

2005

PRACTICAL GUIDE

DAY-TO-DAY
COMPETITION LAW

Intended for employees
of the Chemicals branch of the Total Group



TOTAL

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04 INTRODUCTION



At the time of reorganisation of the Group's Chemicals Segment, it seems to me to be indispensable to remind one and all that our company aims to comply meticulously with the laws which apply in the countries where it is present and in the exercise of each of its activities.

Among these applicable laws, competition law holds significant importance. By forbidding any restriction on free competition, it aims at protecting one of the major bases of the European Union: the free movement of goods and services within the single market.

Infringements of competition law, on the contrary, seriously undermine the integrity, the reputation and the credit of our company with respect to its shareholders, its staff, its customers, its suppliers and the community in general.

Competition law is particularly complex and evolving. That is why we intend to give everybody the means to understand its principles and comply with its provisions. This is the aim of this practical guide to competition which replaces the one issued in March 2001.

This guide presents the general principles of European competition law. We must, however, pay attention to the fact that most countries have now adopted competition laws and have authorities that monitor their application. Although these national regulations are generally similar to European competition law, there are some national particularities which we must pay attention to. This guide may therefore be completed in the near future by a document identifying the particularities of the domestic competition law in the country in which you work.



This guide cannot pretend to cover all of the cases which you may be confronted with in your work. In the event of a question or doubt, it is for each person to obtain advice from the Chemicals Legal Division or, if the sector in which you work has its own Legal Division, with that one.

The European and national competition authorities ensure strict compliance with competition law so as to allow an effective and healthy competitive environment to be maintained, in the interest of all economic actors: producers, distributors and consumers. In order to fulfil their tasks and detect restrictions on competition, the competition authorities may in particular make on-the-spot investigations (including surprise inspections), can organise visits at home, can put incentives into place for the denunciation of infringements, and can exchange information about current cases among one another through a network of competition authorities. Pursuing cartels has become a priority of the European Commission which seeks to inflict very substantial fines on enterprises which take part in them.

Our company's success is dependent on the values that it adheres to, and the image that it projects.

A proper codification of our rules of good conduct therefore appears to be indispensable, and I would be obliged if you could pay constant attention to it. Compliance with competition law is the responsibility of each employee.



François Cornélis

01

THE GENERAL PRINCIPLES

- NO AGREEMENTS WHICH RESTRICT COMPETITION
- NO ABUSE OF A DOMINANT POSITION
- FAIR COMPETITION
- SUBMITTING CERTAIN PROJECTS TO THE COMPETITION AUTHORITIES FOR PRIOR APPROVAL
- FINES AND PENALTIES

NO AGREEMENTS WHICH RESTRICT COMPETITION

COMPETITION LAW PROHIBITS ANY AGREEMENT OR PRACTICE AMONG INDEPENDENT UNDERTAKINGS WHICH HAS THE OBJECT OR EFFECT, ACTUALLY OR POTENTIALLY, OF RESTRICTING COMPETITION ON THE MARKET.

Prohibited agreements or practices include, in particular, those which have the following as their object or effect:

- fixing in common or limiting a partner's freedom to fix its own commercial conditions (prices, volumes, etc.);
- exchanging sensitive information among competitors (pricing policy, industrial projects and plans, names of customers and suppliers, etc.);
- limiting or controlling production, industrial or commercial outlets, technical development or investments;
- sharing and dividing up product markets, territories or customers;
- applying discriminatory conditions to a customer.

The **form** of the agreement or practice is irrelevant. All that is required is a meeting of minds. Any oral or written agreement, whether signed or not, is sufficient.

The **parties** to the agreement or practice are independent undertakings, whether or not they are competitors. Particular attention has to be paid to cooperation agreements, distribution or supply agreements, our general conditions (for sales or for purchasing), price lists and pricing conditions granted to our customers.

The affected **market** can concern both goods and services. Competition law applies to all activities, whether purchasing, sales, distribution or the provision of services (transports, warehousing, etc.). Conduct which infringes competition law is in any event strictly prohibited and very severely punished.

