verallia

PRACTICAL GUIDE

Compliance with **competition law**

September2017

Introduction

Compliance with competition law is a principle which has always guided our activities and is a value that we all share. We have re-affirmed it as a fundamental principle in Verallia's Code of Conduct and Action.

I kindly request you to continue with your personal undertaking. Please ensure, under all circumstances, the integrity of all your activities and those of your professional teams, by complying, notably, with the rules of competition law and of our Code.

A breach of competition law is an act which makes all employees liable vis-à-vis Verallia and the community. It puts the operations, reputation and financial position of Verallia and thus the survival of our company in grave danger.

Please read carefully the following pages and continue to strictly implement the instructions set out in this guide. Do not hesitate to contact your legal departments should you have any questions or should you require additional information.

I place my trust in you regarding your continuing professional and personal undertaking in this regard.

Michel Giannuzzi
Verallia Packaging Chairman

Why should I **comply** with competition law?

Verallia's Code of Conduct and Action requires compliance with law and in particular with competition law.
While the employees of the Group may already be aware of good practice in this area, it is of the utmost importance that we pursue our efforts, since competition law is complex and gives rise to new risks.

Read this guide carefully
and apply it on a daily basis.
If you have any question or doubt,
do not hesitate to contact
your legal department.

Complying with competition law means:

Not exposing the Group to risks

1 Breaching European competition law amounts to putting the Group at risk of being sentenced to pay a **fine** of up to **10% of its worldwide turnover**.

2 In the event of a **repeated infringement**, the fine may be increased by **100%** for each infringement.

3 The majority of **emerging countries** have adopted competition law rules and have imposed increasingly significant fines in the event of infringements of these rules.

4 The clients, competitors and commercial partners of the Group can claim **damages**. In this context, the Group may be ordered to pay particularly significant damages, which may exceed the amount of fines.

Some examples

*The D**1.06 billion** record fine imposed by the European Commission on Intel.*

*The D**715 million** fine imposed on Saint-Gobain in the automotive glass sector by the European institutions.*

*The D**350 million** record fine imposed by the French Competition Authority on Orange in December 2015.*

Example in France, in the telecoms sector
- *A D**117.4 million** fine*
- *Damages of D **790 million.***

Do not expose yourself personally to risks

1 Breaching competition law means that you run the risk of being ordered, in your personal capacity, before French courts, to pay a **fine** of up to D75,000 and 4 years of **imprisonment**

2 In the United States, individuals who have participated in an anticompetitive agreement expose themselves to 10 years of imprisonment and/or to a fine up to $1 million.

3 A European national may be extradited to other countries and ordered to serve a term of imprisonment there.
For instance: A British national employee of British Airways was extradited to the United States and was convicted for taking part in an anticompetitive agreement in the sector of air freight. He was imprisoned in the United States.

Us
and our competitors

What competition law prohibits and what I must absolutely remember

Healthy competition means that each party takes its commercial decisions on its own, without consulting its competitors. Contact with competitors is by nature risky and must be restricted to a minimum.

The following subjects must never be discussed or exchanged with competitors

- **Prices** or any reference to the concept of price (price increase and decrease and the period of application thereof, other items which make up the price, such as discounts, margins, etc.).
- [redacted]
- **Production capacities** and any or all references thereto howsoever (opening/closing of new factories, maintenance of an oven, etc.).
- **The allocation of geographical areas, of customers, markets and suppliers** (the allocation of sales areas, the limitation of sales to reserved areas or clients).
- **Responses to calls for tender** issued by a client (the sharing of important information and the allocation of markets).
- [redacted]
- And less specifically, **the commercial strategy** (promotions, marketing plans, launch of new products, etc.).

Do not collect information regarding competitors other than by means of public sources and always specify the source of the information.

How shall I behave with our competitors?

Generally speaking, avoid all contact with competitors.

If you should have cause to meet them at trade fairs, at meetings held by suppliers or by clients, by taking part in a trade association, etc., be vigilant and do not bring up any commercial topic.

Keep in mind that competition law also applies to informal meetings (dinners, lunches, encounters in hotels, etc.).

Trade associations

- Never join a trade association without the prior consent of your line manager.

- Never go to a meeting which does not have a predetermined agenda.

- If discussions focus on sensitive topics, request cessation thereof. If they continue, leave the meeting. Ensure that the minutes of the meeting mention your statements and your departure therefrom.

- **What if I am working on standards of the profession**: it is important that the standards created be justified objectively and not be determined in order to exclude a specific competitor or a new player in the market. Working groups' membership must be as open as possible and accessible to all competitors present in the market.

N.B.: The dialogues and the situations which feature in the Practical Guide are fictitious. They are just examples which illustrate the content of the Practical Guide.

What shall I do if I am contacted by a competitor?

Situation 1. **Email from a competitor to an employee of Verallia**

"Hi,

I work for Saverglass, we met at a trade fair last month. I was very interested in your new products and I wonder if maybe we can meet to discuss our respective marketing activities."

