

Nestlé Group Antitrust Law Policy



Policy
Mandatory

September 2016

Po

Issuing department

Group Legal

Target audience

All employees

Approver

Board of Directors and Executive Board of Nestlé S.A.

Repository

All Nestlé Principles and Policies, Standards and Guidelines can be found in [NestleDocs](#), on the Nest

Copyright and confidentiality

All rights belong to Nestec Ltd., Vevey, Switzerland.

© 2016, Nestec Ltd.

Design

Nestec Ltd., Corporate Identity & Design,
Vevey, Switzerland

Introduction

Nestlé values consumers' trust above all else and it is fundamental for Nestlé to safeguard its reputation. Complying with antitrust laws throughout the world engenders consumers' trust in Nestlé and protects Nestlé's reputation. The Nestlé Corporate Business Principles establish the clear policy that Nestlé complies with antitrust laws throughout the world.

Nestlé is firmly committed to a functioning free market economy and welcomes vigorous competition, which drives efficiency, encourages innovation and delivers to consumers a choice of products and prices. Antitrust laws aim to preserve the competitive, free enterprise system that is the basis of a free market economy. Abiding by antitrust rules is fundamental for creating and sustaining a competitive economy which ultimately benefits society. Nestlé firmly believes that complying with antitrust laws is the right thing to do for Nestlé, and benefits consumers. In line with the OECD, Nestlé supports the view that anticompetitive behaviours that hinder the functioning of markets should be prohibited and punished.

Compliance with antitrust laws is of key importance to all of Nestlé's businesses and to Nestlé's reputation and falls within the framework of Nestlé's Code of Business Conduct (Section 7 Antitrust and Fair Dealing). Every single employee

at Nestlé is expected to comply with all applicable antitrust laws and every Nestlé manager is required to take any action necessary to achieve this result and seek to avoid even the appearance of any wrong doing. Nestlé cannot afford the possibility that non-compliance with antitrust laws could in any way damage the hard won trust which consumers have in Nestlé. Nestlé has committed to report transparently on any antitrust investigation affecting Nestlé in line with the Global Reporting Initiative G4 guidelines. In this environment every Nestlé manager has to be diligent in ensuring that all employees live up to Nestlé's principles and commitments in all business dealings.

All Nestlé employees must demonstrate their awareness of antitrust laws when engaging with any competitor, customer or supplier. To do this all employees must understand the basic rules of antitrust laws to ensure compliance when executing their day-to-day roles.

Antitrust laws are complex and may vary from country to country. Nestlé expects employees to seek guidance from the Nestlé Legal Function regarding any questions which may arise in relation to antitrust compliance. Nestlé will not tolerate any excuse for failing to seek legal advice.

The basics of Antitrust Laws

Antitrust laws protect free and unrestricted competition between all players at all levels of the supply chain. In summary, antitrust laws prohibit:

- agreements or concerted practices (such as a common understanding) that aim at or result in the restriction of competition and
- the abuse of a dominant position.

Basically, this means that Nestlé must compete independently from other market players and must not seek to control the commercial policy and practices of its retail customers and distributors/wholesalers. Nestlé must not coordinate its competitive behaviour with other companies to try to avoid or reduce the rigours

and uncertainty of a competitive market place. This covers both contacts with competitors and interactions with retail customers and distributors/wholesalers. The most obvious examples of unlawful behaviour are price fixing between competitors and fixing a retail customer's resale prices.

In the specific situation where Nestlé may be considered to hold a dominant position, antitrust laws may also prohibit unilateral behaviour which may prevent (or foreclose) competitors from competing for business.

Relationships with Competitors

When it comes to relationships with competitors, the most severe infringements of antitrust law are:

Price Fixing

Price fixing between competitors is one of the most serious breaches of antitrust laws and is regarded as a hard-core cartel, punishable by the highest levels of fines; it is also a criminal offence punishable with imprisonment in many countries. Price fixing relates to any agreement or concerted practice between competitors that restricts, or aims to restrict price competition. Nestlé employees must always make decisions about pricing and commercial terms independently of competitors and must never discuss pricing or commercial terms with competitors.

Market Sharing

Agreements and concerted practices between competitors to allocate markets, whether by product, territory, channel, type or size of customer, or in any other way, are illegal.

Bid rigging (coordinating tenders)

Co-ordinating tenders between competitors is a serious infringement of antitrust law and a criminal offence in many jurisdictions. Competitors must bid independently of others.

Exchange of confidential and commercially sensitive information

It is not permissible to exchange confidential information which may reduce or remove any degree of uncertainty between competitors in respect of current or future market conduct.

Confidential information includes pricing, credits or discounts, terms of sale, capacity, production forecasts, current trading conditions, commercial strategies, identity of customers and suppliers, details of negotiations with retailers, marketing plans, etc. Any benchmarking project must be reviewed in advance with the Legal Function.

The mere receipt of such information can be illegal, even if the employee does not reciprocate by disclosing similar information.

Trade Associations

Trade associations provide a venue for market actors to legitimately meet and discuss industry trends and issues, such as legislation impacting their industry sector. However, trade associations also present an inherent risk of facilitating intentional or inadvertent illegal information exchanges or even cartels. Many recent high profile cartel cases started with discussions at trade association meetings.

All employees must stay vigilant when attending trade associations to ensure there are no inadvertent breaches of antitrust laws. Passively listening to attendees engage in anti-competitive exchanges is sufficient to breach the law.

