Peikko Group
COMPETITION COMPLIANCE GUIDELINES APPLICABLE WITHIN THE EUROPEAN UNION

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INTRODUCTION

Peikko Group operates in a global economy where competition laws (also known as "antitrust laws") play an ever more important role. Particularly, within the European Union competition law has gained an increased importance.

These developments bring about a new challenge for Peikko Group. It is essential that we implement all required efforts to ensure compliance with the competition rules.

Competition laws are generally based on three underlying concepts:

- The prohibition of anticompetitive agreements and concerted practices.
- The prohibition of abuse of market power. (Although Peikko Group should not be in a dominant position in any geographic or product market some of our customers, competitors or suppliers may be).
- The assessment of mergers & acquisitions and joint ventures to prevent the creation of dominant positions or the reduction of competition. (This is not explained further in this guideline).

This guideline is not designed to be a detailed description of the competition laws of the European Union and those of its member states. Instead of that, it summarises the general competition law principles that are similar within the European Union and beyond.

I invite every Peikko Group employee who has contacts with our competitors, customers or suppliers or who attends trade association meetings or trade fairs in the course of his or her employment, to carefully read these guidelines.

Topi Paananen,
CEO, Peikko Group

I. HORIZONTAL AGREEMENTS - RELATIONS WITH COMPETITORS

Competition laws require competing companies to behave independently from each others. Therefore, almost all horizontal agreements (agreements between competitors or potential competitors) raise competition law concerns.
The form of the agreement is irrelevant. Competition laws prohibit any arrangement restricting competition and the concept of "arrangement" extends beyond formal written agreements. It also covers oral agreements and understandings, "gentlemen's agreements", non-binding agreements and even actions which are taken with an unspoken "common understanding" in mind.

Price fixing agreements. It is illegal to agree with competitors the price level at which the products will be purchased from suppliers or to agree the prices that will be charged from customers. There is no justification for such agreement (often referred to as "cartel"). The prohibition on price fixing agreements extends any and all agreements with a possible effect on the price level of a product. As a rule, also agreements dealing with one or more contractual terms or conditions (credit terms, discounts, payment conditions) are illegal.

Output restriction. It is illegal for competitors to agree to stop production, or to limit production to a certain level.

Market sharing and customer allocation. It is strictly illegal to conclude agreements with the competitors regarding allocation of territories or sharing of customers. Besides price fixing cartels, these are one of the most serious infringements of competition laws.

Collusive tendering ("bid rigging"). Collusive tendering occurs when a company, together with certain competitors, is invited to take part in a tender procedure and agrees beforehand on the bids that will be submitted to the tender. This may, for instance, occur when a number of competitors agree not to take part in the procedure or to raise their prices. In certain European Union member states bid rigging is even a criminal offence.

Information exchange. In general, competition authorities consider the exchange of sensitive information as a tool that facilitates the co-ordination of competitive behaviour. Competition authorities keep a special eye on the sharing of information in the framework of trade associations where competitors meet.

It is illegal for competing companies to exchange information which may influence the independent determination of their individual commercial policy, for example, information regarding sales quantities, prices, cost structure, discounts and other trading conditions, or information relating to their individual customers or suppliers.

It is allowed to exchange information on issues relating to technology in general, health, safety and environmental matters, technical standards, transport hazards and regulations, quality control issues and new and proposed legislation.

Joint purchasing or joint commercialization. These practices may infringe competition laws.

DO'S AND DON'TS

Do not engage in conversations and do not conclude agreements with one or more of Peikko Group's competitors regarding:

- prices, price policies, sales terms, discounts, rebates;
- sales and output quota;
- territories or customers to whom sales will or will not be made.

Do not exchange confidential information with competitors.

Do not conspire or conclude agreements in the framework of a tender procedure.

Always decline immediately and expressly to discuss any of the above topics if a competitor brings them up.

Do comply with these rules when participating in activities of trade associations.

II. VERTICAL AGREEMENTS - RELATIONS WITH SUPPLIERS, DISTRIBUTORS AND CUSTOMERS

Vertical agreements are concluded between Peikko Group and our suppliers, distributors and customers. Although Peikko Group in general does not have distributors, it is important to know the following:

Resale price maintenance. Illegal resale price maintenance occurs when a supplier imposes a fixed or minimum resale price on its distributors. The supplier may however recommend resale prices.

Territorial restrictions. A supplier may not totally prevent his distributors exporting their products outside their contract territory. Absolute geographical resale restrictions are usually considered one of the most serious violations of competition laws. It may, however, be possible to prevent the distributor from "actively" marketing the products outside its contract territory.

DO'S AND DON'TS

Do not require the distributor to adhere to a certain resale price or profit margin.

Do not prevent or discourage a distributor from exporting or importing Peikko products.

Do not prevent or discourage parallel imports.

III. ABUSE OF DOMINANT POSITION

Companies having market power may have a "dominant position". The rule of thumb is that a market share of more than 50% is likely to constitute a dominant position, while dominance is not likely in case of a market share of less than 40%.

It is not prohibited to have a dominant position. It is the abuse of the dominant position that is illegal. Examples of abuse of a dominant position are given below.

Excessive pricing. A dominant company may not charge excessive prices. (It can however be difficult to prove that price is excessive).

Predatory pricing. It is illegal for a dominant company to try to force out competitors with predatory pricing. Prices below average variable costs have been regarded as abusive.
Price discrimination. Discriminatory pricing occurs when individual customers or certain categories of customers are being charged different prices for the same products, in the absence of an objective justification.

Fidelity rebates. Granting rebates or discounts in return for securing all or an increased proportion of a customer's business amounts to abuse of dominant position.

Exclusive supply and exclusive purchasing obligations.
A dominant company is not entitled to require exclusivity from its suppliers or customers.

Tying. It is prohibited for dominant companies to make sale of a product or service conditional upon the purchase by the customer of other products or services.

Refusal to supply. A dominant company needs an objective justification to be allowed to refuse supplies to an existing customer.

Be aware that competition laws can be used both as a shield as well as a sword. If you believe that Peikko Group has become a victim of a dominant company, competition laws may be used as an effective way of bringing the abusive behaviour to an end.

IV. SANCTIONS

The fines imposed by competition authorities within the EU for violation of competition rules may amount up to 10% of the company's worldwide consolidated annual turnover.

Many competition authorities encourage companies to inform them about competition law infringements. This may be done without a fear of the breaching company learning about the identity of the informer.

In some jurisdictions breaching competition rules can be a criminal offence and employees and directors of violating companies can be prosecuted, fined or even imprisoned.

Private damages suits may be brought in one or more national courts by victims of competition law infringements (competitors, customers, suppliers, third parties). Competition authorities in many countries are actively encouraging such private actions.

Contractual provisions of agreements infringing competition rules are automatically void and thus may be invalidated by a national court or arbitration tribunal.

Even in the absence of a court case an alleged victim of a competition law infringement may rely on media in order to exert pressure on the company breaching competition laws.