Competition Compliance Guideline

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PHOENIX group

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GROUP COMPLIANCE

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For questions regarding the versions and exact content-related changes please contact Group Compliance.

The currently valid version is highlighted bold. Currently applicable Compliance Guidelines and Standards may be consulted via the intranet (CONET, local intranet).

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Glossary

Business Partner	A Business Partner in the regard of this Guideline is also a third-party with the exception that the agreement has been concluded in order to have all business activities with the respective Phoenix Company arranged.
Local Compliance Manager (LCM)	The individual who is responsible for the implementation of the CMS – following the specifications from Corporate Compliance – in their respective company/companies and who is available as a local point of contact for all matters relating to compliance. One LCM has been designated for each unit within the PHOENIX group. (See the Compliance Principles and Reporting & Investigations Guideline for more details)
Employee	An Employee is any individual, who signed a direct employment contract with PHOENIX group, and performs work or tasks directly for PHOENIX group.
PHOENIX group (or just "PHOENIX")	Comprises all companies in which a majority of the shares are held by PHOENIX Pharma SE or one of its subsidiaries, or which are directly or indirectly controlled by the holding company or its subsidiaries.
Third Parties	A Third-Party is any natural or juridical person with whom a company in the Phoenix group has contact. This contact includes all business and non-business agreements, whereby the respective agreement is not necessarily concluded to generate revenue (e.g., Donations) or has financial impact (e.g., panels for experts). PHOENIX group companies and their employees are not considered as Third Parties.

I General information

This guideline contains information on how to behave regarding competitors and Business Partners of the PHOENIX group as concerns compliance with provisions under competition law.

This guideline is based on the provisions of EU competition law, which applies uniformly across all member states, and the associated high standards of competition. All companies in the PHOENIX group as well as their Employees are obligated to comply with these legal requirements.

However, the national legal requirements of individual member states may be more stringent than EU law, particularly in areas that are subject to potential abuse of dominant market positions. The same also holds true for non-member states. All companies in the PHOENIX group as well as their Employees are obligated to comply with the relevant local legal requirements. If anything is unclear regarding the legal requirements, Employees are to consult with their superiors, the LCM, or the legal department.

Competition law protects free and open competition against restrictions by companies. Free and open competition is one of the pillars on which our economic system rests. It promotes efficiency, creates growth and jobs, and guarantees consumers the availability of modern products at reasonable prices. Competition law ensures that this remains so. An equally important aspect is its capacity to protect the PHOENIX group from any anti-competitive practices of other companies as well.

The fundamental means by which the EU competition law achieves this are:

- the prohibition of cartels; and
- the prohibition of the abuse of dominant market positions.

The national laws of EU member states and many other countries have similar regulations.

See Compliance Principles

The regulations of the Compliance Principles and Reporting & Investigations Guideline, shall apply without restriction to this guideline. They must be complied with and put into practice in their entirety.

Compliance with competition laws is the responsibility of every Employee. Employees are forbidden to engage in practices that violate competition laws. Each employee is responsible for acquiring a sufficient understanding of competition laws to recognise situations that may involve competition law issues. In case of any question of whether a current business practice or a commercial decision might conflict with competition laws, contact your LCM or Corporate Compliance with any questions you may have regarding competition law or any other topic discussed in this guideline.

ANNEX I of this guideline may also serve you as assistance in identifying and evaluating difficult situations in terms of Competition Compliance.

Compliance with the regulations of this guideline may be also controlled via the Competition Compliance Mail Screening (for further information, please see CoCo_Standard_Mail Screening).

II Regulations

1. Cartels and the Abuse of Dominant Market Position

1.1 Cartels

Principles and rules

PHOENIX forbids the formation of cartels as well as the participation in or contribution to cartels and all other activities which are intended to directly or indirectly lead to the formation of a cartel or have similar effects.

The guiding principle of this prohibition of cartels is the "demand for self-sufficiency". This principle requires each company to independently specify and implement its business guidelines.

The prohibition of cartels also includes concerted practices which are based on a tacit agreement between the parties involved. It is also possible to violate this prohibition without an explicit agreement (written or oral).

Competition violations are committed as soon as any agreement or concerted practice between companies, or the decision to form an association between the companies reduces the uncertainty that is typical of competition. An example of this would be the exchange of information relevant to competition (see point 2).

