MinebeaMitsumi

Passion to Create Value through Difference

COMPLIANCE MANUAL

MINEBEAMITSUMI - EUROPE

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CHAPTER 1 ANTITRUST LAW

Part 1. Basic Principles and Overview of Relevant Regulation

Antitrust law protects competition from any restrictions or interferences that may be brought about by companies. Free and open markets are a cornerstone of our economy. Antitrust law aims to ensure that markets and economies remain free and open. Antitrust law also enables Minebea to maintain its successful position in the market. It protects Minebea against anticompetitive measures taken by competitors, customers or suppliers. In effect, it is not only competition that is protected, but also our company.

Antitrust provisions can be found in most jurisdictions in the world. In what follows, the principles of EU antitrust law will be discussed. In addition to the EU, the individual EU Member States have their own national antitrust legislation. Although such national legislation corresponds for a large part to the EU provisions, there are differences in some specific areas. The following guidance is primarily based on EU antitrust law. Country-specific characteristics are added where indicated.

1.1. EU Law

1.1.1 Prohibition of Anticompetitive Conduct

The antitrust prohibition of EU law is laid down in Article 101(1) of the Treaty on the Functioning of the European Union (hereinafter: "TFEU"). It applies to **all companies** and associations of companies (in particular trade associations) and prohibits agreements and concerted practices between companies as well as decisions by associations of companies which have as their object or effect the restriction of competition. Comparable provisions can be found in the national laws of all EU Member States (in Germany: section 1 German Act against Restraints of Competition, hereinafter: "ARC") and many other countries.

The guiding principle is what is known as the "**requirement of autonomy**". According to this, every company must act autonomously when determining the business policy it wants to pursue in the market and what means it will use to implement this business policy.

Insofar as the antitrust prohibition is aimed at "agreements", "decisions" and "concerted practices", it is intended to cover **multilateral practices**, i.e. coordination between two or more companies.

1.1.1.1. Agreements, Decisions and Concerted Practices

European Antitrust law treats **written and verbal** decisions or agreements alike. Verbal decisions or agreements are just as much prohibited as written decisions or agreements if they have as their object or effect the restriction of competition.

Nor does antitrust law distinguish between **binding and non-binding** decisions or agreements. Non-binding decisions or agreements (so-called "gentlemen's agreements") are also prohibited if they have as their object or effect the restriction of competition.

The prohibition of concerted practices moreover also covers any coordination based on an **unspoken** understanding between the parties concerned. It is therefore also possible to violate the antitrust prohibition without any explicit agreement. One example is the exchange of competitively sensitive information between *competitors*, which makes it possible to draw conclusions about the future commercial conduct of one of the parties.

Therefore, when assessing a situation in terms of antitrust law it is not the external form of the agreement, decision or concerted practice (written, verbal or tacit) or the extent to which this is binding that is important, but only the existence of some form of coordination and the restriction of competition intended or brought about.

1.1.1.2. Restriction of Competition

In principle, a conduct that constitutes a prohibited restriction of competition may already be established by an authority if an agreement, a decision or a concerted practice reduces the uncertainty – concerning the effects of one's own commercial conduct – typical of competition. An example would be the exchange of competitively sensitive information between *competitors*.

The antitrust prohibition applies regardless of whether the companies involved operate at the same level in the market, i.e. are *competitors*, or whether they operate in markets downstream of one another and have a customer-*supplier* relationship.

Restrictions of competition are therefore prohibited both in the relationship between *competitors* (referred to as "**horizontal restraints of competition**") and the relationship between customers and *suppliers* (called "**vertical restraints of competition**"). Examples of horizontal restraints of competition are price fixing, the allocation of territories or customers, quota fixing and the exchange of competitively sensitive information. Examples of vertical restraints of competition include agreements on fixed or minimum prices or other resale conditions.

1.1.1.3. Object or Effect

A violation of the antitrust prohibition does not require that the relevant agreement or conduct actually has an effect on competition. It is sufficient if the companies, by means of their conduct, merely aim to achieve such effects.

In other words: even just agreeing or "attempting" to restrict competition is prohibited.

1.1.1.4. Direct and Indirect, Open and Concealed Contact

The rules specified above apply to **direct and open *contact*** between companies that is to direct communication where the names of the companies are disclosed. The same rules apply in principle to **indirect *contact***, that is communication via third parties, as agreements and concerted practices as defined in the antitrust prohibition do not require *direct contact* but merely the existence of some form of coordination that has the restriction of competition as its object or effect. This means, then, that if a form of conduct is prohibited between *competitors*, it will, as a rule, still be impermissible even if an intermediary is used.

Example: price fixing between *competitors*, where third parties act as message bearers.

It is however easier to ensure that certain forms of behaviour, such as an *exchange of information* between *competitors*, are in compliance with antitrust law if an independent third party is involved ("identifiability" of company data).

Concealed *contact*, where the names of the companies involved, or the companies for which the persons concerned work, are not disclosed, is also to be assessed according to these rules.

1.1.2 Abuse of Dominance

The prohibition of abuse laid down in EU antitrust law is aimed specifically at **companies with a dominant position in the market** and prohibits the abuse of such a dominant position (Article 102 TFEU). In contrast, merely having a dominant position is not prohibited, provided that it is not abused. Comparable provisions can be found in the national laws of all EU Member States (e.g. in Germany: section 19 ARC) and many other countries.

Insofar as the prohibition of abuse is aimed at all types of abuse, it is – unlike the antitrust prohibition – intended to cover **unilateral practices** as well. Whereas "agreements", "decisions" and "concerted practices" always require coordination between two or more companies, a dominant position can also be "abused" by an individual – i.e. specifically the dominant – company.

1.1.2.1. Dominance

A company has a dominant position if it is so strong in a specific market that it can act vis-à-vis *competitors*, *suppliers* and customers in a way that would otherwise be impossible. A dominant position always exists in a specific market. Companies as such therefore cannot be "dominant".

Determining whether Minebea has a dominant position in a specific market is a complicated legal task which is to be carried out by the legal department or outside counsel on a case-by-case basis. As a rule of thumb: if a company has a market share of 25% or more, it may

have a dominant position in that specific case. The same applies if the market share of a company is twice as large as that of its most important *competitor*. Market dominance is assumed if a company has a market share of more than 50%. When determining the market share, the relevant market basically includes all the products that are interchangeable from the customer's point of view on the same geographic market.

1.1.2.2. Abuse

A dominant position is not prohibited "as such", but is instead often the result of a particularly high level of performance. If a company has a dominant position in a specific case, however, particularly strict rules apply in terms of the consideration to be given to other market players. Therefore, a company may not unjustly impede or discriminate against other market players in markets in which it has a dominant position.

Examples of abusive practices include charging inflated or discriminatory prices, applying discriminatory terms of business, delivering goods below cost price, boycotts, certain types of discounts and tying arrangements.

1.2. National Regulation in EU Member States

EU Member States have extensively assimilated European antitrust law into their national antitrust laws and adapted most of the EU standards. Due to this harmonization there are only minor national specifics that deviate from EU antitrust law. This guideline will therefore focus on EU antitrust law and only name deviating national specifics where necessary. However, please note that, particularly in the field of dominance, stricter national rules may apply. In particular, this holds true to German law.

1.3. When a Violation of Antitrust Law Occurs

1.3.1 Measures Against the Violation

The sanctions against entities which have violated EU competition laws are administrative fines; no criminal penalties are filed against either individuals or corporations. However, the administrative fine imposed is a maximum of 10% of the amount of the most recent worldwide sales of the entity which committed the violation (regardless of whether the products are related to the violation) and in recent years the trend has been for fines to become increasingly steep to the extent that administrative fines in the range of two- or three-digit millions or even in the billion Euros are not rare. In addition, each EU Member State has its own competition laws and it is important to note that among them Germany (in the case of bid rigging), the United Kingdom and other countries provide for criminal penalties.

1.3.2 Sanctions Envisaged in EU Law and National Law

Violations of EU antitrust law (antitrust prohibition and prohibition of abuse) and comparable provisions of other legal systems may have serious consequences for the companies in question and the persons directly involved.

The competent authorities may impose hefty fines – in the EU, up to 10% of the group-wide annual worldwide turnover – on the companies concerned. In recent years the trend has been for fines to become increasingly steep to the extent that administrative fines in the range of several hundreds of millions EUR are not rare. In addition, third parties often assert claims for damages in similar amounts, which must be paid over and above the fine. Moreover, anticompetitive arrangements in contracts are invalid under civil law, which can result in considerable legal and economic problems.

