Table of Contents

PREFACE..... 2

I. LEGISLATION..... 2

II. ANTI-COMPETITIVE AGREEMENTS..... 4
1. Prohibition of cartels..... 4
2. Exemptions from the prohibition of cartels..... 5

III. RULES OF CONDUCT..... 6

IV. CONTACT PERSONS..... 7

Corporate Directive on Compliance with Cartel/Anti-trust Law

PREFACE

Compliance with the applicable laws and regulations is an integral component of the corporate culture of KSB, which is not least reflected in the KSB Code of Conduct. This also includes an obligation by all employees to comply with cartel/anti-trust law.

Infringements of cartel/anti-trust law can have dramatic consequences for KSB, the employees concerned and the management of the company. The company may, for instance, be at risk of administrative fines and penalties that could threaten its very existence, a levy on the additional income derived from the infringement of cartel law, and claims for damages. The employees and company management involved may be subject, for instance, to personal fines, penalties and imprisonment.

Against this background, it is a declared aim of the management of the company to prevent infringements of cartel/anti-trust law. Any misconduct can therefore lead to serious consequences under employment and labour relations laws, including formal warnings or dismissals, as well as claims for damages being lodged against the employees involved.

The present guidelines are based on German and European legislation and must be observed by all employees of the KSB Group as a frame of reference founded on the relevant applicable law. They are intended to make it easier to understand any issues that may arise and also provide specific instructions on conduct. Where stricter laws and regulations are applicable in specific countries, the standards applicable in those countries shall take precedence. In all cases that are relevant to cartel/anti-trust law, and also in cases of doubt, the appropriate legal department should be involved as early as possible.

I. LEGISLATION

Under cartel/anti-trust law, the following are prohibited:

- **Anti-competitive agreements**

  The prohibition of cartels is primarily relevant to day-to-day dealings with competitors, customers and suppliers. Detailed comments on this are given under II. below.

- **Abuse of a market-dominant position**

  Should KSB, alone or with other businesses, be in a dominant position in a market, this position must not be abused. A business is assumed to be in a market-dominant position if on the relevant market

  - it has a market share of 40 % at least, or
  - three or less businesses have an aggregate market share of 50 % at least, or
  - five or less businesses have an aggregate market share of 66 % at least.

A market-dominant position can also arise below these thresholds in individual instances. In addition, businesses with superior market power which are not market-dominant, but which small or medium-sized enterprises depend on because of the lack of sufficient alternatives, are subject to similar restrictions.

Where a business is in a market-dominant position, it is prohibited to obstruct competitors, and to exploit or discriminate against customers or suppliers without factually justified reasons. Abuse of a dominant position may include, but is not limited to:

- Closing the market against competitors by means of overlong contractual relations with customers, systems of discounts based on annual turnover, loyalty or the like

  Example: Company X needs 100 pumps per calendar year. Pump manufacturer P, which has a market-dominant position, supplies 90 pumps without discount, but upon delivery of 100 pumps offers a 10 % discount with retroactive effect on the total number purchased. This means that X gets the extra ten pumps effectively free of charge. Market access would be made more difficult for competitors in this way because of the pull effect of the retroactive bonus, which would be illegal under cartel/anti-trust law.

- Crowding out or obstructing competitors, e.g. by means of exclusivity clauses, cross-subsidies or tying arrangements

  Example: Because of unexpected flooding, there is a high demand for certain pumps that are only produced and sold by pump manufacturer P. During this period, P therefore only sells the pumps together with a service contract, for which there is normally little demand.

- Exploitation of customers or suppliers by means of terms or prices that would be unenforceable if there were effective competition

- Discrimination against customers (e.g. different price structures for comparable circumstances) or refusal to supply

  Example: The market-dominant pump manufacturer P refuses to supply its long-standing customer K because K also uses pumps from another manufacturer.

In individual cases, the legal provisions and regulations may be difficult to apply, in particular the reliable definition of the relevant market according to factual, geographical and temporal criteria. If you are faced with any allegation of this kind or are in any doubt, you should seek the advice of the legal department.