Concerted practices and decisions can also violate the law even if they do not affect competition. The mere intention to bring about such effects is sufficient.

For this reason, Employees are strictly prohibited from

a) reaching agreements or making other arrangements with a competitor on prices, sales volumes or sales quotas, market shares, the division of sales regions or clients, or the handling of client or supplier demands;

b) exchanging information with a competitor concerning prohibited or critical topics, other than those instances in which this is expressly regulated differently by the legal department or the compliance organisation.

Definition

A cartel is understood to involve agreements or concerted practices between companies or decisions made by associations of businesses that have anti-competitive intent or anti-competitive effect, e. g. by preventing, restricting, or distorting competition in a certain market.

This guideline applies to the following types of cartels:

- **Horizontal agreements or practices:** Agreements or concerted practices between competitors (at the same level in the supply chain) or decisions made by such companies with anti-competitive intent or anti-competitive effect.
- **Vertical agreements or practices:** Agreements or concerted practices between companies at different levels along the supply chain or decisions made by such companies with anti-competitive intent or anti-competitive effect.

EU competition law expressly prohibits agreements, concerted practices, and decisions which

- directly or indirectly set sales prices or other trade conditions;
- restrict or control production, markets, technological developments, or investments;
- divide up markets or sources of supply;
- disadvantage other market participants by using different terms for equivalent transactions; or
- which connect the conclusion of contracts with the acceptance of additional services which, due to their nature or in any typical commercial sense, stand in no relation to the subject matter of said contracts.

This list is not exhaustive and does not contain all agreements, concerted practices, or decisions deemed anti-competitive by the authorities and courts in their intent or effects. Specific key topics are discussed with further examples in Sections 2 through 4.

If such violations are proven, this could have legal consequences, including:

- fines and prison terms for the persons involved in a cartel;
- fines for the PHOENIX group companies whose representatives were implicated in a cartel;
- challenges to and the annulment of contracts;
- claims for damages by injured parties.

1.2 Abuse of a Dominant Market Position

Principles and rules

PHOENIX prohibits the abuse of a dominant market position as well as any other activities which are intended to directly or indirectly abuse such a position or have similar effects.

Each unit within the PHOENIX group shall independently determine whether there exists a dominant market position within a certain market or segment thereof. If this is the case, this position shall not be abused.

A dominant market position is often the result of excellent performance and thus not forbidden in and of itself. If in a specific case, a company does hold a dominant market position, it will be subject to particularly strict regulations governing its conduct concerning other market participants. A company with a dominant market position may therefore not obstruct nor discriminate against other marker participants in an unjust manner.

Competition law demands that dominant companies within a certain market take their Business Partners and competitors into consideration. In some countries, there are similar regulations for companies with a strong (even if not dominant) market position.

The consequences associated with the abuse of a dominant market position are fundamentally similar to those associated with participation in a cartel (see previous section).

It cannot be ruled out that the PHOENIX group might have a dominant market position in some markets. In these markets, the following activities are prohibited:

- selling at inappropriately high prices ("extortionate prices“);

- drawing away clients from the competition with artificially low prices (or artificially high discounts) with which others cannot compete ("price dumping"), e.g. prices below cost;
- non-delivery without an objectively valid reason;
- treating customers differently without an objectively valid reason ("discrimination"), e.g. the use of different prices, discounts, or conditions for doing business for equivalent transactions among different customers;
- making the sale of one product dependent on the selling of a different product ("binding");
- the employment of certain discounts, such as discounts with binding effect, discounts under the condition of purchasing everything or the largest share of the supply of a certain product from one supplier ("loyalty discounts"), or discounts with similar effect and designed in such a manner that the client only receives certain benefits when they maintain a certain share or procurement volume with the dominant supplier.

Definition

It is not easy to determine market dominance, and various factors must need to be taken into account. The prohibition on the abuse of a dominant position is generally directed against the unilateral conduct of dominant companies within a market.

A company is deemed to have a dominant market position if it is so strong that it may conduct itself differently regarding competitors, suppliers, and clients.

