

FUCHS GROUP

Antitrust Law Policy



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Preface

Dear Employees,

Compliance with the valid laws and legal regulations is part of the corporate identity of FUCHS, which, last but not least, is also reflected in the FUCHS Code of Conduct. Antitrust legislation is of particular significance since any breach of its frequently very complex regulations can lead to high fines, the obligation to pay damages and even criminal prosecution. Furthermore, it may permanently damage the public reputation of FUCHS.

The purpose of this policy is to focus on the core antitrust statements that need to be observed in the German market in order to ensure that FUCHS employees dealing with related matters have a better understanding of potentially arising issues and to give them specific advice on how to conduct themselves. We have tried, as far as possible, to do without listing the individual paragraphs or going into the legal minutiae. In all cases where antitrust legislation is of relevance, the responsible legal department needs to be involved at the earliest possible stage.

Obviously, the policy cannot cover every possible scenario. If you have questions or need further information please contact the Chief Compliance Officer of the FUCHS Group.

In addition, we have set up a hotline that you can use to contact the antitrust law specialists of our law firm. Via this hotline and the internet-based whistleblower system "FUCHS Compliance Communication" you can – anonymously if you want – provide hints and air your suspicions about antitrust law violations in your company. You will find further information as well as the contact details for the Chief Compliance Officer and the law firm at the end of this policy document.

Please give this policy document your full attention and take care to act, at all times, in compliance with the rules set out herein.

Mannheim, December 2016
FUCHS PETROLUB SE



Dagmar Steinert
Member of the Executive Board, CFO



Claudio F. Becker
Chief Compliance Officer

1. Statutory regulations in Germany

The purpose of antitrust laws is to maintain the freedom of competition and to prevent economic power where it hinders the effectiveness of competition. In this context, antitrust laws are frequently referred to as competition laws. However, competition law is a more generic term because, apart from the antitrust laws, it also covers the unfairness rules, which have been codified in the German Law against Unfair Competition (UWG). The objective of the UWG law is to protect the individual against unfair competition whilst the primary purpose of the antitrust law, which is codified in the German Law against Restraints on Competition (GWB), is to maintain or protect competition itself.

Any organization that is active in Germany needs to adhere to the German antitrust laws that apply to every restraint on competition that has an impact in Germany irrespective of its actual origin. In addition, the European antitrust laws need to be observed, which, however, are largely identical with the German ones.

Essentially, antitrust laws cover three areas:

1.1 Ban on competition-restraining trading agreements

Concerning the daily dealings with customers, suppliers and competitors, it is above all the ban on cartels and its exemptions that are relevant. More detailed information on this topic will follow (see chapter 2.).

1.2 Ban on the abuse of a dominant position in the marketplace

If, specifically, FUCHS were to have a dominant position in the marketplace, this position must not be abused. Abuse may consist in charging excessive prices or using discriminating conditions that can only be imposed due to the dominant position in the marketplace and due to the lack of effective competition. We also talk about abuse if there is an unequal treatment of customers or suppliers without any factual justification or if there is an unfair obstruction of competitors. Typical examples are the refusal to supply goods, the ban on tie-in sales as well as discriminating rebate or bonus systems.

A company that is not exposed to substantial competition in its market or that has a paramount position in the marketplace is called a company that dominates the market. Market control depends, among other things, on the market share of the company, on its financial strength or its access to the supply and sales markets. A company is alleged to be market-dominating if it has a market share of at least 40 percent. Even if this is not the case, there may be a joint market-dominating position. A group of companies is considered to be market-dominating if it consists of three or fewer companies that jointly hold a market share of 50 percent or if it consists of five or fewer companies that, together, hold a market share of two thirds.

The application of the relevant legal rules and regulations in individual cases is difficult not least because of the necessity to accurately determine the relevant market and market shares. If you are concerned about a possible market-dominating or strong market position please contact the legal department.

Examples:

- (1) *Whilst the decision of a company not to supply a customer is not abuse per se, it is considered abuse if, due to the market domination of the supplier, this has effects that are harmful to competition.*
- (2) *An airline company dominating the market for flights between Berlin and Frankfurt, charges significantly higher prices for these flights, which are in great demand, than for flights between Berlin and Munich although the distance between the latter destinations is slightly greater. Unless there are justifiable reasons, such conduct is banned by German antitrust laws.*
- (3) *Due to an unforeseen event, there is much demand for specific products that are exclusively produced and sold by supplier P. Therefore, supplier P sells the products during this period only together with a service contract, which tends to be less in demand. Due to this tie-in, P has abused his market-dominating position under the terms of the antitrust laws because there are no apparent factual reasons for pushing customers to accept the service contract that is generally not wanted. It simply presents an undue increase in the price of the products.*

1.3 Control of company mergers

The purpose of merger control is to counteract corporate mergers that are harmful to competition and presupposes the merger between two or more companies. Therefore, from a certain size onwards, mergers can only be carried out if they have been given prior approval by the competent cartel authorities. What needs to be taken into account is the fact that, according to German law, even the acquisition of 25 percent of shares or voting rights in another company is subject to merger control procedures. Even acquiring substantial parts of the assets of another company can present a merger and therefore justify the requirement of registration with the cartel authorities. However, the statutory rules are not applicable to mergers between companies that were an economic unit before the actual merger took place, which means, in particular, corporate groups.

