Fair Competition Manual

How We Conduct Business Worldwide

armacell®

MAKING A DIFFERENCE AROUND THE WORLD

Policy Statement on Fair Competition

Competition is the economic process at the heart of all free markets. It promotes efficient allocation of resources and stimulates innovation. It challenges us to continuously improve. Over time, competition created sustainable value for successful enterprices, their customers, employees and stakeholders. Armacell believes in and supports fair competition as a core value in how we conduct business worldwide.

As a Group, and in line with our Code of Conduct, the policy of Armacell is to respect and comply with laws aimed at protecting fair competition wherever we do business.

"We respect the rules and principles of fair competition!"

Armacell Code of Conduct

You must observe this Fair Competition Manual ("**Manual**") at all times, as well as comply with applicable competition laws wherever you do business.

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Introduction

1. Statement

We want to be successful in our business whilst respecting the rules and laws of fair competition.

2. Purpose

The purpose of this Manual is to inform you about the basic principles of competition and antitrust laws, in order to make you aware of how these must affect your individual behavior in making commercial decisions.

"I didn't know it was illegal" is not acceptable to Armacell or competition authorities.

However, this Manual cannot cover all possible facts and circumstances nor all competition laws and rules, which may evolve over time. In every case of doubt or if you have any question, you should contact your line manager or, if appropriate, legal affairs for advice.

3. Competition law

Most countries have competition laws, although they may regulate competitive behavior differently. Those countries which have not yet adopted a competition law or which are about to amend their existing legal competition framework usually model their competition laws after the EC competition or the US antitrust laws. Consequently, this Manual intends to focus on the main requirements of the EC competition and of the US antitrust laws.

3.1
EC competition law

The principal provisions of EC competition law are found in Articles 101 and 102 of the Treaty on Functioning of the European Community (EC). EC competition law applies to all companies doing business within the member states of the European Union (EU) or which may affect trade between the member states of the European Economic Area (EEA), regardless of whether these companies are established in one of these countries or not. In addition to EC competition law, national competition law of those EU member states affected by the allegedly illegal behavior may apply.

3.2
US antitrust law

US antitrust law is contained in three federal statutes: the Sherman Act, the Clayton Act (also as amended by the Hart-Scott-Rodino Act) and the Federal Trade Commission Act. These laws apply to all companies and individuals doing business in the United States or affecting US commerce.

3.3 National
competition laws

All applicable competition laws must be followed when doing business in any country. You should contact legal affairs for any clarification.

4. Application of competition law

In general, competition laws prohibit unreasonable restraints of competition regardless of where a restraint may have originated. Thus, violations can occur if your activities unlawfully affect a given jurisdiction (e.g. USA or EU), even though the activity takes place elsewhere.

Be aware of the applicable competition laws and rules wherever and whenever you are doing business.

5. Consequences of violations

5.1
In general

Violation of competition laws may result in severe sanctions for the individuals involved and high fines for the company.

Moreover, those who suffer damages as a result of anticompetitive behavior may be able to recover them from the infringing company or an individual.

Furthermore, investigations into the business and, especially, findings of violations will attract adverse media coverage and damage the company's (and the Group's) reputation seriously.

Investigations and legal proceedings resulting from violations can take years to resolve, run up significant expenses and take up management time.

5.2
In the EU

The European Commission can impose fines of a maximum of 10% of the annual worldwide turnover according to the severity and the duration of the violation.

5.3
In the USA

Violations of the US antitrust law may lead to fines and prison terms for those involved.

For a violation of US antitrust law, a company may also be subject to very substantial fines in the amount of millions of USD.

Successful plaintiffs in antitrust lawsuits are entitled to triple their damages ("treble damages") plus attorney fees.

Violating competition laws results in severe consequences.

5.4
Dawn raids and leniency programs

In many countries, competition authorities may conduct unannounced visits at private and/ or business premises to verify compliance with competition laws ("dawn raids" or "adminis trative searches"). During such visits, competition authorities may be authorized to seize physical, electronic information and data carriers, interview employees and generally collect evidence with the view to a prosecution.