The general prohibition can however be the subject of an **exception** if the agreement or practice generates improvements in efficiency to the benefit of consumers. These agreements or practices are considered permissible and valid if a certain number of objective conditions are met.



The procedure for notification to the Commission with a view to obtaining an exemption no longer exists since May 1st, 2004. Undertakings must now make their own assessment with respect to competition law and are therefore exposed to greater legal uncertainty.

More than ever before, it is therefore necessary to submit draft agreements to the Legal Division. The department will examine their legality with respect to competition law.

The Legal Division will assess with you, on the basis of the specific information communicated by you concerning the affected market, whether the agreement meets the objective conditions necessary for it to be exempt from the general prohibition. Where necessary, the Legal Division will propose amendments which best correspond to your interests while complying with competition law.



DO NOT ABUSE A DOMINANT POSITION

COMPETITION LAW PROHIBITS ANY ABUSIVE BEHAVIOUR ON THE PART OF ONE OR MORE UNDERTAKINGS WHICH HAS OR HAVE A DOMINANT POSITION ON THE MARKET.

An undertaking is in a dominant position on a market if it has sufficient **economic power** to be able to behave in a manner which is independent of the behaviour of its competitors.

It is generally considered that an undertaking may be in a dominant position if it has a large market share (generally over 40%) on a given market.

However, in certain markets a low market share can be sufficient to create a situation of dominance. This is notably the case in markets where there are a great number of competitors which hold very low market shares compared to the leader.

Being in a dominant position is not reprehensible as such, but this situation increases the commercial responsibility of the dominant actor. What is prohibited is **abusing** this dominant position.

Abusing a dominant position can consist in the following, in particular:

- discrimination (applying dissimilar conditions to equivalent services without objective justification);
- making the conclusion of contracts subject to acceptance, by the other parties, of services which have no connection with the subject of such contracts;
- granting loyalty bonuses which tend to prevent customers from obtaining supplies from competing suppliers;
- applying prices to customers (consumers or distributors) which are lower than cost price or which are excessively high;
- refusing to sell goods or provide services without objective justification;
- imposing exclusivity clauses without consideration as to their duration;
- limiting production, trade outlets or technical development to the detriment of consumers.

This prohibition is **absolute**. No exception is possible under any circumstances.

To determine whether a dominant position is held (whether individually or collectively), it is first necessary to proceed with the precise identification and definition of the market concerned,

which must then be analysed in detail. This analysis is to be made in close cooperation with the Legal Division, taking all of the specific circumstances into account.

COMPETITION LAW PROHIBITS ACTS OF UNFAIR COMPETITION.

The rules on fair competition vary from country to country. Some countries have adopted very strict regulations concerning promotional campaigns, advertising

or, more generally, any behaviour which seeks to draw customers away from a competing undertaking.

Some commercial practices are to be avoided absolutely:

- any imitation which gives rise to confusion with a competitor or with competing goods;
- disclosing business secrets belonging to a third party;
- the systematic “poaching” of a competitor’s employees;
- illicitly obtaining files;
- “parasitic” practices (i.e. passing-off), etc.

Other commercial practices can be the subject of detailed regulations. This is the case, for example, for promotional campaigns, comparative advertising, competitions, gifts, bonuses, etc. In certain countries such as France and Germany, sales with bonuses are regulated. Conversely, they are authorised without any particular restrictions in other countries such as the United Kingdom.

In all cases, contact the Legal Division. It will inform you about the regulations which apply to the operation in question.



SUBMITTING CERTAIN PROJECTS TO THE COMPETITION AUTHORITIES FOR PRIOR APPROVAL

IN CERTAIN CASES, COMPETITION LAW REQUIRES UNDERTAKINGS WHICH ARE PARTIES TO A CONCENTRATION OR WHICH BENEFIT FROM STATE AIDS TO OBTAIN PRIOR APPROVAL FROM THE COMPETENT COMPETITION AUTHORITIES.

