

Rules for conduct in competition (competition directive)

21 June 2022

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1. Introduction

1.1. What is competition law?

In their code of conduct, Arbonia AG and its Group companies (referred to as “Arbonia” collectively or “Group company” for an individual Group company) undertake to engage in fair, performance-based conduct in competition and neither to engage in any prohibited competitive practices nor to participate in agreements affecting competition that violate cartel law.

The competition law of a country is applicable if a competition violation has an impact in the respective country, even if the violation is initiated in a different country. As a group that is active worldwide, Arbonia commits and endeavours to comply with all national and international statutes and regulations concerning competition law.

In view of complex competition legislation and case law, the objective of this directive is to further enhance the understanding of competition law among all Arbonia employees and to convey concrete information and recommendations concerning conduct in day-to-day work. The employees are to be enabled to identify and critically examine issues that could be problematic under competition law and initiate the needed steps.

In such cases, it is necessary to promptly inform and involve the responsible management and the legal department of Arbonia. This applies especially to all agreements that are concluded with current or potential competitors and/or to long-term supply and procurement agreements with customers and/or suppliers. However, other kinds of agreements with business partners, e.g., research and development partnerships, must also be checked for permissibility under competition law.

The competition of enterprises is the driver of our national economy and thus constitutes the precondition for growth, jobs and prosperity. The protection of competition is largely governed by cartel law. Cartel law prohibits improper restrictions of competition, such as price rigging or dividing up markets among competitors, as well as all kinds of abuse of a market-dominating position.

Every Group company must always check for itself whether its conduct is compatible with cartel law. Such an assessment is not always easy. Even coordinated conduct or informal talks that aim at or cause a restriction of competition are prohibited. Giving the impression of such conspiratorial happenings must be avoided in the first place.

1.2. Instruction under competition law and supplementary information

Each individual employee is responsible for conduct in compliance with competition law.

In cases of doubt, the respective superior or the Head of Compliance is to be consulted, or conduct relevant under competition law is to be reported.

Competition law must be observed by all Arbonia employees around the globe. Every employee is personally responsible for complying with applicable regulations under competition law. Violations may be prosecuted by Arbonia. Employees guilty of violations must expect sanctions under civil law, penal law and disciplinary measures, such as summary dismissal. Arbonia reserves the right to claim damages from employees who are guilty of violations.

Arbonia has a functioning reporting system (see also whistleblowing directive) and sensitises employees for issues relevant under competition law; this avoids and minimises disadvantages for Arbonia and its employees (see section 2), provides for reporting and investigation of any incidents that are critical under competition law, and ensures the correct reaction in the event of an investigation under competition law (see section 3 and 4).

2. Avoidance of violations of cartel law

Any violation of cartel law can have severe consequences for Arbonia and its employees. Violations of cartel law may be liable to high monetary fines, which are often followed by considerable claims for damages. Moreover, violations of cartel law can render agreements invalid and ultimately harm the integrity and credibility of Arbonia and/or the affected Group companies with customers and the public. In certain countries, violations of cartel law can also lead to criminal sanctions (e.g., prison sentence). For this reason, it is important to avoid any kinds of agreements and coordinated conduct that restrict competition (see section 2.1) and any kind of abuse of a market-dominating position (see section 2.2) or abuse of a position as a company with relative market power (see section 2.3).

The following principles must be taken into consideration for every business contact:

2.1. Agreements and coordinated conduct that restrict competition

Cartel law prohibits all kinds of agreements and coordinated conduct of enterprises at the same or different market levels that aim at or cause a restriction of competition.

Cartel law therefore not only applies to written agreements but also to verbal arrangements and so-called coordinated conduct, i.e., deliberate or only intended interaction between individual enterprises, which deliberately replaces risk-carrying competition with practical cooperation, though it does not represent the conclusion of an actual agreement.

2.1.1 Horizontal restrictions

Horizontal restrictions are agreements or coordinated conduct between enterprises that are active on the same market level, for example, agreements between competitors or potential competitors, such as price, quantity, or territory agreements.