To determine whether a company has a dominant position, various criteria are used. It is understood that low market shares generally constitute good grounds to assume that a company is lacking in substantial market power. With market shares under 30 %[1], a dominant market position is unlikely. Market shares are assessed, however, while also taking into account the relevant market conditions, such as the (i) dynamics of the market (expansion and entry), (ii) the extent to which the products differ, and (iii) the restrictions of a certain company by current or potential competitors as well as its clients and suppliers.

The larger the market share or the more a market share exceeds the 30 % threshold, the more important it becomes to be able to rule out the possibility that a dominant market position exists or is being abused.

EU competition law specifically mentions the following examples of abusive practices:

- direct or indirect extortion by imposing unreasonable purchase or sale prices or any other trading conditions;
- limiting production, markets, or technological development to the detriment of consumers;
- applying dissimilar conditions to equivalent transactions with other market participants, thereby placing them at a competitive disadvantage;
- concluding of contracts subject to the other party's acceptance of supplementary obligations which, by their nature or according to ordinary trade practice, have no connection with the subject of such contracts.

[1] The market share used as an indicator for a dominant market position may differ from country to country.

This list is not exhaustive and does not contain all business practices deemed anti-competitive by the authorities and courts. In addition, new practices may be identified as abusive by the authorities and the courts at any time.

Dominant positions always pertain to a certain market. Thus, a company cannot be dominant "in itself". Determining whether the PHOENIX group has a dominant position in a certain market is a complex legal task that must be performed on a case-by-case basis.

2. Exchanging Information with Third Parties

Principles and rules

The (systematic) exchange of information with Third Parties (particularly competitors) regarding matters relevant to competition is prohibited.

Employees are to exercise care when sharing any type of information (relevant to competition) with Third Parties, especially with competitors.

Sharing of information must not reduce or eliminate uncertainty in the market or the independence of competitors' conduct to reduce competitive pressure.

The source of the information must always be legal[2] and corporate secrets must be kept.

The exchange of information with competitors is a delicate subject within competition law. It generally prohibits competitors from exchanging information relevant to competition. Even the one-sided and one-off disclosure of information relevant to competition might constitute a violation of competition law if it allows for concerted practices between the disclosing and the receiving company and thus reduces competitive pressure. There is always a risk that an exchange of information on permissible topics may drift off toward prohibited or sensitive subjects. In addition, the list of topics specified above is not exhaustive and the general regulations under point 1 apply at all times. Please also refer to ANNEX I of this guideline.

When sharing of data between competitors reduces or eliminates uncertainty in the market or the independence of competitors' conduct, there is a competition concern attributable to such information exchange and such information exchange can constitute a concerted practice between competitors.
Certain characteristics of the data being exchanged can enhance the risk. For example, the exchange of data that is considered strategic (such as information related to prices, quantities, sales, capacities, marketing plans, etc.), individualised (as opposed to aggregated data), data being exchanged more frequently and exchange of current or future data (as opposed to historic data) all increase the risk of information exchange being construed as collusive and prohibited.
The kind of information that is exchanged is what decides whether the exchange of information allows for conclusions (see also examples below) to be drawn about the current or future business conduct of the companies involved, or whether it might reduce the competitive pressure. Even an apparently harmless contact and exchange may be interpreted as an attempt to indicate to a competitor willingness to enter into anti-competitive behaviour.

All Employees of the PHOENIX group are thus required to adhere to the following principles of proper conduct in situations relevant to competition:

[2] A source is only then deemed legal if the information has been received under compliance with all contractual and legal regulations. It is therefore prohibited to procure or receive information which is subject to confidentiality, by committing an offence, or by participating in the committing of an offence.

- exercising unremitting care when communicating with competitors;
- expressing objections as soon as prohibited or sensitive topics are addressed;
- ending the conversation if the other party fails to comply with this objection (as well as potentially having this logged and notifying the LCM about it).

If anything is unclear or if there are any questions about the exchange of information that could potentially be relevant to competition, LCM, Corporate Compliance, or the local legal department must be contacted immediately.

Definition and examples

A Third Party is any natural or juridical person with whom a company of the PHOENIX group has (business) contact.

The kind of information that is exchanged is what decides whether the exchange of information allows for conclusions to be drawn about the current or future business conduct of the companies involved, or whether it might reduce the competitive pressure.

In general, there are types of information that would not give rise to concerns with regard to competition law ("permitted topics") and others type of information which may virtually never be shared with competitors (topics relevant to competition, "prohibited topics"). Finally, there are types of information which might give rise to problems under competition law when shared with competitors in specific cases (competition-sensitive information, "critical topics").