Concentrations of independent companies

In competition law, a concentration is defined as any operation which causes a change in control. Therefore the following transactions, in particular, are deemed to be concentrations: mergers, acquisitions, the creation of joint ventures, and sales of assets.

The Legal Division will determine whether an operation is a concentration, whether it requires prior approval and, where applicable, from which authorities approval must be sought. It will inform you of the procedure to be followed and the deadlines to be met, and will assist you at each stage. The Legal Division will also draw your attention to the precautions to be made in the event that there is an exchange of sensitive information.

At the beginning of the project, the Legal Division will also assess, with you, whether the envisaged concentration will obtain the approval of the competition authorities or whether, on the contrary, it will restrict competition. Depending on the result of this assessment, the parties will either go ahead, abandon the project or amend it, as the case may be.

Notification procedures before the competition authorities may take several months, hence the importance of contacting the Legal Division at the very beginning of negotiations.

State Aids

Any direct or indirect public contribution to the financing of a project may be subject to regulations concerning State aids.

Planned aids which the Group might benefit from must be submitted to the Legal Division which will determine, with you, their compliance with the applicable rules.

The fact that a public authority agrees to grant an aid (whether direct or indirect) does not mean that it complies with European regulations.

Any aid from a public body which is found to be illicit must be repaid by its beneficiary.

From the beginning of a project, you must seek information from the Legal Division as to the various formalities required before it is implemented.

02

FINES AND PENALTIES

FINES AND PENALTIES

EMPLOYEES OF THE GROUP'S CHEMICALS SEGMENT MUST ENSURE, IN ALL CIRCUMSTANCES, THAT THEIR PROFESSIONAL ACTIVITIES ARE EXERCISED IN COMPLIANCE WITH COMPETITION RULES IN FORCE. THIS IS A MATTER WHICH HAS A DIRECT CONSEQUENCE ON THE GROUP'S INTEGRITY, REPUTATION AND CREDIT.

In the event of an infringement, the enterprise and the persons responsible may be subject to very harsh penalties

under civil or criminal law. The enterprise may also be obliged to pay compensation for any harm caused.

The enterprise may be subject to the following penalties:

- fines which can amount to 10% of the Group's worldwide turnover, depending on the seriousness and duration of infringements taken together with any aggravating circumstances (repeat offences) or attenuating circumstances (cooperation);
- the payment of damages to third parties who have suffered from the anti-competitive behaviour or agreement;
- the cancellation of any commitments and agreements entered into;
- the cancellation and dismantling of a concentration;
- the publication of the decision;

The most serious penalty which arises is the loss of confidence by investors, suppliers, customers and other actors on the market.

THE 10 HIGHEST FINES IMPOSED BY THE EUROPEAN COMMISSION		
Year	Company	Amount (€ million)
2004	Microsoft	497.20
2001	Hoffman - LaRoche	462.00
2001	BASF	296.16
2002	Lafarge	249.60
2001	Arjo Wiggins	184.27
2002	Nintendo	149.00
2002	BPB	138.60
2002	Degussa	118.00
1998	Volkswagen	90.00
2002	Knauf	85.80



For the calculation of fines, it should be emphasised that the European Commission has adopted a practice of applying a multiplying factor to large groups in order to guarantee the dissuasive effect, or seeking the liability of the parent company for infringements committed by its subsidiaries. The result is that a prohib-

ited cartel concerning what amounts to a marginal market for the segment may be sanctioned by fines which are totally disproportionate to the turnover made for the product in question. Large groups are also penalised by the manner in which the “repeat offence” notion may be applied to them.

Individuals may be sanctioned by:

- fines;
- prison sentences in certain countries such as the United States, France, the United Kingdom, Brazil and Chile;
- Firm prison sentences have become systematic in the United States, even for Europeans residing in Europe (since 1999, out of the 50 cases which gave rise to the largest fines, around 30 people have received prison sentences).

Leniency programmes

The European Commission and a large number of national competition authorities have provided themselves with a mechanism for the detection of competition law infringements by adopting a leniency programme.