2.1.1.1 Agreements on prices or delivery terms and conditions with current or potential competitors (so-called horizontal agreements)

✘ **It is prohibited**

- to directly or indirectly determine selling or sale prices;
- to jointly decide on price increases or decreases or to coordinate prices otherwise;
- to jointly determine certain minimum or fixed prices or certain price limits;
- to jointly determine production, procurement, or supply quantities or decide on reductions and increases;
- to jointly agree on discounts, price reductions, or other delivery terms and conditions or price-related measures (e.g. terms of payment, maximum credit periods, default interest, and warranty scope);
- to share cost- or price-relevant information (e.g. information on pricing, discounts, price reductions, credit conditions, sales figures, customer lists, or other important cost factors);
- to make purchasing agreements with competitors, especially when the relevant deliveries are an important cost element.

✔ **In consultation with the Head of Compliance, it is basically possible**

- to create and use joint costing aids if the costing aid is used for pro-competitive reasons only in agreement with the rules of the competition commission regarding costing aids and no price conditions or costing and/or pricing aspects are shared.

✔ **It is permitted**

- to independently and autonomously search for the current rates of competitors ("*rate shopping*"), for example, via the Internet or by observing published rates without sharing any information with competitors; it must be noted that the information was found and noted without sharing any information with competitors.
- to receive unsolicited information from customers regarding the rates of competitors, if not systematically researched. It must be noted that the information was received unsolicited from a customer.

2.1.1.2 Market division agreements with current or potential competitors

✘ **It is prohibited**

- to divide up or allocate markets according to certain geographic territories, products, customers, or procurement sources;
- to set production, purchasing, or sales quotas;
- to agree on non-competition.

2.1.1.3 Boycotts

✘ **It is prohibited**

- to conclude agreements not to supply certain customers and not to procure goods from certain suppliers;
- to conclude agreements that make the supply or procurement of goods dependent upon certain conditions.

2.1.1.4 Commercial associations

✘ **It is prohibited**

- to directly or indirectly share information on prices, price discounts, delivery terms and conditions, profit margins, cost structures, production volumes, price calculation, marketing and sales practices, supply territories, suppliers, customers, etc. at events of commercial associations.

✔ **It is permitted**

- to join a commercial association in which competitors come together;
- to agree on joint submissions and applications, official matters, and similar subjects within a commercial association;
- to collect and provide statistical material, provided that this concerns historical figures that are collected by an independent entity and published in aggregate form.

2.1.1.5 Joint ventures

In the event of agreements between competitors to establish a joint venture (e.g., in the case of joint ventures for R&D, production, or sales, etc.), the early approval of the Head of Compliance must always be obtained.

2.1.1.6 Especially calls for tenders

Agreements on calls for tenders among competitors are prohibited both under cartel law as well as under procurement law and can also entail claims for damages under civil law.

✘ **It is prohibited**

- to share the content and conditions of bids (prices, terms and conditions of sale, etc.) in advance with other competitors;
- to conclude direct or indirect agreements on the contract award;
- to send completed bids to competitors, who then submit cover bids;
- to rig the price prior to submitting the bid and during bidding rounds;
- to form silent consortia in which everyone bids but the contract award is already determined internally;
- to set up reporting offices at which every interested party signs up and the one that is to be awarded the contract is evident;
- to establish assignment mechanisms that determine which competitor is to be awarded a contract when and under which conditions;
- to offer dumping prices (prices below cost) in the case of a market-dominating position;
- to influence the decision makers of bidding procedures through prohibited gifts or advantages;
- to make agreements with competitors to participate in a call for tenders with a sham offer;
- to withdraw from a public call for tenders under the condition that a fellow competitor pays compensation for this withdrawal;
- to inform competitors whether Arbonia is participating in a call for tenders;
- to ask competitors whether they are participating in a call for tenders.

✔ **It is permitted**

- to form consortia and submit a joint bid as a consortium as long as the consortium is disclosed to the client and the formation of the consortium is what enables the companies to submit a bid or if the offer of the consortium is obviously better than the individual offers of the companies would be;
- to invite any wholesalers to participate in a public call for tenders without fixing the prices of the wholesaler and without coordinating the bids of the wholesaler.

2.1.1.7 Exchange of information

It is not permitted to exchange competition-relevant information among competitors. Competition-relevant information is non-public information that a company would not normally pass on to its competitors because it could influence a business decision or strategy of its competitors. The following information is considered relevant to competition and must not be exchanged with competitors:

- prices (for example, current prices and price rebates, planned price increases, price reductions and discounts), purchasing conditions, or other terms and conditions
- customers, suppliers, markets, and regions
- production costs, production quantities, capacities, revenues, sales numbers, or quality parameters;
- marketing plans, sales strategies or market risk assessment
- planned or submitted offers, including information on the participation in a call for tenders;
- technologies, R&D programmes and their results, and other investments, as well as
- all other information that could provide a competitor with a competitive advantage.

