Kalle
KALLE GROUP

GUIDELINE ANTITRUST EU

Owner	Corporate Affairs
Purpose	The purpose of this Guideline Antitrust EU is to set out the basic competition law rules for the work of all employees of Kalle Group and to provide tips for risk-free conduct.
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The companies in the Kalle Group face intense competition. We are constantly competing with our competitors in respect of quality, innovation, prices and customers. Our customers benefit from this competition. It is very important to us that neither competitors nor customers breach the rules of free and genuine competition to Kalle Group's detriment.

It is even more important that we avoid the risk of breaching competition law ourselves. We protect the good reputation and integrity of the company by our exemplary conduct complying with the law. The business practice we follow is responsible and complies with the competition law provisions issued to protect competition in all countries in which Kalle Group is operating. All employees are requested to fully comply with these requirements.

Breaches of competition law not only contradict our understanding of free and fair competition but can also lead to considerable fines and demands for compensation filed against both our company and also against you, i.e. Kalle Group's employees. Therefore, all employees are requested to inform directly their superiors or Corporate Affairs of any breaches of competition law.

The purpose of this Guideline Antitrust EU is to set out the basic competition law rules for the work of all employees of Kalle Group and to provide tips for risk-free conduct. The policy is based on German and European competition law. Of course, this document cannot cover each individual case. In addition, statutes and rules can change from time to time. If you have any general questions or further questions in individual case, please do not hesitate to contact Corporate Affairs.

In general: Please ask rather once more than once too little!

A. What conduct is permitted/not permitted from a competition law point of view?

I. Conduct vis-à-vis competitors

Particular care with regard to competition law is required whenever you make contact with competitors. Concerted practices / coordination with competitors, but also loose agreements and even the simple swap of information with competitors can constitute breaches of competition law.

1. Concerted practices with competitors

Principle: **Companies must decide individually and on their own how they are going to act on the market that is without prior concertation with their competitors. Concerted practices with competitors distorting free competition breach competition law and are prohibited.**

- Competitors are all companies which do not belong to the Kalle Group and whose products or services are interchangeable with our own products from the point of view of the customer.

  TIP: *Rough rule of thumb on the question of whether products are interchangeable: Which products would customers switch to if the desired product were to become permanently 5 - 10% more expensive? Such alternative products are "interchangeable".*

  TIP: *In the event of any doubt, it is better to assume that there is a competition relationship just to be on the safe side.*

  Apart from actual competitors there are also potential competitors. All companies which could reasonably compete with us in the near future are our potential competitors.

  TIP: *Concerted practices with potential competitors are forbidden in particular if a market launch is to be prevented by the concerted practice.*

- Concerted practice can in principle be any conduct resulting from mutual consent or coordination.
  A concerted practice is not just committed when a legally binding agreement is concluded. The concerted practice does not need to be agreed in writing either. A purely informal, verbal, even wordless agreement is sufficient ("gentleman's agreement"). The sole requirement is that at least two persons agree a certain conduct or to coordinate themselves and thus knowingly substitute practical cooperation between them for the risks of competition

  TIP: *Even an informal discussion at an association meeting or at the hotel bar can constitute concerted practice.*

  TIP: *Do not confuse the violation of the law with the question of its provability! To illustrate: Just because there is no radar trap installed at a road junction does not mean that you are allowed to drive through the traffic lights when they are red. Similarly, an anticompetitive agreement does not become legal just because it was made orally.*

- **Restriction of Competition:** Concerted practices restrict competition if they distort free competition. Free competition is the competition which exists if each company is to determine its conduct itself.

  It is not necessary for the concerted practice to rule out competition completely. It is enough if the competition is distorted by changing normal competitive behaviour. Whether you intended to restrict competition is also irrelevant. It is sufficient if competitors act differently on the markets to the way they would have done without the concerted practice. In the case of particularly grave restrictions (see red box below) it is not even relevant whether the practice really affects the market. The concerted practice itself is forbidden and it is irrelevant if the other party observes this practice or if this practice has an effect on the market.

