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GUIDE TO COMPETITION LAW

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1 INTRODUCTION

1.1 WHY DID SMARTRAC DEVELOP THIS "GUIDE TO COMPETITION LAW"

SMARTRAC is committed to comply with competition laws of all countries in which it conducts its business. This Guide to Competition Law (the "Guide") is not intended to give a complete explanation of competition law, rather it is intended to provide the framework for applicable competition law in day to day business transactions.

It is important for all employees to be aware of competition laws: not only to avoid infringement, but also to ensure that business partners are not engaging in anti-competitive activities that could potentially damage SMARTRAC´s business.

When encountering any situation raising concerns related to competitive conduct, employees should promptly consult their supervisor or the Legal Department.

1.2 TO WHOM THIS GUIDE APPLIES

Competition laws apply to every level of business in the majority of countries in which SMARTRAC operates. It is the responsibility of all directors, supervisors, and employees of SMARTRAC N.V. and all its affiliated and related companies ("SMARTRAC") to comply with these laws.

Any SMARTRAC employee who has contact with customers, suppliers or competitors, and/or who attends trade association meetings or trade fairs in the course of his or her employment, and/or who has management responsibilities with respect to any such employee, is responsible for ensuring that he or she:

- Is familiar with the fundamental principles of competition law;
- Can identify situations where competition law issues may arise;
- Knows about possible sanctions to him or herself and SMARTRAC; and
- Is personally committed to achieve full compliance of SMARTRAC's business with the applicable competition laws.

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1.3 WHAT ARE COMPETITION LAWS?

Competition or antitrust laws (U.S.) are the legal rules designed to preserve free and open competition as the rule of trade in our market-oriented economy. To accomplish that purpose, competition laws declare that certain kinds of business conduct are illegal as restraints of trade or as creating, or tending to create a monopoly.

Competition laws apply to two general business concepts that are relevant in day-to-day business transactions:

1.3.1 Anti-competitive agreements

Under U.S. antitrust law and European competition law, as well as under the laws of many other countries, certain agreements and arrangements which prevent, restrict or distort competition or are intended to do so are illegal. This applies to all formal or informal agreements (including so-called "gentlemen's agreements") whether written or oral. Under competition law, an agreement does not need to be in writing or by a handshake. An illegal agreement may even be inferred from your conduct only.

"CARTELS ARE RECOGNISED AS THE MOST SERIOUS FORM OF ANTI – COMPETITIVE BEHAVIOUR."

The most serious example of an anti-competitive agreement is a cartel, where companies agree not to compete with each other. A cartel is a group of similar, independent companies which join together to fix prices, to limit production or to share markets or customers between them. Instead of competing with each other, cartel members rely on each other's agreed course of action. This also reduces their stimulus to provide new or better products and services at competitive prices. As a consequence, their clients (consumers or other businesses) end up paying more for less. This is why cartels are illegal and heavy fines are imposed on companies involved in a cartel.

Cartel arrangements are usually in secret and not in writing. Typically, cartel members' arrangements cover one or more of the following:

- Prices;
- Discounts;

- Which customers they will supply;
- Which areas they will supply; and/or
- Who should win contracts or tenders.

1.3.2 Monopolies and dominant companies

The competition laws of many countries prohibit anticompetitive exclusionary or "abusive" conduct by a company which has a monopoly or substantial market power. Market power may be determined in different ways. Most competition regulators use market shares as a starting point. Even though market share and market power do not mean the same thing, a significant market share in the relevant market (which is the market for a product or service and the geographic market in which the product or service is sold) is a good indication that the company may have market power. Generally speaking, companies with a market share of over 30% in a relevant market may be considered to have market power.

Exclusionary or abusive conduct can occur in many forms. Under US law, "monopolizing" practices are generally those with no legitimate business purpose and which are performed to simply harm a competitor. In the EU and elsewhere, "abusive behavior" can take many forms, but generally involves any conduct by a dominant firm that appreciably distorts competition or exploits customers.