The following lists merely provide some examples, without any claim to comprehensiveness.

The following topics are permitted:

- publicly available information[3], e.g. the content of business reports, news articles, etc.; information or details which exceed the scope known to the public may, on the other hand, not be exchanged;
- general topics related to technology or science, e.g. general developments within the industry or technological innovations;
- general legal and sociopolitical issues and the joint representation of interests vis-à-vis government agencies (i.e. lobbying activities), e.g. basic legal conditions or legislation which currently being proposed, as well the importance of such for the industry and opportunities to jointly represent interests vis-à-vis the legislature or government;
- the general (i.e. non-company-specific) economic situation, e.g. the economic situation within the industry, prognoses, share prices, and so on;
- matters in which the PHOENIX group does not stand in competition with one of the other companies involved.

The following topics are prohibited, i.e. Employees of the PHOENIX group are not allowed to exchange information about them with competitors:

- all **information related to prices**, e.g. pricing policy, purchase or sale prices or the components of such, planned price changes;

[3] Information is only considered public if everyone can access it under the same conditions. Information accessible for a high fee or whose access is restricted in another way is considered non-public. Information which Employees receive from clients or other Business Partners is also to be considered non-public.

- **capacities**, e.g. storage or transport capacities, capacity bottlenecks;
- **sales policy**, sales quantities or quotas, allocation of sales territories and clients, client lists, current orders, the handling of client or supplier demands or complaints;
- agreements made on **tendering**: this applies both to the fact that an offer is submitted as well as its contents. the disclosure of offer prices or other offer conditions is prohibited, as are agreements regarding the submission of sham offers by competitors, even if such information is disclosed by just one party;
- **agreements on salaries and the enticing away of Employees**: it is prohibited for competitors or other companies to make agreements and/or exchange information regarding salaries. Competitors or other companies are, to name an example, prohibited from reaching agreements on maximum salaries or ranges for salaries not bound by collective agreement. In the same vein, no agreements may be made to refrain from enticing away Employees and/or to generally refrain from employing the Employees of competitors or other companies.

The following topics are critical, i.e. Employees of the PHOENIX group are not allowed to exchange information about them with competitors, unless said information were to be known to the public or the legal department or Compliance Organisation has given its express consent:

- trade conditions, e.g. terms of delivery;
- costs, e.g. administrative or logistics costs;
- investments, e.g. in IT or logistics;
- revenues, sales figures, and market shares which are not known to the public.

Finally, information relevant to competition forms a component of the corporate secrets of the PHOENIX group. Irrespective of their obligations under competition law, all Employees of the PHOENIX group have a duty to maintain confidentiality on these trade secrets in accordance with the applicable regulations within the context of their employment. In accordance with these regulations, it is categorically prohibited to disclose corporate secrets to Third Parties.

2.1 Data Sharing via Data Information Systems

Principles and rules

PHOENIX prohibits the (systematic) exchange of information with Third Parties (particularly competitors) regarding matters relevant to competition (see also point 2) via (external) data information systems.

Employees are to exercise care when sharing any type of information (relevant to competition) with Third Parties via data information systems and/or planning to implement new data information flows via internal or external data information systems with Third Parties (e.g. suppliers, customers etc.).

This may also include inter-company information exchange (e.g. from PHOENIX retail to wholesale units).

Information and data exchange – possibly organized in a dedicated data information system - is in many cases important part of PHOENIX core business activities, e.g. as interface between our wholesale or retail businesses and suppliers or health authorities (e.g. point of sale systems,

procurement systems etc.). As such it is not only legal but usually indispensable for conducting our business.

However, such systems often do contain competition sensitive information (e.g. wholesale or retail prices, rebates, quantities etc.) from our entities, and possibly also competitors. Such data is in general considered as relevant under antitrust law. It must not be used to reduce competitive pressure, to generate transparency where not required and particularly not used as systematic information exchange platforms for collusions of any kind.

Even the appearance of any possible anti-competitive conduct in relation to such systems should be proactively countered by taking forethoughtful precaution measures, since the exchange of data between companies may constitute a manifestation of an illegal, anticompetitive agreement.

