Antitrust Compliance Policy for Europe

Approved by the Management Committee on 17 July 2014

Document Information

Short Description:

Aperam is committed to strict observance of the competition laws of the countries in which it does business and to the avoidance of any conduct that could be considered illegal.

Scope:

This policy is relevant to all staff, including Management and Directors of Aperam and all of its subsidiaries.

1. Introduction

Competition law is a system of rules aimed at ensuring that markets work effectively and businesses compete fairly. The two main rules prohibit anti-competitive agreements and abuse of a dominant position.

An agreement or arrangement will infringe competition law if it prevents, restricts or distorts competition in any market in the EU or in a particular country. Agreements between two or more competitors most commonly raise the most significant competition law risks, but agreements with suppliers, distributors or customers may also breach competition laws. Equally, arrangements between parties to a joint venture or research and development agreement, and between Aperam and companies in which Aperam holds minority participations, are also covered by the prohibition.

In addition to prohibiting agreements or arrangements which prevent, restrict or distort competition, abusive conduct by a dominant company is also prohibited. Generally speaking, a company acting independently can act as it chooses, unless it has a dominant position in any market. If it has a dominant position, it is considered to have a special responsibility not to allow its conduct to impair undistorted competition. This responsibility may prevent a company from offering certain discounts, bundling product ranges, or other commercial arrangements which may exclude competitors from the market.

In any given situation, either EU law or national law could apply, or sometimes both. Cartel activity may be a criminal offence, as well as infringing the competition rules. This is the case in the UK, and the US, for example.

Aperam is committed to complying with all competition laws in all of the countries in which it is active. Specifically, it is Aperam's policy to make its own commercial decisions on the basis of what is in the best interests of the company, completely independent and free from any understandings or agreements with any competitor and in observance of competition laws. Please note that a violation of European and/or national competition law may result in significant criminal and civil penalties for Aperam and individuals alike, including prison terms for individuals and could also seriously damage Aperam's reputation.

What follows is a more detailed description of the conduct that may violate European competition law and guidelines you should follow in your everyday business practices to prevent or reduce competition law risk for you and Aperam. The guidelines are intended to help you identify issues and assist you in achieving complete compliance with the law. Whenever you have any doubt about whether a practice is competition law compliant, you should consult the Legal Department[1].

It is the responsibility of each and every manager, officer and employee of Aperam to understand these rules, and to seek help from the Legal Department if and when there is any question or doubt as to what the rules are or how they are applied in a given situation. No manager officer or employee, whatever his /she position, is authorized to depart from Aperam's policy or to condone a departure by anyone else. Strict compliance with this policy is expected and it should be understood that Aperam shall take appropriate disciplinary action with respect to anyone who violates it.

[1] Please note that this policy does not deal with the specific rules applicable to mergers & acquisitions, joint ventures, IP licensing or State aid. Consequently, the Legal Department should be contacted for all questions relating to such matters.

2. Dealings with competitors

Aperam believes in competing vigorously but fairly, taking business decisions independently of its competitors and potential competitors, and developing its own commercial strategy.

Agreements, arrangements and understandings

An agreement or arrangement will infringe competition law if it prevents, restricts or distorts competition in the market in the EU or in a particular country.

The prohibition is very broad and covers not only formal written contracts but also oral agreements, “gentlemen's agreements” and informal arrangements and “understandings” even where the parties do not reach agreement on every element of the arrangement. In some cases, even a single exchange of commercially sensitive information can be prohibited. Decisions of associations of undertakings (e.g. trade associations) are also covered by the prohibition.

Aperam has competitors in each of the markets in which it is active and must exercise extreme caution in any dealings with them. The following practices pose the greatest risk to Aperam. However, the list is not exhaustive: any practice that restricts competition in a relevant market is prohibited.

Price fixing

You must not agree with competitors to fix the price of a product irrespective of whether the arrangement is to increase the price or to decrease it. This includes:

- Agreeing with a competitor the amount of any component of the price (e.g. price supplements or surcharges).
- setting minimum prices below which prices cannot be reduced.
- increasing prices by a certain amount or percentage.
- establishing a range outside which prices are not to move.
- applying harmonised terms of trading (transport charges, payments for additional services, credit terms or the terms of guarantees).