In many countries, competition authorities have put in place leniency programs that offer either full immunity or a significant reduction in the penalties that would otherwise be imposed for participation in a cartel, in exchange for the freely volunteered disclosure of information to the authority. When considering this option, you should liaise with legal affairs.

6. Your responsibilities

Compliance with applicable competition laws by you and your staff (if any) is your personal and professional responsibility.

You must refrain from engaging in practices that violate competition laws.

You are responsible for acquiring a sufficient understanding of applicable competition laws and recognizing situations which may involve competition law issues.

Non-compliance with this Manual and applicable competition laws is a serious offence and you may be subject to disciplinary sanctions including termination of your employment.

Should you acquire information that competition laws are being, or may have been, violated you must disclose such information to your line manager or, if appropriate, to legal affairs. There will be no retaliation or penalty for such reporting.

Anticompetitive Agreements

Competition rules require a company to make its business decisions independently of competitors. Consequently, in the EU, all agreements or understandings which have as their object or effect the prevention, restriction or distortion of competition are generally prohibited. Similarly, the US Sherman Act prohibits contracts, combinations or conspiracies that unreasonably restrain trade. Not only are written agreements deemed to fall within the scope of competition law, but also verbal agreements or so-called "concerted practices", i.e. deliberate and intended collaboration between individual companies for the purpose of eliminating or restricting competition.

The form of agreement is irrelevant.

Restraints of competition are divided into two types: horizontal and vertical restraints.

- Horizontal restraints are agreements or coordinated policies restricting competition between companies operating at the same market level (e.g. agreements with competitors).
- Vertical restraints are agreements or coordinated policies between companies operating at different market levels (e.g. agreements with distributors, customers, licensees, suppliers, licensors or other such partners) that restrict the competitive freedom of the partners or third party companies.

7. Horizontal agreements

Agreements or coordinated policies between competitors which affect the terms on which they do business raise the most serious competition law concerns. The following general principles should be considered in connection with any dealings with competitors:

7.1 Prices and other business terms and conditions

Every company is free to establish and change its own prices, and in doing so, it may take account of the conduct of its competitors. You are also free to use publicly available market information, including information published by competitors. However, it is unlawful to agree or cooperate in any way with competitors to fix or stabilize prices and/or other trading conditions.

Do:

- make decisions about pricing unilaterally[4] and adequately document your pricing calculations and decisions;
- seek information from your customers and/or the market.

Do not:

- jointly determine minimum or maximum selling or purchase prices, price increases or price ranges;

- discuss, negotiate or enter into any agreement or exchange or indicate information with a competitor that has anything to do with pricing, price elements, cost structures or other business terms and conditions (including rebates, discounts, price changes or methods of calculating prices);
- agree or even discuss any aspects of pricing or other business terms and conditions with competitors.

7.2
Market sharing

An agreement among competitors to divide, share or allocate markets, whether by product, output, territory, type or size of customer, or in any other form, is forbidden. More specifically:

Do:

- make decisions about territories, output and customers unilaterally.

Do not:

- share or allocate markets between competitors in respect of specific territories, lines of commerce, products, customers or sources of supply;
- reach an agreement or understanding with competitors to the effect that each party will refrain from or restrict sales (including exports) into the other parties' "home" territory;
- discuss or agree with a competitor joint efforts in order to curb imports, especially low-price imports;
- fix production, buying and selling quotas between competitors;
- limit or control production or investment between competitors;
- arrange any market allocation with competitors.

7.3
Collusive tendering
("bid rigging")

It is an essential feature of tendering procedures that prospective suppliers should prepare and submit tenders or bids unilaterally. Accordingly, any coordination of this process is likely to be illegal.

Do:

- **make decisions on how to bid unilaterally.**

Consult legal affairs:

- when considering to offer a joint bid with your competitor or to create a bidding consortium. Under certain circumstances (e.g. insufficient individual capacities, substantial benefits for customers, etc.) such bidding consortia might be legal.