If you should receive competition-relevant information from a competitor, immediately inform the management and the Head of Compliance. Alternatively, you can also submit a report to the contacts listed in the “whistleblowing directive”.

2.1.2 Vertical agreements

Vertical agreements are contracts between enterprises that are active at different production and distribution levels. The contracting partners are usually not competitors, but distribution companies, customers, licensees, licensors, and suppliers. Vertical agreements may be treated differently depending on the applicable laws; for example, certain groups of vertical agreements do not violate European competition law insofar as they are subject to the applicability of the respective block exemption regulation, but the same type of agreements might not be permitted under a different legal system.

2.1.2.1 Resale prices of distribution companies

✘ **It is prohibited (for the manufacturer)**

- to directly or indirectly determine or specify the resale prices of distribution companies or dealers in lists, catalogues, ads, brochures, order forms, offers, or in similar ways;
- to request distribution companies to comply with the recommended selling price;
- to terminate the business relationship with a distribution company due to its refusal to apply the recommended selling prices or to threaten that it will be terminated in such a case;
- to hinder distribution companies from granting discounts and preferential conditions;
- to send distribution companies price calculation instructions or formulas;
- to determine the profit margin of a distribution company;
- to determine fixed or minimum selling prices;
- to agree upon most-favoured customer clauses that prohibit distribution companies from granting other buyers more favourable purchasing conditions than oneself;
- to determine the pricing policy with a distributor according to the market situation;
- to systematically monitor the resale prices of a distributor.

✔ **It is permitted**

- to give a non-binding price recommendation for the resale of goods, provided that no direct or indirect pressure is exerted (e.g., by granting discounts) or other methods (e.g., automatic display of the price recommendation in the cash register system of the distributor) to enforce the recommendation, and the recommendation does not have the same effect as an actual price fixing on the market;
- to specify maximum prices for resale, as long as these maximum prices do not function as fixed or maximum prices in practice.

2.1.2.2 Territorial protection/exclusivity

✘ **It is prohibited**

- to impose export bans;
- to demand that distribution companies not be passively supplied from outside the agreed exclusivity territory (i.e., upon request of customers from outside the exclusivity territory);
- to prohibit a distribution company from giving the goods to other distribution channels on request;
- to conclude exclusive supply agreements that provide for the exclusive supply to a particular customer without the express approval of the Head of Compliance;
- to reject orders from distributors who export the products (passive sales) with the argument of territorial limitations;
- to prohibit a distribution company from engaging in Internet advertising or Internet sales.

✔ **It is permitted**

- to grant exclusive distribution, procurement, franchise or licence rights in a certain territory;
- to prohibit an active sales policy outside the exclusivity territory, if the market share of the Group company is below 30 % and advertising and sales on the Internet is not prohibited;
- to inform the business partners of differences that affect the product acceptance in other countries or of legal requirements in other countries;
- to limit the goods quantity to be sold to a business partner temporarily due to substantiated capacity bottlenecks.

2.1.2.3 Competition clause

✘ **It is prohibited**

- to forbid a distribution company or licensee to manufacture and sell competing products during the term of the agreement for an indefinite period or a period of more than 5 years from the beginning of the agreement;
- to forbid a distribution company or licensee to manufacture and sell competing products after termination of the agreement (so-called post-contractual prohibition of competition).

✓ **It is permitted**

- to forbid a distribution company or licensee to manufacture and sell competing products during the term of the agreement up to a maximum of 5 years, as long as the market share is not more than 30 %.

2.1.2.4 Patents, copyrights, know-how, or trademarks

✗ **It is prohibited**

- to conclude an agreement on the licensing of patents, copyrights, know-how, or trademarks without the express approval of the Head of Compliance;
- to forbid the business partner to challenge the legitimacy of the licensed patent;
- to fix the price that the licensee charges for its product;
- to enter agreements with other patent holders on the fees charged for competing patents.

2.2. Prohibition of abuse of a market-dominating position

A market-dominating enterprise is prohibited from using its market power in an unfair and discriminating manner. Within the scope of these instructions, a market-dominating position and the related consequences are always to be checked if the market share of an enterprise in a particular market is higher than 40 %.