Apart from the clearly quantifiable losses to be sustained as a result of sanctions and civil claims, antitrust violations may permanently damage the image and share price of a company. It then often takes a great deal of time and effort to regain the trust of customers, business partners and investors. Furthermore, if a company violates European antitrust law, it may be suspended from designation as a bidder in procurement by public agencies and local governments and accordingly be unable to participate in competitive bidding held by public agencies and local governments for a designated period.

Finally, there are serious personal consequences for the persons directly involved in the anticompetitive conduct as well. They may also have to pay large fines themselves. In some legal systems, antitrust violations are even punishable by imprisonment. This is the case, for example, not only in the US and Great Britain but also in Germany, if the case involves fraud, a breach of trust or anticompetitive agreements in respect of invitations to tender. Furthermore, those who were personally involved in the violation will also have to face consequences under employment law as well as claims for damages.

1.3.3 Leniency Program

The Leniency Program is a program under which companies that engaged in an infringement of antitrust law and voluntarily report their violations to the European Commission are able to obtain immunity from or a reduction of fines. This program creates an incentive to companies that have committed violations to provide information to the European Commission and aims to facilitate the prompt detection of violations and the collection of evidence. Even a company that played a leading role an infringement of antitrust law may apply for leniency under this program.

This program, however, only provides immunity from or a reduction of the fines against an enterprise that committed a violation; it does not necessarily result in the reduction or extinction etc. of other liabilities (e.g. civil liability).

Under European law, applicants may receive immunity or a reduction of the fine within the following ranges

- 1st applicant before the initiation of an investigation: 100% immunity
- 2nd applicant before the initiation of the European Commission investigation: 30% to 50% reduction if its application contains significant added value to the ongoing investigation or the application by the previous applicants
- 3rd applicant: 20% to 30% reduction if its application contains significant added value to the ongoing investigation or the application by the previous applicants
- Later applicants: Up to 20% reduction if their application contains significant added value to the ongoing investigation or the application by the previous applicants

In Germany, the first applicant obtains 100% immunity and all following applicants may obtain a reduction of up to 50% depending on the added value and the order of applications.

1.4. Extraterritorial Application

European competition law corresponding to Japan's Antimonopoly Act and US competition law is applied not only if just a certain part of the violation (agreement, negotiation, acts, effects etc.) has taken place within the EU, but when it is found that some impact has been exerted on markets within the EU, it may even be applied to acts taken place completely outside of the EU. In past prosecutions and rulings, there have been precedents of large administrative fines being imposed despite the fact that no sales took place within the EU. There were no sales in the EU simply because the companies had mutually agreed on the territories in which they would do business and on not doing business in each other's agreed-upon territories; one of which was Europe. If there had not been such an agreement there most likely would have been sales within Europe; and from that perspective, deeming that there was an impact on European markets, EU competition law was applied and deeming that there was certain sales revenue, a significant administrative fine was levied.

There is a relevant precedent in US antitrust law practice, where a large fine was imposed in the US despite the agreement concerning the cartel having been completely executed in Japan. It goes without saying that in cases where a product of the cartel is sold in the US, the US antitrust law is applicable, but even in cases where the product is merely incorporated into a final product which is then sold in the US, US antitrust law has still been judged applicable on the basis of there being an effect on the US market. Because the antitrust laws and competition laws of the US and the EU as well as countries such as Germany may be thus applied even to extraterritorial acts when there is any kind of impact on markets within their jurisdiction. The scope of applicability is extremely broad; accordingly, when business is conducted globally, there is always the possibility of antitrust

laws of various countries throughout the world being applied. Therefore, it is not sufficient to be attentive only to EU law; the antitrust laws and competition laws of other countries also must be taken into account.

1.5. Relevance for the Company

Antitrust law is extremely relevant for all daily operations of Minebea. In July 2011, a compulsory investigation by the Japanese antitrust authority was conducted against four bearing manufacturers (NTN, NSK, JTEKT and Nachi-Fujikoshi) on the basis that there was a strong suspicion that they had formed a cartel to fix prices. Then in November 2011, the European and US competition authorities also initiated investigations against those four companies and additionally against SKF and Schaeffler. As a result of the investigations, on those companies fines and pecuniary sanctions were imposed as shown below and five former officers of NSK and Nachi-Fujikoshi were convicted in Japan.

Country	NTN	NSK	JTEKT	Nachi-Fujikoshie	SKF	Schaeffler
Japan	542.2 mnEUR	421.4 mnEUR	Excused	0.03 mnEUR	-	-
US	Not yet determined	60.3 mnEUR	91.2 mnEUR	Not yet determined	Not yet determined	Not yet determined
Europe	201.3 mnEUR	62.4 mnEUR	Excused	3.6 mnEUR	315.1 mnEUR	370.5 mnEUR

Worldwide administrative fines imposed in recent years on manufacturers in the auto parts industry alone amounts to more than **EUR 4.1 billion**. It must be added that a large part of relevant proceedings is still ongoing.

Antitrust law must be complied with not only during working hours, but also during private activities insofar as these pertain to the interests of the company or employees are perceived as representatives of the company by third parties. This applies, for example, to visits to trade fairs and conferences as well as to trade association work. When assessing a situation in terms of antitrust law, it is therefore not the occasion of the *contact* (business or private, spontaneous or arranged etc.) that is important, but the existence of some form of coordination and the restriction of competition intended or brought about.

In principle, antitrust law applies to all Minebea business units – be it purchasing or sales, production, research and development, administration etc. However, within Minebea, the following divisions and departments are considered at considerable risk due to their area of responsibility and their frequent contact with customers and competitors:

Sales Division and Business Departments: especially product manufacturing, sales, pricing, quality and specifications decisions, rebates etc.

Procurement and Logistics Division:	especially procuring raw materials etc.
Engineering Support Division:	especially joint research and development, license agreements etc.

Part 2. Restrictive Practices

2.1. Conduct towards Competitors

2.1.1 What Is a Cartel?

As discussed above, a cartel is an agreement among companies in a competitive relationship to fix product prices, or otherwise jointly restrict competition. Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies which have as their object or effect the restriction of competition (see 1.1.1.1. above).

Cartels are not limited to cases where competitors directly meet and enter into explicit agreements. For example, cases of correspondence by telephone or email are included and even gentlemen's agreements, verbal promises, or tacit understandings can form agreements pursuant to Article 101(1) TFEU. It should be noted that, in contrast to a common misperception that as long as information opinions on general market trends are exchanged without an agreement, this does not have any antitrust law implications. However, the European Commission and competition authorities of other countries take "consistent conducts after exchange of information" to be an implicit understanding (agreement or concerted practice).

2.1.1.1. Form of the Agreement

As has been outlined above, antitrust violations can be committed in very different ways. Situations, in which *competitors* coordinate their activities in one way or another, possibly restricting competition as a result, are always problematic. In the following fictional examples, a restriction of competition is intended or brought about by the parties concerned in each case. Each example therefore contains an antitrust violation, even though the forms of conduct described differ widely.

– **Binding written Agreement**

The sales managers of the three miniature ball bearing manufacturers X, Y and Z meet for lunch in a restaurant. They jointly calculate the prices for a particular design feature on the receipt for their meal. Finally, they agree on a specific amount, which is noted on the receipt.

– **Binding verbal Agreement**

Sales rep A from LED driver manufacturer X is a friend of employee B working at *competitor* Y. During a telephone conversation, they start talking about work. It turns out that both have been approached by a TV panel manufacturer and a computer display manufacturer and asked to make an offer in each case. They agree that their offers will be drawn up in such a way that X will have a shot at the TV manufacturer, while Y will have a shot at the computer display manufacturer.

– **Binding Trade Association Decision**

Excerpt from the minutes of a meeting of a trade association:

"Agenda item 5: Market development

The members' meeting has decided that the members of the trade association are not to expand their production capacities in the area covered by the trade association during the next two years."

– **Non-binding so called Gentlemen's Agreement**

A and B work for different companies that are *competitors* in the market for fan motors. At the end of a technical conference, they sit together at dinner and discuss the market situation.

A: *"We urgently need to raise our prices. But we can't take on the major customers on our own. We should try tackling this jointly next month. Around 3% would be enough for us."*

B: *"We'll see what we can do. 3% sounds doable, though."*

– **Concerted practices: exchange of information**

In order to optimize their product ranges, each year in January and July a number of *competitors* exchange, via e-mail, lists indicating the production figures for the previous six months arranged according to country, product and features. The lists are also sent to the trade association, which inserts them into a large table and publishes them on the intranet.

2.1.1.2. Hardcore Restrictions

Agreements among competitors are categorized into (i) agreements that clearly have no real purpose or effect other than anticompetitive purpose or effect, such as price-fixing (referred to as a ***hardcore restrictions*** in academic terms) and (ii) agreements such as a business alliance between competitors based on business necessity, which do have anticompetitive effects to some extent but also might have justifications or procompetitive effects that could make up for those anticompetitive effects (referred to as a ***non-hardcore restrictions*** in academic terms).