Data-sharing arrangements may be anticompetitive when, among other things, shared data include sensitive data from a competition-law perspective and/or competitors that have been denied access (or have been allowed access on less favourable terms) may, as a result, have their market access reduced.

Employees must pay particular attention to the kind data shared (see listed in point 2).

All PHOENIX entities and Employees – when operating or using such systems – must ensure the usage of the system(s) is permissible the way it is currently operated. This might require an updated (external) local legal assessment. Reconciliation with the LCM and the Legal Department is always recommended. All relevant regulations specified above on prohibited topics and contents apply.

This potentially also includes (systematic) inter - company information exchange/forwarding (e.g. real-price data from competitors via PHOENIX retail unit to PHOENIX wholesale unit). If necessary, adequate precautionary measures have to be taken to avoid illegitimate information exchange via data information systems (e.g. by implementing a so-called “Chinese Wall” which ensures departments – headed by different objectives – are separated such a way that there is no information exchange [of information relevant for competition], thus avoiding conflicts of interest).

2.2 Benchmarking

Principles and rules

PHOENIX prohibits the abuse of benchmarking activities in order to form cartels (see point 1) as well as the (systematic) receiving, provision, or mutual exchange of information relevant to competition from or with competitors in the context of benchmarking.

The benchmarking process itself is allowed in principle and can improve the efficiency of processes, procedures, and the like; nevertheless, benchmarking always includes an exchange of information.

Hence, the following rules apply to benchmarking activities:

a) Benchmarking does not constitute an exemption from the prohibition of cartels, i.e. the prohibition continues to apply without any changes. Certain activities do not become legal because they are labelled as "benchmarking".

b) Benchmarking is a special form of information exchange, which is why the criteria described in point 2 in particular apply.

c) There is a risk that discussions on the margins of the actual benchmarking process may involve the exchange of information relevant to competition or sensitive with regard to competition. In such situations, Employees must ensure that no prohibited or critical topics are discussed, or in case of doubt, to raise objections (see point 2).

Definition

Within the context of this guideline, benchmarking denotes the continuous process used by competitors with companies outside of their group to compare operations, identify differences and their causes, determine concrete opportunities for improvement, and formulate competitive goals.

Benchmarking activities between companies which do not stand in competition to each other, however, are not affected by this guideline.

2.3 Work in Associations

Principles and rules

PHOENIX prohibits the abuse of activities in associations for the purpose of forming cartels as well as the (systematic) receiving, provision, or mutual exchange of information relevant to competition from or with competitors within the context of working in associations.

Working in associations is permitted in principle. All the same, working in associations does not constitute an exemption from the prohibition of cartels, i.e. the prohibition continues to apply without any changes.

Associations may under no circumstances become a platform for anti-competitive conduct. Hence, the following additional rules apply to Employees who participate in the conferences of associations:

a) **Before the conference**: Insist that you are sent a detailed agenda and inspect whether it contains any prohibited or critical topics. If the agenda contains prohibited or critical topics, the Employee is prohibited from participating in the conference; in addition, they must inform their superior, their LCM, or the legal department about this.

b) **During the conference**: Insist that the detailed agenda is complied with. During conversation, care should be taken not to allow these to drift off course so that information is exchanged which might make it possible to draw conclusions about current or future market strategies. Special care should be taken with open agenda items, such as the "current market situation" or similar. Any discussion of topics that give rise to concerns about their permissibly under competition law must be refused. The Employee should insist that their objection be recorded in the minutes. If the the topic under query continues to be discussed, the Employee must leave the conference. The Employee must insist that their name and the moment of their departure from the conference be recorded in the minutes; in addition, they must inform their superior, their LCM, or the legal department about this.

c) There is a risk of information relative to competition being exchanged on the margins of conversation. In such situations, Employees must ensure that no prohibited or critical topics are discussed, or to object in case of doubt. If another party in the conversation fails to respond to an objection immediately, the conversation must be ended.

d) **After the conference**: insist that the minutes be distributed and that these be approved by the participants. Minutes must be checked for potentially ambiguous phrasing that might give outside parties the impression that topics which are questionable under competition law may have been discussed. The Employee must insist that such

passages be corrected; in addition, they must inform their superior, their LCM, or the legal department about this.

e) Demanding the introduction of a code of conduct for the association.