To determine the market share, the relevant market must be defined by product, geographic location, and time period. Usually, products belong to the same product market if they are reasonably interchangeable from the perspective of the market counterparty. The geographically relevant market is defined as the territory in which the same or comparable competitive conditions exist. For example, such a market may consist of individual, several, or all EU/EFTA member states and Switzerland or individual regions of these countries.

If a market-dominating position is affirmed, it is essential to observe the following instructions:

2.2.1 Discrimination / different terms and conditions of sale

✗ **It is prohibited**

- as a market-dominating enterprise to grant the same kind of trading partners (distribution companies, customers, or suppliers) different terms and conditions of sale (prices, discounts) or business conditions under the same circumstances.

2.2.2 Obstruction of competitors

2.2.2.1 Exclusive procurement relationships

✘ It is prohibited

- as a market-dominating enterprise to block competitors' access to customers or resellers in a material scope through exclusive procurement relationships.

2.2.2.2 Loyalty discounts and discounts with a similar effect

✘ It is prohibited

- as a market-dominating enterprise to grant discounts to a buyer under the condition that it fulfils his needs exclusively from the market-dominating supplier (so-called exclusivity or loyalty discounts);
- as a market-dominating enterprise to grant total turnover discounts that trigger a pull effect for the benefit of the market-dominating enterprise and that affect the sale of products of different markets;
- as a market-dominating enterprise to grant target discounts that are individually tuned to the turnover volume of a particular customer or supplier;
- as a market-dominating enterprise to grant volume discounts on certain product categories without the express approval of the Head of Compliance;
- as a market-dominating enterprise to grant turnover discounts on certain product categories that are determined on the basis of a prior specification of the order quantity, without the express approval of the Head of Compliance.

2.2.2.3 Dumping prices

✘ It is prohibited

- as a market-dominating enterprise to quote prices below cost;
- as a market-dominating enterprise to systematically offer products or services below cost.

2.2.2.4 Tying

✘ It is prohibited

- to make the delivery of a market-dominating product conditional upon the obligation to purchase another product or conclude a service agreement;
- as a market-dominating enterprise to request a customer to purchase an entire product range including accessories, without the express approval of the Head of Compliance;

- as a market-dominating enterprise to request a customer to conclude a service agreement for reasons of product safety, without the express approval of the Head of Compliance.

✓ **It is permitted**

- to prescribe the procurement of materials and special tools that are objectively necessary for a technically satisfactory use of the license in licence agreements.

2.2.2.5 Bundling

✗ **It is prohibited**

- to strategically bundle a market-dominating product with one or more other products with the sole purpose of excluding competitors;
- to set a predatory price for a product bundle.

✓ **It is permitted**

- as a market-dominating enterprise to bundle one or more products if this is based on sound scientific reasons;
- to bundle products that are part of an objectively necessarily interrelated system.

2.2.2.6 English clause

✗ **It is prohibited**

- as a market-dominating enterprise to agree on an “English clause”. Under such clause, the contracting partner of the market-dominating enterprise is allowed to procure products from a competitor provided that it first informs the market-dominating enterprise of the name of the competitor, the quantity to be procured, and the agreed price.

✓ **It is permitted**

- to agree on automatic agreement renewals as long as termination is possible.

2.2.2.7 Refusal to supply

✗ **It is prohibited**

- as a market-dominating enterprise to refuse to supply a customer that fulfils the same conditions as other customers that are supplied;
- as a market-dominating enterprise to restrict the supply to customers of the same kind in different ways without factual justification;

- as a market-dominating company to refuse to conclude an agreement or to terminate an existing agreement in order to refuse business relationships without factual justification.

✓ **It is permitted**

- to refuse to supply new or old customers for provable reasons that are reasonable under economic considerations;
- to refuse to supply a new customer due to insufficient capacity.

2.2.2.8 Geographic price discrimination

✗ **It is prohibited**

- as a market-dominating company to restrict the ability of customers to purchase goods or services offered in Switzerland and abroad in foreign countries at the local market prices and under the local conditions usual in the industry.

✓ **It is permitted**

- to demand that customers pick up the goods abroad themselves if they want to purchase goods under foreign conditions.