Do not:

- exchange information with competitors (including through a trade association) on whether and how your business intends to respond to an invitation to tender;
- discuss with competitors (even those that you supply) how your business will bid.

7.4
Information sharing

a) Exchange of pricing information

Enforcement authorities consider the regular and systematic exchange of specific pricing information (especially if related directly to prices or to elements of pricing) between competitors as likely to lead to coordinated anticompetitive market behavior and thus, as illegal.

b) Exchange of other market information

The exchange of information on competition-sensitive matters other than pricing (e.g. sales or cost figures, market share information, production output, production capacities, investments) may also affect competition and be illegal depending upon the type, details and topicality of information exchanged.

c) Collective market information systems

The establishment of a collective market information system (e.g. via a national trade association) may be lawful, especially if i) the information exchange is opened to all interested parties, ii) the information provided is processed by a body independent from each submitting party (e.g. third parties or adequate Chinese walls), iii) the individual information provided by each submitting party is kept secret from the other parties and iv) the information reported back to the submitting parties is only available in aggregated form (and does not allow to draw inferences in relation to individual plants or companies). Furthermore, the actuality of the information is decisive for the legality of its exchange[6].

d) Communication to market

A further difficult issue is the unilateral communication of current prices to the market. Please consult with your legal counsel when communicating business sensitive information to the market. However, be aware that each company remains free to independently distribute its price lists to its current or potential customers.

Do:

- set up your own market intelligence to gather information about the market;
- keep your current and future customers informed about your prices, terms and conditions, new products, new applications; this also applies to competitors, which are customers at the same time.

Consult legal affairs:

- when considering practices or information exchanges that involve competitors;
- when considering to provide (even merely historical) information to a collective market information system;
- before publicly announcing a general change in the pricing trend (e.g. major price increase) to the market.

Do not:

- share sensitive market information (e.g. prices, discounts, sales figures, market share information, production output, production capacities, investments) with competitors.

7.5 Boycotts

The refusal by a group of competitors to deal with one or more customers or suppliers in order to hinder such customer's or supplier's ability to do business in a market is strictly prohibited.

Do not:

- agree with competitors not to supply certain customers or not to purchase from certain suppliers;
- agree with a customer not to supply another customer;
- agree with competitors to make the supply to or purchase of goods from third parties subject to certain mutually agreed conditions.

7.6
Horizontal cooperation agreements

It is important to appreciate that there may be circumstances in which companies operating at the same market level enter into cooperation agreements with one another that can have lawful economic benefits. Competition law does not prohibit all horizontal agreements outright because efficiency gains may follow from cooperation which are sufficient to outweigh the negative effects of a restriction of competition. Consequently, there are several different types of horizontal cooperation agreements (even between direct competitors) that competition authorities may consider lawful. However, the competitive impact of such horizontal cooperation has to be assessed on a case-by-case basis.

Consult legal affairs:

- before entering into negotiations with a competitor (or any other undertaking) on a future cooperation, inter alia, in the following areas:

  - selling (or the establishment of joint selling syndicates or bureaus);
  - bidding (or the establishment of bidding consortia in tender proceedings);
  - advertising/marketing;
  - supply (or swap agreements with competitors);
  - purchasing (including joint imports);
  - production (including joint production, toll manufacturing, specialization and subcontracting agreements);
  - transport;
  - stockholding;
  - research and development;
  - technical standards.

7.7 Trade associations

Joining a trade association where competitors meet is not in itself prohibited. However, any meetings or other activities that involve sharing of sensitive business information among competitors can raise antitrust concerns (see 7.4). Accordingly, the activities of such associations must be carefully monitored and, if appropriate, cleared by legal affairs. Also, contact legal affairs before becoming a member of a trade association or providing information (e.g. sales information) for the purpose of preparing joint statistics.

Do:

- require a clear agenda before taking part in any trade association meetings;
- ensure that the discussions during the meeting stick with the agenda provided and that the minutes of the meeting reflect all subjects discussed and only the subjects discussed;
- leave a trade association meeting in a case where non-compliant subjects (e.g. schemes to reduce or restrict competition) are discussed and ensure that the meeting's minutes reflect the fact that you left the meeting;
- only take part in official trade association meetings and avoid unofficial events at the fringe of such association meetings.