This programme allows a cartel participant to benefit from complete immunity from fines if they are the first to denounce it. It also allows the other denounced participants to benefit from a substantial reduction in fines if they cooperate in the proceedings.

These programmes are extremely effective in pursuing infringements. Most of the cases which the European Commission deals with these days were revealed by denunciation by one of the participants.

Arguing good faith or ignorance is no defence against penalties.

Liability arises from the mere fact that an infringement is found to have occurred.

03

03

WHAT TO DO OR WHAT NOT TO DO

- WITHRESPECT TO COMPETITORS
- WITHRESPECT TO SUPPLIERS
- WITHRESPECT TO CUSTOMERS,
DISTRIBUTORS AND RESELLERS
- WITHRESPECT TO
TRADE ASSOCIATIONS

WHAT TO DO OR WHAT NOT TO DO WITH RESPECT TO COMPETITORS

In competition law, the notion of a competitor refers to both an actual competitor and a potential one.

A **competitor** is any undertaking which is actually or potentially in a position to make investments or incur other adaptation costs required to enter the market concerned, as a reaction to any slight but durable increase in prices.

In some markets of the Chemicals Segment, the company's competitors may also be its **suppliers** or its **customers**. This situation means that particularly prudent conduct is required.

You must be extremely vigilant if you are in contact with competitors, whether for the conclusion of an agreement or at a meeting organised by a trade association.

Contact the Legal Division as soon as possible in the event of a project involving a competitor and have your membership of a trade association validated in advance.

If a competitor communicates any potentially sensitive information to you, terminate the meeting and notify the Legal Division (see appendices).

WHAT TO DO

- DISCUSS INFORMATION WHICH IS PUBLIC OR HISTORICAL AND FOR WHICH YOU HAVE FORMALLY IDENTIFIED THE SOURCE
- RECEIVE INFORMATION CONCERNING OUR COMPETITORS FROM INDEPENDENT PUBLIC SOURCES

CONTACT THE LEGAL DEPARTMENT

- WHEN DISCUSSING PLANS FOR A JOINT VENTURE (PRODUCTION, DISTRIBUTION, R&D, ETC.)
- WHEN JOINING A TRADE ASSOCIATION
- WHEN CONCLUDING A SWAP AGREEMENT (GEOGRAPHICAL OR DEFERRED)
- WHEN YOU WISH TO INCLUDE AN "MFN" (MOST FAVOURED NATION) CLAUSE



WHAT NOT TO DO

- EXCHANGE CONFIDENTIAL AND/OR STRATEGIC INFORMATION
- TOUCH ON ANY SUBJECT CONCERNING THE GROUP'S COMMERCIAL OR INDUSTRIAL POLICY: PRICES, REBATES, SALES CONDITIONS, PROFITS, MARGINS, CREDITS, INCREASE OR DECREASE IN CAPACITY, CUSTOMERS AND THEIR SOLVENCY, ETC.
- AGREE ON ANY COMMERCIAL CONDITIONS (PRICES, REBATES, CREDIT ETC.)
- AGREE ON ANY LIMITATION OF PRODUCTION, SALES QUOTAS OR PURCHASING QUOTAS
- AGREE IN ORDER TO FAVOUR OR ELIMINATE A COMPETITOR
- AGREE NOT TO PURCHASE FROM CERTAIN SUPPLIERS OR NOT TO DELIVER TO CERTAIN CUSTOMERS
- SHARE OR DIVIDE UP SALES, PRODUCTS, TERRITORIES, CUSTOMERS, OR SUPPLIERS
- ATTEND A TRADE ASSOCIATION MEETING WHERE THE AGENDA IS NOT SPECIFIED AND WHERE MINUTES CANNOT BE OBTAINED



WHAT TO DO OR WHAT NOT TO DO WITH RESPECT TO SUPPLIERS

In some markets of the Chemicals Segment, some of the company's competitors are also its suppliers. This situation means that particularly prudent conduct is required. Consequently, the advice

given above for conduct in the presence of competitors must also be taken into account in this case.