2.3. **Prohibition against abuse of a position as an enterprise with relative market power**

An enterprise with relative market power is prohibited from hindering or discriminating against other companies or consumers who are dependent on the enterprise with market power for demand or supply, for example, through discriminatory conditions, predatory pricing, special discount programs, refusing access to intellectual property rights, termination of agreements without factual justification, or refusal of business inquiries.

An enterprise is considered to have relative market power if other enterprises are dependent on it for the supply of or demand for a product or service in such a way that there are no adequate and reasonable possibilities for switching to other enterprises.

The concept of relative market power is to protect demanders and suppliers when they are dependent on suppliers or demanders with market power. In particular, the following groups of dependencies can be distinguished (non-exhaustive list):

- Assortment-based dependency: must-in-stock products without which a dealer cannot compete (top-tier products), original spare parts, software updates, etc.
- Enterprise-related dependency: lock-in of an enterprise, e.g., due to prohibitively high switching costs and/or when a buyer commits itself to a particular contract partner for

a longer time and is practically unable to switch to other suppliers in the case of a one-sided delivery refusal

- Relative buyer power: A supplier is dependent on a strong buyer (e.g., a supplier or subcontractor of large retail chains/wholesalers)
- Platform dependency or data dependency: dependency of a company on access to the platform or data of another company
- Dependency due to shortage: non-discriminatory delivery obligation in the event of a general shortage (e.g., during an oil crisis or possibly during a general chip shortage)

Enterprises with relative market power must present plausible reasons for the unequal treatment of customers or suppliers of the same kind, e.g., in regard to prices, discounts, termination of supply or purchasing relationships, or tying transactions (otherwise they are impermissible).

The assessment is made individually on the basis of the dependencies between two enterprises in relation to specific products or services. Accordingly, an enterprise can have relative market power over business partner 1, for example, but not over business partner 2, whereby it has relative market power over business partner 1 only in relation to product A but not in relation to product B.

If a position with market power is affirmed, it is essential to observe the following instructions:

Obstruction of dependent enterprises

2.3.1 Discrimination / different terms and conditions of sale

✘ It is prohibited

- to treat the same kind of trading partners (e.g., customers or suppliers) differently under the same circumstances (e.g., different prices, discounts, or terms and conditions).

✔ It is permitted

- to grant distribution companies different terms and conditions of sale (discounts) if these companies provide special services not offered by other distribution companies or operate at different market levels (wholesaler-retailer).

2.3.2 Loyalty discounts and discounts with a similar effect

✘ It is prohibited

- as an enterprise with relative market power to grant discounts to a dependent buyer under the condition that it fulfils its needs exclusively from the supplier with relative market power (so-called loyalty discounts);



It is permitted

- to grant volume discounts on certain product categories;
- to grant turnover discounts on certain product categories that are determined on the basis of a prior specification of the order quantity.

2.3.3 Tying



It is prohibited

- as an enterprise with relative market power to make the delivery of a product to a dependent company conditional upon the obligation to purchase another product or conclude a service agreement.



It is permitted

- to demand that a customer purchase a complete product range including accessories;
- to demand that a customer conclude a service agreement for product safety reasons;
- to prescribe the procurement of materials and special tools necessary for a technically satisfactory use of the license in licensing agreements.

2.3.4 Refusal to supply



It is prohibited

- as an enterprise with relative market power to refuse to supply a dependent customer that fulfils the same conditions as other customers that are supplied;
- as an enterprise with relative market power to restrict or end the supply to dependent customers without factual justification.



It is permitted

- to refuse to supply new or old customers for provable reasons that are reasonable under economic considerations;
- to refuse to supply a new customer due to insufficient capacity.

2.3.5 Agreement terminations

✘ **It is prohibited**

- as an enterprise with relative market power to terminate agreements with dependent customers without a reasonable notice period if the agreement partner (customer or supplier) is not able to switch to other suppliers or buyers at short notice.

✔ **It is permitted**

- to terminate agreements with dependent companies without notice for good cause (e.g., for gross breach of contract by the agreement partner);
- to terminate agreements with dependent companies if it is possible for the agreement partner to switch to another supplier or customer after the end of the reasonable notice period.

2.3.6 Geographic price discrimination

✘ **It is prohibited**

- as an enterprise with relative market power to restrict the ability of dependent customers to purchase goods or services offered in Switzerland and abroad in foreign countries at the local market prices and under the local conditions usual for industry.