Market sharing

You must not agree to share markets with competitors. This includes, for example, agreeing not to export to a competitor’s home market, or to a particular territorial market or type of customer; agreeing to allocate certain customers to one another or certain types of product to one another; or agreeing not to compete.

Limits on activities

You must not agree to limit the number of products which Aperam or its competitors may sell, or try to sell (a sales quota).

Aperam must not agree with competitors to refuse to supply customers, refuse to purchase from suppliers, refuse to supply businesses that are planning to become competitors (a collective boycott) or otherwise keep (new) competitors out of the market.

Agreements to limit output or production are commonly found as part of a wider cartel intended to keep up prices. You must not:

- agree to adopt production quotas to limit supplies to the market.

- agree to accept sales quotas.

- agree not to build new production capacity or reduce existing capacity.

These arrangements are considered unlawful irrespective of any consideration of justifications or efficiencies. Moreover, the most severe antitrust penalties, including in some countries, criminal liability, are applied to these types of infringements of competition law.

The risks in this area are complicated by the fact that the common economic pressures that apply to all competitors in the same market often produce parallel conduct in the marketplace. While this parallel conduct may well be entirely lawful, it regularly attracts the attention of competition authorities and may cause an investigation, in particular where the conduct is accompanied by evidence of communications and contacts between and among competitors. Accordingly, it is of the utmost importance to avoid any contacts with competitors that might support an inference or allegations of collusion. This means that any contact with competitors that you may have for legitimate reasons should always be conducted as if they were at all times in the public view so that no one can question the intent or outcome of such contact with competitors.

Joint venture agreements with competitors may produce useful efficiencies, but can also restrict competition. You should always consult the Legal Department before entering into any such agreement.

2.1. Contacts with Competitors and Provision or Receipt of Commercially Sensitive Information (Information Exchange)

You must not exchange confidential or sensitive business information with actual or potential competitors under any circumstances. This includes providing such information, or receiving it, or both and also information exchanged indirectly, for example, through a third party (including a customer), trade association or company secretarial service which collects, collates, and redistributes commercially sensitive information, from which the behaviour of individual producers can be identified. The transfer of technology to, and certain other types of co-operation with competitors or potential competitors (e.g. within the terms of research and development agreements) may be exempted depending on the circumstances. You should not provide any information of any kind to competitors without first taking advice from the Legal Department.

You must not provide or receive confidential information in the context of a distribution agreement or joint venture with competing suppliers. Aperam employees are responsible for ensuring that any trade gatherings of any kind that they attend do not give rise to unlawful information exchanges or provide opportunities for behaviour to be co-ordinated.

Even a one-sided single provision of information to a competitor, or from a competitor, could constitute an infringement of competition law.

Individual contacts

Avoid individual conversations with competitors entirely if you can, and by no means ever discuss or disclose commercial policy such as pricing, customers, strategic, investment or capacity plans or terms of trade with a competitor. If in any conversation, your competitor seeks to discuss current prices or enquire into plans for future prices, or any of the elements of prices, or any element of strategy relating to prices and/or commercial policy you must refuse to discuss that subject.

The key test is whether the information provided (a one-way provision of information is caught – there does not need to be an exchange) “reduces strategic uncertainty” as this could result in commercial rivalry being reduced or eliminated. Examples of strategic information include:

- current price lists

- proposed prices, price changes, and pricing initiatives (e.g. discounts, credit terms etc)
- input costs or current production figures
- inventory or sales levels
- capacity figures
- individual output figures
- information on:
    - margins and costs
    - customers
    - recent orders and deliveries
    - terms and conditions of sale or purchase
    - market shares
    - turnover
    - current and proposed investments
    - R&D programmes
    - technologies
    - marketing plans.