- **Call to boycott**

It is prohibited to call upon third parties to cease purchasing from a certain company or to cease supplying that company, where this is done with the intention of causing an unfair disadvantage for the other company. In assessing unfairness, it is crucial to weigh up the interests involved, and this must always be done by the legal department.

- **Merger control**

Business combinations must, if the businesses involved are large enough, be reviewed and approved by a monopolies commission or cartel/anti-trust authorities before completion. If a merger is completed before approval by the monopolies commission or cartel/anti-trust authorities, there is a risk of serious fines and de-merging, i.e. the breakup of the combination. It should be noted that a business combination requiring application to the commission or authorities is not limited to the typical acquisition of shares and assets of other companies, but can also result from transactions which appear to have little relevance at first glance, such as the planned formation at a later date of a supplier association or a lease agreement on assets. It is therefore necessary to consider whether application is required. For this purpose it is

irrelevant whether the businesses involved in the project are competitors, customers and suppliers or similar parties.

> *Example: German pump manufacturer P generates annual sales revenue in excess of EUR 500 million and leases a pump production facility from company X for ten years which generates annual sales revenue of EUR 6 million. Whether the parties intend this or not, this may be a situation where prior review and approval by a monopolies commission or cartel/anti-trust authorities is required, since the circumstances may make it a relevant merger and both parties (company and production facility) are big enough because of their sales revenue.*

II. ANTI-COMPETITIVE AGREEMENTS

1. Prohibition of cartels

The following are PROHIBITED:

- Agreements between businesses, decisions by associations of businesses and concerted practices,
- the purpose or effect of which is to
- prevent, restrict or distort competition.

This applies not only to the conduct of competitors (horizontal cartels), but also to businesses which are at different levels of the economic process, such as producers and their own sales and distribution partners (vertical cartels).

a) Types of anti-competitive practices

An **agreement** means any written or verbal arrangement. It is sufficient if the parties express their common intent to conduct themselves in a certain way in the market. Whether there is a possibility of legally enforcing this joint understanding or not is unimportant. Even a "gentlemen's agreement" is therefore an agreement within the meaning of the law.

Decisions by associations of businesses (e.g. within the framework of association work) differ from agreements in that they can be made by majority resolution, rather than by consensus of intent by all those involved. What they have in common is that it is not a question of legal commitment or enforceability. A member who has voted against a decision will also be accountable for any decision made by other members, if that member ultimately adhered to the decision. Simple recommendations (without a formal resolution) by an association are also sufficient to constitute an infringement of cartel/anti-trust law, if members follow them.

> *Examples: Fixing of prices, price mark-ups or discounts etc., standardisation of terms and conditions of business.*

Concerted practices mean any form of coordination that, although if falls short of an agreement, nevertheless involves the deliberate substitution of practical cooperation between the parties for the risks of competition. Although mere imitation (parallel behaviour or practices) cannot be automatically included, it can typically be deemed to indicate unlawful coordination. The boundary between permitted independent practices by individual companies and concerted practices may already have been crossed if the parallel behaviour is based on a mutual non-committal contact, e.g. on an exchange of information with the competitor.

> *Example: The exchange (or even unilateral disclosure or receipt) of information on future competitive behaviour and practices within the framework of an association meeting, or any other meeting with competitors (e.g. a trade fair).*

b) Horizontal and vertical restriction of competition

In principle, any form of coordination that results in a noticeable **restriction of competition** is not permitted.

This covers many different types of formal and informal coordination of practices with competitors (horizontal arrangements), including but not limited to:

- Fixing prices (e.g. consumer prices, non-binding price recommendations, list prices), price increases, minimum prices, price components or discounts
- Fixing other material terms of business or conditions (e.g. contract periods, warranty terms and conditions)
- Sharing markets by product, territory or type of customers
- Controlling sales or production quotas
- Exchanging information relevant to competition

It is also not permitted to coordinate the submission (or non-submission) of bids or tenders with competitors within the scope of public or private tendering processes, nor to inform competitors about submitted, non-submitted or planned bids or tenders. Even if the submission of joint bids or tenders may be permitted under certain circumstances (see below), general agreements such as, for example, an agreement only to submit joint bids or tenders must not be made under any circumstances.

