accede. On the other hand, the independent collection of information – separately from any competitor – using official websites or other publicly available documents is not prohibited.

14. Legal Agreements with Competitors

Do ask legal counsel to review any proposed agreement with a competitor before discussing it with any external party (including the competitor). Certain agreements with competitors may be acceptable under certain conditions, such as co-manufacturing agreements, swap agreements, joint R&D agreements, or specialisation agreements. However, special market circumstances or individual contract clauses may render such agreements illegal.

15. Trade Associations Involve Continuous Risks of Violating Anti-Trust Laws

- Do remain extremely vigilant when attending meetings of a trade association. Trade association meetings are meetings among competitors! All topics that may not be discussed among competitors (see above) may not be discussed at trade association meetings either and may not become the object of a decision or even a recommendation of a trade association.
- Do not attend any meetings of trade associations which do not have a clear agenda. Missing or vague agendas may raise the suspicion of anti-trust authorities.
- Do not attend (or immediately leave) any meeting where subjects are discussed which are prohibited between competitors. You will not avoid a violation of the antitrust rules by remaining silent and not participating in the discussions. You must leave the room and record your absence in the minutes or in a personal note to the relevant file; the Compliance Officer of battenfeld-cincinnati should receive a copy of such minutes or note to your file.
- Do not discuss any collective boycott against certain customers or suppliers.
- Do avoid any "casual" meetings with competitors before or after the official meeting of the trade association. battenfeld-cincinnati reserves the right not to reimburse any expenses in connection with such "casual meetings" (in particular invitations of competitors), unless it can be demonstrated that the meeting served a legitimate business purpose in line with anti-trust laws.

16. Be Careful in Relation to Restrictive Clauses in Vertical Agreements

While "*horizontal* agreements" are agreements between businesses at the same level of the production or distribution chain (see above), "*vertical* agreements" are agreements between businesses at different levels of the production or distribution chain. They include, for example, agreements between supplier and manufacturer, manufacturer and distributor, distributor and retailer, licensor and licensee. Anti-trust law does not prohibit vertical agreements as such. However, some provisions in vertical agreements having an anticompetitive effect are prohibited or can be critical under anti-trust law.

Therefore, each employee should be aware in particular of the following critical clauses in vertical agreements:

a. Exclusive Distribution Agreements

Exclusive distribution agreements (where the supplier agrees to sell only to one distributor for resale in a certain territory) can be illegal pursuant to European anti-trust law (which mainly depends on the market share of the relevant parties). Therefore, before entering into such an agreement legal counsel should be consulted.

b. Territorial Restrictions

Do not impose on your customers or distributors the *prohibition to resell the products into another country or geographic area*, unless legal counsel has explicitly approved such restrictive obligation. Under European law distributors may be bound only not to *actively* solicit customers outside the territory assigned to them, but "*passive* sales" (i.e. sales responding to un-solicited orders) to customers outside the assigned territory must not be prohibited. In contrast to this, in the US manufacturers are in general permitted to independently impose reasonable and justifiable territorial restrictions on resellers. However, also in the US it is illegal for a manufacturer to impose territorial restraints on a reseller at the request of a competing reseller.

c. Resale Prices

Do not impose on your customers or distributors the *resale price* of the products that battenfeld-cincinnati delivers to them. Imposing prices is permitted only with respect to an agent who sells the products in the name of battenfeld-cincinnati and who is subject to the directions of battenfeld-cincinnati.

d. Exclusivity Obligations and Exclusive Purchasing Agreements

Exclusivity obligations (obligations imposed on the distributor not to produce, purchase or sell competitive products) and *exclusive purchasing agreements* (where the distributor/reseller agrees to purchase all goods of a certain category or a very high percentage of its requirements from only one suppler) can be illegal under European anti-trust law (depending in particular on the term of the restriction). Therefore, before entering into such agreements legal counsel should be consulted.

e. "Most Favoured Nation Clauses"

"*Most favoured nation clauses*" are clauses that shall ensure that the favoured party (= the purchaser) will get equally favourable terms as any other customer of the other party (= the supplier). Under European anti-trust law such clauses are generally admissible only as long as the market share of the parties involved does not exceed 30%.

f. *"English Clauses"* or *"Meet or Release Clauses"*

Such clauses can be seen as the opposite of most favoured nation clauses. They usually foresee that the purchaser will inform the supplier about any cheaper offers he receives from a third party. The supplier has then the right to meet any such offer, in which case the existing contract will be amended accordingly. If the supplier decides against meeting the offer, the purchaser is free to switch to the other supplier. It depends on the individual circumstances (in particular market share of the relevant parties, exact wording of the clause) whether or not such a clause violates anti-trust regulations. Therefore, legal advice should be sought before agreeing on any such a clause.

17. The Misuse of Market Power is Prohibited

Companies holding a "*dominant* position" (very rough rule of thumb: market share exceeding 40% or with another competitor 50%) on a specific market are prohibited from "abusing" their market power. The same applies in the case of superior market power. Superior market power is given when there is dependence on other companies.

To the extent that battenfeld-cincinnati is active in such a market and has such a "dominant position", the following applies:

- Do not employ any unfair methods or leverage your market position to exclude competitors from the market (for example, by threatening competitors, through predatory pricing below variable costs, through price discrimination).
- Do base your decisions not to deal with a specific supplier, distributor or other customer on legitimate commercial reasons. Do seek outside legal advice to review any proposed refusal to supply an existing or potential customer before doing so.
- Do not lock in your customers through long-term contracts covering the totality or the majority of their requirements, or through rebate schemes (fidelity rebates, top slice rebates, etc.).

