


# ANTITRUST POLICY

## Inhalt

## 1. Purpose and Scope

It is one of the fundamental principles of Arvos Bidco S.à.r.l. and its subsidiaries ("ARVOS") to observe strictly all laws and regulations in which ARVOS is operating and to maintain high ethical standards in conducting its business.

It is the strong belief of the management of ARVOS that not only the interest of ARVOS, its employees and various stakeholders, but also the interest of society is best served by a policy which ensures fair competition. Therefore, it is the policy of ARVOS to comply strictly in all respects with the antitrust laws and regulations which strive to protect fair competition from any anticompetitive behavior.

The Antitrust Policy ("Policy") came into effect on July 12, 2019 and this revision is effective immediately and is binding on all directors, officers and employees ("Employees") of ARVOS.

## 2. Compliance with Antitrust Laws is Unconditional and the Personal Responsibility of Every Employee

It is the unconditional policy of ARVOS to comply fully with all applicable antitrust laws worldwide and to enforce compliance throughout ARVOS.

The Policy summarizes the basic rules of the antitrust laws prevailing in the main jurisdictions where ARVOS is active ("Basic Rules").

All Employees of ARVOS must be familiar with and strictly observe the Basic Rules and the specific antitrust 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 antitrust regulations. Noncompliance will be taken very seriously by the ARVOS Management Board of ARVOS and will lead to personal consequences for the relevant Employees. ARVOS has a "*zero tolerance*" for any violation of antitrust laws or regulations. This means that any and all violations of this Policy will result in corrective counseling up to and including termination of employment for cause, compensation for damages incurred, and criminal prosecution by the local authorities (if appropriate).

## 3. Serious Consequences of Violation of Antitrust Laws

Violation of antitrust laws can lead to very serious consequences.

- The antitrust authorities impose high fines against companies that violate the antitrust regulations, in particular regulations prohibiting price cartels.[1] Under European laws, companies can be fined up to 10% of their group-wide annual turnover. Even if the illegal arrangement concerns one out of hundreds of products only, the fine is measured against the total turnover of the entire company with all of its products. Furthermore, violations of antitrust 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 antitrust laws may be sued for damages by third parties (for example, customers or shareholders by shareholders' derivative suit) directly or indirectly affected by the illegal behavior. While in Europe (different from the US) damage claims have not been very common for a long time, the antitrust 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.

- Employees involved in the violation of antitrust laws, including their superiors, may be held liable personally for damages incurred by their employer and can directly be fined by the antitrust authorities. In the EU such personal fines can amount up to one annual income of the respective employee.
- The reputation of ARVOS may be damaged significantly by negative publicity if ARVOS or any of its Employees is found to have infringed the antitrust laws.
- The payment of fines, damages and related costs, as well as the adverse publicity, resulting from any violation of the relevant antitrust laws may jeopardize the long-term survival of ARVOS. Therefore, the management of ARVOS will not tolerate any behavior of any Employee which is not in full compliance with the Basic Rules or the relevant antitrust laws.
- Some countries also impose criminal sanctions against individual employees involved in arrangements violating antitrust regulations[2]. Criminal prosecution includes personal fines (in addition to the fines levied against the companies), as well as imprisonment for varying terms (in the US you can usually expect one year imprisonment, possibly up to three years, and also in Germany and Japan bid-rigging is a criminal offence which may lead to imprisonment).

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[1] See Art. 101 and 102 of the Treaty on the Functioning of the European Union, Germany: Art. 81 of the Law Against Unfair Competition (GWB) and Czech Republic: Act on the Protection of Competition No. 63/1991 including amendments; Poland: Art. 106 of the Act on competition and consumer protection of 16 February 2007; India: Section 3 of the Competition (Amendment) Act 2007; Japan: Art. 95 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade; USA: Section 1 of the Sherman Act; China: Article 46 and 47 of the Anti-Trust Law and Australia: S 45D of Part IV of the Competition and Consumer Act 2010 (CCA).

[2] USA: Section 1 of the Sherman Act; Germany: Art. 263 and 298 Criminal Code (StGB), Czech Republic: §248 Criminal Code; Poland: Article 229.5 of the Penal Code; Japan: Art. 89 of Act on Prohibition of Private Monopolization and Maintenance of Fair Trade and Australia: Section 134A of the Competition and Consumer Act 2010 (CCA)

- Clauses not in line with the various antitrust laws and regulations are null and void, which may render the whole agreement to be invalid and unenforceable. In particular, customers or suppliers who are no longer "happy" with an agreement may look for reasons to get out of their contractual obligations and use the "antitrust violation argument" as the basis to render the agreement null and void – *i.e.,* as of it never happened.