WHAT TO DO

- AGREE ON THE QUALITY, QUANTITY, SPECIFICATIONS, PACKAGING, DELIVERY DEADLINES, ETC., OF THE SUPPLIED GOODS

CONTACT THE LEGAL DEPARTMENT

- WHEN CONCLUDING A SWAP AGREEMENT (GEOGRAPHICAL OR DEFERRED) WITH A COMPETITOR
- WHEN CONCLUDING A PURCHASING AGREEMENT WITH A COMPETITOR
- WHEN JOINING A PURCHASING GROUP OR ASSOCIATION
- WHEN APPOINTING AN EXCLUSIVE BUYER

WHAT NOT TO DO

- AGREE ON RESALE PRICES
- DEMAND EXCESSIVE ADVANTAGES OR SALES CONDITIONS WHICH ARE NOT ECONOMICALLY JUSTIFIED
- ABUSE POSSIBLE PURCHASING POWER

WHAT TO DO OR WHAT NOT TO DO WITH RESPECT TO CUSTOMERS, DISTRIBUTORS AND RESELLERS

In some markets of the Chemicals Segment, some of the company's competitors also happen to be its customers, distributors or resellers. This situation means that particularly prudent conduct

is required. Consequently, the advice given above for conduct in the presence of competitors must also be taken into account in this case.

WHAT TO DO

- GRANT NON-DISCRIMINATORY REBATES
- RECOMMEND A RESALE PRICE, AS LONG AS THIS DOES NOT IN REALITY, CONSTITUTE A MINIMUM RESALE PRICE
- IMPOSE A MAXIMUM RESALE PRICE, AS LONG AS THIS DOES NOT IN REALITY, CONSTITUTE A FIXED RESALE PRICE
- IN AN EXCLUSIVE SALES FRAMEWORK, PROHIBIT ANY PROMOTIONAL ACTION OUTSIDE THE EXCLUSIVE TERRITORY
- REFUSE TO SELL FOR OBJECTIVE REASONS

CONTACT THE LEGAL DEPARTMENT

- WHEN CONCLUDING A SWAP AGREEMENT (GEOGRAPHICAL OR DEFERRED) WITH A COMPETITOR
- WHEN CONCLUDING A SALE AGREEMENT WITH A COMPETITOR
- WHEN IMPOSING A NON COMPETITION CLAUSE
- WHEN PUTTING AN EXCLUSIVE OR SELECTIVE DISTRIBUTION SYSTEM INTO PLACE
- WHEN MAKING TIED SALES
- WHEN REFUSING TO SELL
- WHEN TERMINATING A CONTRACT WITH A REGULAR BUYER
- WHEN GRANTING LOYALTY REBATES OR REBATES WHICH PRODUCE SIMILAR EFFECTS
- WHEN PRACTICING PREDATORY PRICING SEEKING TO ELIMINATE COMPETITORS
- WHEN YOU WISH TO INCLUDE A CLAUSE CONCERNING THE NOTIFICATION OF COMPETING OFFERS
- WHEN YOU WISH TO INCLUDE AN "MFN" (MOST FAVOURED CUSTOMER) CLAUSE



WHAT NOT TO DO

- IMPOSE, DIRECTLY OR INDIRECTLY, A RESALE PRICE ON THE BUYER
- DISCRIMINATE (PROHIBITED BY SOME NATIONAL LAWS EVEN IN THE ABSENCE OF A DOMINANT POSITION)
- EXCLUDE THE FREEDOM TO SELL ON A TERRITORY OR TO A CUSTOMER UNDER A NON-EXCLUSIVE DISTRIBUTION SYSTEM
- PROHIBIT AN EXCLUSIVE DISTRIBUTOR FROM RESPONDING TO UNSOLICITED DEMAND FROM CUSTOMERS LOCATED OUTSIDE ITS EXCLUSIVE TERRITORY
- PROHIBIT EXPORTS WITHIN THE EUROPEAN UNION

WHAT TO DO OR WHAT NOT TO DO WITH RESPECT TO TRADE ASSOCIATIONS

Trade associations generally bring together members from a given business and, therefore, from competing undertakings. Consequently, the advice given above for conduct in the presence of competitors must also be taken into account in this case.