When it comes to the material evaluation of mergers, one needs to establish whether the merger would constitute a considerable obstacle to effective competition. This may in particular be the case if the merger leads to or reinforces a market-dominating position.

2. Ban on cartels

2.1 Principles

In accordance with section 1 of the German Law of Restraints on Competition (GWB) and Article 101 of the Treaty on the Functioning of the European Union (TFEU), the following undertakings are **banned**:

- Agreements between companies and decisions by corporate associations as well as concerted practices
- which have as their objective or effect
- the prevention, restriction or distortion of competition.

This not only applies to the conduct of competitors among each other (horizontal cartels), but also to companies that operate on different economic levels such as producers and distribution partners (vertical cartels).

An agreement means any written or verbal understanding. It is sufficient for the parties to have expressed their joint will to conduct themselves in a certain manner in the marketplace. The possibility of the legal implementation of this joint understanding is of no concern. Therefore, even a 'Gentlemen's Agreement' is an agreement as defined by this law. What is prohibited is the simple entering into an agreement not its being put into practice.

Decisions by corporate associations differ from agreements in that they are not the result of the unanimous consent of all parties involved but can in fact be achieved by majority decision. Here too, the legal commitment is irrelevant. A decision taken by members must also be attributed to a member who has voted against the decision as long as he ends up implementing it.

Examples: The ban on membership in other associations, the setting of minimum sales prices by members.

A concerted practice is any coordinated undertaking that, instead of resulting in an agreement, intentionally puts practical cooperation before risk-laden competition. While simple copycat behavior (parallel conduct) cannot easily be categorized as concerted practice (e. g. the quasi-simultaneous petrol price rises by several producers), in specific cases, it can certainly be counted as evidence. The threshold from legal autonomous actions carried out by individual companies to coordinated conduct is crossed only if the copycat action is based on mutual contact e. g. on the exchange of information with the competitor.

A typical example of coordinated practices is the exchange of competitive parameters during an association conference.

The characteristic of having as their objective or effect simply signifies that the restraint of competition does not need to have been successfully implemented. The simple intention to restrain competition is sufficient. On the other hand, even measures that are not meant to restrain competition but which, nevertheless, have such effect, are covered by the ban.

2.2 Horizontal restraints of competition

Horizontal restraints of competition concern the relationship of competitors between each other. Important cases of obvious competition-restraining measures between competitors are the following:

- agreements on price fixing, increases of prices or price components (e. g. rebates, cash discounts, interest) or other essential business conditions
- the division of markets by product, area or customers
- agreements on curbing production or shutting down capacities
- the exchange of otherwise confidential information on matters that are relevant to competition (unless, in individual cases, this is carried out by meeting special conditions)
- agreements on tenders submitted in a bidding process, which exceed the limits of permissible cooperation agreements (e. g. working group or consortium).

2.3 Permissible cooperation with competitors

The ban on cartels does not apply absolutely. Cooperation agreements among competitors may be permissible under certain circumstances. They do not require approval by the antitrust authorities. FUCHS must decide for itself whether, due to exceptional circumstances, such cooperation is exempt.

According to the rule of thumb, such types of conduct may be exempt if they lead to increased efficiency from which the opposite side of the market i.e. the FUCHS customer will benefit in, for example, the form of lower prices or better quality.

Examples for modi operandi that may, in individual cases, be permissible are joint undertakings in purchasing as well as research and development cooperations and market information procedures.

Since exemption depends on certain, narrowly defined conditions and since, as a rule, general market conditions such as, for example, the market share of the companies involved, are relevant for any antitrust evaluation, a prior review by the antitrust authorities is indispensable for each and any cooperation with competitors.

2.4 Vertical restraints of competition

Vertical competition restraints concern measures taken by companies as part of exchange-based relationships where the companies belong to different economic levels such as producers and distributors. Even with regard to exchange-based relationships, there are banned or problematic competition-restraining measures that require to be examined on their own merits under the terms of the antitrust laws. They include for example:

- a ban on second-hand price fixing (i.e. the supplier is not allowed to dictate to his distributor the prices that he is to charge other buyers)
- maximum price fixing
- price recommendations
- fixed purchasing
- bans on competition
- regional protection/exclusivity
- arrangements that restrict the territory where, or the type of customers to whom, a distributor can sell the obtained goods
- arrangements that establish exclusive, long-term ties between the distributor and the supplier.