The following guidance focuses on the most common hardcore restrictions.

2.1.1.2.1. Price Fixing

In the case of **price fixing**, competitors agree with each other on the prices at which they will purchase or sell certain goods. Please note that price-fixing is a hardcore infringement irrespective of whether the parties involved are successful in raising or maintaining prices. On the other hand, if a supplier and its buyer agree on the price for a delivery, this of course does not constitute anticompetitive price fixing. They are merely agreeing on the conditions of the transaction that they are concluding with each other.

Examples of price fixing:

- conduct such as setting an upper or lower price limit or price range;
- conduct regarding the extent or rate of price increases;
- conduct regarding price-setting standards (e.g., standard price, reference price, or index price);
- conduct regarding a common price calculation method;
- conduct regarding kickbacks, fees, discounts, or other essential price factors (e.g., margin rate or rebate amount or rate).

2.1.1.2.2. Agreements on Territory

Agreements on territory concern the allocation of geographic sales areas. They have the effect of foreclosing customers from sources of supply in other sales areas.

Example of territory allocation:

- practices according to which the parties mutually abstain from engaging in new activities in territories where other undertakings are already engaged in activities (sales or otherwise);
- practices according to which the parties divide new territories amongst each other.

2.1.1.2.3. Agreements on Customers

In the case of **agreements on customers**, customers are not allocated according to sales territories but instead according to a different allocation basis. For example, this can take place in that individual companies “reserve” certain customers for themselves. In the final analysis the resulting foreclosure effect is just as drastic as that of an agreement on territory.

Examples of customer allocation:

- practices according to which the parties mutually abstain from trading with customers of other undertakings;

– practices according to which the parties pay compensations in case an undertaking trades with customers of another undertaking;

– practices according to which the parties mutually abstain from competing to win customers by selling products at prices lower than other undertakings;

– practices according to which the parties divide respective trading counterparties among themselves.

2.1.1.2.4. Quota Fixing

Quota fixing concerns the determination of product quantities, capacities or market shares. It has the direct or indirect result that the market shares of individual competitors are frozen at or allocated to a particular level. This eliminates any incentive such competitors have to poach customers from each other.

Examples on quota-fixing:

– practices according to which the parties restrict production output, shipping volume, or sales volume;

– practices according to which the parties set a total production volume for a certain period, and allocate that volume among each entrepreneur participating in the output restriction on the basis of past performance or other criteria;

– practices according to which the parties indirectly restrict production volume or supply volume etc. by placing purchase volume restraints on raw materials or operating restraints on facilities.

2.1.1.2.5. Bid Rigging

In the case of tenders, conduct such as bidders consulting prior to bidding and determining the winner or the bid prices are hardcore infringements prohibited by EU competition law. Consulting with a competitor is considered a restraint of competition in its own right, and thus making that kind of arrangement itself is a violation of antitrust law even if a company does not win the bid. Even if there is no desire to win a bid from the beginning, conveying that information to another company is regarded as cooperation to enable other companies to win the bid, and such conduct is illegal as well.

The prohibition on bid rigging is not limited to the bidding with public agencies or third-sector companies. Bid rigging is also illegal in cases where the order placer is an ordinary private company.

Examples:

– bidders consult each other and determine the winning bidder by rotation;

- bidders consult each other and determine the winning bidder or winning bid price, and determine that the quotations presented by bidders other than the winning bidder will be higher than the winning bid price;
- requiring bidders to provide inquiry-related information to a lead company or administrative office, and coordinate the winning bidder and winning bid price.

In addition to administrative fines, in **Germany**, according to sec. 298 of the German criminal code (hereafter "StGB"), bid rigging can constitute a criminal offense. Thus, such conduct is not only penalized by administrative fines but rather by **criminal penalties** including **criminal fines** and **imprisonment** of up to five years.

2.1.1.3. Guideline to Avoid Infringements

Since hardcore restrictions are highly illegal and malicious and subject to aggressive crackdown and enforcements by the European commission and other competition authorities, it must be ensured that such conduct never occurs. The enforcement practice of the cartel authorities shows that, even in light of sever sanctions, core restrictions occur and are discovered time and again. To prevent this from happening, Minebea employees must always follow these **basic rules**:

- Avoid discussions on prices, capacities, sales territories, customers and rates right from the start.
- At the very latest, alarm bells should go off when off-limits topics arise during *contact* with *competitors*. However, there are also specific **warning signs** to heed even before it comes to this. If they arise, you should break off the *contact* immediately. Here are a few examples:
  - A *competitor* seeks to establish *contact* with you (by inviting you to an event, putting you on an e-mail distribution list, etc.), but you cannot, even after careful consideration, see any good reason or any reason that is not in violation of antitrust law for such *contact*.
  - The invitation or agenda contains open or concealed hints about the intended discussion of off-limits topics.
  - A person who has previously broached off-limits topics will also be participating in the planned contact between competitors.
- Should you nevertheless find yourself in a situation where competitors are exchanging information on off-limits topics or are even agreeing on price, territory, customers or quotas, you should take the following action:
- Object! Make it clear that you do not take part in discussions that violate antitrust law.

– Break off the contact immediately! For example, leave the room or the telephone conference or have your name removed from the e-mail distribution list.

– Have your actions recorded! If the contact takes place during a formal meeting or in writing, make sure that your objection is recorded in the minutes or in the correspondence. In the case of other types of contact, you must document your actions in another way.

– You must in any event consult the consultation center of the legal department referred to under section Chapter 5.

2.1.2 Exchange of Information and Benchmarking

Section 2.1.2 concerns exchanges of information in general and benchmarking. The sections that follow will deal with situations in which exchanges of information may typically happen, e.g. during trade association work, participation in trade fairs, entering into or performing supply or other formalized contractual relationships with competitors, or work with joint ventures. The information contained in these chapters will take precedence over chapter 2.1.2 unless indicated otherwise.

Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies which have as their object or effect the restriction of competition. According to the Horizontal Guidelines of the European Commission, an information exchange violates the antitrust prohibition if it establishes or is part of a concerted practice and has as its object or effect the restriction of competition. This is the case if the exchange of information reduces strategic uncertainty in the market thereby facilitating collusion or resulting in foreclosure. The European Commission makes no distinction between direct exchanges of information and exchanges of information through a third-party service provider such as a market research institute.

All employees are obliged not to disclose confidential business information and to strictly comply with antitrust laws. The unauthorised disclosure of confidential Minebea business information, and illegal agreements and coordinated behaviour that intends to or may limit competition are prohibited; this also applies to the exchange of information with competitors. In collecting information about its competitors, Minebea utilizes all legitimate sources, but avoids illegal actions, and respects the business secrets of competitors, business partners and customers.

2.1.2.1. Typical Examples

2.1.2.1.1. Signalling

According to the Horizontal Guidelines, a company can also violate antitrust law if it unilaterally discloses competitively sensitive information to a competitor and the competitor accepts it (what is known as “signalling”). If a company receives competitively

sensitive information about a competitor as a result of direct contact with such a competitor, e.g. through a discussion or an e-mail (what is known as "direct signalling"), the European Commission will even assume that it has accepted the information, and has thereby violated the antitrust prohibition, if it has not explicitly objected to the receipt thereof. According to the Horizontal Guidelines, the unilateral disclosure of competitively sensitive information in public media (journals, trade magazines, on the internet etc.) can also violate the antitrust prohibition in the form of "indirect signalling", particularly if the aim is to reach an agreement with competitors.

2.1.2.1.2. Benchmarking

Benchmarking is a special form of information exchange. The same rules therefore apply to the exchange of information and benchmarking. In the context of benchmarking with competitors, therefore, exchanges of information on off-limits topics and on critical topics (see section 2.1.2.2 for further details) are equally prohibited if the information is less than 12 months old and if the companies to which the data relates are identifiable. In the other cases prior approval must always be obtained from the legal department for critical topics. On the other hand, benchmarking on non-critical topics such as staff satisfaction is generally permissible and is not subject to approval.

Situations often arise on the periphery of the actual benchmarking activities in which antitrust-relevant topics could be discussed. Make sure in such cases, too, that no off-limits or critical topics are addressed and, where there are doubts as to permissibility, remind the other person of the antitrust issues. End the conversation if the other person does not acquiesce immediately.

2.1.2.1.3. Factory Visits

Visits to competitors' factories are not automatically prohibited under antitrust law. "Open-factory days" are, for instance, also open to competitors because this will not give them access to any more information than the general public.