Any attendance of professional or inter-professional meetings, or involvement in a trade association or professional union, must be approved in advance.

An employee must not go to any meetings which do not have a pre-deter-

mined agenda. It is also important to ensure that minutes (even if brief) are drawn up.

Employees must be equally careful in their conduct at international fairs or social events (golf, tennis, cocktails, etc.) where they may meet competitors.

WHAT TO DO

- GO TO A MEETING OF A TRADE ASSOCIATION THAT ONE IS A MEMBER OF IF INFORMED OF THE AGENDA OF THE MEETING AND ENSURING THAT MINUTES ARE DRAFTED
- DISCUSS AND EXCHANGE PUBLIC INFORMATION AS LONG AS ITS ORIGIN IS KNOWN
- CONSERVE A COPY OF INFORMATION EXCHANGED TRANSPARENTLY AND LEGALLY, WITH THE SOURCE BEING IDENTIFIED

CONTACT THE LEGAL DIVISION

- WHEN JOINING A TRADE ASSOCIATION
- WHEN PARTICIPATING IN A SURVEY MADE BY THE ASSOCIATION
- WHEN DRAFTING THE MINUTES OR AN ACCOUNT OF A TRADE ASSOCIATION MEETING

WHAT NOT TO DO

- DISCUSS OR EXCHANGE SENSITIVE INFORMATION



04

**REGULATIONS
THROUGHOUT
THE WORLD**

04

REGULATIONS THROUGHOUT THE WORLD

GIVEN THE INTERNATIONAL DEVELOPMENT OF ACTIVITIES OF THE GROUP'S CHEMICALS SEGMENT, IT IS ESSENTIAL TO COMPLY WITH REGULATIONS IN THOSE COUNTRIES IN WHICH WE ARE PRESENT.

Among these countries, the **United States** has had highly developed regulations in competition law (antitrust law) for nearly a century. Their antitrust authorities (Federal Trade Commission "FTC" and Department of Justice "DOJ") have developed substantial expertise in this field.

In the same line as European competition law, the American regulations prohibit cartels and the abuse of a dominant position.

The European and American competition authorities collaborate actively, all the better to pursue offenders. Over the last few years, it can also be observed that a good number of cases dealt with by the European Commission have also been examined simultaneously by the American authorities with respect to the harm caused to competition on their own market.

The American antitrust authorities have the main aim of protecting consumers and inflict very harsh penalties on any actor who restricts or distorts the free-domin of competition. These sanctions may applied to the enterprise or to one of its employees, and may arise under both civil and criminal law (imprisonment).

In the United States, the majority of complaints are brought before the antitrust authorities by individuals acting together in the form of class actions. This civil law form of proceedings constitutes a major factor in assessing the sanctions; indeed, such proceedings can lead to awards which are three times higher than the damage caused to consumers, and can sometimes require the payment of an amount which far exceeds the amount of fines.

Competition law is developing in **Asia**. Thus China, Korea and Japan have adopted competition legislation and competent authorities to ensure its application.

TRANSATLANTIC COOPERATION		
Cases	US fines	EU fines
Vitamins	\$ 900 m	€ 855 m
Graphite electrodes	\$ 434 m	€ 219 m
Citric acid	\$ 105 m	€ 135 m
Lysine	\$ 90 m	€ 110 m
Sodium gluconate	\$ 30 m	€ 57 m

The background is a solid teal color with several overlapping, semi-transparent circular shapes in various shades of teal, creating a layered, abstract effect.

