

# Competition Law Policy

## 1. Objective

- 1.1 HES is committed to adhere to all relevant competition laws and does not condone any behaviour that prevents, restricts or distorts competition. HES believes that in order to keep the trust of its customers, suppliers and other stakeholders HES must be a reliable and honest market player and HES Personnel should comply with laws against the abuse of economic dependence that exist in various jurisdictions that can also apply in scenarios where there is a lower market share (particularly if suppliers or purchasers are economically dependent on HES).
- 1.2 The Code of Conduct sets out the importance and basic principles that all HES Personnel should follow. This Policy provides further guidance on this topic. It should be read and understood by all the employees of the Sales, Commercial, Business Development and Legal Department, as these employees are exposed to a greater risk of anticompetitive conduct. The Policy may also be read by any other employee of HES International that would like to obtain further guidance on this topic.

Term	Definition
CSI	Competitive Sensitive Information
HES	HES International and all wholly-owned or controlled direct and indirect subsidiaries of HES International, as well as joint ventures in which HES holds a majority interest.
HES Personnel	Any board of directors member, officer, employee, or independent contractor of HES and its group companies and majority joint ventures.

## 2. Applicability and governance

- 2.1 This Policy applies to HES International all wholly-owned or controlled direct and indirect subsidiaries of HES International. Specifically, it applies to every employee, director or officer of these entities. Agents, representatives, consultants or other contract staff that are working for these entities should also adhere to these guidelines.

- 2.2 The Chief Compliance Officer, with support of the local compliance officer, is responsible for the development and implementation of this Policy. The Chief Compliance Officer is the ultimate owner of these guidelines and carries the ultimate responsibility.
- 2.3 HES will ensure that this Policy, or a policy with similar standards is applicable to joint ventures in which HES holds an interest.
- 2.4 This Policy will be reviewed regularly by the Chief Compliance Officer and in addition may be reviewed from time to time to take account of, for example, changes to legislation, regulatory developments or organizational changes.

### **3. Competition Law**

- 3.1 The objective of competition law is to protect competition (and ultimately the consumer) by prohibiting any behaviour that prevents, restricts or distorts competition. Competition laws are based on two main concepts:
- The prohibition of agreements, understandings or arrangements between competitors that reduce (or have the potential to reduce) competition; and
  - The regulation of behaviour of dominant companies.

### **4. Anticompetitive agreements with competitors**

- 4.1 Agreements between actual or potential competitors not to compete or compete less vigorously with each other are amongst the most serious forms of anti-competitive behaviour. Agreements can relate to:
- Fixing prices or any elements of prices, including discounts , or any other trading conditions;
  - Dividing up markets or customers;
  - Limiting or reducing capacity; or
  - Bid rigging.
- 4.2 This does not need to be put down in any formal way. Informal or non-binding arrangements and oral understandings (e.g. 'nod-and-wink') or so-called 'gentlemen's agreements' with an anticompetitive intent or effect are prohibited.
- 4.3 If the agreement is considered to be intended to have an anti-competitive effect, it is not necessary that the agreement is actually implemented or has any effect (i.e. is 'successful') on the market for it to be caught by competition rules. Examples of such so-called 'hard-core' agreements are the four listed directly above. Likewise, if the agreement or practice is entered

into without malicious intent, but the agreement could still result in anti-competitive effects it can still be prohibited under competition laws.

4.4 Therefore, HES may not in any form agree with competitors on arrangements that prevent, restrict or distort competition. In particular, the following practices should always be avoided:

- Agreeing or discussing prices (including any elements of pricing), price increases or important costs with competitors;
- Sharing out markets or customers with competitors;
- Agreeing with competitors to limit output or production;

### Exchange of competitively sensitive information

4.5 In addition to possible anti-competitive agreements, HES must be particularly cautious when exchanging information with actual or potential competitors. More specifically, CSI cannot be shared between HES and any of its actual or potential competitors.

4.6 Sharing CSI can lead to a restriction of competition because the transparency increases in the market and strategic uncertainty around each other's competitive behaviour diminishes. It may also lead to collusion between competitors. Therefore, competition rules prohibit the exchange of CSI between actual or potential competitors.

4.7 CSI is any non-public information on the basis of which any (potential) competitor could alter its competitive behaviour on the market. The more detailed and recent the information is, the more likely it is to be CSI.