However, factory visits among competitors may be critical from the antitrust perspective if they are used to disclose or exchange information that permits conclusions to be drawn as to current and future market strategy. Visitors must not, therefore, have access to any information about off-limits or critical topics. If the visitors are from sales or from R&D the risk is greater than if they are from production.

Factory visits involving access to production facilities are therefore only permissible – even for top level visitors – if the following requirements are met:

– The purpose of the visit must be a specific, well-defined topic or aspect of production, and an agenda must be set up for the visit.

- Only employees working in production may be allowed to visit. Most importantly, employees with responsibility for sales may not be included.
- No processes may be demonstrated, or information exchanged, that is of strategic importance for one of the companies.
- The factory visit must not be used to hold a general exchange of information on off-limits or critical topics.

Remember: The general antitrust rules apply to the exchange of information at or on the occasion of factory visits.

Now and again factory visits are planned with the aim of sounding out the possibility of a specific cooperation with a competitor. Visits of this kind may be permissible under antitrust law, but have to be scrutinised and cleared by the legal department – especially if employees working in strategy and development are to be present. Sales employees should not be allowed to take part in visits of this kind.

2.1.2.1.4. Exchange of Information through Independent Third Parties

The exchange of information between competitors through an independent third party, e.g. a trade association or a service provider, can ultimately, and under certain premises, be assessed more favourably from an antitrust perspective, among other things because this does not involve direct contact between competitors. If the information is anonymised appropriately and made less detailed, then an exchange of information through the intermediary of independent third parties can be permissible under antitrust law.

2.1.2.1.5. Data Collection by Trade Associations

For information exchanged at trade association level (e.g. incoming orders, retail/ wholesale data) – other than statistics published by public authorities/the government – the following applies:

- What matters is that the data disseminated by the trade association is sufficiently aggregated. Check the data Minebea gets back from the trade association to ensure that this is the case and have the trade association confirm that they only communicate aggregated data to the competitors too.

  Examples: The information indicates a manufacturer's overall incoming order/retail figures, but is aggregated to include all product ranges.

  Examples: Data can be disseminated that distinguishes between the specific product categories, but relates to the overall market only.

- Minebea may report individualised data to trade associations because these are necessary for the associations to perform their legitimate obligations to furnish

statistics to government bodies, etc. The above rules apply worldwide. In the event of doubt, please consult the consultation center of the legal department as referred to in Chapter 5.

2.1.2.1.6. Data Collection by Third-party Service Providers

As a general principle, the rules for the exchange of information through trade associations also apply as a minimum standard to the exchange of information through external service providers. The following aspects must also be considered when assessing whether an exchange of information is permissible under antitrust law:

- If Minebea does not report data to the service provider, then it is permissible under antitrust law for Minebea to work together with this service provider.
- If Minebea only reports data that, at the time of reporting, can be obtained in the same degree of detail through publicly accessible means - in full and at no significant additional cost – ("publicly available data"), then there are no antitrust problems.
- If the reported data is not publicly available, it may not be exchanged if it contains information about the future (e.g. forecasts). Current price data may not be reported unless it is already publicly available at the time of reporting.
- To reduce the risk of data disseminated by the service provider not being sufficiently aggregated, only data that is condensed accordingly may be supplied to the service provider. Unlike trade associations, external service providers have no legitimate interest in receiving non-aggregated, identifiable data.
- In situations where the exchange of information through an independent external service provider is neither clearly permissible nor clearly impermissible, it should be discontinued. In cases of this kind, the exchange should only be resumed if and when it has been cleared by the legal department.
- As a general rule, Minebea employees should not attend any meetings organised by external service providers, e.g. to explain or discuss statistics.

2.1.2.2. Guideline to Avoid Infringements

The exchange of information (which includes the unilateral disclosure or receipt of information), benchmarking, and direct and intended indirect signalling are subject to the following rules, in particular.

2.1.2.2.1. Basic Rules

- Regardless of the requirements of antitrust law, employees must adhere to the duties to observe secrecy according to other provisions, in particular those in their

employment contract. According to such provisions, it is generally prohibited to disclose business secrets of Minebea to third parties.

- Employees must refrain from any agreements or coordination with a competitor that could reduce competitive pressure between Minebea and a competitor.

- Employees must, in particular, refrain from any exchange of information that makes it possible to draw conclusions about the future market behaviour of Minebea or the competitor.

Remember: The cartel authorities are very strict in this regard. An antitrust violation generally only requires the exchange of information that is "not entirely worthless" for the competitors.

- Do not under any circumstances engage in discussions with competitors on off-limits topics (see below). Do not unilaterally disclose information on these to competitors either (direct or intended indirect signalling).

- Do not under any circumstances engage in spontaneous discussions with competitors on critical topics. This also applies to the unilateral disclosure of information (direct or intended indirect signalling). Unless the contact is impermissible from the outset anyway, you need approval from the legal department.

- Avoid discussions on off-limits topics or spontaneous discussions on critical topics right from the start. Take note of the warning signs referred to below.

- **Warning signs:** At the very latest, alarm bells should go off when off-limits topics arise during contact with competitors. However, there are also specific warning signs to heed even before it comes to this. If they arise, you should break off the contact immediately. Here are a few examples:

  - A competitor seeks to establish contact with you (by inviting you to an event, putting you on an e-mail distribution list etc.), but you cannot, even after careful consideration, see any good reason or any reason that is not in violation of antitrust law for such contact.

  - The invitation or agenda contains open or concealed hints about the intended discussion of off-limits topics.

  - A person who has already previously broached off-limits topics will also be participating in the planned contact between competitors.

Whether it is possible to draw conclusions about the market behaviour of participating companies mainly depends on the type of information exchanged. There are kinds of information that as a general rule do not permit any conclusions about market behaviour ("permissible topics"). These include in particular general economic topics (e.g. general

business trends), general technical topics (e.g. academic discussions among engineers with no commercial implications), general socio-political topics, and lobbying. On the other hand, there are various kinds of information that do, either generally or in a particular case, permit conclusions about market behaviour. According to the Minebea Standard, be divided into “off-limits topics” and “critical topics”; each type is subject to different rules. Please note that the lists below are not exhaustive.

2.1.2.2.2. Off-Limits Topics

With regard to certain topics, an exchange of information with competitors is never permitted under antitrust law. **Under no circumstances** may employees **exchange information** with competitors concerning these topics (“off-limits topics”). This applies regardless of the form (written or oral) and the occasion of the contact (business or private, spontaneous or arranged, e.g. participation in trade fairs, trade association meetings, market information systems, benchmarking, factory visits, etc.).

Vis-à-vis competitors, **off-limits topics** are:

– All price-related topics

  Examples: Purchasing, sales and resale prices including list prices, price components, price calculation, pricing policy, price changes.

– Capacities and rates

  Examples: Production and installation rates, production restrictions, capacity shortages, etc.

– Distribution policy, sales territories and customers

  Examples: Customer lists, current orders and invitations to tender, customer and market allocation, market exits, etc.

Should you nevertheless find yourself in a situation where competitors are exchanging information on off-limits topics, you should take the following action:

– Object! Make it clear that you do not take part in discussions that violate antitrust law. This also applies to the unilateral disclosure of competitively sensitive information by a competitor (direct or intended indirect signalling).

– Break off the contact immediately! For example, leave the room or the telephone conference or have your name removed from the e-mail distribution list.

– Have your actions recorded! If the contact takes place during a formal meeting or in writing make sure that your objection is recorded in the minutes or in the correspondence. In the case of other types of contact, you must document your actions in another way.

– You must in any event consult the consultation center of the legal department as referred to in Chapter 5.

2.1.2.2.3. Critical Topics

Under antitrust law, an exchange of information with competitors regarding other topics can be impermissible in individual cases (critical topics).

Vis-à-vis competitors, **critical topics** are:

– Other conditions (that are not directly price-related)

  Examples: Guarantee conditions, supply conditions, etc.

– Costs

  Examples: Manufacturing costs, administrative costs, etc.

– Turnover and sales figures

– Market shares

– Technologies and innovative products;

– Investments

  Example: Plans to build a new factory or extend an existing one.

Employees may not **exchange any information with competitors** concerning critical topics **if** the exchanged information:

– pertains to the future or is not at least 12 months old ("up-to-dateness") **and**

– it is at the same time possible to allocate the information to a particular company ("identifiability").

  Example: Exchange of information on the development of manufacturing costs (critical topic) for mid-size cars in the future or in the last 12 months.

Otherwise, i.e. when the information is more than 12 months old or the recipient cannot attribute it to a particular company (e.g. because the information was gathered by a neutral financial intelligence unit and is made available to the companies in aggregate form and not in a manner that allows the identification of individual companies), an exchange of information with competitors regarding critical topics is permissible **only after obtaining approval from the legal department** and in accordance with his/her instructions as explained in section Chapter 5.