Consult legal affairs:

- before exchanging industry best practices within a trade association;
- before carrying out joint market research through a trade association;
- when agreeing on joint petitioning, government relation matters and similar topics within a trade association.

Do not:

- share specific and detailed information about prices, rebates, discounts, conditions of supply, profit margins, cost structures, calculation practices, distribution practices, market shares, territories, customers, etc. during meetings of a trade association;
- participate in any vote, which has as its purpose the exclusion of any member of the industry from participation in the trade association, in the markets the trade association covers or any of its activities;
- exchange competitively sensitive information with competitors.

8. Vertical agreements

Vertical business partners include for example distributors, customers, licensees, licensors and suppliers.

You may differentiate between customers who do not have similar transactions with you. Such differences shall occur on a fair, defensible and consistent basis, especially when such customers require differentiated services.

There are also situations, where you may enter into an agreement with a competitor as a supplier or customer (vertical). In such a case, deal with your competitor always at an arm's length basis and always limit the discussion/information exchange to the supplier/customer relationship. In other words, leave out any information on other products/markets.

With respect to agreements with vertical business partners, the following principles should be observed:

8.1 Resale price maintenance

A supplier must not set the resale prices charged by its distributor.

Do:

- independently conduct regional/local price surveys.

Consult legal affairs:

- before making a non-binding price recommendation for resale prices of branded products. Mark all statements of resale prices as "recommended resale prices";
- before inviting your distributors to comply with maximum resale prices;
- before concluding an agency agreement (as more freedom to determine retail prices may be granted).

Do not:

- fix or set a minimum resale price or rebates or discounts or the distribution margin to distributors or dealers for any product;
- terminate the agreement with a distributor because of its refusal to adhere to the recommended resale prices8;
- link the resale price to the resale price of your competitors.

8.2 Competition clause

Under certain circumstances, it may be possible to forbid a distribution partner or licensee to sell or manufacture competing products.

Consult legal affairs:

- before forbidding the manufacture or sale of competing products during the term of the agreement.

Do not:

- forbid the manufacturing and selling of competing products beyond the term of the agreement.

8.3 Other resale restrictions	The following restrictions are also likely to be considered illegal: • imposing a prohibition on the resale of a certain product, a restriction on the resale to certain customers or a restriction of resale territories as these may lead to the allocation of markets; • imposing import or export restrictions as this is usually designed to prevent parallel trade, to allocate markets and to artificially protect different price levels in these markets[9]; • jointly implemented measures between a producer and a dealer or distributor aiming at limiting parallel trade.
Consult legal affairs:	• before imposing any resale restrictions on your distributors / customers.
Do not:	• impose on your distributors / customers a general prohibition to resell your products; • restrict your customers in relation with whom to supply; • impose import or export restrictions; • impose an obligation on your customer (distributor) to refer orders received from customers in certain territories to other suppliers; • prescribe to your customer (distributor) not to export the product upon a customer's enquiry from outside the territory ("passive" sales)[10]; • refuse orders from customers (distributors) exporting the products with the argument of territorial restrictions; • make the allocation of supplies to a customer (dealer or distributor) dependent on the customer's promise not to resell or re-export the products.

8.4
Exclusive dealing arrangements

Exclusive dealing arrangements encompass, for instance, the following:

- selective distribution: where the supplier agrees to only supply specified, approved distributors who in return agree to sell only to end users of other approved distributors;
- exclusive distribution: where the supplier agrees to sell only to one distributor for resale in a particular territory; the distributor is usually restricted from actively selling into other territories;
- exclusive purchasing or dealing: where the reseller agrees to purchase all products or substantially all (≥ 80%) in a certain category from only one supplier may be anticompetitive and, accordingly, illegal depending upon the circumstances of each particular case.

Do:

- encourage "most favored" supplier status (not exclusionary) treatments by customers by offering promotional rebates or additional services (e.g. exclusive "in store" display or external signage).