18. Merger Control Law

Anti-trust law does not only prohibit certain anticompetitive *behaviour* (see above 7-16) but deals also with *structural* changes of the market by mergers and acquisitions. The exact rules vary very much from jurisdiction to jurisdiction. Therefore, before acquiring or selling any company or business or merging with any companies or businesses it is necessary to obtain legal advice as to whether or not any merger control notifications or clearances are necessary and whether or not a waiting period after the notification has to be observed before the transaction is implemented.

As battenfeld-cincinnati is part of the industrial holding company Nimbus, other companies of the Nimbus group may have an impact on the merger control procedure and decision of the authority. Therefore, before entering in any agreement for the acquisition of, or merger with, another business or company, the legal department of Nimbus must be informed.

19. Investigations by Anti-Trust Authorities

If an antitrust authority requests information or shows up for a site investigation,

- you should immediately inform the Chief Compliance Officer of battenfeld-cincinnati and
- you should not make any statement without having first consulted with a lawyer.

battenfeld-cincinnati will issue special guidelines for the correct conduct in so-called dawn-raids of the anti-trust authorities.

20. Use the Antitrust Laws to Protect your own Interests!

If you become aware of any agreements or practices, which you suspect may involve sharing markets, boycotts, pricing abuses or any other conduct you think may be illegal, you should inform the compliance officer of battenfeld-cincinnati.

21. Questions

In case of any questions about the basic rules of antitrust law or antitrust laws in general you should contact the relevant Compliance officer of battenfeld-cincinnati, who then will answer your question or obtain legal advice.

Entry into force

This Guideline replaces the Guideline of March 9, 2017 and enters into force with effect of, 21st March 2023.

Bad Oeynhausen, 21st March 2023

BC Extrusion Holding GmbH

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Annex 1

Examples

Behaviour towards Competitors

Collusion or concerted practices with competitors regarding prices, discounts, terms and conditions applicable to customers, quotas, costs, sales figures, calculations, capacity, market sharing, individual market share, and the like are prohibited in all cases. Indirect dialogue via third parties (e.g. through a shared supplier or customer) is also prohibited in cases in which, for example, prices are coordinated through a third party that acts as a "hub".

Agreements are also strictly prohibited in the case of bidding procedures, public or private. Agreements not to compete for various bids or to issue coordinated bids, for example, clearly violate the prohibition on cartels. Information on the bids submitted in bidding procedures must not be disclosed to competitors, either.

Even sharing information that is sensitive in terms of competition between competitors is prohibited. Be sure not to talk to competitors about prices, calculations, elements of prices (e.g. discounts, bonuses, surcharges), or planned price increases or reductions in particular. Other strategic information (such as costs, capacity, volume of orders received, etc.) must also not be shared with competitors.

As a basic principle, there is no issue if you meet with competitors in a professional, informal, or social capacity. However, you must pay strict attention to ensure that you do not discuss any topics that are sensitive in terms of competition at meetings like these.

Cooperation between competitors may be permissible in certain cases. This applies, for example, to agreements regarding joint research and development or joint purchasing and/or sales processes. Subject to strict requirements, bidding consortia may also be allowed for individual projects. A detailed legal review is absolutely essential in these cases. Agreements like these must not be entered into without a prior review by the compliance officer.

Supply relationships between competitors are to be viewed with a critical eye from the standpoint of anti-trust law due to the sharing of information that accompanies them. If a competitor expresses an interest in purchasing a product that the competitor itself does not carry, but that the competitor wishes to sell to a different business partner, contact the compliance officer before entering into an agreement regarding this.

Independent observation of competitors on the market is permissible. Public information and information prepared by independent market research institutions can be used for this. Prices that have been publicly announced or posted by the competitor itself can also be used. The same applies to general product descriptions or company information.

Agreements between companies that are under the uniform leadership of a single parent company are not covered by the prohibition on formation of cartels. Affiliated companies are permitted to agree on matters such as sales territories or prices without meeting any further requirements. In this area, "group privilege" applies.

Behaviour towards Business Partners (Suppliers and/or Customers)

It is prohibited to specify resale prices toward customers and/or suppliers or to affect their prices. In addition to stipulating resale prices, stipulating the methods used to calculate prices (e.g. in the form of upper limits for price discounts or specifications for discounts), minimum prices, and price ranges is also prohibited.

Dialogue with business partners regarding information that is sensitive from the standpoint of competition (e.g. prices, plans, terms and conditions of business, etc.) regarding other business partners is prohibited.

In principle, a company that occupies a dominant position is prohibited from eliminating the remainder of the competition (through exclusive commitments or in the form of loyalty discounts, for example) and from exploiting suppliers and/or customers.

Issuing non-binding price recommendations is allowed under antitrust law. "Non-binding" means that it must be expressly noted that compliance with the price recommendation is not required. Economic or social pressure to comply with the price recommendation must not be exerted, either. Stipulating maximum prices is also permissible as long as competition is still possible below these maximum prices (meaning that the maximum prices do not in fact act like fixed or minimum prices). Stipulating non-binding price recommendations or maximum prices must be preceded by a legal review.

If a supplier undertakes toward a customer not to offer better terms and conditions to any other customer (a "maximum benefit clause"), that agreement should be viewed with a critical eye from the standpoint of antitrust law and must be reviewed in legal terms.

Under certain conditions, suppliers are permitted to assign a specific territory or specific customers to retailers and prohibit active sales activities in other territories or to other customers ("exclusive distribution agreements"). If customers approach a retailer themselves, no restrictions can be set for that retailer (passive sales are always possible). If you are considering making these kinds of specifications toward business partners, you should always be sure to obtain legal advice.

Agreements to procure a product or service exclusively or to a large extent from a specific supplier or to supply it to a certain customer ("purchase commitments") should be viewed with a critical eye from the standpoint of antitrust law and require more detailed review in the individual case.