The legal department will examine the matter on the basis of the following criteria in particular:

– Degree of detail of the information

  Example: If a trade association collects data on a critical topic and classifies these according to products, sales territories, time periods, etc., this is more problematic than if only a rough overview is provided.

– Availability of the information

  Remember: In general, information is not competitively sensitive if it can be accessed from public sources by all market participants at the time at which it is exchanged. Of course this only applies if the publicly accessible sources actually contain all of the information exchanged with competitors, i.e. have the same degree of detail and are equally up-to-date.

  Example: For instance, if the gross prices for individual technical features of a competitor were published in a trade journal, this does not justify exchanging a gross price list with this competitor which contains all or only additional technical features.

– Market transparency

  Remember: An exchange of information may not be assessed in isolation but instead taking into account the information already available.

– Frequency of the exchange of information

  Remember: The more frequently an exchange of information occurs, the more problematic this is for competition. A repeated exchange of competitively sensitive data makes it easier to draw conclusions about future business behaviour.

– Government statistics

Remember: Providing information for use in the compilation of government statistics is always permissible under antitrust law insofar as Minebea has an official obligation, e.g. under laws or regulations, to disclose this information. Retrieving and evaluating statistics of this kind is, in and of itself, always permissible because this is information that is in the public domain.

Critical topics are therefore just as unsuitable for spontaneous contact between competitors at trade association level as off-limits topics. You must therefore refrain from any spontaneous discussion of critical topics.

2.1.2.3. Case Studies

Case Study 1:

A cutthroat price war has been raging in the industry for months, pushing prices further and further down. The chair of the management board of the industry leader wants to put an end to this as quickly as possible. In order to communicate this to his competitors, he says the following during a television interview: "*Our company will do everything it can to resist this ruinous drop in prices. Our shareholders have no cause for concern. This can go no further. We will not be making any more price reductions.*"
Is this permissible?

⇨ **No!** This statement is aimed to signal competitors that there will be no more price reductions and allows for the possibility of a gentlemen's agreement not to reduce prices anymore.

Case Study 2:

Five bearings manufacturers carry out benchmarking in connection with the logistics costs incurred during the past three months. In the study, the cost structures of the five companies are compared in detail.
Is this permissible?

⇨ **No!** The logistics costs are to be regarded as problematic information. This information is less than 12 months old and is identifiable, i.e. the respective cost structures can be traced back to the individual participants.

Case Study 3:

An employee receives an e-mail from a competitor asking whether he is interested in "exchanging experiences on purchasing topics". The competitor goes on to say that an exchange in connection with purchase prices would no doubt be profitable for both companies.
How should the employee respond?

⇨ The exchange of experiences with the competitor would involve competitively sensitive information. Purchase prices are one of the off-limits topics. The employee must reply that he is not permitted to participate in these kinds of exchanges. In order to properly document the situation, he could, for example, print out the e-mail and file it separately. He should also inform the legal department about what has happened.

Case Study 4:

An employee receives an e-mail from a competitor asking whether he is interested in "exchanging experiences" on the subject of "sustainability in the sales system". The competitor goes on to say that a general exchange on environmental and socio-political topics would no doubt be profitable for both companies.
Is such an exchange of experiences permitted?

⇨ **Yes!** The enquiry does not contain any indication that competitively sensitive topics, i.e. prohibited or critical topics, are to be discussed. The employee must however take care that no prohibited or critical topics arise spontaneously as part of the discussion.

Case Study 5:

An employee of a miniature bearings manufacturer urgently needs to know, for work purposes, the price charged by a competitor for a specific technical feature. Since he is unable to find the price on the internet, he picks up the phone and asks an employee of the competitor – whom he met at the last trade association meeting – for this price.
Is this permissible?

⇨ **No!** Price-related questions are off-limits. Information therefore cannot be exchanged under any circumstances.

Case Study 6:

An employee regularly attends trade association meetings at the European level. At the previous meeting, the discussion focused on political initiatives against a new and cost-intensive regulation of environmental requirements for products in the industry. The item "Model for the sharing of regulation costs – involvement of suppliers and customers" is on the agenda for the next meeting.
Can the employee attend the meeting?

⇨ **No!** The agenda item is clearly a violation of antitrust law. It clearly shows that competitors intend to agree on passing on the corresponding costs via price fixing with respect to the purchasing and sales prices.

Case Study 7:

At a training event employee A coincidentally runs into employee B of a competitor. Employee B is known for "not strictly adhering to" antitrust law rules, particularly in times of crisis, as currently experienced by the industry. Although A avoids B, B approaches A at the first opportunity in order to tell him that it is "simply a disgrace" that A is constantly attempting to poach B's regular customers. B says that A should not do this anymore and that, in return, he himself would then "refrain from approaching A's customers". A responds that he is simply an active competitor and that he abides by antitrust laws. He then simply walks away. In addition he immediately gets in touch with the consultation center of the legal department in order to find out the best way to deal with the situation and to document it accordingly.

Were employee A's actions appropriate?

⇨ **Yes**, the actions were exemplary. This was the only way to safely avoid becoming involved in an agreement on customers.

Case Study 8:

A sales rep calls a competitor and informs it that he received an enquiry from a customer concerning a major order. The sales rep suggests dividing up the order. In this way neither company would have to lower its price and both would benefit from the transaction. The sales rep suggests that, in the future, they could handle all major customers in a similar way.

Is this permissible?

⇨ **No!** Such conduct results in a fixing of the market shares of both *competitors* when it comes to business with major customers. For the customers, the other respective *supplier* no longer represents an alternative source of supply that could legitimately compete in that market.

2.1.3 Supply Relationships with Competitors

2.1.3.1. General Rules

In the case of a supply relationship, the companies involved, namely the supplier and the buyer, do not operate at the same level of the market. The supply relationship as such is a vertical rather than horizontal agreement. If the companies involved in the supply relationship are at the same time also competitors, for example at the downstream stage of manufacture, the supply relationship must be assessed more strictly in terms of antitrust law than supply relationships between non-competitors.

Example: If Minebea procures specific components for the production of miniature bearings from a manufacturer that also produces miniature bearings, Minebea and the supplier not only have a *supply* relationship, but also *compete* on the market for miniature bearings.

In the case of supply relationships between competitors there is a risk that the supply relationship and the information obtained in connection with such relationship could give rise to concerted practices, thereby restricting competition between them. "*Ad hoc*" deliveries are deliveries among competitors designed to eliminate a bottleneck at a competitor. In this context, the exchange of information only pertains to the specific delivery proposed.

Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies which have as their object or effect the restriction of competition. The antitrust prohibition laid down in EU law applies to both the *vertical* and *horizontal* aspects of supply relationships between competitors. Although supply relationships with competitors are not prohibited per se, they do pose significant antitrust-related risks. Restrictive clauses (exclusivity, restrictions of use, processing clauses, market allocation etc.) may raise antitrust concerns. Irrespective of possible restrictive clauses, supply relationships between competitors as such may also be subject to the antitrust prohibition if the supply relationship enables the companies concerned to coordinate their competitive conduct as suppliers in the markets affected by the agreement.

There is a whole series of specific provisions to assess whether there is a threat of such a coordination of conduct, making assessment very complicated. The case must therefore be assessed by the legal department.

2.1.3.2. Approval of the Legal Department

The **approval of the legal department** must always be obtained before a new supply relationship is established with a competitor. In order to implement an approved supply relationship with a competitor, such information as is required to implement the supply relationship and to carry out the reciprocal services and which is customary in supply contracts with non-competitors – and only such information – may be exchanged. No information going beyond this may be exchanged.

Example: The quantities required in the future may be planned in advance to the extent that this is necessary to be able to plan and guarantee timely delivery. Specifying the exact number of units required for more than a year, for example, will therefore generally be impermissible.

In addition, it must be ensured that **only information pertaining to the specific order is exchanged** with competitors and not information on the competitor's capacities, on prices or on the justification for price increases. For this reason, only employees who are directly

involved in the supply relationship may attend meetings arranged specifically to discuss the further organisation and implementation of the supply relationship.

2.1.3.3. Case Studies

Case Study 1:

A colleague at a competing company contacts Minebea because of a temporary supply bottleneck at his company. He asks to be supplied with a specific product so that he can meet his customers' needs. He asks about the price.
How do you assess such a delivery in terms of antitrust law?

⇨ Antitrust law does not in principle prohibit one company from supplying competing companies. In the case of ad-hoc deliveries of this kind, the exchange of information only pertains to the specific delivery proposed. This is fine as far as antitrust law is concerned, provided that no other aspects come into play. You should involve the legal department as soon as possible in this case as well.