Illustrative Examples:

Not every concerted practice among competitors restricts competition. There are many agreements with competitors which are permitted. On the other hand, there are concerted practices with competitors which are clearly not permitted. Between the two there is a grey zone. It is not always easy to distinguish one from the other. The following (non-exhaustive) list can provide guidance:

NO	YES
Concerted practices with competitors with regard to the following are **always prohibited**: - Prices, price components and conditions (e.g. discounts, bonuses, rebates), - date or extent of price increases, - production or sales quantities, capacities or market shares, - allocation of customers, territories, business divisions, product lines, etc., - participation/non-participation in invitations to tender or concerting content of offers, - passing-on of certain external cost factors (e.g. raw materials prices or transport costs) to the customers. - Not supplying certain customers (so-called collective boycott) or preventing third parties from entering the market.	Concerted practices with competitors regarding the following **may be permitted**: - The mutual supply with products (crossover supply), - Cooperation with competitors, e.g. in the areas of logistics, purchase, marketing, R&D or production **As a rule**, the following is **permitted**: - Simple supply agreements with competitors, - Determining technical standards, types, etc. between competitors (e.g. in standardization committees of associations)

TIP: *In all cases which may (as a rule) be permitted a competition law review must be made in each case beforehand. Therefore, Corporate Affairs must be informed in advance in each case.*

2. Trade Associations / Exchange of information and opinion with competitors

Principle: In trade associations we meet competitors. Here we need to be particularly careful. Not only the concerted practices as described above are prohibited. **The mere exchange of information is prohibited under competition law if it leads to competitors adapting their conduct to one another or concert their market conduct.** Therefore, the exchange of information with competitors is critical if the information is usually confidential, relevant to the market and up to date. This also applies when attending trade association meetings. **You must not assume that "everything will be ok" just because it happens under the auspices of a trade association.**

- **Exchange of information:** Even a one-off exchange can be prohibited. Therefore, for an exchange to be prohibited it is not necessary that this exchange occurs regularly. The form of the exchange is also irrelevant. In addition, it is irrelevant whether the information was gained by email, in a bilateral meeting with the competitor or at association meetings, at trade fairs, from market information systems or benchmarking studies.

  Even the unilateral provision of information can constitute a forbidden "exchange" for example if a competitor discloses information to Kalle Group and Kalle Group accepts this information.

  TIP: *If a competitor gives you information about his company which is relevant for competition, turn down the offer of this information and explain expressly that you do not want such information. Do not write down or share the information and inform Corporate Affairs of the process.*

- **Restriction of Competition:** It is the view of the competition authorities that there is normally no justified reason for companies to provide their competitors with sensitive information. If they do so nevertheless, they are creating the basis for a concerted practice between the competing companies. If the company knows for example which price increases its competitor is planning it can react thereto to the detriment of its customers. This then has the same effect as a genuine price agreement.

  TIP: *It is crucial to differentiate between the sources of information. If the information about competitors came from public sources or third parties, e.g. customers, suppliers, or market research institutions this is, generally speaking, not a problem.* ***However, caution is required****: It would be not permitted if the information is exchanged systematically through third parties and thus competitors could communicate knowingly with one another via third parties.*

What to remember at trade association meetings or when exchanging information / illustrative examples:

Particpating in trade associations is not prohibited! However, competition law fully applies also when engaging in trade associations:

- Prior to Kalle Gruppe becoming a member to a trade association contact Corporate Affairs.
- An official agenda should be circulated prior to each trade association meeting; check the agenda carefully and if you have doubts about the content or topics contact Corporate Affairs;
- Official minutes should be taken at each trade association meeting;
- If prohibited subjects are being discussed (see below for examples) during a meeting, object to the discussion and, if necessary, leave the meeting; have this included in the minutes and inform Sie Corporate Affairs;
- Insist on the minutes being forwarded and check them for inconsistencies or wording that is questionable under antitrust law; if necessary, inform Corporate Affairs.

Standardization agreements play an important role in trade association work. The joint development with competitors of technical standards or norms which aim at ensuring compatibility / interoperability is normally allowed under competition law. The following should be observed:

- All competitors should have access to participate in the standard-setting.
- The standard-setting procedure should be transparent, so stakeholders can inform themselves about the procedure.
- There should be no obligation to comply with the standard.
- Third parties should have access to the standard terms under fair, reasonable and non-discriminatory conditions.

There are many topics which can be discussed with competitors without concerns. On the other hand, there are topics which clearly may not be discussed with competitors. There is a grey zone here as well. The following (non-exhaustive) list can provide guidance:

NO	YES
Exchanging information with competitors with regard to the following is **always prohibited**: - Future purchase or sales prices and/or purchase or sales price components, - planned price increases, even if this concerns only the date on which such price increases will be implemented, average prices or "whether" there will be a price increase at all, - future sales or market share targets, - future business territories, - which customers will be supplied in future, - to which territories supplies will be made in future, the status and the course of negotiations with customers or suppliers (e.g. how to react to a request to lower prices).	**In der Regel erlaubt** ist der Informationsaustausch mit Wettbewerbern über: - Legal and political framework conditions (e.g. parliamentary bills) or general economic developments, - data which is generally known (for example stock market prices of raw materials), easily accessible (already published online) or purely historical individual company data; prior to participating in benchmarking etc. contact Corporate Affairs, - general exchange of experiences or joint market research in the context of economic associations.