Companies with a monopoly or dominant position may be banned from acting like companies without such a position. Examples of a firm with monopoly power or a dominant position include:

- Predatory pricing;
- Refusing to deal with a customer without a legitimate purpose for refusal;
- Refusing to deal with someone on the grounds that they refuse to stop dealing with a competitor;
- Entering into contracts with suppliers in order to deprive competitors of essential supplies; and
- Buying up competitors to secure and expand the monopoly position.

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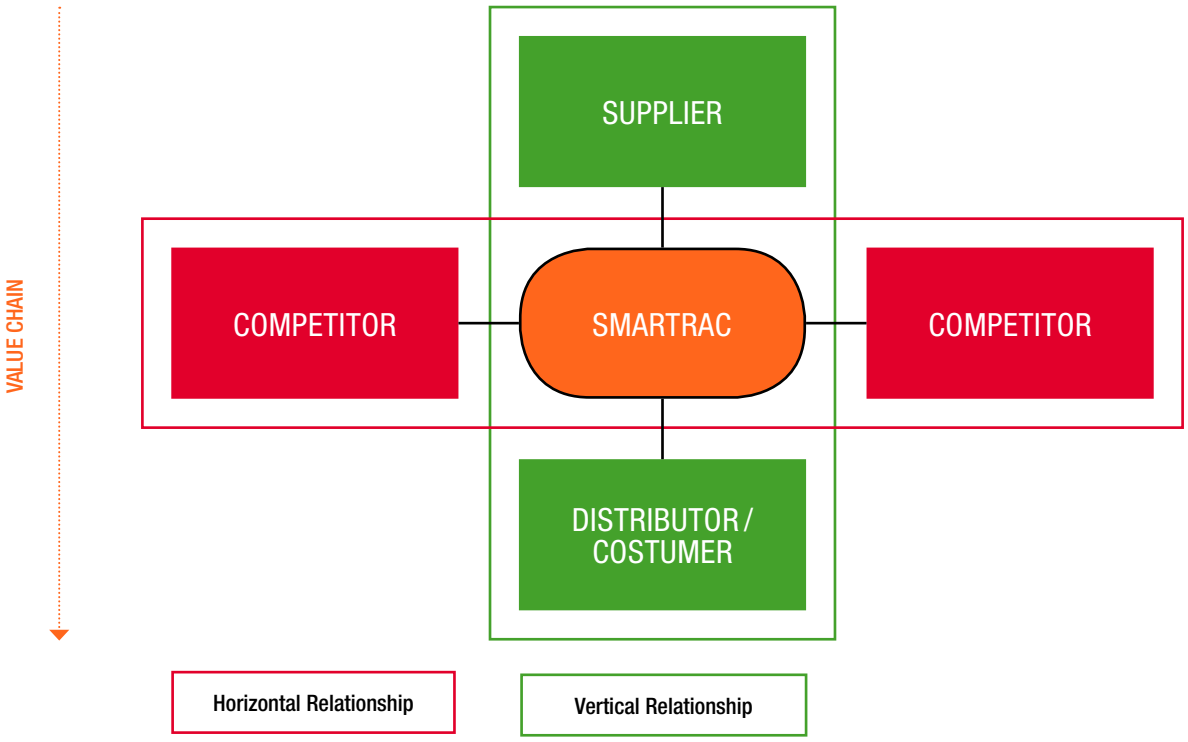
2 BASIC PRINCIPLES OF COMPETITION LAW

The basic competition law principles are applicable as follows:

- When dealing with competitors: so-called “horizontal conduct”;
- When dealing with suppliers, distributors and customers: “vertical conduct”;
- When a company has a dominant position or substantial market power in a market.



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2.1 "HORIZONTAL CONDUCT" – RELATIONS BETWEEN COMPETITORS

Agreements between competitors are often considered inherently harmful to competition because of their profound impact on the market. Accordingly, most of these agreements are prohibited – regardless of whether they have been concluded orally, in writing or through simple concerted practice.