4.8 There is no exhaustive list of what CSI is. However, the below examples are typically considered CSI:

- Company and/or customer specific pricing and pricing policies, including elements such as discounts, rebates and costs/profit margins;
- Details on particular customers or suppliers;
- Production or spare storage capacity;
- Strategic business or marketing strategies;
- Productivity or storage utilization levels.

4.9 It is irrelevant in what form the information is exchanged (e.g. orally, via email, via a data-room) and even one-off exchanges of CSI can amount to a breach of competition law. Sharing CSI is not only forbidden in professional settings, but also in any other setting. For instance, at social events (private or work-related), trade associations, industry fairs or any other meeting with competitors the same competition rules apply. It is also irrelevant whether you actually use the information received or reciprocate by sharing information about HES; you could still

be in breach of competition law unless you actively distance yourself by making it clear that you will not use and do not want to receive such information.

- 4.10 While there may be legitimate reasons to have a meeting with competitors, for example to discuss general market developments at a trade association meeting, HES must ensure that no CSI is exchanged. In order to mitigate this risk a clear agenda should always be available, and if not it should be requested ahead of the meeting. In case the agenda contains any topics which may potentially lead to or require the exchange of CSI, please inform your local compliance officer or Chief Compliance Officer immediately and do not attend the meeting without their prior approval. Furthermore, ensure that minutes of the meeting are kept and that these are a correct reflection of the meeting. If you are at a meeting with (potential) competitors and you note that CSI is (likely going to be) discussed you should immediately raise your objections, leave the meeting and ensure your departure is recorded accordingly in the minutes. You should immediately inform your local compliance officer or the Chief Compliance Officer of the incident.

## Joint Ventures

- 4.11 When competitors collaborate on business activities through a joint venture, this can create benefits for customers, such as improved services due to for example increased efficiency and lower costs. However, the collaboration can harm competition by reducing incentives for the joint venture parties to compete fully (e.g. where it leads to or digresses into (price) collusion or sharing of CSI).
- 4.12 Therefore, specific rules on exchanging information apply within certain joint venture companies of which HES is one of the shareholders. Specifically, this concerns sharing of information with OBA and OVET.
- 4.13 These joint ventures (potentially) compete with each other and with HES. Therefore, HES has implemented additional safeguards to avoid the illegal exchange of CSI between the (supervisory board members of the) joint ventures and HES.

## 5. Dealing with customers

- 5.1 As a general competition law principle, once you have sold a product on to a distributor or reseller, you should not agree with the distributor/reseller or have control over:
- Who that distributor/reseller sells the products to; or
  - The distributor/reseller's pricing to its customers.
- 5.2 You must therefore never:
- Impose resale prices on distributors or resellers (although you can have recommended resale prices provided they are purely recommendations and do not amount to a fixed price); or

- Prevent distributors from selling outside of a designated area (except in limited circumstances where exclusive distribution arrangements are in place).
- 5.3 You must also never share confidential information about one customer with another customer.

## 6. Mergers and acquisitions

- 6.1 In the context of a M&A transactions, competition authorities generally recognise that there often is a legitimate commercial reason for the exchange of information, for example, for valuation and planning purposes. However, when the parties to the transaction are (potential) competitors, they must remain so and act accordingly until the transaction has closed. HES must be particularly cautious in case the transaction involves a (potential) competitor. Please notify your local compliance officer or Chief Compliance Officer in these circumstances.
- 6.2 As a rule of thumb, sensitive information should only be exchanged to the extent this is necessary for legitimate objectives (for example, due diligence or integration planning) and must be required to be shared in the immediate term (rather than nearer to completion or after completion) in order to satisfy those objectives. In addition, access to such sensitive information must be restricted on a need to know basis.
- 6.3 If it is considered necessary during the transaction that CSI is shared between the (potentially) competing parties, specific safeguards should be put in place, for example, by anonymizing/aggregating CSI so the information loses its competitively sensitive nature or by agreeing to a 'clean team' protocol. Under a clean team protocol CSI is shared only with a limited number of persons, preferably only consisting of external advisors or individuals who are not involved in day-to-day decision making. The local compliance officer and/or Chief Compliance Officer can help with ensuring the necessary safeguards are put in place.
- 6.4 Furthermore, if a transaction must be notified to a merger control authority, most jurisdictions have a so-called 'stand-still obligation' not to implement the transaction before merger clearance is obtained in the sense that the acquirer prematurely exercises control over the target undertaking. A violation of this obligation is referred to as 'gun jumping'. For every transaction (including acquisitions of minority interests and joint ventures) it is therefore necessary to seek legal advice to determine whether any merger control notifications are required.
- 6.5 Parties must make sure that no steps which a competition authority may perceive as the implementation of the deal prior to receiving the required merger control approval. Although parties are allowed to carry out due diligence and plan for integration, they must not (take any steps that may be perceived to) implement the deal until the transaction is cleared.