Under no circumstances must the distribution system be used to obstruct or to intend to obstruct the exportation or re-importation of goods. Therefore, measures such as export bans imposed on a distributor and all comparable restrictions (e.g. discriminating discount or bonus systems) that serve or are intended to be used to seal off the markets, are not permitted.

As far as the aforementioned competition-restraining agreements are included in vertical contractual relationships, they must, without exception, be examined by the legal department who will have to decide to what extent they are admissible under the terms of the antitrust laws.

3. Consequences of breaches of the ban on cartels

Breaches of antitrust laws are associated with considerable risks. Essentially, these are:

- high fines imposed on the persons and company involved
- claims for damages by the injured parties i.e. customers and competitors
- ineffectiveness of agreements in breach of the ban
- penal consequences
- consequences under labor law
- loss of reputation for the company

The fines imposed by the antitrust authorities have, in recent times, frequently reached tens if not hundreds of millions. The upper limit for fines imposed due to a violation of antitrust laws is ten percent of the entire worldwide sales of the respective company. For example, in a recent, well publicized case, the German 'Bundeskartellamt' [Federal Cartel Office] imposed fines of hundreds of millions against companies involved in sausage and beer cartels. Frequently, the fines imposed by the European Commission are even more drastic and have, in major cases, reached amounts approaching a billion.

4. Investigative powers of cartel authorities and Leniency Programs

4.1 Investigative powers of cartel authorities

Upon the suspicion of wrongdoings, the German and European cartel authorities can at any time start investigations to uncover violations of the antitrust laws. This can lead to formal requests for information as well as searches and confiscations. The investigative powers of the cartel authorities include, for example:

- the search of business and private premises
- the inspection of documents and electronic files
- the confiscation of documents and electronic data carriers
- interviewing suspects and witnesses
- interviewing employees
- written requests for information

4.2 Leniency Programs

People participating in banned cartels can be wholly or partly exempt from the payment of fines if by turning state witness they assist in uncovering the cartel. This represents a particular incentive to uncover violations of the antitrust laws and has, over the last few years, led to a considerable increase in monetary fine proceedings before the European and national cartel authorities. If the repentant company fears that (also) others involved in the cartel intend to make use of the leniency program, it must, first of all, quickly contact the responsible cartel authority to try to be the first company to provide the relevant information and evidence (first-come-first-served principle).

If you receive information on matters that may be relevant under the terms of the antitrust laws, the legal department/the compliance officer must be informed forthwith to ensure that FUCHS, if required, can initiate the necessary measures.

5. Rules of conduct

5.1 Basic principles

Economically sensible and admissible cooperation agreements should neither be avoided due to unfounded fears of a breach of antitrust laws nor should competition-restraining cooperation agreements be undertaken carelessly. What matters is that problematic agreements or concerted practices are recognized and critically assessed. To this end, it is indispensable that FUCHS employees who deal with such matters are aware of the principles of the German antitrust laws and that the legal department is involved at an early stage. This applies in particular to all agreements with competitors as well as the entering into important and/or long-term delivery or purchasing contracts with customers or suppliers but also to agreements with partners regarding, for example, joining forces to carry out research and development work.

5.2 Business transactions with competitors

Unless the information can be obtained from generally accessible sources, you do not discuss the FUCHS conduct regarding competition-related matters with competitors e. g. you avoid speaking about the following:

- prices and planned price changes, price components
- general sales/purchasing conditions (e. g. payment terms or times)
- division by geographic area, customers or procurement sources
- costs, capacities, orders received
- technical developments and investments
- submission and content of tenders
- specific – above all future – conduct vis-à-vis customers and suppliers.

Be explicit and clear about your non-acceptance of any agreements and any form of coordinated practices. In cases of doubt, start by pointing out the necessity of an assessment by the legal department. Under no circumstances must you proceed adopting the attitude that 'nobody is likely to find out anyway'. In view of the state witness rule, the authorities no longer have problems obtaining sufficient evidence.

5.3 Dealings with distributors/resellers

As far as the dealings between FUCHS and its distributors/resellers are concerned, the following general rules apply:

- Do not agree a minimum or fixed price for the selling-on of products sold to the distributor/reseller.
- Do not agree any incentives/bonuses for complying with a minimum or fixed price.
- Observe the principles set out under section 2 if, apart from working with distributors/resellers, you are at the same time selling products directly.