Definition

An association is a voluntary union coalition of various companies striving to pursue shared objectives. To this end, associations bundle the interests of their individual members to present a united and uniform front vis-à-vis politicians, etc.

Associations offer their members the opportunity to share experiences and jointly represent their political interests. Normally, such activities comply with the regulations of competition law.

2.4 Trade Fairs

Principles and rules

Within the context of trade fairs, Employees should pay particular care to prevent the (perhaps unintentional) disclosure, transfer, or exchange of information relevant to competition or sensitive with regard to competition.

At trade fairs, Employees meet a large number of people. The question of which rules to follow depends on whether the persons concerned work for a competitor of the PHOENIX group or not.

Conversations with non-competitors usually do not give rise to any concerns with regard to competition law. Non-competitors include trade journalists, representatives of the government and the industry, as well as clients and suppliers. Employees should represent the PHOENIX group as best they can; however, they must still ensure that they do not disclose any trade secrets, such as confidential prices and conditions.

Due to the increased risk of conduct which violates competition law, special care should be taken by Employees when conversing with competitors. As such, Employees are obligated to comply with the rules specified in Sections 1.1 and 2, particularly as they relate to prohibited or critical topics, and must distance themselves expressly and unambiguously from such conversations.

Definition

In this context, a trade fair is an umbrella term for all general events or gatherings at which a large number of competitors and Employees (may) meet.

2.5 Signalling

Principles and rules

PHOENIX prohibits the use of signaling as an instrument with the intention or the effect of restricting competition.

Employees must exercise great care concerning the statements they make publicly, which may contain information relevant to competition or sensitive with regard to competition.

Employees are furthermore prohibited from professing to speak on behalf of PHOENIX if they are not entitled to do so.

The (potential) restriction of competition by way of public channels is not excepted from cartel law. PHOENIX prohibits any statement by way of public channels that contains sensitive information with regard to competition or even relevant to competition made with the intention or the effect of restricting competition.

Whether the information is actually intended for the public or whether this is indeed a case of illegal signalling is hard to determine after the fact. Since the standards based on the practices of local cartel authorities are often both inconsistent and vague as well, great care must be exercised when disclosing information that is sensitive with regard to competition.

The LCM or the local legal department are to be consulted prior to any public statements if anything is unclear regarding their permissibility under competition law.

Definition

Signalling refers to statements about future market behaviour made publicly and therefore transparently, with the restriction of competition as the aim, the intent, or the effect.

In such a case, information that is sensitive with regard to competition is disclosed via public media (e.g. newspapers, trade journals, social media, etc.) and directed towards a competitor. In this context, signalling is illegal. Depending on the specific characteristics of the statement and the classification and gravity of the matter, signalling differs from unobjectionable "public communication".

3. Vertical Agreements or Practices

Principles and rules

PHOENIX prohibits illegal vertical agreements and/or practices which are restrictive to competition, have such an effect, or are intended to restrict competition either directly or indirectly, particularly when setting (minimum) sales prices between PHOENIX and suppliers and/or customers.

The permissibility of any existing or intended vertical sales agreements must be assessed individually by each unit within the PHOENIX group.

Vertical agreements or practices do not ordinarily represent any restriction of competition. Quite the opposite, in fact; for example, in the case of procurement, a client must negotiate with the supplier on quantities, prices, discounts, and other conditions.

Even if a vertical agreement or practice includes what may be termed a vertical restriction, i.e. a provision which might have an anti-competitive intent or anti-competitive effects, it does not automatically violate competition law. Vertical restrictions may be permitted, provided that the legal requirements are fulfilled.

Examples of permissible vertical agreements include:

a) Selective distribution agreements: distribution systems in which the provider is obligated to only sell goods to certain Business Partners, perhaps to ensure the quality of the goods or their proper use (such as the exclusive distribution of high-quality cosmetics via specialty pharmacies and ordinary chemist's shops).

b) Block exemption regulations: EU regulations which comprehensively allow agreements and concerted practices that restrict competition (such as in research and development to improve the competitiveness of European companies)

Vertical restrictions which do not have any effects that stimulate competition, as is the case with "hardcore restrictions" (see point 1.1), are prohibited.