## 7. Abuse of a dominant position

- 7.1 Companies with a dominant position in a certain market are prohibited from abusing this dominant position. Although there is no hard and fast rule for when a company might be dominant, particular caution should be taken if there are any markets in which HES might have a market share above 40%. Note that markets can be defined narrowly (e.g. a particular product or local area).
- 7.2 A dominant position in itself is not prohibited, the abuse thereof however may well be prohibited. This means that a dominant position should not be used illegally to exclude competitors or exploit customers through, for example, tying or predatory pricing.
- 7.3 In situations where HES might have a dominant position, HES must be careful when setting terms and conditions with customers (and suppliers), specifically in relation to:
- Requiring customers to only use HES' services;
  - Setting fidelity or target rebates;
  - Granting different sales conditions to customers who meet the same criteria;
  - Refusing a customer a product or service while that customer does not have any alternative options for receiving this product or service;
  - Introducing predatory pricing with the aim of excluding competitors from a market; or
  - Tying or bundling products or services for which HES might have a dominant position with other products or services for which it is not dominant (e.g. requiring customers to use HES for both the dominant and non-dominant services or offering customers a discount if they use HES for both).
- 7.4 When in doubt about the above, contact the local compliance officer or Chief Compliance Officer before setting such terms and conditions.

## 8. Dawn raids

- 8.1 In order to ensure compliance with competition laws, the European Commission and most national competition authorities have far-reaching investigative powers. These powers include being able to conduct unaccounted inspections of companies and their premises (so-called 'dawn raids'). Please refer to the Dawn Raid Policy for further guidance in this regard.

## 9. Consequences

- 9.1 A violation of competition law can have very serious consequences for HES as a business, but also personally.
- 9.2 Failure to comply with relevant competition laws could lead to heavy fines, cause reputational damage, lead to criminal liability and result in significant damage claims.
- 9.3 For example, if any of the HES entities is found guilty of breaching EU competition law, fines can be up to 10% its group annual turnover worldwide (that of HES and its controlling shareholders (!)).
- 9.4 Furthermore, a customer who has suffered damages as a consequence of the competition law violation can bring an action for damages before a national court to claim compensation. This damage claim may be additional to the fine already imposed by a competition authority.
- 9.5 In addition to hefty fines and damage claims, HES can suffer from reputational damage as these types of issues may attract extensive press coverage.
- 9.6 Lastly, if a provision in an agreement is found to be restrictive it can be declared void or, in serious cases, the entire agreement can be declared null and void.
- 9.7 For employees, a breach of competition law may result in disciplinary action and, in certain circumstances and depending on the applicable competition laws, personal fines and/or criminal prosecution.
- 9.8 For instance, under the UK Competition Act 1998, directors and members of the management team, who are expected to comply with competition laws, could face criminal prosecution, individual fines and civil damages. Directors can also be disqualified from their position as a director for up to fifteen years. If an individual is found to be involved in cartel activity, he/she can be sentenced to up to 5 years in prison.

## 10. Seeking advice or reporting conduct

- 10.1 If you are aware of any (possible) violation of this Policy you must report this to your local compliance officer or the Chief Compliance Officer. You can also contact your local compliance officer in case of any questions ([compliance@hesinternational.eu](mailto:compliance@hesinternational.eu)).
- 10.2 Please refer to the Whistleblower Policy for further guidance and an explanation on (i) how you can report a concern and (ii) the procedures applicable to any report that is made.
- 10.3 While it is your duty to report a violation when you become aware of it, early reporting gives HES the opportunity to detect a potential risk early and thereby hopefully mitigate possible harmful consequences.

10.4 HES does not tolerate any retaliation against any person making a report in good faith. Any form of such retaliation will be seen as a violation of this Code of Conduct.

## 11. Update history

Version	Revised By	Description	Revision Date

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