Case Study 2:

Minebea procures a specific component for a number of products from another bearings manufacturer. The legal department played an active role in concluding the contract and checked this from an antitrust law perspective. To ensure the effective functioning of this supply relationship, Minebea must pass on information on the quantities of the component required for the respective next month to the competitor. As a result, the competitor can see how many miniature bearings of this specific type Minebea will be manufacturing in the following month. This information on the production figures is, however, necessary and common practice to ensure that sufficient components can be made available during the following month. For this reason, the information is **permissible**.

Case Study 3:

A competitor procures components from Minebea which it installs in products that compete with Minebea products. The components represent a significant part of the costs of these products. As a customer, he asks you to disclose Minebea's production capacities and cost structures. Although this will allow him to draw conclusions about the production costs of the end product, you make the required data available.
What do you make of this?

⇨ With his request for information, the competitor crosses the line of what is permissible in terms of the supply relationship. As part of this relationship, the parties may only discuss issues that are specifically related to the deliveries and that are customary in the specific industry in the case of deliveries of this kind. Everything else exceeds the "need to know" basis.

2.1.4 Licensing of Intellectual Property

Licensing agreements on intellectual property (including technology and know-how, hereafter "IP") with other undertakings, be it with competitors **or** non-competitors, bear risks of infringing EU antitrust law. Licensing agreements may contain numerous competition restrictions such as restrictions of the use of the licensed IP, resale price fixing of the products manufactured with the licenced IP, territorial restrictions or output restrictions. The risk of an infringement of antitrust law is particularly high in licensing agreements with competitors on the same product market or technology market and this risk increases further if the parties to the agreement agree on so-called cross licensing where both parties grant each other complementing licenses.

As is the case with research and development agreements (see 2.1.7.3 for further details), the assessment of the permissibility of licensing agreements is extremely complex. Thus, Minebea employees must always – especially where competitors are involved – contact the consultation center of the legal department before entering into licensing agreements.

2.1.5 Trade Associations

The term *trade association* as used in this guideline refers to groups of independent companies that voluntarily join forces to have their interests represented, have a set internal organisational structure and include at least one competitor of Minebea. Trade association work within the meaning of this guideline refers to any formal or informal activity of an employee in such a trade association.

The risk of becoming involved in an antitrust violation is especially high in connection with trade association work, because members are often competitors, and agreements and concerted practices between competitors are examined especially critically. The cartel authorities keep a close eye on trade association work and have frequently imposed heavy

fines on cartels operating at trade association level. The following rules apply regardless of whether or not the employee occupies a specific position in the association. For an assessment under antitrust law it is merely decisive that the person in question is (also) an employee of Minebea.

Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies (in particular trade associations) which have as their object or effect a restriction of competition. The antitrust prohibition, thus, also expressly applies to trade association work. There is no such thing as a "trade association privilege". To the contrary: As trade associations are frequently used as a platform for antitrust violations, the cartel authorities keep a close eye on trade association work. Heavy fines have frequently been imposed on cartels operating at trade association level – both on the associations themselves as well as on the undertakings concerned.

Under the European Commission's Horizontal Guidelines, a company's disclosure of competitively sensitive information to competitors, for example at a trade association meeting, and failure by the competitors to expressly object to such disclosure may already qualify as an antitrust violation. In such cases, the European Commission takes action against companies whose representative was present when the information was exchanged, based on the principle of "guilt by association".

2.1.5.1. Guideline to Avoid Infringements

2.1.5.1.1. Basic Rules

The following topics may, for example, be discussed with competitors at trade association level (**permissible topics**):

– General legal and socio-political questions and the joint representation of interests vis-à-vis government (lobbying)

  Examples: legal framework conditions or current proposed legislation, its significance for the industry and possibilities for joint representation of interests vis-à-vis government.

– General economic questions

  Examples: general short-term data, stock exchange listings.

– General technical questions

  Examples: general trends in the industry or current technical innovations.

– Questions on areas in which Minebea does not compete with any of the other companies.

The general rules governing agreements on prices, territories, customers and quotas (see section 2.1.1.2) and the exchange of information (see section 2.1.2) also apply. Employees therefore may never participate in an exchange of information regarding **off-limits topics** or **critical topics** (see section 2.1.2.2.2 et. al).

As the discussion of critical topics at trade association level is either prohibited from the outset or requires prior approval from the legal department, **neither critical topics nor off-limits topics should be the subject of spontaneous discussion**. Employees must therefore refrain from any spontaneous discussion of critical topics in connection with trade association work.

At the very latest alarm bells should go off when trade association work involves discussing off-limits topics. However, there are also specific **warning signs** to heed even before it comes to this. If they arise, you should break off the contact immediately. Here are a few examples:

– You are invited to an event with competitors but cannot, even after careful consideration, see any good reason or any reason that is not in violation of antitrust law for such contact.

– No agenda is sent for a trade association meeting.

– The agenda hints – even if only vaguely – at a proposed discussion of off-limits topics or critical topics.

– A representative of a competitor who previously broached off-limits topics or critical topics attends or will be attending a trade association meeting.

2.1.5.1.2. Special Rules Regarding Trade Association Meetings

Before the meeting:

– The employee should insist that a detailed agenda is sent.

– The attending employee should check the agenda for off-limits topics and critical topics (see above). If the agenda contains items that are impermissible under antitrust law (e.g. “passing on surcharges costs to suppliers”), the employee may not attend the meeting and must inform the legal department. The agendas for trade association meetings often contain very general, open-ended items such as “general market situation”. Employees may attend such trade association meetings, but must ensure, in particular, that the rules pertaining to situations “on the periphery” and after the meeting referred to below are strictly adhered to.

During the meeting:

– Employees should insist that detailed minutes of the meeting be kept.

- When it comes to antitrust issues, employees should not rely on trade association representatives or other people attending the meeting, but instead on information from the Minebea Antitrust Compliance Program and statements from the legal department.
- Employees must object to discussions of topics if there are doubts as to their permissibility under antitrust law. Employees must have their objection recorded in the minutes.
- Employees must leave the meeting if discussion of the topic continues anyway. The fact that they are leaving the meeting must be recorded in the minutes, ensuring that their name and the time at which they left are noted. The attending employees must inform their superior and legal department of this.

"On the periphery" of the meeting:

- Situations often arise outside of the official program, for example during coffee breaks, during lunch or dinner or when enjoying a drink in the hotel bar, in which critical or off-limits topics may be discussed. In these situations too, employees must comply with the rules listed above.

After the meeting:

- Employees should insist on the distribution of the minutes of the meeting and the approval thereof by the participants.
- Employees must check the minutes of the meeting for ambiguous language that could give outsiders the false impression that topics have been discussed that are questionable under antitrust law. It must be ensured that such language is corrected and the attending employees must inform their superior and legal department of this.

2.1.5.2. Case Studies

Case Study 1:

The national component supplier association requests, on a monthly basis, the figures for orders received from bearings manufacturers for the past month and provides these to its members.
Is this permissible?

⇨ **No!** The exchange of current orders received is a off-limits topic. Information therefore cannot be exchanged under any circumstances.

Case Study 2:

The agenda of a trade association meeting contains the item “Dealing with the in-crease in prices for raw materials (involving suppliers)”.
Can you take part in this meeting without hesitation?

⇨ **No!** The agenda item suggests that bearings manufacturers will be discussing a joint strategy for dealing with the increase in prices for raw materials. This is a critical topic, which cannot be discussed with competitors without the approval of the legal department.

Case Study 3:

The agenda of a trade association meeting contains the item “Round table discussion on the general market situation”.
Can you attend this meeting?

⇨ Discussions on this agenda item are only permissible if the participants exclusively discuss the general market situation, for example short term data or the general economic development. If the item is used as an opportunity to debate critical topics or off-limits topics, no spontaneous discussion is allowed. Employees may attend such trade association meetings, but must be careful to ensure that the rules specified above are strictly adhered to during, “on the periphery” of and after the meeting.

Case Study 4:

As part of a general discussion on the economic situation, a participant of a trade association meeting suddenly announces that his company will be using the economic data to implement a major increase in prices. He asks the other participants whether their companies have similar plans.
What should you do?

⇨ Proposed price increases qualify as a off-limits topic. Information therefore cannot be exchanged under any circumstances. The employee must openly object to the discussion and have his objection recorded in the minutes. If discussion of the topic continues anyway, the employee must leave the meeting – having the fact properly recorded in the minutes – and immediately inform his superior and the legal department of this.

2.1.6 Trade Fairs

Any employee who attends a trade fair professionally or privately as an exhibitor or visitor and acts, or is perceived to be acting, in his/her capacity as a Minebea employee is considered for the purposes of this Manual to be participating in a trade fair.

Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies (in particular trade associations) which have as their object or effect the restriction of competition. The antitrust prohibition also applies to participation in trade fairs.