✔ **It is permitted**

- to demand that customers pick up the goods abroad themselves if they want to purchase goods under foreign conditions.

3. Procedure in the event of a suspected cartel violation

Employees who notice circumstances that indicate a possible cartel violation must report this immediately. Either the management and/or the Head of Compliance must be informed or a report must be made to the contacts listed in the "whistleblowing directive". All employees must cooperate in investigating suspicious cases and in avoiding or putting an end to any violations.

Further rules of conducts for the employees:

Business contacts with current or potential competitors:

When meeting competitors (business contacts, events, trade shows, etc.), if the conversation starts drifting to topics relevant under cartel law, you must clearly distance yourself from the content of the conversation and insist on ending the conversation. If this request is not complied with, leave the conversation round without delay and make a note of the conversation. Then report the incident to the Head of Compliance and hand over the conversation report.

Attention: If a conversation violates cartel law, it is not sufficient to merely assume a passive role in the conversation. In this case, the company will also be liable for the violation of cartel law. In your day-to-day work, you should therefore make sure that the market behaviour is not influenced by informal contacts with current or potential competitors. In general, you should always make sure that business contacts with competitors serve a concrete purpose and the objective of the meeting is determined in advance (agenda).

Business correspondence

In your business correspondence, always take care to use clear language that cannot be misunderstood. This also applies especially to the use of e-mail, in which less attention is usually paid to precise wording than in other forms of written communication. Avoid ambiguous statements such as: *“Due to the high cost pressure in our industry, we will increase the prices by ...% as of the beginning of next year”*. This could give the impression that we are aware of the costs of our competitors. Instead, a statement such as the following would be unobjectionable: *“Due to our increased costs, we will increase our prices by...% as of the beginning of next year”*.

In connection with price-related topics, avoid wording like *“harmonisation, synchronisation, coordination”* etc. Such statements could be interpreted to mean that agreements with competitors have already taken place or that at least attempts have been made in this direction.

If possible, avoid statements that could give the impression that our company does not have any competition on the market (e.g. *“we are the invulnerable market leader”*).

Expressly reject (in writing) any confidential information that you receive from competitors incidentally or without asking for them.

4. Investigations under cartel law

Competition authorities may order (unannounced) searches at companies suspected of having violated cartel law. For this purpose, they are authorised to search the site and premises, request access to documents and records, make copies of documents, order confiscations, and interrogate the personnel. Should a search be conducted at a Group company, the employees of the respective Group company must make sure to observe the following instructions and then follow the steps according to the local conduct instructions created for the respective Group company based on the sample information sheets for reception (appendix 1) and management (appendix 2).

5. Unfair competition

While cartel law serves to protect competition (or competitors, suppliers, and demanders) against restriction of competition, fairness law ensures protection of all market players (competitors, customers, consumers, etc.) against unfair competition. All Group companies and Arbonia employees are obliged to comply with the applicable provisions of the respective unfair competition legislation during their work. "Unfair competition" refers to unlawful or deceitful conduct that can influence the relationship between various market players and violates nationally applicable laws that protect fair competition.

Unfair competition is also committed by anyone who discriminates against end customers in online business without factual justification due to their nationality, their place of residence, their place of business, the location of their payment service provider, or the place of issuance of their means of payment in respect to the price or the conditions of payment; blocks or restricts access to an online portal; or transfers the end customer to a version of the online portal other than the originally visited one without their consent.

Examples of unfair conduct:

- Prohibited customer persuasion (e.g., bait offers below cost, deception of the customer through misleading product information, use of aggressive sales methods that impair the customer's freedom of choice, etc.)
- Degradation of a competitor (e.g. in advertising)
- Use of misleading information on own products within the scope of advertising measures
- Exploitation or use of a third-party service for own purposes
- Establishment of a danger of confusion with products of other providers

- Unjustified geoblocking and other forms of discrimination (price, payment conditions etc.) due to nationality, place of residence, place of business, location of the payment service provider, or the place of issuance of the means of payment in online business, specifically for access to online user interfaces of all kinds (websites, web shops etc.)

6. Effective date

This directive enters into force immediately and replaces the competition direction of 24 January 2014.

