

1. Overview

Competition and antitrust law regulates fair, undistorted competition.

Accordingly, conduct that restricts competition is prohibited.

Examples of conduct that may restrict competition include

- Unfair agreements between competitors
- Unfair agreements with customers or suppliers

Antitrust laws exist almost everywhere in the world.

Antitrust investigations may result in dawn raids.

Leniency programmes offer an incentive to cartel members to report illegal practices to the antitrust authorities.

2. Consequences of antitrust violations

Possible government sanctions include

- Fines for the company involved of up to 10% of the group's annual turnover; and
- Fines and penalties for the individuals involved; and
- Invalidity of "infected" contracts

Other possible consequences include

- Damage claims from customers and competitors; and
- Loss of reputation and business value; and
- Claims for damages against employees of the company involved

3. No restrictions on competition

Agreements with competitors that restrict competition are strictly prohibited; therefore, no confidential information may be exchanged with competitors on the following points

- Prices and other terms of contract
- Customers or territories
- Production or capacity utilisation
- Costs or margins
- Business strategies

4. No coordinated behaviour

A cartel does not require a formal or even written agreement; informal coordination is sufficient; even passive participation in the meetings described below can be critical if anti-competitive matters are discussed. In order not to infringe competition law in this respect, special care must be taken when communicating with competitors, e.g. in the case of

- Association meetings
- Trade shows and conferences
- Casual lunches or dinners
- Personal relationships or friendships with competitors
- Unplanned and impromptu meetings

5. No direct or indirect agreements

Direct agreements that restrict competition are prohibited. However, this also applies to indirect agreements, which can take the form of exchanges of competitively sensitive information, e.g. by providing or exchanging information on unpublished business strategies (for example Competitor A stops producing product X, but does not publish this fact. Competitor B learns of this through "inconspicuous leaks" from within competitor A. Competitor B then increases its efforts in the production of product X and "in return" stops the production of product Y, of which competitor A now wants to produce more.)

6. Leniency programme

A "leniency programme" is a programme run by the competition and market authority to encourage members of a cartel to report anti-competitive behaviour. In return, they may be granted immunity from prosecution or a reduction in fines. Only the first person to report the issue will be granted full or partial immunity from prosecution by the authority.

In order to benefit from any leniency programme, it is particularly important to seek specialist legal advice at an early stage.

7. Doubtful cases

In cases of doubt in the area of competition and antitrust law, KESSLER should seek legal advice from the company lawyer or an expert in competition and antitrust law.