Consult legal affairs:

- before entering into any exclusive dealing arrangements.

8.5
Intellectual property rights

There are specific competition law provisions relating to the licensing or assignment of intellectual property rights[1]. This is a very complex legal area. Such licensing and assignment agreements can usually be made competition-law-compliant but require careful drafting by legal counsel to avoid violating competition laws.

Dominant Position

Companies in a dominant market position must pay special attention to some additional competition law principles.

The mere fact of being dominant is not illegal. Abusing such a dominant market position is, however, illegal.

Consequently, the EC competition law prohibits the abuse of a dominant position and, in the USA, the Sherman Act prohibits monopolization, attempts to monopolize and conspiracies to monopolize.

The larger the market share, the more careful a company must be conducting business, particularly as to how its actions affect its competitors and customers.

Definition of dominance

To determine whether a company is dominant its relevant market needs to be identified. "Relevant market" means the relevant **product** market and the relevant **geographical** market. As a rule, products belong to the same product market if they are "reasonably interchangeable" in terms of price, use and characteristics. The geographical market is defined as the area where there are the same or comparable conditions of competition.

Once the relevant market is defined, it shall be assessed whether the company is dominant in such market. Among possible proxies for such an assessment, market shares are one of the favorite. Any market share exceeding 40% is often a strong indication of a likely dominant position. However, in certain circumstances, a company with a substantially smaller market share may also have a dominant position.

As a rule of thumb, in the EU, a market share above 40% indicates a dominant position, a market share below 20% is unlikely to lead to a finding of dominance. Between 20–40% market share, the likelihood of a dominant position will depend on circumstances.

9. What is collective dominance?

Collective dominance may occur, where:

1. a small number of companies together hold market shares which, if held by one company alone, would make this company dominant;
2. if such companies are linked in such a way that they adopt the same conduct in the market; and
3. there is a lack of effective competition between the companies.

This concept is premised on the fact that a few firms acting the same way have such economic strength that they can act independently of their customers or lesser competitors. Please be aware that competition laws can also encompass abusive behavior by companies in these situations, even if the relevant "abuse" is practiced by only one of the collectively dominant companies.

11. Abuse of a dominant position

Practices of abuses of a dominant position can be categorized as following:

- exclusionary practices position (i.e. those practices which seek to harm competitors or to exclude them from the market altogether); and
- exploitative practices (i.e. those practices which involve the dominant company using its dominant position to harm customers or suppliers directly)[14].

11.1
Exclusionary practices

a) Imposing exclusive purchase commitments on customers

Dominant companies are usually not permitted to substantially restrict the access of competitors to customers or dealers by imposing exclusive purchase obligations on their own customers or dealers.

b) Unfair or predatory pricing/dumping It is not allowed for a dominant company to impose unfair prices on its customers and to charge prices that are lower than a certain cost threshold determined by applicable competition laws (e.g. "average variable cost", above "variable cost" but considerably lower than "average total cost" with the aim of eliminating a competitor or "average avoidable cost") etc.

Consult legal affairs:

- in case of sales by your competitors at below costs (dumping prices);
- in case you are selling products below production costs.

Do not:

- impose unfair purchase or selling prices.

c) "English" clause

It is not lawful for a dominant company to enter into an "English" clause, which prohibits the other party from purchasing from a competitor of the dominant company if it has not previously informed the dominant company of the name of the competing seller and the quantities and prices agreed upon.

Do not:

- agree on an "English" clause obliging the customer to disclose names and prices of competitors.

d) Refusal to sell

Under the laws of many countries, a refusal by a dominant business to supply a customer who has no realistic alternative sources of supply is an abuse of a dominant position if no objective justification ("good business reason") for the behavior can be provided.

Do:

- only refuse to sell to a new customer because of insufficient capacity[16].

Consult legal affairs:

- if you intend to refuse to sell to an existing or new customers for a good business reason.

Do not:

- refuse to sell to a customer that meets the same requirements as other customers which are supplied[16];
- reduce supplies to comparable customers in different ways without objective justification[16].