At trade fairs the risk of becoming involved in an antitrust violation is especially high because many exhibitors and/or visitors are competitors, and agreements and concerted practices between competitors are viewed especially critically.

2.1.6.1. Contact with Non-Competitors

Non-competitors include, for example, specialised journalists and representatives from government and industry, as well as customers and suppliers. Employees naturally may and should represent Minebea in the best possible manner vis-à-vis the above, but they must take care not to discuss topics that may disclose confidential trade secrets, e.g.

– prices and conditions;

– planned conduct in the case of invitations to tender;

– confidential information on research and development activities etc.

Example: You may discuss Minebea's research and development activities involving a particular supplier with an employee of such supplier, but not confidential research and development activities involving another supplier.

2.1.6.2. Contact with Competitors

Employees must be much more careful when dealing with competitors because there is an increased risk of becoming involved in an agreement or conduct that is impermissible. The following rules apply:

Employees must refrain from engaging in any discussions/arrangements with *competitors* at trade association or other events ahead of trade fairs about their respective participation, stand concept details or the vehicles to be displayed.

The following topics, for example, may then be discussed with competitors at trade fairs (**permissible topics**):

– General legal and socio-political questions and the joint representation of interests vis-à-vis government (lobbying)

  Examples: legal framework conditions or current proposed legislation, its significance for the industry and possibilities for joint representation of interests vis-à-vis government.

– General economic questions

Examples: general short-term data, stock exchange listings.

– General technical questions

  Examples: general trends in the industry or current technical innovations.

– Questions on areas in which Minebea does not compete with any of the other companies.

The general rules governing agreements on prices, territories, customers and quotas (see section 2.1.1.2) and the exchange of information (see section 2.1.2) also apply. Employees therefore may never participate in an exchange of information regarding **off-limits topics** or **critical topics** (see section 2.1.2.2.2 et. al).

As the discussion of critical topics at trade fairs is also either prohibited from the outset or requires prior approval from the legal department, **neither critical topics nor off-limits topics should be the subject of spontaneous discussion**. Employees must therefore refrain from any spontaneous discussion of critical topics at trade fairs.

2.1.6.3. Guideline to Avoid Infringements

In principle, the following applies:

– Do not under any circumstances engage in discussions with competitors on off-limits topics.

– Do not under any circumstances engage in spontaneous discussions with competitors on critical topics. Unless the contact is impermissible from the outset anyway, you need approval from the legal department.

– Avoid discussions on off-limits topics or spontaneous discussions on critical topics right from the start. Take note of the following warning signs.

At the very latest, alarm bells should go off when off-limits topics arise during contact with competitors. However, there are also specific warning signs to heed even before it comes to this. If they arise, you should break off the contact immediately. Here are a few examples:

– At a trade fair you are invited to a presentation, a special exhibition or the like with competitors, but even after careful consideration, you cannot see any good reason or any reason that is not in violation of antitrust law for attending the event in question.

– The invitation to such an event contains open or concealed hints about the intended discussion of off-limits topics.

– A representative of a competitor who has already previously broached off-limits topics is or will be present at a trade fair.

Should you nevertheless find yourself in a situation where competitors are exchanging information on off-limits topics, you should take the following action:

– Object! Make it clear that you do not take part in discussions that violate antitrust law.

– Break off the contact immediately and leave the room!

– Have your actions recorded! If the contact takes place during a formal meeting, make sure that your objection is recorded in the minutes. In the case of other types of contact, you must document your actions in another way.

– You must in any event consult the legal department as referred to in Chapter 5.

2.1.6.4. Case Studies

Case Study 1:

Sales rep A from competitor X, who is wearing a name tag, visits the Minebea stand at a trade fair. He asks employee B when Minebea is thinking of putting a particular technology on the market.
Is B allowed to provide information about this?

⇨ **No!** The launch of a new product on the market is a topic that is problematic from the antitrust perspective. As it is also a question that relates to the future ("up-to-dateness") and the question is directed at B as a Minebea employee ("identifiability"), it is forbidden to disclose this information.

Case Study 2:

An employee of fan motor manufacturer X visits the trade fair stand of fan motor manufacturer Y and picks up a copy of their current price list.
Is that permissible under antitrust law?

⇨ **Yes!** There are no agreements or concerted practices involved here. Moreover, the current price list on display at the stand is publicly available information.

2.1.7 Trade Cooperation with Competitors within the Context of Formalized Contractual Relationships and Joint Ventures

Competitors often work together on specific projects on the basis of formalised contractual relationships. They may, for example, set up a purchasing pool, run joint research and development (R&D) projects, or conclude joint production agreements. The cooperation may take place in a joint venture or on a purely contractual basis.

Formalised contractual relationships with competitors can be useful and benefit the general public, and do not necessarily lead to an impermissible restriction of competition. This is the case, for example, where they help promote research and development. However, this is a highly complex legal issue, which should be handled by the legal department and external advisors, if necessary, to ensure that the boundary between permissible and impermissible conduct – which is not always clear-cut – is not crossed.

Article 101(1) TFEU prohibits agreements and concerted practices between companies as well as decisions by associations of companies which have as their object or effect the restriction of competition. The antitrust prohibition also applies, in principle, to both setting up and implementing formalised contractual relationships with competitors. The statements in section 2.1.2 apply, in principle, to the exchange of information as part of such relationships.

There are, however, a large number of exceptions which may affect the establishment or implementation of such relationships. These apply depending on the nature of the contractual relationship, and make it possible for companies to engage in forms of cooperation that do not restrict competition, or that – although they may restrict competition – are nevertheless desirable on account of their predominantly positive aspects. These exceptions include, for example, block exemption regulations for research and development, for specialisation agreements or technology transfer etc. This is a highly complex area. Formalised contractual relationships with competitors should therefore only be established once they have been approved by the legal department and must be implemented according to its specifications. Regarding the exchange of information in connection with an existing **joint venture**:

2.1.7.1. General Rules

Exchanging information with a joint venture and with other parent companies is unproblematic provided that Minebea, the joint venture and the other parent company are not competitors and that no supply relationships link them either.

Example: That would be the case if a bearings manufacturer and a food retail company together owned an insurance company.

Very often, however, that is not the case, so that the following rules apply: In a joint venture context, it is vital to differentiate between information exchanged:

– with the other parent company/companies and

– with the joint venture itself.

2.1.7.1.1. Antitrust Matters between Minebea and the Joint Venture

For antitrust matters between Minebea and a joint venture, it is decisive whether the joint venture *belongs* to Minebea for antitrust purposes. If that is the case, the so-called *intra-*

group privilege applies, and the antitrust prohibition does not apply between Minebea and the joint venture.

In many cases the size of the share is a good indication of whether or not a company belongs to Minebea for antitrust purposes. The following 'rule of thumb' applies:

– If Minebea has a share of 50% or more in a joint venture, then it belongs to Minebea for antitrust purposes. In this case the intra-group privilege applies between Minebea and the joint venture.

– If Minebea has a share of less than 50% in a joint venture, then it may nevertheless belong to Minebea for antitrust purposes, in which case the intra-group privilege applies. However, this requires close examination by the legal department. Unless and until said assessment has shown that the intra-group privilege applies, the general rules, i.e. in particular sections 2.1.1 and 2.1.2 with subsections, apply between Minebea and the joint venture.

If a joint venture belongs to Minebea for antitrust purposes and the intra-group privilege therefore applies, the following practices are, for example, permitted:

– Minebea/joint venture purchasing pool;

– Agreement with Minebea on the prices at which the joint venture may sell its products;

– Agreement with Minebea on the customers to which the joint venture may sell its products;

– Agreement with Minebea on the countries in which the joint venture may sell its products;

– Agreement with Minebea on the suppliers that the joint venture may source its products from;

– Agreement with Minebea that the joint venture will focus its R&D activities on a particular area and that Minebea alone will be responsible for R&D in a closely related area;

– Reports from the joint venture to Minebea on detailed sales figures, market shares or individualised data relating to its customers;

– Detailed obligations on the part of the joint venture to report sales figures and market shares to Minebea.

Remember: As explained above, the intra-group privilege never applies to agreements or practices **between Minebea and other parent companies**. A joint venture may not be used

as an intermediary for anticompetitive agreements or for an exchange of information that is not permitted under the general rules.

2.1.7.1.2. Antitrust Matters with Other Parent Companies

In relation to Minebea the other parent companies are independent market players. Therefore, they have to decide for themselves on how to behave vis-à-vis their competitors and, as a general rule, they may not coordinate their behaviour in the market with Minebea's. Basically, the general rules apply (see sections 1.1.12.1.1and 2.1.2 above with subsections). There is no such thing as a general antitrust privilege solely because Minebea and the other parent company are partners in a joint venture.