Distance yourself immediately from any conversation that veers towards any of the subjects above. Walk away or hang up the telephone if that is what it takes to end your involvement (or even listening) in the discussions. Make clear to the participants that you refuse to participate in such discussion and that you will have to report the discussion to your Legal Department. If you allow yourself to hear such a conversation you may be required, at a later date, to testify that it did take place and it will be hard to avoid the implication that you were an active participant in it. Even a one sided single provision of information to a competitor, or from a competitor, could constitute an infringement of competition law.

It may at times appear to you that essential competitive information as to existing price structures and commercial policy can only be obtained from a competitor and that a discussion of existing prices with them is therefore justified – this is NEVER justified.

Don't ever do it: Provision of current price information could be found, on its own, to be unlawful. For this reason, you must not engage in, or reply to, any such inquiries. For example, do not confirm with a competitor price information that you may have received from another source (i.e., a customer).

- DO make it clear at all times to your competitor that you cannot and will not discuss competitively sensitive information.
- DO immediately object to any discussions that relate to subjects outlined above; continue only if objectionable discussion ceases, and when you are comfortable the discussion has resumed in a proper direction.

- DO report immediately to the Legal Department any improper discussion with, or overtures by, a competitor.

- DO protect the confidential business information of Aperam.

- DON'T ever discuss prices, other terms of trade, customers, bids, or plans.

2.2. Trade Associations

Trade associations perform useful and legitimate functions, and can be supported by the members of an industry under appropriate circumstances. Trade association meetings, however, provide opportunities for both formal and informal gatherings of competitors and, consequently, expose each person and company present to the risk of an inference of collusion or unlawful information exchange if such gatherings are followed by parallel action.

Accordingly, Aperam employees are not permitted to join any trade association unless management has determined that the association serves an important and proper purpose and approved the membership application. In case of any doubt, the Legal Department should be consulted.

Membership in trade associations should be periodically reviewed by management. When attending trade association meetings sanctioned by Aperam, the guidelines above with respect to contacts with competitors must be strictly followed. In addition, in the trade association context, special precautions should be undertaken:

- DO consult with local management before joining a trade association.

- DO insist on a complete draft agenda well in advance of the trade association meeting that sets forth specifically what will occur when, and the matters to be discussed with sufficient clarity to assess appropriateness of the discussion in light of the audience.

- DO strictly follow the agenda – its use as an accurate record of the purpose and subject matter of the meeting is undermined by discussion of off-agenda items.

- DO ensure that minutes of the meeting are taken in draft form and thereafter reviewed before being finalized.

- DO intervene immediately if you feel uncomfortable about anything that is discussed in the meeting and ask that your concern be minuted.

- If the discussion nevertheless continues, you leave the meeting and ask for your departure to be minuted. Make a note of your actions the same day and report the event immediately to the Legal Department and your manager.

- If such a discussion takes place outside the context of the formal meeting, walk away. Make a note of your actions the same day and report the event immediately to the Legal Department.

- DON'T discuss prices, other terms of trade, customers, bids, or plans or other commercially sensitive information.

- DON'T engage in sidebar discussions at the trade association meeting or at ancillary social events or meals with one or more representatives of competing companies on commercially sensitive information – there is strength in numbers so stay with other colleagues of Aperam where possible.

- If the trade association prepares industry statistics, DON'T provide Aperam commercial data to the trade association (or agree to receive data) unless the statistical services offered have been vetted and approved by the Legal Department.

2.3. Planned Meetings with Competitors

From time to time there may be occasions where Aperam will meet with competitors for legitimate business reasons(e.g. a due diligence exercise and negotiations in the context of proposed joint ventures, mergers and acquisitions, supply agreements and research and development agreements) outside of the context of trade association meetings.

All of the policies and guidelines set forth above with respect to individual contacts with competitors and trade association meetings must be followed strictly with respect to any planned meetings with competitors.

In particular, be very careful not to provide or receive confidential information in the context of any research and development or joint ventures with any competing suppliers. Appropriate guidelines must be put in place on a case by case basis and information must be ring-fenced to:

- limit information flows;

- ensure that commercial representatives involved in the marketing and distribution of competing products (including directors who sit on multiple boards) do not see or use any confidential information relating to third party products obtained as a result of the arrangement or discuss anything other than the arrangement itself.