2.1.1 Pricing and conditions of supply – price-fixing

In all countries with competition law regulations, it is illegal for competitors to agree upon the price level at which their products will be sold to third parties, whether directly or indirectly (for example through distributors).

In particular it is prohibited to:

- Jointly determine selling or purchase prices, price de- and increases;
- Jointly fix specific minimum or maximum prices or price ranges;
- Jointly agree rebates, discounts and other conditions of sale or purchase;
- Exchange cost or price-related information that will be followed by fixing similar pricing.

2.1.2 Market allocation / sharing

It is illegal for competitors to allocate territories to each other and/or to agree not to compete in such territories. Competitors are not allowed to divide up customers between them.

2.1.3 Boycotts or refusals to do business

A boycott occurs when two or more competitors agree not to do business with a particular company. It is illegal for competitors to agree upon that only one of them will refuse to do business with a specific company. It is illegal for two or more competitors to threaten or force one company not to deal with another company, such as a competitor or supplier.

2.2 "VERTICAL CONDUCT" – RELATIONS WITH SUPPLIERS, DISTRIBUTORS AND CUSTOMERS

While the greatest antitrust risks arise when dealing with competitors, it is important to note that antitrust issues can also arise when dealing with customers, suppliers, distributors, dealers and other companies with which SMARTRAC has a vertical relationship.

THE LAWS IN VARIOUS COUNTRIES DIFFER. THE LEGAL DEPARTMENT SHOULD BE CONSULTED PRIOR TO THE ESTABLISHMENT OF ANY VERTICAL AGREEMENTS.

Care should be taken with regard to the following situations:

2.2.1 Resale prices

As a general rule, SMARTRAC may not prohibit its customers from reselling its products to whomever they wish, or otherwise impose restrictions on resale prices of its products. For example, SMARTRAC normally cannot insist that the customer will not resell, but only incorporate its products. In the EU, absolute geographical resale restrictions are usually considered hardcore violations.

Whatever the country, it might be generally possible to:

- Appoint an exclusive reseller in a defined geographical area or for a defined class of customers;
- Require the reseller not to sell competing products for a certain period of time; and
- Require the reseller to purchase all its requirements of the contract product from SMARTRAC.

It is prohibited to:

- Fix or set the resale prices to distributors or dealers for any product;
- Fix or set the resale prices in letters, offers, invoices and the like;
- State resale prices in order forms, in price lists, catalogues, etc.;

- Require the distributor to adhere to the recommended resale prices;
- Terminate the agreement with a distributor because of its refusal to adhere to the recommended resale prices;
- Coordinate the price policy with the distributor according to the market situation;
- Prohibit the distributor from granting any rebates or discounts;
- Provide the distributor with formulas to calculate prices;
- State the profit margin of the distributor;
- Prescribe minimum resale prices;
- Systematically monitor the resale prices of the distributor.

It may be possible to give a non-binding price recommendation for resale prices (all statements must be marked as "recommended resale prices"), if no direct or indirect pressure is exercised or any incentive is offered to enforce such recommendation, provided there is no dominance.

THE LAWS IN VARIOUS COUNTRIES DIFFER.
THE LEGAL DEPARTMENT SHOULD BE CONSULTED PRIOR TO THE ESTABLISHMENT OF ANY RESALE PRICE MAINTENANCE INITIATIVES.

2.2.2 Exclusive dealing

It is prohibited to provide exclusive dealing arrangements, which are known to have the purpose or effect of substantially limiting competition.

Long term contracts that commit a customer to purchase all, or substantially all, of its requirements for a particular product from one seller – or commit the seller to sell all, or substantially all, of its production of a particular product to one customer – are problematic in respect of competition law. They are allowed in specific cases, such as those requiring the customer / supplier to make considerable investments.

IT IS IMPORTANT TO REMEMBER THAT A CUSTOMER MAY ALSO BE AT THE SAME TIME COMPETITOR OR SUPPLIER! IN THESE CIRCUMSTANCES IT IS CRITICAL TO BE AWARE WHETHER THE ARRANGEMENTS CONTAIN AN AGREEMENT BETWEEN COMPETITORS THAT CONSTITUTES CARTEL CONDUCT.