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e) Fidelity rebates and rebates with similar effects

Rebates, discounts and similar pricing practices are a normal part of commercial life. They are therefore only condemned where they could have a detrimental effect on competition. Where such rebates can be objectively justified, there is no abuse.

As a general rule, quantity discounts linked solely to the volume of purchases, fixed objectively and applicable to all purchasers and for each product, are usually permissible. Discounts granted for prompt payment are also usually regarded as objectively justifiable.

The following types of discounts offered by a dominant company are, *inter alia*, generally prohibited:

- fidelity (loyalty) rebates: where discounts depend on retaining all or part of a customer's business, thereby discouraging the customer from placing business with a competitor;
- target rebates: where discounts are only offered to customers that achieve sales targets set by the dominant firm (individually and selectively) for each customer (often in excess of their purchases in the preceding year);
- aggregated rebates: where discounts depend on buying all of (or part of) various different products offered by the dominant firm.

Do:
- set up uniform quantitative rebate schemes that are applied to all customers in a non-discriminatory manner and which can be objectively justified (e.g. cost savings).

Do not:
- grant forfeitable fidelity and target rebates to any of your customers;
- grant aggregated rebates on the overall turnover reached with the supply of goods belonging to different product groups.

11.2
Exploitative practices

a) Discrimination/different sales conditions

A company with a dominant position must not discriminate with its sales conditions when dealing with similar customers in competition with each other and under comparable circumstances.

Do:
- grant different sales conditions (rebates) to distributors providing special services that are not met by other distributors;
- grant different sales conditions to distributors in different segments (wholesalers – retailers) as such distributors are usually providing different services.

Do not:
- grant different sales conditions (prices, rebates) to distributors or customers meeting the same requirements.

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b) Tying

Tying clauses, which make the supply of a product subject to the buyer's agreement to buy other goods and/or services that, either by their nature or according to commercial usage, are distinct products, shall generally not be used, especially not by a dominant company[17].

Do:
- enable customers to buy products separately even though they are related in their usage.

Do not:
- make the supply of the product conditional upon the obligation to buy other products of another nature and/or to enter into a service agreement for any kind of service;
- offer special rebates to specifically induce the buyer to also purchase all or part of its requirements for a second product from you.

Intracorporate Agreements

Agreements between controlled affiliate companies do not, in principle, fall within the scope of competition laws. Therefore, this Directive does not apply to dealings between a company and its parent company, its affiliates or sister companies.

Consult legal affairs:

- before concluding a potentially anticompetitive agreement with a company which is not fully controlled by an entity of the Armacell Group (less than 100% shareholdings).

Documents

It is not prohibited to originate and maintain internal records, notes (e.g. about a telephone conversation) or other documents which in the future may help to reconstruct developments and/or provide proof if needed. In general, internal files are a valuable source of information.

However, internal documents can sometimes be misleading if they are not carefully drafted or if they are incomplete. This can be true, especially, if internal documents are interpreted out of their context or isolated from other conclusive documents and a misunderstanding or even misinterpretation of the particular document can occur. This is especially true with e-mail correspondence which is sometimes written without applying the necessary care to the wording.

Apply the necessary care when originating letters, notes or e-mails.

To avoid possible misunderstanding by outside parties (including authorities who, in some instances, may be inclined to read a particular interpretation into a document which was not intended), observe the following do's and don'ts whenever you originate a businessrelated document:

Do:

- whenever you write something down, remember that it could be made public at any time or used against you or your company;
- clearly state the source of any price or market information (so it does not give the false impression that it came from competitors).

Consult legal affairs:

- before putting anything on paper, disk or e-mail, if you think that the matter you are about to address may involve a sensitive topic. Consider if you need to write it down at all.

Do not:

- give the impression that a customer is getting special treatment without proper justification;
- use power or domination vocabulary (for example "We will control the market after this" and "We have now virtually eliminated the competition");
- use improper vocabulary (for example "Please destroy/delete after reading");
- write anything that implies that prices are based on anything other than independent business judgment or publicly available information.

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