Employees are therefore prohibited such actions as:

a) making agreements with clients of the PHOENIX group on resale prices to Third Parties;

b) making agreements with suppliers of the PHOENIX group on resale prices to clients of the PHOENIX group;

c) making agreements or coordinating concerted practices whereby the aim or effect is to restrict a client of the PHOENIX group with regard to their sales territory or clientele (with the exception of the block exemption regulation).

The prohibition on price fixing also includes a ban on fixed resale prices on price lists, in catalogues, on price signs, and on packaging. Employees are also prohibited from using other measures to discipline their clients' pricing policies, such as threatening them with delivery suspensions, contractual penalties, and sanctions, or by granting financial incentives.

Some national healthcare regulations do, however, allow for exceptions. To name one example: in Germany, the prices of prescription medication for end customers are fixed by the country's regulation on prescription drug prices. Similar agreements exist in other European countries as well. Some countries even fix the prices of non-prescription medication as well.

It is often difficult to assess whether an agreement with a vertical restriction restricts competition or not. Employees should thus consult their LCM or the legal department when negotiating vertical agreements between (i) the PHOENIX group and its clients or suppliers (e.g. a non-competition agreement), or (ii) between the PHOENIX group and its competitors (e.g. a procurement obligation), or (iii) between the clients or suppliers of the PHOENIX group and their competitors (e.g. an exclusivity agreement), where there exists the possibility of restricting competition.

Definition

Vertical agreements are agreements made with a Business Partner along the value-added chain (non-competitors, e.g. suppliers – such as the pharmaceutical industry – or clients – such as pharmacies). In contrast to this stand horizontal agreements with Business Partners at the same step along the value-added chain (primarily competitors).

4. Hub-and-Spoke Agreements

Principles and rules

PHOENIX prohibits the formation of, as well as the participation or collaboration in, cartels through so-called hub-and-spoke agreements.

The exchange of strategic information on competitors or their market practices via Third Parties might be critical under cartel law.

Communication of information among competitors may constitute or facilitate the implementation of a cartel - an agreement or a concerted practice between competitors with the object or effect of prevention, restriction or distortion of competition (for example fixing prices or quantities). A cartel is typically achieved by cartel members (e.g. competitors) directly communicating with each other. However, it is also possible for companies to coordinate their market conduct by communicating indirectly – through a Third Party which is in a vertical relationship with them – typically their shared upstream supplier or downstream customer.

These cartels are called “Hub and Spoke cartels”, where the spokes are the competitors and the hub is the Third Party (the upstream supplier or downstream customer) and coordination occurs by each competitor (the spoke) communicating with the supplier/customer (the hub), who in turn shares this information with the other competitors (the other spokes). The hub – e.g. the supplier or customer – acts as a channel for transferring information between competitors.

If competitors systematically and continually use a Third Party as an intermediary or messenger for information that is sensitive with regard to competition or even relevant to competition (see point 2) to, for example, gain or exchange insights on the future market behaviour of other competitors, this is forbidden under cartel law.

In no case shall a client be actively questioned on strategic information regarding competitors.

Definition

Within the context of cartel law, hub-and-spoke agreements refer to the illegal exchange of information by way of Third Parties. This includes vertical agreements that have a horizontal effect on the competitive situation, contrary to cartel law.

Competitors (e.g. pharmaceutical wholesalers) do not stand in direct contact with each other, but rather transmit agreements via an intermediary (e.g. a pharmaceutical manufacturer) to a recipient (in this example, another pharmaceutical wholesaler).

5. Business Partners

Principles and rules

The anti-competitive behaviour of Third Parties might negatively affect the reputation of companies in the PHOENIX group, even if these were not involved in such practices. This is why PHOENIX strives towards shared standards of integrity with all our Business Partners. Through a Business Partner Due Diligence (BPDD), PHOENIX is proactively making sure to avoid interactions with Business Partners who may pose legal or reputational risks also in terms of competition law. The regulations from the AnCo_Standard_Third Party Management apply.

See Compliance Principles

Hence, each Employee who gains awareness of actual or potential violations against competition law by Third Parties is obligated to immediately inform their superior, their LCM, or the legal department.

Definition

The term Business Partner includes all Third Parties such as customers, suppliers, agents, consultants and others directly engaged with PHOENIX group's business activities.

6. Merger, Acquisitions and Joint Ventures

Principles and rules

Before concluding a contract on merger and/or acquisitions as well as joint ventures, an appropriate due diligence assessment must be made for competition compliance purposes.