Recommendation – I contact the legal department to prepare a written reply stating that I cannot follow up on the request.

How shall I behave during public events, such as exhibitions and trade fairs?

Situation 2. **Discussion between an employee of Verallia and an employee of a competitor at a trade fair** *"We have decided to no longer do business with the supplier Gamma, it's not working out for us. Besides it is what a lot of manufacturers are going to do."*

The following day, by email: *"Hi, further to our discussion yesterday, please find attached the termination letter which we sent to the supplier Gamma. You can make use of it if you also plan to no longer do business with that supplier."*

Recommendation – I must send back the email to the addressee and indicate that I do not want to receive that type of information since it is commercially sensitive information and that one is free to choose its commercial partners. I must keep a record of my reply.

How shall I behave with regards to trade associations?

Situation 3. **A phone call between two employees of Verallia**

P. "Hi, how are you?"

R. "I'm fine, thanks. I've just come back from a meeting of a glass packaging trade association. We explored the topic of developing a standard for glass bottles with a special colour and with a volume of 85cl."

P : "Well done, it's exactly what we've already been doing and on top of that we are the only company doing it! So, right, the Spanish will not be able to expand."

Recommendation – Trade associations should never act as a front for an anticompetitive agreement between competitors to allow them to maintain or increase their market share, and exclude competitors from the market. Therefore, I reply that a standard laid down by a trade association must always be objective and justified and that I do not want to continue the conversation.

What shall I do during negotiations prior to acquisitions?

Situation 4. **The Group is planning to acquire a competitor**

In the context of such a plan, the negotiation team in charge of the acquisition will get access to information relating to the competitor.

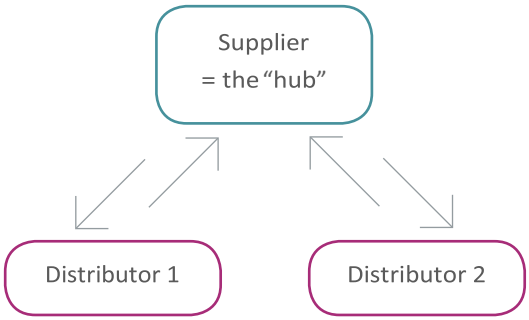
Recommendation – The commercially-sensitive information in relation to the competitor should only be disclosed at the final stage of the acquisition process and exclusively to members of a dedicated or "clean team" (who are part of the negotiation team but who do not carry out commercial duties and who shall be subject to a confidentiality obligation). Please contact the legal department to get information regarding the precautions that must be taken with regard to exchanges of information as soon as you are aware of such a project.

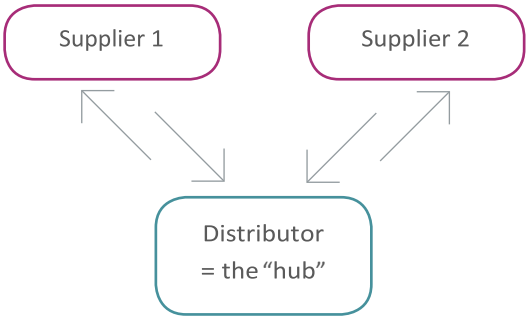
What's new and what I should be aware of

Exchanges of information of a strategic or commercial nature with competitors via a third party

Hub-and-spoke

We speak here of the **recurrent and unjustified** exchange of commercially sensitive information between competitors, not directly but via a third party, which may be a distributor or a supplier.





Between Distributor 1 and Distributor 2

- Distributor 1 provides information to the Supplier **with the intention** that the information be forwarded to Distributor 2;
- Supplier provides the information to Distributor 2;
- Distributor 2 **knows** that the source of the information is Distributor 1.

Between Supplier 1 and Supplier 2

- Supplier 1 provides the information to the Distributor **with the intention** that the information be forwarded to Supplier 2;
- The Distributor forwards the information to Supplier 2;
- Supplier 2 **knows** that the source of the information is Supplier 1.

What shall I do when a client gives me information on competitors?

Situation 1. **Email from a client to an employee of Verallia**

"Hi,

Thank you for your sales proposal. However, your competitor Omega has just made me an offer but 5% less expensive. What can you offer me from your side?"

Recommendation – Receiving this type of information is part of sales negotiations. The client is "using competition" as a bargaining tool to get a lower price.

Situation 2. **Phone call from a client to an employee of Verallia**

"Hi,

How are you? I quickly need your price increases for top-end wine bottles. For your information, your competitor's increases are 5%. It would help me if you went the same way... it would allow me to standardise my own price list vis-à-vis my clients. And then we can negotiate..."

Recommendation – I disclose my sales policy to the client and I reply that Verallia sets its prices alone and freely, without ever coordinating with its competitors or its clients. Otherwise, my client would act as a hub for an exchange of information between Verallia and its competitor.

Price signalling

This consists of informing competitors in advance of my future business strategy without getting in contact with them, but through public announcements or letters announcing general price increases which are sent to clients.

This is a delicate practice since it relates to perfectly legal day-to-day commercial activities.

What shall I do?