05

ON-THE-SPOT INVESTIGATIONS

INVESTIGATION BY A COMPETITION AUTHORITY

IN THE EVENT OF AN INVESTIGATION BY THE EUROPEAN COMMISSION, CONTACT A LAWYER IMMEDIATELY AND:

- 1 VERIFY** the identity of the investigators and their originating department, as well as the mandate or decision which authorises them to investigate. Have them specify the purpose of their visit.
- 2 CONTACT** the person that the investigators ask to see and, imperatively, **NOTIFY** the Legal Division. Try to ensure that the visit does not begin until a lawyer arrives, but do not oppose the beginning of the investigation if the investigators have to wait too long (a maximum of half an hour).
- 3 ACCOMPANY** the investigators at all times throughout their visit. Never leave them alone. Put them in an empty meeting room.
- 4 YOU MUST:** communicate documents pertaining to the investigation (product, period concerned, country, etc.) to the investigators;
 - refuse to communicate documents which are not related to the investigation, or any correspondence from or to barristers and solicitors;
 - unless absolutely impossible to avoid, only answer investigator's requests for clarification concerning examined documents in the presence of a lawyer;
 - keep a copy of documents copied by the investigators, as well as a precise list of these documents stating their origin;
 - keep a list of all questions asked and the answers given;
 - remain courteous in all circumstances.

For any question during an investigation, you must imperatively speak to a lawyer.

06

CONTACT

→ WITHA COMPETITION
AUTHORITY

CONTACT WITH A COMPETITION AUTHORITY

BY TELEPHONE

- **Note** the identity of the person you talk to and their originating department, together with the precise purpose of their call.
- Then **contact** the Legal Division before answering any question or accepting any meeting.

BY LETTER

- **Send** a copy of the letter to the Legal Division without delay. The Legal Division will indicate how to proceed, depending on the content of the letter.
- The European Commission may send staff of the Chemicals Segment requests for information in the context of concentrations notified to it, or questionnaires in the context of an investigation into the market. **It is compulsory to respond to these questionnaires within the given periods** (which are generally extremely short) **and to obtain the assistance of the Legal Division.**



07

APPENDICES

INCIDENT REPORT FORM

WE REMIND YOU THAT ANY WRITTEN DOCUMENT FROM OUR COMPETITORS CONTAINING PROPOSALS WHICH ARE INAPPROPRIATE WITH RESPECT TO COMPETITION LAW MUST IMPERATIVELY BE COMMUNICATED TO THE LEGAL DEPARTMENT.

DRAFTER'S NAME _____

DATE OF THE INCIDENT _____

ENTITY _____

DEPARTMENT _____

CONTACT DETAILS _____

NATURE AND CIRCUMSTANCES OF THE INCIDENT

- Professional meeting** with one or more competing enterprises
- Telephone conversation** with a representative of a competing enterprise
- Other** _____

NAME(S) OF THE OTHER PARTY(IES) _____

COMPANY(IES) _____

POSITION _____

SENSITIVE SUBJECT(S) MENTIONED BY THE OTHER PARTY(S)

- Price fixing, concerted price increase**
- Sharing customers or markets**
- Level of use of production capacities, concerted stoppages**
- Commercial strategy**
- Other** _____

WHAT WAS YOUR REACTION AT THE TIME OF THE INCIDENT?

- Listened passively**
- Interrupted the conversation**
- without any particular explanation**
 - with reading of the conversation refusal sheet**
 - with own words for conversation refusal sheet**
- Other** _____
- _____
- _____
- _____
- _____
- _____

Form to be sent to the company's Compliance Officer or, in their absence, to the Chemicals Legal Division



CONVERSATION REFUSAL SHEET

CONDUCT TO BE ADOPTED IN THE EVENT OF INAPPROPRIATE REQUESTS BY TELEPHONE.

WE REMIND YOU THAT ANY ILLICIT PROPOSAL FROM OUR COMPETITORS MUST IMPERATIVELY BE REPORTED TO THE LEGAL DIVISION.

For this purpose, an example is given below of expressions to be used in refusing a conversation, to help you put an end to an inappropriate request by telephone.

«I must interrupt the conversation on this subject immediately»

«Our Group complies with very strict competition rules, meaning that I cannot discuss this kind of subject with competitors»

OPTION : «In addition, I should inform you that I am now obliged to report to my Legal Division that this subject has been brought up»

If the other party insists, then hang up.

CONTACTS IN THE CHEMICALS LEGAL DIVISION

35

Day-to-day competition law

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