TIP: *With regard to exchanging sensitive, strategic information: When it comes to the exchange of information that might be related to competition, remember the golden rule: Better to be silent once too often than once too little. In particular,* ***discussions with competitors regarding prices and customers should be taboo****.*

TIP: *The above rules apply to the exchange of information with* ***competitors****. Of course, you may announce price increases to customers in advance or for example inform your own supplier when purchasing preliminary products that a competing supplier has made you a much better offer.*

II. Conduct towards suppliers and customers

Kalle Group must equally comply with the competition law requirements in agreements with customers and suppliers. In this context, competition law prohibits Kalle Group above all to prescribe customers resale prices or the territories or customers to whom Kalle Group customers sell on these Kalle Group products.

1. Prescribing prices to resellers / resale price maintenance

Principle: In as far as Kalle Group distributes products via third parties (resellers), Kalle Group may not prescribe or otherwise agree or coordinate with these third parties any fix- or minimum prices for the resale:

- **Resellers** are all third parties not belonging to the Kalle Group which purchase Kalle products in their own name and to their own account and then sell them on.
- **Prescription or other agreement/concerted practice** is on the one hand any binding prescription of fixed or minimum prices by Kalle Group. On the other hand, even if the reseller voluntarily implements the price requests from Kalle Group or even requests Kalle Group to fix resale prices Kalle Group may not agree on fixed minimum resale prices with the reseller. In the end any form of co-ordination / concerted practice regarding sales prices with resellers is covered irrespective of whether such practice is formal or informal, written, verbal or only arises from the circumstances (see above under A I. 1. regarding "Concerted Practice").

  Kalle Group may further not induce resellers to adhere to fixed / minimum resale prices by using pressure or incentives, i.e. offer the reseller advantages for complying with certain minimum or fixed sale prices or threaten him with disadvantages for not complying with such prices.

Illustrative Examples:

NO	YES
Among other things the following is **prohibited** towards resellers: - Agreeing or otherwise coordinating with resellers their fix or minimum resale price, - agreeing or otherwise coordinating with resellers so that they comply with recommended resale prices ("RRPs"), - indirect resale price fixing, such as agreeing or otherwise coordinating with resellers a maximum discount the reseller may grant on the list price or prescribing / agreeing sales margins, - granting or promising special discounts or other advantages to provide the reseller with an incentive to comply with the requested price level, - threatening with or implementing a refusal to supply or other sanctions to provide the reseller with an incentive to comply with the requested price level.	**As a rule** the following is **permitted:** - Agreeing or otherwise coordinating with resellers maximum resale prices, provided this does not amount to setting / agreeing in reality a fixed or minimum resale price; for example Kalle Group could prescribe that resellers do not exceed a certain price during a certain promotion, - Recommended retail prices provided these are clearly non-binding and remain so.

TIP: *When communicating with your customer please always ensure that RRPs are clearly and unambiguously marked as such. Wherever Kalle Group uses price lists and marketing documentation, any resale prices should always be clearly marked as a non-binding recommendation.*

TIP: *Avoid talking about a recommended retail price too often with resellers. This is because merely addressing the issue of a recommended retail price vis-à-vis a reseller on more than one occasion has been considered to be (an indication for) exercise of pressure on the reseller.*

2. Protection of territory or customer

Principle: may not prohibit resellers from supplying "walk-in customers", i.e. customers who approach the resellers themselves. Internet customers are "walk-in customers" in this respect.

Illustrative examples:

NO	YES
The following is prohibited vis-à-vis resellers, e.g.: - Agreeing or otherwise coordinating with a reseller that the reseller may not supply certain customers (e.g. food retail trade, industrial customers, etc.) or certain territories (e.g. France, Southern Italy, etc.). - Agreeing or otherwise coordinating with a reseller that the reseller may not supply any customers other than "his" customers or from "his" territory (e.g. absolute prohibition of re-imports within the EU, i.e. to supply German customers from Poland or to export from Poland at all), - agreeing or otherwise coordinating with a reseller that the reseller may not sell Kalle products on the internet, - granting or promising special discounts or other advantages in order to prevent the reseller from supplying certain customers, certain EU territories or selling on the internet, - threatening with or implementing a refusal to supply or other sanctions in order to prevent the reseller from supplying certain customers, certain EU territories or selling on the internet.	The following restrictions **may be permitted, e.g:** - Prohibiting wholesalers from selling directly to end customers, - prohibiting from actively selling into exclusive territories which Kalle Group has reserved exclusively to itself or one other dealer, i.e. for example not to pro-actively solicit customers, not to open offices or warehouses in such exclusive territories; however the sale to "walk-in customers" / unsolicited customers from these customer groups or territories must still be permitted (see left-hand column), - obligations to operate at least also a shop and not pure internet trade, - in as far as Kalle Group only sells products via certain dealers approved in accordance with certain criteria: Prohibition of supplying "outsider resellers" who are not approved or do not satisfy the criteria. ***TIP:*** *The legal viability of all these sales restrictions must be assessed beforehand.*