Please discuss with the Legal Department the appropriate procedures to be followed in each case.

2.4. Benchmarking

Benchmarking by exchanging information with competitors of Aperam is in principle NEVER permissible, except for benchmarking done through an outside consultant. Even in the latter case, very strict rules apply. You must contact the Legal Department before engaging in any benchmarking exercise.

2.5. Market Intelligence

You can obtain market intelligence only from sources other than competitors, such as publications, including trade reports, etc. Even if those sources don't give you as much information as you may want or need, you should NEVER go to competitors for such information.

Equally, you should not encourage customers or suppliers to provide you with competitors' prices or information on their commercial policy. If a customer or supplier happens to provide you with such information, please report this to your manager and please keep a written record of the source of such information and the circumstances in which it was provided to you.

- DO obtain necessary market intelligence from public sources and NOT your competitor.

- DO keep a written record of the source of any such information and circumstances in which it was provided to you.

- DON'T meet with, or in any way correspond with your competitor regarding market intelligence.

2.6. Hub and spoke arrangements

Aperam as a supplier must be very cautious about sharing commercially sensitive information which has been provided to it by one customer with another customer. For example, if a customer informs Aperam that it will be increasing the price of its products across the board, Aperam should not share this information with another customer. The channelling of information could be regarded as a three-way concerted practice between Aperam as the supplier and its two customers if it leads to a breach of the competition rules. This is known as a hub and spoke arrangement. Aperam must also ensure that it is not used as a conduit for an information exchange taking place between its suppliers. Be very cautious about sharing commercially sensitive information which has been provided by one supplier with another supplier. If you have concerns about the conduct of suppliers then discuss them with the Legal Department.

3. Vertical Agreements - arrangements with customers and suppliers

Although collusion between competitors constitutes the most obvious and serious violation of competition laws, certain other types of arrangements with customers or suppliers are also prohibited and can be the subject of severe penalties.

The following arrangements with customers or suppliers are likely to be unlawful:

- setting your customer's pricing policies (e.g., resale price maintenance, or where recommended resale prices are enforced by sanctions);
- market partitioning by sales territory (e.g., export restrictions or specifying where resale must take place) or customers (excessive/long term exclusivity arrangements; sole supplier status etc);
- prohibition of passive sales outside a sales territory allocated to a trader or a reseller (parallel trade); or
- prohibition of selling competing products imposed on a trader or reseller except in certain circumstances.

Where a customer or a supplier proposes arrangements of this nature, you should immediately consult the Legal Department. Aperam should only propose such arrangements with the approval of the Legal Department. In addition, joint purchasing and/or joint selling arrangements can affect competition and should NEVER be entered into without prior consultation with the Legal Department.

3.1. Exclusive sourcing arrangements

A customer can require a supplier to supply only that customer or to supply all or a large part (more than 80%) of its stock for particular kinds of products to that customer, but only if the agreement is for a definite period of time that is less than five years and both parties have less than a 30% market share. If the agreement is automatically renewable, this counts as an indefinite period and is not permitted. This kind of exclusivity clause is also known as a non-compete clause.

In addition, a supplier can require a customer to buy all or a large part (more than 80%) of its requirements for particular kinds of products from the supplier, or not to buy (or manufacture, sell or resell) competing goods, but only if the agreement is for a definite period of time that is less than five years and both parties have less than a 30% market share.

Do not agree a clause where the non-compete obligation exceeds five years, or is automatically renewable, unless you have first consulted the Legal Department. If the customer or supplier is dominant in the market separate considerations arise, as the abuse of dominance rules come into

play as well as the prohibition against anti-competitive agreements. If you think that this is the case please contact the Legal Department for further guidance.

3.2. Exclusive distribution

A supplier can appoint a distributor for a particular geographical territory or a particular type of customer. Where it appoints a distributor for that territory or type of customer, it can agree:

- not to appoint anyone else to sell to that territory or to that type of customer; and
- not itself to sell its products into that territory or to that type of customer.