5.4 Taking part in association meetings, trade fairs or other events

The involvement in professional associations is necessary and legitimate. However, this is an area that attracts the particular attention of the cartel authorities because, frequently, activities breaching the antitrust laws take place within the context of association-related work. Therefore, you must be particularly careful when it comes to any involvement in professional associations. Under no circumstances must your involvement in professional associations i.e. in committees or working groups, be exploited to breach of antitrust laws. No employee involved in association-related work, must take part in conferences, meetings or discussions that are relevant under the terms of the antitrust laws. This also applies if he/she adopts a passive role.

You definitely must react if you get the impression that the boundaries of conduct that is admissible under the terms of the antitrust laws have been exceeded. You must leave an association meeting if, in spite of your hints, the sensitive topics listed under section 2 are discussed with regard to specific competitors. In such a case, you must insist upon your objection to discussing such topics and your withdrawal from this discussion being included in the minutes. It is obvious that by proceeding in such a way, you will disrupt the meeting but this must be of no concern to you. Simply remaining silent will not protect you from subsequent punishment. If you have taken part in talks that may give you cause for concern, notify management or the legal department or the compliance officer forthwith and provide information regarding dates, participants and content.

The same principles apply to all meetings with competitors, which may take the form of working groups, regular meetings in bars or other informal get-togethers.

5.5 Business correspondence and internal communication (including e-mails)

Due to the obligation to submit comprehensive information and due to the wide-ranging confiscation powers of the cartel authorities, it is particularly important to be careful when it comes to the wording of documents used as part of the external as well as internal business correspondence, which are sensitive under the terms of the antitrust laws. The presentation of content as well as the choice of words should always be made on the basis that the respective document may, under certain circumstances, be used in antitrust investigation procedures against the company. When making written notes, always consider whether your records, in particular those regarding contacts with competitors, may be misinterpreted in a way that makes you appear to have entered into forbidden agreements.

It goes without saying that the same care must be taken when it comes to public relations work i.e. in particular when dealing with the media and the press. Particularly crucial are statements on future conduct (e. g. price increases by the industry), especially if they refer to competitors acting in a uniform way.

6. Conduct during corporate investigations carried out by the cartel authorities

The European Commission and the national cartel authorities i.e. the Federal Cartel Office as well as the regional cartel authorities have differing powers of intervention, the content and scope of which depend on specific conditions. As a rule, the most important cases at national level are searches and confiscations upon suspicion of inadmissible cartel agreements.

In such cases, officers of the cartel authority who, at times, are accompanied by police officers, appear, mostly unannounced (or, in individual cases, also with prior appointment) on the business and/or private premises, introduce themselves and demand access to specific rooms or persons.

In such cases, you must, at all times, arrange the following:

- Notify the legal department/Chief Compliance Officer forthwith and ask the officers to wait for the arrival of the in-house lawyer and
- inform the highest-ranked company representative present at the time (generally a Member of the Board or Managing Director) forthwith.

Extensive instructions regarding the conduct during investigations by the cartel authorities are available on the FUCHS-Intranet under 'Legal & Insurance'.

7. Chief Compliance Officer, whistleblower system and hotline

1. As illustrated by this policy, the antitrust laws are very complex. Therefore, in many cases, it is not altogether easy to determine the admissibility or inadmissibility of certain modes of conduct under the antitrust laws without their being examined and assessed by legal experts. There may also be cases where, retrospectively, you are in doubt as to the legality of a certain mode of conduct. Hence, FUCHS has appointed a Chief Compliance Officer to serve as a 'port of call' for all employees and who can be contacted if you have questions or want to make comments and observations regarding issues that are relevant with regard to antitrust laws.

Chief Compliance Officer

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 Corporate Counsel & Chief Compliance Officer
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2. FUCHS employees who come across concrete facts and incriminating evidence hinting at a violation of the aforementioned principles, are urged to report these. In such cases – as well as concerning any other associated issues – the persons to be contacted are the respective superiors, the Local Compliance Officer, the Chief Compliance Officer or the respective management.
3. Since September 15, 2014 FUCHS has, via its company website, been offering access to the "FUCHS Compliance Communication" System, an internet-based whistleblower portal. The portal offers the user the option of submitting a detailed report covering his observations of breaches or suspicious circumstances and entering into a dialog with the Chief Compliance Officer. Upon request, the user can remain completely anonymous during the entire process. You will find the system at www.fuchs.com/group/compliance.
4. Furthermore, we have set up a hotline for you with SZA Schilling, Zutt & Anschütz Rechtsanwälts AG, a law firm in Mannheim. By calling the numbers indicated below, you can, at any time and on an anonymous basis, contact the persons listed. Whilst the law firm is going to pass on the respective information to the Chief Compliance Officer, it will not name the informer in order to ensure confidentiality. You can contact the persons listed below from whatever country you are in and raise your concerns in German or English, whichever language you prefer.

The contact details of the law firm are as follows:

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