TIP: *For example one "sanction" would be if Kalle Group invoices a dealer a higher price for those products which the dealer sells outside "its" territory than for those same products sold in "its" territory. Conversely, it would be an advantage if Kalle Group for example were to grant a reseller a rebate with retroactive effect only for sales in the "allocated" territory or only for the products not sold online.*

3. Exclusivity clauses, most favoured clauses, etc.

Principle: Also, all other provisions in business relationships with customers and suppliers which restrict their freedom to enter into transactions with other business partners can be forbidden under competition law.

As a rule the following **is permitted** but must be checked in each individual case, e.g.

- In relation to **suppliers of Kalle Group**
  - exclusive dealing obligations on suppliers of Kalle Group, i.e. prescribing or otherwise agreeing that a supplier of Kalle Group may supply a certain product exclusively to Kalle Group,
  - agreeing or otherwise coordinating with the supplier that the supplier always offers Kalle Group the most favourable prices.
- In relation to **customers of Kalle Group**
  - exclusive dealing obligation on Kalle Group, i.e. agreeing or otherwise coordinating with the customer that Kalle Group may only supply certain products (in a specific territory) to one individual customer (e.g. appointing a sole distributor in one country),
  - agreeing or otherwise coordinating with a customer that Kalle Group does not supply any products directly in a certain territory,
  - agreeing or otherwise coordinating with a customer that Kalle Group always offers the respective distribution partner the most favourable prices,
  - exclusive dealing obligation on the customer, i.e. agreeing or otherwise coordinating with the distribution partner that the latter may only offer products and not competitors` products during the term of the contract; this exclusivity should only be agreed for a term of five years; once the agreement has expired the distribution partner should be free to again sell competing products with immediate effect. This means:
    - If an exclusivity clause is envisaged, the initial term of the contract must be limited to five years.
    - If, after the initial five-year period, a new contract is concluded, the contract can again comprise an exclusivity clause for up to five years; this can be repeated as often as required.
    - From 1.6.2022 expected change in law: automatic renewal of contracts with exclusivity clause permitted, provided that contract can be terminated after the first five years with reasonable notice and at reasonable cost.

4. Research and development agreements

Principle: Also research and development agreements fall under competition law.

In particular, restrictions on using the results of joint development, on supplying customers or on carrying out research or development outside the respective agreement independently of the other party may be prohibited under competition law. They are then also invalid. This means that in the worst case scenario we have given away our knowledge and have no protection against our partner using our knowledge with our competitors.

TIP: *All research and development agreements must be aligned with Corporate Affairs.*

III. Abuse of market power

Principle: Market-dominant companies are subject to special restrictions. The freedom of dominant companies to act is restricted by the prohibition of the rules against abuse of market power. Apparently completely regular market behaviour can be prohibited if practised by market-dominant companies.

- **Market dominance/market power:** If a company has a market share of 40% or more it is assumed that it is dominant. Companies with much lower market shares can also have market power, namely if their buyers or suppliers depend on them because they simply cannot turn to other suppliers or customers.

- **Abuse:** The term "abuse" is not linked to any moral reproach. The issue is whether a company uses its market power to implement any behaviour which is harmful to competition. This can be the case for example if business partners are not treated equally without there being any reason for such different treatment, if competitors are wilfully forced out of the market or if business partners are exploited.

  TIP: Do not be misled by the term "abuse". Totally normal behaviours, such as issuing loyalty discounts or terminating a distribution agreement, can constitute abuse if such behaviour is practised by a company which has particular market power.

- **Supply obligation:** The principle of equal treatment also applies with regard to the supply itself. Therefore, in individual cases Kalle Group can be obliged to supply a given customer.