This is an exclusive distribution agreement. By its nature, this is a restrictive agreement, as it restricts other distributors (and the supplier) from selling products in that territory or to those customers. However, provided both the supplier and the distributor have a market share under 30% and the agreement does not contain any hardcore restrictions (e.g. price fixing, market partitioning etc), the agreement is likely to be permissible. At higher market shares, any other restrictions in the agreement must be assessed individually for their potential impact on competition, so contact the Legal Department.

A supplier in an exclusive distribution arrangement must not prevent its distributor selling goods in response to unsolicited orders from a customer outside the distributor's allocated territory or who belongs to a different customer group than the one allocated to him. This kind of unsolicited sale is known as a "passive sale". Having a website is regarded in general as a form of passive selling.

3.3. Agency agreements

A genuine agency agreement can stipulate where the agent can sell goods or services, the customers to whom he or she can sell them and the prices at which they must be sold (these restrictions would otherwise be likely to fall within the prohibition against anticompetitive agreements). This is because the Agent's function is to conclude an agreement between its Principal and the customer, and does not take any risk in the transaction concluded. However, the category of genuine agency agreements is narrow and will not apply if the Agent takes on any element of risk in respect of the transaction. Even genuine agency agreements may infringe the competition rules if they lead to the market being closed off to competition. An example of this could be where the principal is prevented from appointing another agent for a territory, customer or type of territory (exclusive agency provisions) or where the agent is prevented from acting as an agent or distributor for companies that compete with the principal, especially if these extend beyond the life of the agency agreement. Whether such a restriction can be justified is a matter that needs careful legal assessment so please contact the Legal Department if you are faced with such a situation.

Intra-group agreements, including intra-group agency agreements, are not subject to the EU competition law prohibitions (group companies are looked at as a single economic entity under EU competition law).

4. Abuse of a dominant position

The prohibition against abuse of a dominant position only applies to suppliers or purchasers with significant market power. The first step is therefore to identify whether a company is in fact dominant in the relevant market. Dominance is presumed above a 50% market share, although evidence to the contrary may disprove it, and may exist at market shares in the range 30%-40%.

Dominance itself is not prohibited, only the abuse of that dominance. Dominant companies are allowed to compete for business on the basis of the quality of their products and services. However, competition law places a special responsibility on dominant companies when competing in the market. As a consequence, conduct that is perfectly legal for a company without market

power may be an abuse when carried out by one that is dominant. Abuse of a dominant position includes taking steps to prevent competition developing by excluding actual or possible competitors as well as taking advantage of a strong market position by imposing unfair terms or charging excessive prices.

Abusive conduct may, in particular, consist of:

• **Predatory Pricing**

A seller with market power in a particular product or service market is prohibited from pricing below cost to a competitor with the intent to harm, or the likely effect of harming, that competitor and/ or with the aim of removing competition on that particular market.

• **Selection and Rejection of Customers or Suppliers**

A refusal to deal with a would-be or an existing customer or supplier may be unlawful if the refusing party has market power in respect of the product concerned.

• **Price Discrimination and other Differential Treatment of Customers and Suppliers**

A seller that has market power must not discriminate in its prices or other sales conditions when dealing with similarly situated customers under comparable conditions. Only if there is an objective justification for the different conditions (e.g., rebate to a distributor providing special service), may different prices or terms be proposed to customers in the same class or category. Discriminatory discounts by a dominant company are generally not permitted.

• **"Tie-Ins" and "Bundling" of Product Ranges**

A seller with market power in one of its product markets may NOT force its customers to make other purchases from it by „tying" its sales of the product where there is dominance with sales of other products. Severe antitrust penalties are applied to these types of violations.

If you believe that Aperam has market power in relation to a certain product, or if you are dealing with a supplier which has market power you should consult with the Legal Department.

Joint dominance

Although rare, two or more companies could be found to have a collective dominant position if, together, they are in a position

- to behave independently of their competitors, suppliers or customers; and
- to hinder the maintenance of effective competition in the market.

Although the law in this area is far from clear, the companies concerned must at least in some respects adopt common conduct or otherwise align their behavior on the relevant markets. Joint dominance may arise in markets in which it is easy for companies to co-ordinate their pricing and other behavior, for example, markets where:

- there are very few suppliers,
- the suppliers have information about each other, and
- the products or services are similar and readily interchangeable.