Arbon, 21 June 2022

Arbonia AG



Alexander von Witzleben
Chairman of the Board of Directors

Andrea Wickart
Head of Compliance / General Secretary

Appendix 1: Sample search information sheet – reception

- 1. The authority officials are to be asked about the reason for their visit. *Remain calm and professional; do not try to obstruct the search under any circumstances but observe the following points:*
- 2. Inform the management and/or Head of Compliance immediately:
 - CEO of the division: [first name, last name, email, phone number]
 - Management: [first name, last name, email, phone number]
 - Head of Compliance: [first name, last name, email, phone number]

If these persons are not present or cannot be contacted, the highest-ranking company representative that is present must be informed immediately. For this purpose, one of the following people must be contacted (in this order) on site:

- [first name, last name, email, phone number], role
 - [first name, last name, email, phone number], role
 - [first name, last name, email, phone number], role
- 3. The authority officials are to be requested to produce the search warrant.
 - 4. The search warrant is to be accepted and copied/scanned.
 - 5. The authority officials are to be requested to identify themselves, and their IDs are to be scanned or copied.
 - 6. The titles of the individual authority officials are to be noted.
 - 7. A copy of the search warrant as well as information on the authority officials (*information according to section 4, 5, and 6*) are to be forwarded to the management, the Head of Compliance, and the external lawyer (cf. contact details in section 2).
 - 8. The officials are to be assigned a conference room in which there are no files or other possibilities of accessing documents, with the request to wait there for the arrival of the persons previously informed by the reception, if possible also for the arrival of the external lawyer consulted by the management / Head of Compliance.

If the authority officials should refuse to wait for the arrival of the management (because they are not the premises, for example) and want to carry out a search immediately, the highest-ranking employee present must be summoned in accordance with section 2 so that the authority can begin the search without delay. This person has to take over leadership according to "Search information sheet – management".

As a general rule (and for all employees):

- *Never try to destroy, hide, or stash away documents!*
- *There is no obligation to actively support the search. However, in the event of a search by competition authorities, questions on documents or facts must be answered truthfully. Only provide information on processes which you definitely know, and avoid speculations!*
- *The search is to be treated confidentially. Inform only the above mentioned persons.*

Appendix 2: Sample search information sheet – management

I. Beginning of the search

As a general rule (and for all employees):

- *Never try to destroy, hide, or stash away documents!*
- *There is no obligation to actively support the search. However, in the event of a search by competition authorities, questions on documents or facts must be answered truthfully. Only provide information on processes which you definitely know, and avoid speculations!*

- 1. The authority officials are to be asked about the reason for their visit.
Remain calm and professional; do not try to obstruct the search under any circumstances. Never try to destroy, hide, or stash away documents.
- 2. The search warrant is to be examined to ascertain the subject matter and scope of the search.
 - *The warrant must state the reason for the search and the searching authority (state competition authority or European Commission).*
 - *The search warrant must specify what premises are to be searched and what evidence is sought.*

Only when the exact content of the search warrant is known is it possible to check whether the authorities are adhering to the powers granted to them in the search warrant during the search.
- 3. The following persons are to be informed immediately:
 - CEO of the division: [first name, last name, email, phone number]
 - Head of Compliance: [first name, last name, email, phone number]
 - If not yet informed: management: [first name, last name, email, phone number]
 - [designated external competition lawyer for each company],

The division management (one of the following persons is to be informed):

- [first name, last name, email, phone number], role
- [first name, last name, email, phone number], role
- [first name, last name, email, phone number], role

Person responsible for IT (one of the following persons is to be informed):

- [first name, last name, email, phone number], role
- [first name, last name, email, phone number], role
- [first name, last name, email, phone number], role

- 4. The information on the authority officials compiled by the reception (*information according to section 4, 5, and 6* ***“Search information sheet – reception”***) is to be forwarded to the management and the Head of Compliance (cf. contact details in section 3).
- 5. In coordination with the Head of Compliance (if not reachable: in consultation with the division management, if also not reachable: in consultation with the management), an external lawyer who is experienced in proceedings under competition law is to be engaged as quickly as possible (cf. contact details in section 3).

In addition, it must be clarified whether a search is also being carried out at other locations of the company at the same time (parallel search) (cf. contact details in section 3).

