BEFESA

Anti-Trust Policy

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1. Purpose and Scope

It is one of the fundamental principles of Befesa and its subsidiaries ("the Company") to strictly observe all laws and regulations in which the Company is operating and to maintain high ethical standards in conducting its business.

It is the strong belief of the management of the Company that not only the interest of the Company, 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 the Company to strictly comply in all respects with the anti-trust laws and regulations which strive to protect fair competition from any anti-competitive behaviour.

The Anti-Trust Guideline ("Guideline") comes into effect with immediate effect and is binding on all directors, officers and employees ("Employees") of the Company.

2. Compliance with Anti-Trust Laws Is Unconditional and The Personal Responsibility of Every Employee

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

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

All Employees of the Company 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 the Company and will lead to personal consequences for the relevant Employees.

3. 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 hundreds 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 highest

individual fine levied by the European Union against a leading company involved in the elevator cartel amounted to 479 million EUR. The second highest individual fine amounted to 462 million EUR and was imposed on the vitamin cartel, on which the U.S. anti-trust authorities additionally levied a fine of similar size. 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. By way of example, the total costs (fines in various countries, damages to be paid to customers) caused by the above mentioned cartel prosecution against one leading company involved in the vitamin cartel were 3.8 billion EUR. 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 the Company* may be damaged seriously by bad publicity if the Company 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 the Company. Therefore, the management of the Company will not tolerate any behaviour of any Employee which 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 the UK, 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 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 not (any more) "happy" with an agreement look for reasons get out of their contractual obligations and use the "anti-trust violation argument".

4. No Safe Harbour Anymore

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

Furthermore, business behaviour which may still be 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 which do not have or do not practically enforce anti-trust laws – must observe the Basic Rules.

5. No "Good Friend" Anymore - Leniency Policies

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 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 a 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.

6. 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 <u>not</u> in any way coordinate your market behaviour with (potential) competitors.
- Do <u>not</u> unreasonably restrict the commercial freedom of customers or suppliers in any sale or supply contracts.
- Do <u>not</u> 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.

7. 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 therefrom in order to determine how the Company 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 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.

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 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.

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 the Company or outside legal counsel 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 the Company or outside legal counsel. In many countries (such as Germany, UK, and the US) bid-rigging is a criminal offence 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 for anonymous and historical data may be acceptable under certain restrictions, but setting up or accessing such systems are subject to the prior approval by the legal department of the Company or require prior "green light" by outside legal counsel. This also applies to information systems organized by third parties (in particular, trade associations or service providers) which you may want to accede.

13. Legal Agreements With Competitors

- Do ask the legal department of the Company or outside 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.

14. 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 legal department or the Compliance Officer of the Company 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. The Company 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.

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 anti-trust law. However some provisions in vertical agreements which have 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:

- Do not impose on your customers or distributors the *prohibition to resell the products into another country or geographic area*, unless the legal department or outside legal counsel 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.

- Do not impose on your customers or distributors the *resale price* of the products that the Company delivers to them. Imposing prices is permitted only with respect to an agent who sells the products in the name of the Company and who is subject to the directions of the Company. 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,
    - linking a resale price to the resale price of competitors
- *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 anti-trust 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 or outside legal counsel should be consulted.
- "*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%.
- "*English clauses*" or "*meet or release 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.

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 anti-competitive 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

The abuse of a dominant position by one or more companies in part of the market or in the whole market is completely forbidden, unless permitted by law.

In particular, the abuse could consist of:

i. The direct or indirect price imposition or other commercial conditions or disloyal services.

ii. Production, distribution or technical development's limitation that causes an unjustified harm to companies or consumers.

iii. Application to third trading parties of unequal conditions to equal products or services that entail a competitive disadvantage.

iv. The subordination of the celebration of contracts to the acceptance by other trading parties of additional services that, by their nature or according to transactional practices, do not have a relationship with the object of those contracts.

v. The unjustified refusal to satisfy the purchase of products or rendering of services' demand.

Companies that hold a "*dominant* position" (rough rule of thumb: market share exceeding 40%) on a specific market, are prohibited from "abusing" their market power. If the Company 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 (e.g. 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 the Company or 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.).

17. Merger Control Law

Anti-trust law does not only prohibit certain anticompetitive *behaviour* (see above), but also deals 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 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.

18. Investigations By Anti-Trust Authorities

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

- you should immediately inform the legal department of the Company and
- you should not make any statement without having first consulted with a lawyer.

Special guidelines of the Company 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 inform the legal department and the Compliance Officer of the Company.

20. Questions

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

- Francisco Bolaños Rowe,

  Compliance Officer

  Email: francisco.rowe@befesa.com

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