5. Accuracy in Writing

Be accurate in what you write in correspondence, emails and memoranda about the businesses in which Aperam competes, its competition and competitors. It is easy for what we write to be

taken out of context and provoke incorrect inferences about our commercial conduct and/or the markets in which we compete. Some simple guidelines can avoid many problems:

- DO always write clearly, concisely and completely and avoid exaggeration.
- DO mark all documents (including e-mails) “Confidential and Legally Privileged” when corresponding with external counsel.
- DO limit memoranda, e-mails or letters dealing with the subject of competition or competitive prices to statements of fact and always provide the source of the information.
- DON’T ever overstate or exaggerate Aperam’s market position and/or its market strategy.
- DON’T ever write inter-office memoranda in a way that could support an inference that Aperam is engaging in predatory or exclusionary activity, that there is some sort of collusive understanding among competitors or that Aperam is otherwise acting with anticompetitive intent (for example, references to driving out the competition).

Following these simple guidelines will reduce substantially the risk of unjustified inferences in the event Aperam later faces a competition investigation.

Please also note that in the context of proposed M&A operations (joint ventures, acquisitions, divestitures) internal documents may have to be provided to the European Commission or national competition authorities. Such documents will typically contain a market analysis and explicit statements on strategic intentions.

6. Government Investigations

Officers and employees should inform the Legal Department immediately where there are allegations, be it from competitors, customers or any other source, that Aperam is involved in anticompetitive behavior.

It is Aperam’s policy to cooperate in all appropriate ways with authorized governmental authorities in connection with any investigation conducted by them in the proper performance of their duties. A government investigation in this context means any non-routine enquiry by a European or national law enforcement agency related to the corporate activities of Aperam or its subsidiaries regarding possible criminal or civil violations of any laws or regulations.

Under EU and national procedural rules, the European Commission or national competition authorities may issue a request for information to Aperam at any location in the EU and require Aperam to furnish oral or written information.

These authorities may also at any time conduct unannounced on-site inspections (“dawn raids”) in any premises of Aperam and/or private cars or houses. It is important, therefore, that any non-routine government investigation, whether antitrust or otherwise, be properly coordinated within Aperam and handled in a prompt and orderly manner. Aperam’s Legal Department should be immediately informed when any employee is approached by any person or authority conducting a government investigation regarding possible violations of competition laws.

In order to ensure the required coordination, and the furnishing of accurate and complete information, as well as to safeguard the rights of Aperam and its employees, no information concerning Aperam’s business, whether oral or written, should be furnished except after prior review, advice and approval of the Legal Department. The Aperam “Dawn Raid” Guidelines should be followed in case of on-site inspections conducted by EU and/or national competition authorities. The destruction of Aperam records or files should always comply with Aperam’s rules on the retention of documents and records. No Aperam record or file maybe destroyed or altered during a government or internal investigation. Not following these rules could lead to serious consequences for employees, including dismissal.

7. Consequences of Violation of Antitrust Laws

A violation of EU or national European antitrust law may result in significant penalties for Aperam and individuals alike, including in certain circumstances, prison terms for individuals. Agreements containing an illegal clause may be held unenforceable and invalid.

EU and national competition laws provide for penalties of up to 10% of the world-wide turnover of a corporate group found to have infringed competition law. In addition, for certain types of violations, national laws of certain countries may lead to penalties and imprisonment for individuals.

Moreover, in addition to criminal and civil penalties, antitrust violations are also subject to private damage actions that allow private parties (e.g., customers) the right to recover very substantial amounts on account of damage caused to their business by unlawful conduct.

Criminal and/or civil fines, private actions for damages, and, most importantly, damage to the reputation of a company in the marketplace, can severely impact a company's business and share price.

In all cases where the evidence is sufficient to warrant disciplinary action, such action will be taken against Aperam employees involved in any illegal conduct, in compliance with all applicable laws.

8. Updating the Policy

The Legal Department is responsible to update this Policy based on regulatory changes or other legal or organizational developments.