Employees must:

- **Seek** management approval for all trade association memberships.
- **Ensure** trade associations have an antitrust policy and guidelines in place and contact the Legal Function in case a trade association does not have such a policy and guidelines.

- **Insist** that a written agenda be circulated to participants well in advance of any trade association meeting and contact the Legal Function in case of any potential antitrust concerns with the agenda in advance of attending the meeting.
- **Object** to deviations from the agenda during the meeting and leave the meeting if any potential anticompetitive practices (price-fixing, market sharing, etc.) are discussed. Ensure that your objection and/or departure is/are properly recorded in the minutes of the meeting and contact the Legal Function.
- **Report** immediately to the Legal Function any other incident in the environs of the meeting which could have antitrust law consequences.
- **Keep** minutes of each meeting.

Customers, Distributors and Wholesalers

The general principles of antitrust law apply also to Nestlé's relationships with its customers, i.e. retailers, distributors and wholesalers.

Broadly, customers must be free to determine their commercial strategy independently.

Resale price maintenance

Pursuant to the majority of antitrust laws, in most countries Nestlé's customers should be free to set their own resale prices. In those countries where resale price maintenance is prohibited, any agreements or concerted practices which result in fixing a retailer's or distributor's/wholesaler's resale prices or setting a minimum resale prices will generally be deemed to be illegal.

However, it is generally acceptable to issue a resale price recommendation and explain the rationale behind it (value of brand, product consumer perception, market situation), as long as the customer is not required to follow that recommendation. Similarly, it may be acceptable to agree maximum prices to customers where this does not result in a fixed price, however employees should first contact the Legal Function.

Restrictions on resale territories or customers

As a general rule customers are free to sell wherever they wish and to whomever they wish. Within the European Union, all the companies, including wholesalers/distributors and retailers are free to sell into any European Union member state and to any customer or group of customers. There are limited exceptions to this rule which must always be cleared in advance with the Legal Function.

In all geographic regions, employees must seek advice from the Legal Function before agreeing geographic or customer restrictions.

Restricting customers from selling competing products

Employees must seek advice from the Legal Function before restricting a customer's freedom to sell products competing with Nestlé's products.

Abuse of a Dominant Position

There is nothing illegal or wrong with winning over customers and achieving strong market shares. However, antitrust laws impose specific additional restrictions on the commercial freedom of dominant companies in order to keep markets open and competitive.

Where employees consider that Nestlé may have strong market positions for particular products, the employees **must seek advice from the Legal Function in particular before:**

- Agreeing exclusive purchasing requirements or non-compete clauses.
- Agreeing customer loyalty incentives (rebate, price scheme or bonus).
- Refusing to supply certain customers where the Nestlé product in question may be considered as necessary for that customer to conduct its business.

Consequences of Infringing Antitrust Laws

The ramifications of breaking antitrust laws are serious, both for Nestlé and individual employees.

- **Reputation:** Antitrust investigations attract significant media coverage and damage Nestlé's reputation in the market and more importantly damage consumers' and stakeholders' trust in the Company. In addition, antitrust investigations and fines can undermine Nestlé's credibility in its dealings with governmental and regulatory agencies in other fields.
- **Fines:** Breaking antitrust laws may result in ever increasing fines. Global companies regularly face fines of hundreds of millions of EUR/USD, and in a number of jurisdictions the maximum fine is 10% of a company's global turnover. This ceiling has been met in a number of cases. In addition, in a number of jurisdictions individual employees may receive serious fines of hundreds of thousands EUR/USD.
- **Criminal risk:** In many countries infringing antitrust law is a criminal offence for individual employees. Employees involved in illegal anti-competitive practices can face time in prison. Countries with criminal antitrust penalties include: Australia, Brazil, Canada, Chile, Israel, Japan, Mexico, the Netherlands, the UK and the US.
- **Civil liability/Damages:** Nestlé may also be sued by injured parties for damages resulting from infringement of antitrust laws.
This includes Class Actions of groups of victims of antitrust law infringements. Many governments, including the EU, actively encourage this as a form of "private enforcement" of antitrust law. In the US, this will automatically result in treble damages (three times the value of loss of profit due to the antitrust breach). Claims for damages often amount to hundreds of millions of EUR/USD.
- **Contractual risk:** Illegal terms in a contract can lead to the offending clause or even the whole agreement being deemed void and unenforceable.
- **Internal costs:** In addition to these penalties, the cost of defending antitrust claims or investigations by the authorities can be staggering both in terms of external legal fees and loss of management time due to the serious disruption of day-to-day business.

Implementation, Reporting and Training

This Policy sets out minimum standards enshrined in Nestlé's antitrust compliance culture. Nestlé welcomes the development of free market economies and competition, which ultimately benefits consumers, customers, the market and Nestlé.

The implementation of the Policy is conducted both at Group and Market level. Every Nestlé manager and employee is expected to take full responsibility for antitrust compliance and ensure correct individual behaviour at all times. Nestlé will ensure that the Group Legal Function is able to proactively support and advance Nestlé's antitrust compliance commitments.

Training Nestlé's employees to make sure they comply at all times with the applicable antitrust laws and monitoring compliance within the Group forms an integral part of Nestlé's antitrust compliance culture. The responsibility for developing and updating the antitrust training program lies with the Group Legal Function. The implementation is the responsibility of the Zone General Counsels, the Heads of Legal in the Markets, the Heads of the Globally Managed Businesses and the General Counsel of Corporate Operations & Procurement. Detailed guidelines and content for the training program will be produced by the Antitrust Counsels at the Group Legal Function.