Competitors are permitted to submit joint bids or tenders within the scope of tendering processes, if such submission is disclosed to the agency inviting tenders and the participating companies would not be in a position to perform the contract alone (for instance, because of a lack of capacity) or an independent bid or tender would in any case be economically inexpedient and commercially unreasonable.

It is also in principle prohibited for companies which are at different levels of the value-adding chain to enter into agreements that are anti-competitive, i.e. in particular agreements between producers such as KSB on the one hand and customers, dealers or suppliers on the other (vertical agreements), e.g.

- Price fixing for dealers, in particular the fixing of minimum resale prices
- Customer or territorial protection agreements, i.e. prohibition of selling to certain customers or in certain territories (but cf. under 2, below)

c) Purpose or effect

The characteristics of **purpose or effect** simply emphasise that anti-competitive practices must not necessarily have been implemented successfully. The mere intention to prevent or restrict competition is sufficient. Likewise, the definition also covers measures that are not intended to result in a restriction of competition but nevertheless have that effect.

2. Exemptions from the prohibitions of cartels

The prohibition of cartels does not apply absolutely. Certain forms of information exchange (e.g. for preparing market statistics that do not identify competitors) and cooperation between competitors, and also certain commitments that are imposed on dealers, customers or suppliers, are permitted by cartel/anti-trust law under legally defined prerequisites.

This is mainly achieved by the use of so-called block exemption regulations, which provide detailed rules governing the conduct of contracting parties for specific categories of agreements (e.g. for cooperation on

research and development or vertical agreements) and exempt all agreements permitted thereunder from the ban on cartels provided that specified market share limits are not exceeded.

> *Example: For different European countries pump producer P has set up exclusive authorised dealers (exclusive sales/distribution system), which are not allowed to sell "actively" in any other territory, i.e. by actively approaching customers; however, "passive" selling, i.e. executing unsolicited orders, may be undertaken. Such agreements – even though they are objectively anti-competitive – may be permissible under the relevant block exemption regulations and therefore allowed.*

In selective sales/distribution systems, a manufacturer's products are only sold and distributed through selected dealers. Under cartel/anti-trust law, this is allowed if such a system is required to ensure that the product is properly used and its quality maintained. Simple specialist trading ties, that is the obligation on the part of wholesalers only to resell a manufacturer's products to approved specialist dealers (e.g. in the three-stage sale and distribution of pumps), and not to supply other dealers such as supermarkets, are therefore as a rule not anti-competitive, despite the restrictions associated with them.

However, determining whether a specific practice is actually permitted can as a rule only be done on an individual basis, because for this purpose factors such as, for instance, the specific content of the agreement, the respective market structure and market shares must be taken into account.

III. RULES OF CONDUCT

It is important for agreements or concerted practices that potential problems under cartel/anti-trust law are identified and critically reviewed. It is therefore imperative that KSB employees who deal with such issues inform themselves about the fundamentals of cartel/anti-trust law. In cases of doubt, the legal department must be called in at an early stage.

This may, for example, be important with a view to the so-called leniency programme in favour of key witnesses: It was incorporated into German law in 2017 (in consideration of EU rules). The key witness is a company (or natural person) who is or was party to a cartel and has filed an application for leniency with the cartel authority, i.e. cooperates with it to uncover the cartel. If corresponding provisions are met, immunity from a fine under cartel law - which would otherwise have been imposed - will be granted to the key witness. In addition, the key witness will benefit from a limitation of liability against customers and suppliers. But only the infringer who is the *first* to meet the requirements of a key witness may benefit from the advantages.