## 4. Increasing Prosecution and Enforcement

There is no safe harbor any more. In the meantime many jurisdictions, up to now more than 100, including jurisdictions in Asia (like China, India and Japan etc.) have enacted antitrust laws. And, even more important, violations of antitrust laws are increasingly and vigorously pursued and enforced by the relevant authorities.

Furthermore, business behavior which may still be legal in certain jurisdictions may have antitrust 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 antitrust 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 antitrust laws. Therefore, all Employees – even in countries which do not have or do not practically enforce antitrust laws – must observe the Basic Rules.

## 5. No "Good Friend" Anymore - Leniency Policies

In Europe, the most effective instrument to detect antitrust violations and to enforce compliance is the leniency policy of the EU Commission. Most of the EU member states and the US as well as China, India and Japan have adopted similar policies. The leniency program is found to be a very effective way for competition law enforcement authority for the thin edge of the wedge for the investigation.

Underlying principle of the leniency policies is that any company which is the first to inform the relevant authority about a previously unknown cartel arrangement and then 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 antitrust laws is highly likely to come to the attention of the antitrust regulatory agencies at some time. As a result of the leniency programs, the probability that a violation of antitrust law will remain secret over a longer period of time is very low. One side caution is that law enforcement agencies of each country cooperate and orchestrate the investigations even though each country has slightly different elements for applicability of leniency. This leads to the possibility of one country granting leniency and another country not necessarily granting of leniency. This is a potentially dangerous scenario, so please contact the legal department in case of application for leniency.

## 6. The Three Core Rules of Antitrust Law

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

- Do not in any way coordinate, directly or indirectly, your market behavior 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 *behavior* of the relevant persons or entities in a market, most of the antitrust 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 Policy, because they vary very significantly from jurisdiction to jurisdiction.

## 7. Agreements, Concerted Practices; Decisions and Recommendations

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

For antitrust law purposes, the term "*agreement*" has a very broad meaning. "Agreements" may be written or oral, signed or unsigned, express or implied, legally binding or not. Also, a "gentlemen's agreement" or informal agreement is an agreement within the meaning of the antitrust 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 antitrust 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 antitrust law already at the moment when you enter into an anticompetitive arrangement, even if you never implement it in the marketplace.

Anticompetitive arrangements also are 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 behavior 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. This anticompetitive practice also is applicable to so called "Hub and Spoke" collusion. Hub and Spoke collusion is when competitors in a market coordinate their conduct by communicating through an upstream supplier or downstream customer. In contrast, a concerted practice is not given if the market behavior of the competitors is only observed and analyzed and a conclusion is drawn therefrom in order to determine how ARVOS 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 on the companies' prices.

## 8. 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-mail) with competitors. Draft such correspondence as if antitrust authorities were going to read it. All meetings or calls with competitors must have a clear and unambiguous agenda. This agenda must be documented in writing and minutes of meetings with competitors should at least contain some headwords about what was discussed. 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. When in doubt always consult with your Compliance Officer.

## 9. 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 antitrust 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 antitrust 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.

## 10. Coordination with Respect to Market Sharing, Capacity, Production or Sales Volumes 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, by customers, by product or by 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 the legal department of ARVOS before negotiations begin.

## 11. Bid-Rigging is One of the Most Serious Competition Law Offences

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

## 12. No Exchange of Information with Competitors

Do not exchange commercially sensitive information (including pricing, sales and market share information) with competitors. Information exchange systems of anonymous and historical data may be acceptable under certain restrictions, but setting up or accessing such systems is subject to the prior approval by your Compliance Officer. This applies also to information systems organized by third parties (in particular trade associations or service providers) which you may want to access.

## 13. Legal Agreements with Competitors

Do ask the legal department of ARVOS 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 specialization agreements. However, special market circumstances or individual contract clauses may render such agreements illegal.

## 14. Trade Associations Involve Continuous Risks of Violating Antitrust Laws

- Do remain extremely vigilant when attending meetings of a trade association. Trade association meetings are meetings often include 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 antitrust 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; your Compliance Officer must receive a copy of such minutes or notes 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. ARVOS 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 antitrust laws.

