GHO-LC-005-P-EN Antitrust Law Policy

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Scope of application

The purpose of this policy is to provide further information on antitrust law and to provide specific instructions for actions to take in certain subject areas.

Responsibility

This policy applies to all employees of the Greiner Group, especially those who work in areas that are relevant from the standpoint of anti-trust law.

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1 Introduction

Within the Greiner Group, all employees are obligated to comply with the provisions of antitrust law. Regrettably, antitrust violations that have led to fines in the millions being imposed on the Greiner Group have occurred in the past.

The aim of these guidelines, which supplement the existing training sessions and documents, is to help ensure that employees of the Greiner Group behave with integrity and in compliance with the law at all times in matters concerning antitrust law. Proper behavior under antitrust law in dealings with competitors and business partners (suppliers or customers) and in acquisitions of current or potential competitors is described with instructions and specific examples.

Further information on the areas of compliance and antitrust law is available from the relevant compliance officers. These officers should also be contacted if questions arise or if anything is unclear. The Greiner Group follows up internally on every violation of rules and regulations, which can lead to the dismissal of the employee in question.

Violations of antitrust law are namely associated with massive potential for sanctions. In addition to the damage to the company's image, fines of as much as 10% of the previous year's sales earned by the Greiner Group can be imposed as sanctions for antitrust law violations. Third parties can also file lawsuits seeking damages, the agreement that is in violation of antitrust law can be invalidated, and costly investigations by the competition authorities can also result from this.

2 What is antitrust law?

Antitrust 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.

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3 Subject areas

This section deals with subjects that can come up anytime in day-to-day business operations, making them especially relevant: behavior toward competitors, behavior toward business partners (suppliers and customers), and behavior in the case of acquisition of competitors.[1]

Behavior toward 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."

These kinds of 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 Division Compliance Officer (DCO) (provided that the latter is an in-house counsel; otherwise, by the Group Compliance Officer (GCO)).

[1] A separate policy sets out guidelines on proper behavior in the case of acquisitions. It must also be observed. For further information, please contact the Group Compliance Officer (GCO) or see the intranet.

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Supply relationships between competitors are to be viewed with a critical eye from the standpoint of antitrust 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 Division Compliance Officer (DCO) (if the latter is an in-house counsel; otherwise, contact the Group Compliance Officer (GCO)) 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.

When recording information that is sensitive in terms of competition, be sure to cite the source (which should be above suspicion) from which you obtained or received the information (e.g. price information received on [date] in the course of price negotiations with the customer [customer name]). Systematically sounding out customers for information on competitors' prices is, however, not allowed.

If information regarding a competitor that is sensitive in terms of competition is provided by a business partner without being requested, contact the Division Compliance Officer (DCO) (if the latter is an in-house counsel; otherwise, contact the Group Compliance Officer (GCO)). The Greiner Group will respond to this in writing for documentation reasons.

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.

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Behavior toward 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.

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.

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. Should inquiries like these be received from business partners, the Division Compliance Officer (DCO) must be notified (provided that the latter is an in-house counsel; otherwise, notify the Group Compliance Officer (GCO)).

One particular topic is the prohibition of abuse of a dominant position. This prohibition is relevant in all cases in which a company occupies an especially strong ("dominant") position on a certain market (in some countries, a dominant position is presumed to exist starting at market share of 25%, though this can be challenged).

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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. If you have any questions about the prohibition of abuse, please contact the Division Compliance Officer (DCO) or Group Compliance Officer (GCO).

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Behavior in case of acquisition of competitors

No coordination of competitive behavior can take place at any time during the entire process of acquiring a current or potential competitor. A compliance statement and confidentiality agreement must be signed by all participating company representatives early on, during the initial contact phase.

To the extent that it is necessary to analyze and disclose information concerning a company's behavior on the market (such as customer-specific information) that is sensitive in terms of competition as part of a due diligence review, special ground rules ("red data rules") that must be coordinated with the Group Compliance Officer (GCO) are required.

After finalization ("closing") of a transaction to the extent that a controlling influence over the acquired company has been acquired (which is typically the case for stakes of more than 50%), group privilege applies: Coordinating market behavior and sharing information that is sensitive in terms of competition is now allowed in principle.

Group privilege does not apply in cases of acquisition of a non-controlling minority interest or of founding of a joint venture. In these cases, the companies continue to be regarded as independent enterprises that are not permitted to coordinate their market behavior. The Group Compliance Officer (GCO) must be consulted in all cases in order to determine the limits of permissible cooperation that apply under antitrust law.

Outside the scope of application of group privilege (i.e. in the case of acquisition of a non-controlling minority interest or of founding of a joint venture), no flow of information between the companies involved (not even indirectly, via the joint venture or minority shareholding) can lead to the competitive behavior of the companies involved becoming foreseeable or to coordination being made easier or intended.

Change log

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1.0	January 31, 2017	Maximilian Wellner	Draft