Mergers and/or acquisitions may result in the companies in the PHOENIX group being liable for the past or future transactions of the companies concerned. It must therefore be ensured that these companies share our standards of integrity and act accordingly. To ensure compliance with this guideline in the event of transactions of this nature, the business activities of the companies concerned are to be assessed and monitored accordingly within the scope of due diligence before and after the contracts are concluded.

Joint venture agreements between competitors may produce useful efficiencies but can also affect or restrain competition. Consequently, such agreements must not be entered into without first obtaining legal advice.

Definition

The concept of merger and takeover transactions designates the takeover and purchase/acquisition of a company in whole or in part or the merger of a company in the PHOENIX group with another company.

A joint venture denotes the shared operation of a company with at least one Third Party.

References

– M&A Guideline

7. Enforcement

The EU commission or the competent national cartel authorities are responsible for enforcing competition law. To this end, they may use the investigatory powers vested in them (e.g. to search houses and other premises, conduct investigations, issue subpoenas, etc.).

See Compliance Principles Point 10

The regulations of the Compliance Principles and Reporting & Investigations Guideline (Point 10) are to be put into practice in the context of searches.

8. Contact

See Compliance Principles

There are various options available for reporting misconduct (see Compliance Principles).

In case of any questions about this or one of the other guideline, please contact your LCM or Corporate Compliance.

Corporate Compliance may be reached via the following channels:

By email: compliance@phoenixgroup.eu

By phone: +49 621 8505 – 8519

(Anonymously) via the case reporting system: https://phoenixgroup.integrityplatform.org/

By post:
PHOENIX Pharma SE
Corporate Compliance
Pfingstweidstraße 10–12
68199 Mannheim
Germany

ANNEX I

Guidance and Red Flags

Take care with your language in all business communications, whether in writing or in the course of telephone conversations or meetings. Careless language could be very damaging if the company is subject to an investigation by the competition authorities or is involved in litigation with another company. A poor choice of words can make a perfectly legal activity look suspiciously. Many internal documents are likely to come under scrutiny during an investigation or legal proceedings involving a Third Party, even those which you might believe to be confidential such as diaries, telephone call records or personal notebooks. Documents in this context are not limited to papers but will include any form in which information is recorded: computer records and databases, e-mail, SMS messages, microfilms, tape recordings, videos and so on can all be examined.

You should therefore follow these guidelines:

- If you think it might be a sensitive area, speak to internal legal counsel or LCM before putting it to paper;
- State clearly the source of any pricing information (so it does not give the false impression that it came from talks with a competitor);
- Avoid any suggestion that an industry view has been reached on a particular issue such as price levels;
- Do not speculate about whether an activity is illegal or legal;
- Keep accurate notes of all meetings with competitors and ensure that contact forms are completed;
- Whenever you write something down, remember that it could be scrutinized and made public one day;
- Do not write anything that implies that prices, rebates or other price components are based on anything other than the company's independent business judgement;
- Follow the same rules if annotating copies of notes or memorandums originated by others;
- Avoid language suggesting that the company has a strategy to drive a competitor out of business;
- Do not use "guilty vocabulary" ("Please destroy/delete after reading").

Furthermore, these following examples (list not exhaustive) may be possible warning signs that an uncompetitive behaviour is taking place. Should you notice or be involved in any of them immediately contact your LCM or Group Compliance:

- A competitor contacts you (directly) and wants to exchange views with you on "various topics";
- A competitor asks whether PHOENIX will also participate in a (public/private) tendering process;
- No agenda is distributed before association meetings;
- No minutes are distributed after official association meetings;
- You will be invited to informal sub-meetings/meetings/events of the official association;
- You are planning contracts with exclusivity clauses, preferential conditions, non-compete clauses or sales restrictions (active or passive) - Contact the legal department about this;
- You (accidentally) receive an email from a competitor with (sensitive) customer information;

- You assume that you have a dominant position in a (limited) market and plan an aggressive marketing strategy to win customers;
- You use a system/database/company through which information (on customers etc.) is (supposed to be) exchanged with competitors;
- You are planning an exchange with a company which is a competitor of PHOENIX only possibly/in a certain area. You are unsure what may be discussed.