You should contact the Legal Department and seek legal advice before entering into exclusive dealing arrangements.

2.3 ABUSE OF A DOMINANT POSITION

An illegal restriction of competition may also occur when a company or group of companies abuses a dominant position or its substantial market power in a way that is detrimental to competition. It is not always easy to establish whether a dominant position exists. As a rule of thumb, where a company suspects it may have a market share exceeding 30%, this company may be considered to have market power, although certain countries may have more than one definition of market power. Generally speaking, a dominant position exists when a company has the power to behave to an appreciable extent independently of its customers, competitors and suppliers. Having such a position is not prohibited in itself. It is the abusive behaviour of a company in that position that constitutes the violation.

Some examples of abuse of a dominant position:

2.3.1 Discrimination in prices and other trade conditions

In many jurisdictions, it is illegal in certain circumstances for a company to enforce different prices or other trading conditions upon different customers in similar situations, or discriminatory licensing conditions under intellectual property rights, without objective justification.

A price difference alone will not violate the law but an unjustified difference in the price of a good that causes injury to competition can be unlawful. Differentiation may be permissible if it is justified on objective grounds.

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2.3.2 Fidelity rebates and discounts

Rebates and discounts applied by a company in a market where it has a dominant position should be the same for all (potential) customers, transparent and based on objective criteria. It is acceptable to offer a discount or rebate to a customer where the reduction is justifiable on the basis of genuine cost savings. Quantity rebates, which reflect cost savings in economies of scale, which are made available to all buyers and do not restrict the buyer's choice of supplier, are permitted.

On the other hand, a dominant company may not grant fidelity (or loyalty) rebates or discounts that have the effect of tying that customer to the supplier. Such rebates are not based upon quantities, but on the percentage of its requirements purchased by the customer.

2.3.3 Tying and bundling arrangements

A "tie-in" occurs when a seller offers a product or service (the "tying" product) only on the condition that the buyer also agrees to purchase a different product or service (the "tied" product) he may not want. Such tie-ins may be illegal in certain circumstances, provided that the seller has a strong market position or market power, which can occur if the product is patented or if there are only a few firms that dominate the market for the tying product.

It is also possible for tying-related issues to arise where products, although available to be purchased separately, are priced in such a way as to induce customers to purchase such products in "packages" or "bundles." Where a seller offers such a substantial package discount that purchasing the individual components of the package separately, or from different vendors, is not a viable option, this practice could lead to antitrust complaints by competing vendors.

2.3.4 Predatory pricing

Particular pricing conduct known as predatory pricing, by companies with market power and/or by companies with a substantial share of a market, is prohibited.
A company that has a substantial share of a market must not supply (or offer to supply) goods or services for a sustained period at a price less than the relevant costs, for the purpose of:

- eliminating or substantially damaging a competitor;
- preventing others from entering into market;
- deterring or preventing from properly competing in a market.

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3 EXCHANGE OF INFORMATION

Not only the conclusion of the above mentioned agreements, but merely suspicious conduct or circumstances may be used to infer anti-competitive conduct. Suspicious conduct or circumstances in this respect are particularly at issue in the context of exchanging information which is prohibited as set out in the following.

Reason being that the information obtained from a competitor can be used as a basis to enter into the agreements set out above – you can only fix prices if you already talked about them in a first step. This example makes already clear, that not every kind of information falls under this prohibition. As a rule of thumb, it is prohibited for you to exchange all kind of information which allows conclusions as to the business strategy - how business is or will be conducted in the future.