  TIP*: Each refusal to supply or termination of ongoing supply relationships with respect to products for which Kalle Group has a market share of at least 40% must be assessed beforehand under competition laws.*

Illustrative examples:

NO	YES
Companies with market power are prohibited from - abuse by discrimination, i.e. granting more or less favourable terms to individual customers or suppliers in a manner which is not objectively justified; this can take the form of any arbitrary unequal treatment but includes in particular unequal treatment aimed at motivating a partner to implement a certain conduct which in itself is not desirable under competition law; one example is discontinuing supply of a dealer owing to its price or other supply behaviour, - exploitative abuse, e.g. demanding unfair conditions from customers and suppliers, for example demanding monopoly prices or the condition to sell a product only if the customer also buys another, non-related product. - exclusionary abuse, i.e. any unjustified detrimental conduct against customers, competitors of suppliers; typical examples for *market-dominant* companies are the targeted exclusion of competitors from the market, i.e. by (i) exclusivity clauses which bind important suppliers exclusively to Kalle Group, (ii) exclusivity clauses which prohibit customers from making purchases from competitors, (iii) issuing loyalty discounts which make it unattractive to make purchases from competitors or (iv) specifically using predatory pricing in order to force competitors from the market.	Companies with market power may inter alia: - Apply quantity-related discount systems without retroactive effect which are applied without discrimination, - choose sales channels and sales conditions on a reasonable commercial decision, in particular companies with market power are not obliged to apply the same prices and conditions to all customers; companies with market power may still react to price competition by individually negotiating prices, - refuse supply, provided there is justification for such refusal, for example because the customer has not paid or has not satisfied other permissible contractual obligations. Under certain circumstances companies with market power may carry out the following acts inter alia: - Apply a loyalty programme, - apply discount systems which have a similar effect to expressly agreed loyalty agreements, e.g. loyalty discount or staggered discount with retroactive effect.

***TIP**: These measures may be permissible but must be reviewed beforehand under competition laws and the Corporate Affairs should be informed.*

***TIP**: In particular, the possible discount types and their effects are many and various. Therefore, all discounts which offer a particular sales incentive may only be granted after a prior competition law review. Here as well it is better to ask too many questions than too few.*

B. What are the consequences of breaches of competition law?

Conduct in breach of competition law can result in high fines which can even threaten the existence of the company or the personal financial existence.

For the company:

- In a worst-case scenario the fine can be as much as 10% of Kalle Group`s consolidated group turnover for the previous year
- Contractual clauses that violate competition law or the entire contract are invalid. They cannot be enforced in court. Be especially careful with **R&D agreements**: We disclose our knowledge. If our contract is invalid, our knowledge is gone, and we are unprotected!
- Kalle Group can be faced with numerous other consequences, such as the instruction to return advantages unlawfully gained, the confiscation of unlawfully acquired advantages but also cease and desist or compensation / damages claims, e.g. from customers who feel that they have suffered from the conduct in breach of competition law.

For employees:

- A fine of up to EUR 1 million can be imposed on key employees. This does not only apply if the key employees themselves were involved in the breach but also if they breach their duty of supervision in the company. Such breach a duty of supervision may occur if no adequate control was exercised over the conduct of employees in competition-law sensitive areas.
- Employees also face employment law consequences and, in a worst-case scenario, compensation claims.

C. Golden Rules in practice

There are a number of golden rules in practice which help to minimise the risk of a breach of competition law. These are:

- Never discuss company strategy with competitors. In particular, never discuss prices and conditions.
- Never try to obtain illegal information from employees of competitors regarding their business strategy prices or conditions.
- Do not complain to competitors about their pricing policy.
- Do not accept proposals from competitors which are legally not permitted (e.g. price fixing), not even just for appearance`s sake.
- Do not try to enforce fixed or minimum resale prices on resellers.
- Be very careful if you want to impose customer or territory restrictions on your resellers.
- Observe the special rules which apply to companies with high market shares (40% or more).

When communicating, always consider how your words could be perceived by others! Always be careful when communicating, particularly when communicating by e-mail. Avoid using phrases which can be misunderstood such as for example

- The competitor told me...
- I will ask the competitor...
- We must do something about the prices of this dealer/competitor...
- We dominate the market for this product/We are the uncontested market leader...
- We will kick them out of the market
- We will boycott...

Always inform the management or Corporate Affairs, if

- you hear of a competition-law relevant conduct of Kalle Group, of competitors or business partners,
- you have questions or reservations with regard to certain conduct,
- a competitor or a business partner informs you it wants to give up a practice exercised with Kalle Group so far for competition law reasons,
- business partners or competitors are subject to competition law investigations by authorities.

This guideline cannot cover each individual case. Should you have any doubts please do not hesitate to contact us however insignificant you feel your question to be.

This policy has been released by the management of Kalle Management GmbH as per February 1st, 2022. This policy replaces the group Guidelines for Compliance with the global Antitrust Laws from March 2014.

Wiesbaden, 1 February 2022

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