Irrespective thereof, the following rules of conduct must always be observed:

In general dealings with competitors:

- No agreements or arrangements, be they formal or informal, must be made with competitors on issues that are relevant to competition. Under no circumstances should you adopt a "nobody will find out" attitude.
- Only such information as does not enable conclusions to be drawn about trade secrets or individual competitive practices may be exchanged with competitors (e.g. on the general market situation, new legal developments). This does not apply if at the time of the exchange the relevant information is already retrievable from published sources in the public domain (e.g. annual reports). Any other exchange of information relevant to competition is prohibited, or must first be discussed and agreed with the legal department.
- The legal department must be informed if you receive confidential information (e.g. unpublished price lists) from competitors unsolicited.
- Supplies to and from competitors, and also any agreements made in this context, must always be discussed and agreed individually with the legal department.

In connection with (association) meetings

- If you have any doubts, submit the agenda for association meetings to the legal department for reviewing before the meeting.
- Avoid taking part in informal meetings, so as not to give a false impression.
- Always limit the exchange of information with competitors to the topics allowed (see above: *In general dealings with competitors*).
- You must leave association meetings and other (including private) meetings with competitors immediately if agreements are made or information is exchanged in a prohibited way. You must insist that your refusal to conduct yourself in this way be recorded in writing (e.g. in the minutes of the meeting) or you must record the incident yourself. Although this often means that you "break up" the meeting concerned, you need not give any consideration to this. Simply staying at the meeting, even if all you do is remain silent, will not protect you from punishment later on. You should accordingly ensure that the minutes explicitly say that you left the meeting, so that it is clear that you were no longer participating in the subsequent discussion.
- Inform the legal department immediately if you have taken part in meetings that may be questionable.
- After an association meeting, have a copy of the minutes sent to you so that you can review it for inaccuracies and phrasing which can be misunderstood, and have it corrected if necessary.

Where there is an intention to cooperate with other companies:

- The legal department must always be involved before setting up a bidding consortium or any other form of cooperation with competitors (e.g. cooperation on research and development, cooperation on production, setting up a market information system).
- Except for cooperation arrangements (e.g. buying syndicates) discussed and agreed individually with the legal department, no agreement relating to a joint approach to customers, dealers, suppliers or other market operators must be made with other companies.

In dealings with customers, dealers and suppliers:

- Important or long-term supply or purchase contracts (i.e. duration > 5 years, unlimited-term contracts or contracts with automatic extension) must be submitted to the legal department before they are concluded.
- Sale and distribution agreements and other general agreements with dealers and trade representatives must be submitted to the legal department before they are concluded.
- Commitments or informal arrangements covering the maintenance of a specific distribution system (e.g. three-stage distribution) must also always be agreed with the legal department.

For drafting business correspondence (including internal notes, memos and e-mails):

Because of the extensive disclosure requirements and the cartel/anti-trust authorities' wide-ranging powers of seizure, it is particularly important to draft documents of a potentially sensitive nature under cartel/anti-trust law aspects with great care. Both internally and externally, the presentation of content and wording should always be based on the assumption that the document (e-mail, letter, memo, etc.) could possibly be used against the company in cartel/anti-trust investigation proceedings. When drafting written memos or notes, you must be aware that and check whether your statements, especially statements relating to contacts with competitors, could be misunderstood to the effect that you had entered into prohibited agreements or arrangements.

IV. CONTACT PERSONS

All employees who have or gain knowledge of specific and reliable facts that indicate an infringement of the principles of cartel/anti-trust law outlined above are required to report the same. The persons to contact in this respect – as for all other questions arising – are the line manager, the legal department or the company

management. The responsible Compliance Officer or Group Compliance Officer may also be contacted in this respect, particularly if confidential treatment is desired.
In addition, a law firm specially commissioned for this purpose is available as a contact. Although the law firm will forward relevant information to the Group Compliance Officer, it will not name the informant, so as to ensure confidentiality also in these cases (ombudsman system). Contact can be made from any country, either in German or English, and both by telephone and in writing.
You will find the contact details for the Group Compliance Officer and the law firm in the KSB Code of Conduct.