Do not have formal or informal discussions relating to commercially sensitive information. “Commercially sensitive information” is company specific information which, if exchanged, could influence competitors’ future conduct. It refers to, but is not limited to the following prohibited subjects:

- Price information: selling or purchasing prices, including not only actual prices charged but also the elements of pricing and pricing policy, for example, costs, discounts, promotional terms and trade terms;
- Price changes, present or future trading conditions;
- Capacity, costs or production output;
- Plans relating to future business, investment, products, marketing and advertising strategies;
- Purchasing or bidding plans or other commercial strategies;
- Sales volumes or values, or sales quotas;
- Market shares;
- Proprietary technical development;
- Individual dealings with customers or suppliers or buying associations including the status or content of regular negotiations; and
- Proposals for joint market conduct regarding specific companies, including customers, suppliers and other industry participants, including boycotts and blacklists.

It is important, that you do not exchange this kind of information regardless of the circumstances in which you meet a competitor - whether in the realm of trade association meetings, other business meetings, in letters, e-mails, a memorandum or in a more informal setting.

BEAR IN MIND, THAT EVERYTHING YOU WRITE MAY BE TURNED OVER TO THE AUTHORITIES AND THAT IT MAY BE STORED FOR AN INDEFINITE PERIOD OF TIME.

4 TRADE ASSOCIATIONS

Trade association meetings pose a risk since sensitive information can be exchanged easily. If you want to become a member of a trade association, you should make sure that there is discrimination-free access to this association and that its work is published.

In any case, before SMARTRAC becomes a member of any trade association, the Legal Department should review the rationale for joining as well as all documents describing the organization and operations of the association. In addition, since an association's purpose and activities can change over time, the membership and degree of participation in the association should be reviewed periodically.

It is important that commercially sensitive information is not discussed at trade association meetings. Accordingly, you should know before attending a trade association meeting what topics will be covered. In general, each meeting should have a written agenda. If you are in doubt about its content, consult with the Legal Department before the meeting. If topics that may be improper are to be discussed at a trade association meeting, you should either not attend, unless those topics are removed from the agenda or leave the meeting and make sure that your action is recorded. The same principles should be applied outside formal trade association meetings (e.g. during lunches or dinners).

It is desirable that you keep minutes of trade association meetings to document that the proceedings were proper. If you are in a trade association meeting when an improper discussion begins, you should insist that the discussion is terminated immediately or leave the meeting, announcing your departure and making sure that it is noted in any minutes that are being taken. Contact the Legal Department promptly to determine if any follow-up action is necessary.

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5 MIND YOUR LANGUAGE

Everything recorded electronically or in writing may one day be read by an antitrust authority, be it during the course of searches or be it because the documents must be presented to the authorities.

Therefore, attention must always be paid in all writing that clear and unambiguous language is used. Unconsidered language about sets of facts which are not of any concern under competition law could otherwise trigger unjustified suspicions. This applies especially to e-mail correspondence where typically less attention is paid to exact drafting than with other forms of correspondence.

Attention must also be given to the fact that e-mails can very quickly be circulated to a large group of persons without any control. Even deleted e-mails can still exist for many years in the IT system and can be recovered.

6 SANCTIONS

Above we have provided you with a set of guidelines on how to do business in accordance with anti-trust regulations. Finally, we will outline to you possible sanctions for the company and the employee involved in anti-competitive behaviour.

Sanctions range from heavy fines to jail sentences for individuals. In the U.S., these fines can be as high as twice the gain from the violation or twice the loss imposed on its victims. Injunctions limiting a firm's future conduct may also be ordered by a court. In addition, injured parties may sue and obtain damages equal to three times the amount of any financial loss resulting from a violation of competition laws. Please note in this respect, that sanctions can also be imposed if the conduct has effects on the U.S. market – regardless where the anti-competitive conduct took place.

In the EU, competition rules can result in fines of up to 10% of a company's worldwide turnover during the preceding business year. Other countries also impose significant sanctions for violations of their competition laws.

As the costs for defending in antitrust cases can be huge and the disruption of a company's business, its reputation through adverse publicity and considerable loss of revenue are at stake as well, it is important that you apply to the regulations set out above. In case you require clarification, please turn to the Legal Department.

7 CONTACT

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