- 6. The authority officials are to be provided with an office with a photocopier (or the conference room assigned to the authority officials as well as a photocopier) for the rest of the search.
- 7. For every authority official, an employee of the company is to be designated to accompany this person during the entire search: *The designated employees must keep a detailed record of the actions of the accompanied authority (personal details of the accompanied officials, procedures of the authorities, viewed documents, confiscated documents, confiscated or copied electronic files, questions asked, information given etc.).*

II. During the search

As a general rule (and for all employees):

- *Never try to destroy, hide, or stash away documents!*
- *There is no obligation to actively support the search. However, in the event of a search by competition authorities, questions on documents or facts must be answered truthfully. Only provide information on processes which you definitely know, and avoid speculations!*

- 8. A “competition law team” must be assembled to coordinate/accompany the further search process and specify the internal and any external communication on the part of the company.

The “competition law team” should comprise:

- a) *A representative of the division management*
- b) *A representative of the management*
- c) *A representative from compliance*
- d) *A representative from IT*
- e) *An external lawyer*
- f) *The Head of Corporate Communications*

- 9. The competition law team should evaluate as quickly as possible whether to set a marker for a leniency application at the responsible competition authority.
- 10. A member of the competition law team is to be announced as a central point of contact and information for the authority officials and the employees of the concerned company during the entire further search.
- 11. At the beginning of the investigations, the officials are to be requested to confirm that all presented documents and information are treated confidentially unless otherwise agreed. The confirmation of the officials is to be recorded in writing.
- 12. Copies are to be made of all documents taken by the officials. The officials should make their own signed list of copied documents available. Check that this is correct.
- 13. The employees of the affected company are to be informed and instructed about the further process during the search.

An external communication / press release is also to be published by Corporate Communications if necessary.

- 14. Sealing as a right of the company:
Sealing can be requested in consultation with the Head of Compliance or the external lawyer involved.
Records and objects that may not be searched or confiscated due to the company's right to refuse to give evidence or other rights are to be sealed at the company's request and may be neither viewed nor used by the prosecution authorities for the time being.
The sealing must be requested directly and close in time to the search. The sealing cannot be requested later, for example, during the evaluation of documents.

III. Completion of the search – execution record

- 15. The execution record is to be accepted and checked:
 - o *The applicable regulations stipulate that directly affected persons (and this includes the company at which a search has been carried out) must receive a copy of the search warrant as well as a copy of the execution record.*

- *If documents or other objects are confiscated in the course of a search, an execution record will contain a list of the confiscated documents and objects. This execution record must be precise and detailed; it must be signed by the company that owns the searched premises.*
- *Afterwards, the employees who accompanied the individual authority officials during the search should each draw up a record as well. These individual records of the employees must be compared with the authority record.*

IV. After the search – debriefing

- 16. The competition law team is to hold a conference directly after the search.
- 17. The information that was provided during the search either by authority officials (search warrant, execution record), the records of the employees, as well as other documents and information must be compiled.
- 18. Employees are also to be interviewed about the investigation.

After the debriefing, the company must analyse the situation more closely and determine the further procedure.

Appendix 3: Guideline for employees during searches

Competition authorities, law enforcement authorities, or other authorities can carry out unannounced searches at Arbonia.

In the event of a search, officials can search business premises, view and copy documents and records, confiscate original documents and records, as well as question employees. During a search, the authorities have the right to enter all offices, obtain access to all passwords, open all rooms and containers (e.g., cabinets, safes), search all electronic information, and make complete copies; in the case of obstruction, they have the right to call the police.

In the event of a search, all employees must follow these rules:

DOS

- Remain calm and stay in control of the situation.
- Treat the officials with respect and courtesy.
- Inform your superior immediately and cooperate with our legal service and our external lawyers.
- Read through the official search warrant carefully if the officials insist on starting their search.
- Open all offices, rooms, and safes requested by the officials.
- Provide the officials access to the computers and mobile phones that they request.

DON'TS

- Do NOT disturb or obstruct the officials.
- Do NOT hide or destroy any documents or records; do NOT delete any files or e-mails.
- Do NOT break any official seals placed by the officials.
- Do NOT sign any documents handed to you by the officials before the lawyers have checked them.
- Do NOT speak with the officials about the content of the case without the lawyers being present; only answer general and factual questions. In the case of complex questions, ask for time to give an answer in writing or at a later time.
- Do NOT make any assumptions or speculations and do NOT express any personal opinions.
- Do NOT give any information on things that you do not know exactly or that you cannot remember precisely.
- Do NOT give out any documents or information that have not been requested.
- Do NOT communicate with others inside or outside of Arbonia about the search.
- Do NOT MAKE ANY CONFESSION!