



**H2APEX Group SCA**

# **CODE OF CONDUCT**

**Antitrust law**

# FAIRNESS IN COMPETITION

Antitrust laws safeguard free competition amongst businesses, prohibiting agreements, coordinated practices, and the abuse of market power that restrict competition.

These laws are prevalent worldwide, each tailored to regulate conduct affecting its jurisdiction, irrespective of where the conduct was planned or agreed upon. For instance, arrangements made outside Europe intending to influence the European market could violate EU antitrust laws.

Violating these laws could entail severe repercussions for our company, including substantial fines (up to 10% of annual sales), damage claims from customers or competitors, contract invalidation, and reputational harm.

Employees participating in violations might also face personal sanctions like fines, imprisonment, and damage claims, alongside potential employment repercussions, including job termination.

Our adherence to antitrust laws in every operational country is unequivocal and paramount.

**This document aims to break down this complex subject, guiding us through daily business practices. In case of any uncertainties or questions, reach out to the Compliance department.**



# FUNDAMENTALS OF ANTITRUST LAW

## What is a cartel?

A cartel is an agreement or concerted practice between actual or potential competitors that restricts competition or has as its object the restriction of competition. This includes price fixing, market sharing, production restrictions, boycott agreements, information exchange or market abuse.

In this context, cartels do not require formal agreements or contracts; informal behavior can also violate antitrust law (e.g., "meeting of the minds" or "gentleman's agreement"). Passive participation in meetings at which topics in violation of antitrust law are discussed can also be regarded by antitrust authorities as a violation of the law and punishable by fines.

## What is a competitor?

Companies are considered competitors if they provide similar products or services on the same relevant product and geographic market. The relevant market is determined by customer demand. If direct customers regard certain products as interchangeable, the relevant product market is said to be uniform. The geographic extent of the market depends on the scope of customer demand.

Companies are often considered competitors only with respect to certain products or services or in certain geographic areas.

Antitrust law also prohibits restrictions on potential competition. In particular, a potential competitor is someone who is likely to enter the market in the foreseeable future (e.g., if prices increase).

Companies that are part of the same group are not considered competitors within the meaning of antitrust law.

# EXCHANGE OF INFORMATION

The exchange of confidential information (e.g. price or customer lists) between competitors can restrict competition and violate antitrust law. Due to this high risk, the transfer of confidential information to competitors, whether directly or via third parties, takes place only after prior consultation with our Legal Department and Compliance. This rule also applies without restriction to association activities, trade fairs and other events in which competitors participate.

If we receive unsolicited information about competitors from business partners, this is permissible under antitrust law because there is no direct collusion between competitors. Nevertheless, we must not accept information that the business partner should not have disclosed. To avoid any appearance of an impermissible exchange of information, we document when, from whom and in what context we received the information.

Although antitrust law restricts the exchange of confidential information, it permits cooperation between competitors in areas such as research and development, licensing, norms and standards, production and purchasing. Such collaborations are often necessary when special expertise is lacking or projects are too complex for one company to handle alone. However, these cooperations must not lead to an excessive exchange of information, which in turn could restrict competition. The permissibility and nature of a cooperation must therefore always be reviewed in advance by the Legal Department and Compliance.



# EXAMPLES OF CONDUCT IN VIOLATION OF ANTITRUST LAW

## Example 1: Price Agreements

Company A and Company B compete in the market for high-quality fuel cells. They are leading suppliers in this market segment and each has a significant market share.

One day, the managing directors of the two companies meet at a trade fair. In a private conversation, they agree that the intense competition between them is depressing prices and reducing their profits.

They agree that neither company will sell its products below a certain price. They set a minimum price that is well above the cost of production to ensure that they both make a high profit. They also decide not to raise their prices at the same time so as not to arouse suspicion.

## Example 2: Market segmentation

Three major technology companies are leaders in the development and sale of smartphones and compete for market share worldwide.

In an online meeting, the CEOs discuss the intense competitive conditions and the high costs of research and development in their industry. As a solution, they come to an agreement:

Company A will focus on selling smartphones in America, B will serve the European market, and C will take on the Asian market. They also agree that they will not advertise in each other's "zones" and will not seek new business in each other's "zones."

## Example 3: Exchange of Information

Two large companies in the automotive industry produce similar models and compete for the same customers.

One day, the sales managers meet by chance on an airplane. During the flight, they strike up a conversation and start talking about their respective companies. The sales manager of company A reveals that they plan to raise the prices of their cars in the next quarter. The sales manager of B then shares that they plan to cut their production next year in order to keep prices stable.

Although this conversation was informal and casual, it constitutes an exchange of information that could violate antitrust law. Both companies exchanged competitively sensitive information that could influence their business decisions and market behavior. This could be seen as an attempt to restrict competition and could lead to investigations and possible sanctions.

# MARKET POWER & ABUSE

Antitrust law prohibits companies from exploiting their so-called dominant position to the detriment of other market participants (customers, competitors, suppliers). A dominant position is assumed if a company has a market share of more than 40%. However, the exact determination of such a position can be very complex and should always be done in consultation with the Legal Department and Compliance.

In some countries, such as Germany, the prohibition of abuse may also apply to companies that are not dominant but have special market power, for example vis-à-vis an economically dependent supplier.

Abusive conduct can be, for example, the unjustified refusal to supply a customer, price discrimination against certain customers, the obstruction of competitors or the forced sale of a product together with another product.

A key aspect of antitrust law is the issue of discounting by companies with a dominant market position. These companies could exploit their economic strength to gain greater customer loyalty through rebates and make the purchase of competing products less financially attractive. Since this could restrict competition, dominant companies are not permitted to create improper incentives for customers to purchase a disproportionate share of their needs from the company. However, companies with a dominant market position are permitted to pass on internal cost savings to customers in the form of discounts, provided that these discounts are linearly graduated and the same for all customers.

# THIS IS HOW WE BEHAVE THE RIGHT WAY

- As a general rule, we must not exchange confidential information with competitors. This includes not disclosing details that could reveal H2APEX's individual market behavior unless such information is publicly available. Additionally, we should not seek such information from competitors. This standard is upheld in various contexts, such as associations, clubs, supplier days, and trade fairs.
- It is a fundamental principle that we only exchange information with competitors, even in association work, after consulting with the Legal Department and Compliance.
- If we receive unsolicited confidential information about a competitor from a business partner or third party, it is generally allowed (except if I know that disclosure is prohibited). In such cases, the document should be noted with who provided the information, when, and in what context.
- Participation in events with competitors is only acceptable if a non-objectionable agenda is shared in advance. Should competitors initiate inadmissible discussions under antitrust law at association events or similar gatherings, we must exit immediately, and document our express rejection of such conversations.
- We must avoid behaviors or actions that may imply potential anti-competitive agreements, such as informal meetings with competitors or unclear communication in correspondence.
- Meetings with competitors should only occur for legitimate business reasons and never in private settings like hotel bars.



# RESPONSIBILITY MEANS ACTION

If potential violations of this Code of Conduct, laws or internal policies are noticed, we ask that they be reported to the manager, executive management or the compliance department. If it is uncomfortable to address these issues directly, it is possible to submit the tip anonymously via the [whistleblower system](#).

Every report from a whistleblower will be handled with utmost confidentiality and in strict compliance with all applicable legal provisions. Whistleblowers will not face any adverse consequences or reprisals as a result of their disclosure.

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