- Ensure that announcements of price increases in advance are really necessary.
- If this is the case, use individualized (with the name of the client and its address), confidential and targeted (per product) letters.
- Ensure that the period between the announcement of the price increase and the implementation of it is as short as possible (one month, for instance).

Us,
our clients and the market

What competition law prohibits and what I must absolutely remember

Our relationships with our clients and our suppliers can also affect competitors and the market.
As previously explained, our clients and suppliers often receive confidential information concerning our competitors and it is important to ensure that they neither become a source of information regarding our competitors, nor a way of affecting them.
It is thus particularly important that our commercial decisions take this into account and in particular that the independence and autonomy of our suppliers and of our clients be respected.

Relationships with our suppliers and our clients

Practices to be banned with regard to our suppliers

- **Do not enter into exclusive agreements** (in other words contracts which force a supplier to only sell to the Group) **before consulting the legal department.**
- **Avoid encouraging our suppliers to terminate contracts that they may have with our competitors.**
- **Refrain from all acts which deprive a competitor of a source of supply.**

Practices to be banned with regard to our clients which distribute our products

- **Do not impose a resale price on them.** As a supplier, we can make resale price recommendations or communicate a maximum resale price. However, we do not have to check the price ultimately applied, nor can we impose sanctions if the client charges a price which is different from the recommended price.

How can Verallia act in relation to its clients as regards prices?

Situation 1. **Email sent by an employee of Verallia to a colleague**

"Hi,

I see that the distributor Alpha has not applied the resale price which we recommended to it. What do you think we can do to have him follow our recommendations?"

Recommendation – A client must be free to determine its own commercial policy in line with its strategic choices. If you impose a price on several wholesalers and/or retailers, you are contributing to restricting competition in the distribution of the products. Also, if you put pressure on our clients in order that they apply a "recommended" resale price, this shall be deemed equivalent to imposing a resale price.

What competition law prohibits and what I must absolutely remember

Abuses of a dominant position

Abuse of a dominant position takes place when a firm:

- **Is in a dominant position** in a given market (there is no strict rule, but in general it can be considered that a risk of a dominant position exists when a firm's market share exceeds 40%) and
- **It has abused** its market power whereby it can gloss over the behaviour of its competitors and clients.

To determine its market share, one needs to identify:

- The relevant **product** market, which comprises substitutable/interchangeable products and
- The relevant **geographic** market, which corresponds to the geographical area in which the products are substitutable/interchangeable with one another.

The main types of abuses include in particular:

Practices which exclude competitors

- **Exclusive supply or exclusive distribution agreements entered into with clients.**
- **Loyalty-inducing rebates which exclude competitors.**

Example: a volume/quantity rebate covering the majority of the needs of the client and which entails a "retroactive" effect (for instance, when the higher discount rate applies to the whole turnover of the client and not above a certain turnover threshold).

Exemple: a rebate in return for exclusive or almost exclusive supply of the client (equivalent to an exclusive supply obligation).

- **The application of artificially low prices** (with the aim of excluding a competitor).

Practices which exclude clients

Discriminatory conduct not based on objective criteria (treating similar clients differently).

- **Refusal to supply a client** (unless there is an objective reason for doing so, such as the fact that a client is a bad payer).
- *Example: refusing to sell our products to a client so long as the latter continues to get supplies from competitors.*

- **Tying** of products.

Example: imposing the purchase of product A to obtain product B if we have a substantial market share in the market to which product B belongs.

The application of excessively high prices (to abuse clients in a captive situation).

Generally speaking, this encompasses any practice which restricts the entry of new competitors into the market or which excludes actual competitors from the market.

It is not easy to determine whether a firm is abusing its dominant position.

Should you have any doubt, please contact the legal department, to identify the market in which you are operating.

What rebates can Verallia grant to its clients?

Situation 1. **Question from a business person**

"Hi,

Can I grant a significant rebate to one of my clients on the condition that it makes all of its purchases or at least the majority of them from us?"

Recommendation – No, Verallia must not grant this type of rebate. Insofar as possible, rebates granted to a client must reflect the economies of scale or costs from which Verallia benefits due to the volume of purchases concerned.

Is Verallia entitled to refuse to supply a distributor?

Situation 2. **Question from a business person**

"Hi,

Can I refuse to supply the client Epsilon? It has not placed any order with us lately."

Recommendation – It is important that Verallia can document the circumstances and the objective reasons which led it to refuse to supply a distributor. For example, the objective reasons justifying a refusal to supply a distributor can be insufficient stock of the product requested, the fact that a distributor has not fulfilled its contractual duties and also poor solvency; but certainly not a means to put pressure on a distributor so that the latter stops getting supplies from our competitors.

Who can I contact for any question?

Country	Contact person
France	Anne Conraux
Argentina, Brazil and Chile	Caroline Faleiros
Spain and Portugal	Beatriz Peinado Vallejo
Italy	Maria Chiara Balestri
Germany	Stefan Eich
Russia	Kirill Chudinov
Ukraine	Serhii Vasylenko