## 15. 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. Vertical agreements as such are not prohibited by antitrust laws. However, some provisions in vertical agreements which have an anticompetitive effect are prohibited or can be critical under antitrust 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 to only one distributor for resale in a particular territory) and *exclusive purchasing agreements* (where the reseller agrees to purchase all goods of a certain category or a very high percentage of its requirements from only one supplier) can be illegal under European antitrust law (depending in particular on the market share of the relevant parties and the term of the restriction). Therefore, before entering into such agreements the legal department 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 the Compliance Officer has 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, it is illegal for a manufacturer to impose territorial restraints on a reseller at the request of a competing reseller.
- According to EU law *sales by the Internet* are not considered a form of active sales and therefore cannot be restricted, unless the website specifically targets certain groups of customers. In particular, the EU Commission does not allow the following restrictions of on-line sales: (i) requiring a distributor to prevent customers located in another territory from viewing its website or to re-route them to the manufacturer or another distributor, (ii) requiring a distributor to terminate transactions when the customer's credit card data reveal an address outside the distributor's territory, (iii)

requiring a distributor to pay a higher price for products to be sold online or to limit its overall online sales.

**c. Resale prices**

Do not impose on your customers or distributors the *resale price* of the products that ARVOS delivers to them. Imposing prices is permitted only with respect to an agent who sells the products in the name of ARVOS and who is subject to the directions of ARVOS. Forbidden resale price maintenance obligations imposed by a manufacturer or supplier can have different forms:

- simply fixing a resale price,
- setting a minimum resale price (in contrast to imposing a maximum resale price above which the buyer must not sell the goods and which is permitted in most jurisdictions),
- determining the distribution margin,
- determining the maximum level of discount,
- making the grant of rebates or the sharing of promotional cost conditional on adhering to a given resale price level, or
- linking a resale price to the resale price of competitors.

**d. Non-compete and exclusive purchase agreements**

Exclusivity agreements (prohibition of the contract partner to manufacture, buy or sell competitive products) and exclusive purchase agreements (in which the contract partner agrees to purchase all goods of one category or a very high portion of the goods from only one supplier) can be illegal under European anti-trust law (depending in particular on the term of the restriction). Therefore, before entering into such agreements the Legal department should be consulted.

**e. Most favored nation clauses**

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

**f. "English clauses" or "meet or release clauses"**

"*English clauses*" or "*meet or release clauses*" can be seen as the opposite of most favored 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.

In connection with the above critical clauses it should be noted that fines can be imposed on a company also if its distributor or other "vertical" business partner does not abide by the anticompetitive clause or if the clause is "avoided" but the business practice actually reflects a respective tacit agreement.

## 16. The Misuse of Market Power Is Prohibited

Companies that hold a "*dominant* position" (very rough rule of thumb: market share exceeding 40%) on a specific market are prohibited from "abusing" their market power. If ARVOS is active in such a market and has such a "dominant position":

- 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 ask the Legal department of ARVOS 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.).

## 17. Merger Control Law

Antitrust law does not only prohibit certain anticompetitive *behavior* (see above), 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 ARVOS is part of funds advised by Triton, other companies belonging to funds advised by Triton may have an impact on the merger control procedure and decision. Therefore, before entering in any agreement for the acquisition of, or merger with, another business or company, the Legal department of Triton must be informed by the Legal Lead ARVOS.

## 18. Investigations by Anti-Trust Authorities

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

- you should immediately inform your Compliance Officer and the Legal department, and
- you should not make any statement without having first consulted with a lawyer.

Special guidelines of ARVOS for the correct conduct in so-called dawn-raids of the anti-trust authorities are in place.

## 19. 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, please immediately inform your Compliance Officer and/or the legal department of ARVOS. Please consider that time is of the essence in advising Legal, especially with regard to the leniency legislation in many jurisdictions (see point 5 of this Policy).

## 20. Questions

In case of any questions about the Basic Rules of antitrust law or antitrust laws in general you should contact any of the following persons:

- Matthias Mautner, E-Mail: matthias.mautner@arvos-group.com; Phone: +49 (0) 6221 7532 108, Mobile: +49 (0) 171 228 6019
- Steve List, E-Mail: steve.list@arvos-group.com; Phone: +1 423 498-2659, Mobile: +1(630) 750-8000
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## 21. Effective Date

This Policy was effective as of March 6, 2015 and this revised version is effective immediately and binding on all directors, officers and employees of ARVOS as of July 2019.

Luxemburg, July 12, 2019

Ludger Heuberg Karsten Stückrath David Breckinridge

Matthias Mautner