Nevertheless, there are exceptions, where more information can be exchanged than would normally be allowed. These exceptions apply for:

– any information that is absolutely necessary to jointly manage the joint venture.

  Examples: Strategic interests of the joint venture's business, such as expansion of sales markets, agreement between parent companies not to deliver any offers that compete with the joint venture's; this includes the exchange of information about the joint venture necessary for these purposes.

– any information that the companies need to secure the value of their own shareholdings.

  Examples: A coordinated exercise of voting rights and the exchange of information necessary for this purpose between two or more minority shareholders if there is no other possibility of protecting one's own interest, e.g. exercising contractual veto rights.

If there is any doubt, the legal department must first be consulted before exchanging information with other parent companies.

2.1.7.2. Purchasing Pools

EU antitrust law protects not only competition among sellers, but competition among purchasers as well. When price cartels fix purchase prices or the extent or rate of mark-downs or mark-ups in order to lower or maintain purchase prices, this causes trading prices to be lower than when there is effective competition among purchasers. As a result, sellers are unjustly disadvantaged and normal price formation in the market is distorted. Because of the foregoing it is impermissible to fix purchase prices. This raises a concern not just in terms of lowering purchase prices, but also in attempts to maintain prices or prevent price increases. Further, even if the intended price decrease or maintenance is not actually achieved, it is illegal from the moment an agreement is reached, thus employees need to be extremely cautious.

Thus, there is a particularly high risk of infringing antitrust law within so-called *purchasing pools*. In purchasing pools several undertakings join together to build large buying groups and accomplish better buying conditions due to large purchase quantities which they could not reach on their own. Such purchasing pools also have a procompetitive effects in the form of the achievement of economies of scale by large/bulk purchases and allocation of risk associated with purchase transactions. As a result, they are not generally illegal in and of themselves.

However, if purchasing pools are formed among leading undertakings, there is a likelihood that competition in the purchase market will decrease, and depending on the importance of the products being purchased, it will invite uniformity of costs among competitors, and a likelihood that competition in the finished products market will be inhibited, and may raise concerns under EU antitrust law.

Moreover, as outlined above, purchase price fixing is illegal and purchasing pools constitute a high risk of turning into price fixing cartels. As a rule of thumb, if the combined market shares of the participants in the purchasing pool are below 15%, the purchasing pool is likely to be permissible. However, purchasing pools always pose the risk of serving as platform for inter-company information exchange. In this regard the general rules on information exchange outlined above apply as well. Purchasing pools above the threshold of 15% are not impermissible in general; however they pose an even higher risk and are only permissible under certain conditions.

Because of the high risks involved with purchasing pools, employees must always contact the consultation center of the legal department before they agree to enter into or form purchasing pools.

2.1.7.3. Joint Research and Development

Joint research and development itself is not illegal under EU antitrust law. However, joint research and development may have restrictive effects on competition. This is particularly problematic if the parties restrict each other in further development or the use of the developed know-how or technology. Research and development agreements can also be used to disguise hardcore cartels and as a result be illegal. Moreover, joint research and development can be abused for information exchange between competitors which is always problematic.

It is very complex to assess whether research and development agreements are permissible under EU antitrust law. Thus, Minebea employees must always clear with the consultation center of the legal department before entering into such agreements. In particular, research and development agreements with competitors require close examination.

2.1.7.4. Guidelines to Avoid Infringements

Get the legal department involved from the very beginning in negotiations on any formalised contractual relationship with a competitor.

Unless otherwise specified by the legal department, information may be exchanged when establishing formalised contractual relationships with competitors, as long as the following is adhered to:

– A confidentiality agreement should be signed to ensure that the exchanged information remains secret, that it may only be used for commercial and strategic evaluation of the contractual relationship, and so that documents are returned or destroyed by the recipient thereof if contract negotiations fall through.

– The exchange of competitively sensitive information is kept to a minimum necessary for evaluation of the contractual relationship.

– Persons entrusted with evaluation of the information exchanged should not hold a position that allows them to use the data for operational purposes.

When implementing an approved contractual relationship with a competitor, such information as is required to implement the contractual relationship and which is customary in contracts with non-competitors – and only such information – may be exchanged. Any exchange of information going beyond this is subject to the general rules. Under no circumstances should a contractual relationship be used to conceal an exchange of information that is prohibited under antitrust law.

2.1.7.5. Case Studies

Case Study 1:

Fictitious example: Minebea's purchasing department is planning to buy, together with SKF, NTN, NSK, JTEKT, Nachi-Fujikoshi and Schaeffler certain products for bearings from a supplier. Between them, the companies would bundle almost 100% of the overall purchase volume. The purchasing department considers purchasing pools to be generally permissible. It does not think the legal department needs to be consulted.
Is this OK?

⇨ **No!** Antitrust issues are complex and difficult. The legal department should always be consulted early on. In this case it would have led to the purchasing pool almost certainly being classified as impermissible. The undertakings concerned concentrate market power and can dictate the prices in the market. An exchange of information regarding the respective terms and conditions of the supplier in question up front or for use in setting up the proposed purchasing pool would therefore also be impermissible.

Case Study 2:

In connection with a purely research-based collaborative venture stretching far into the future, the two heads of production from both companies involved discuss the present utilisation of capacity for current production.
Is this permissible?

⇨ **No!** The information is not essential for a purely research-based collaborative venture stretching far into the future.

Case Study 3:

Minebea has joined forces with two other bearings manufacturers and several suppliers to form an R&D cooperation for research into new types of bearing housings. The cooperation was approved by the legal department, and the boundaries of permissible exchange of information were defined. After a real breakthrough was achieved with a series-production, technical problems have arisen in connection with other bearing components. The companies now wish to solve these issues together.
Does the legal department need to be consulted again?

⇨ **Yes**, as there have been significant changes to the scope of cooperation, and the boundaries for the permissible ex-change of information have to be redefined.

2.2. Conduct towards Suppliers and Dealers

2.2.1 Vertical Agreements

Vertical agreements are agreements for the sale or purchase of goods or services between companies on different levels of the production or distribution chain. Distribution agreements between manufacturers and *dealers* are a typical example of vertical agreements. Agreements between a product manufacturer and a component *supplier* are also vertical agreements.

Article 101(1) TFEU prohibits agreements and concerted practices between companies which have as their object or effect the restriction of competition. The antitrust prohibition also applies to vertical agreements that restrict competition. These are referred to as vertical restraints. Examples of such vertical restraints are exclusivity clauses and price maintenance clauses. Vertical restraints may also have positive effects, not only negative ones. For example, they can make it easier for a manufacturer to penetrate a new market or they can ensure that a supplier can recover its investments for a particular customer.

Special care must be taken in the case of certain types of vertical agreements with distributors and suppliers that are prohibited or are subject to specific conditions. This is

the case, for example, with **resale price maintenance**. Under EU law, it is not permitted – or is only permitted under specific conditions – to make stipulations to a dealer as to the resale prices it should charge its customers. **Restricting the territory or the group of customers** to which a dealer may sell contract goods is likewise prohibited or made subject to specific conditions. Finally EU law provides for antitrust provisions that limit measures for checking sales incentives granted to dealers.

That said, it must be noted that in the majority of countries the antitrust prohibition only applies if the other party to the agreement does not itself belong to the Minebea Group.

Assessing a vertical agreement in a particular case is complex. In case of any doubt, you should therefore always consult the consultation center of the legal department as referred to in Chapter 5.

2.2.2 Intra-Group Privilege, Commercial Agent Privilege and Supply Relationships as Exemptions from the Antitrust Prohibition

The antitrust prohibition does not apply within the Minebea Group (known as the **intra-group privilege**) because all the individual companies form part of one and the same economic entity. In addition, in EU antitrust law, the antitrust prohibition applies only to a limited extent to the relationship with **commercial agents**. A commercial agent is a distributor that carries out distribution services for Minebea, but is somewhat integrated into Minebea's sales organisation and is bound by its instructions and that does not bear any market-specific risks in respect of the transactions mediated by it. This exemption applies at least insofar as it is a matter of product-related restrictions of competition, i.e. restrictions on the resale of the contract product (e.g. binding price for resale to the end customer). The antitrust prohibition does, however, apply to restrictions that affect the commercial agent in its function as distribution service provider (e.g. in an exclusivity clause that obliges the commercial agent to purchase solely from Minebea). The determination of whether a distributor qualifies as a commercial agent can be very complex. Thus, employees should always contact the consultation center of the legal department as referred to in Chapter 5 when in doubt.

In EU antitrust law, the antitrust prohibition moreover does not apply to agreements with suppliers stipulating that the know-how and operating resources provided by the client may only be used for that client. This exemption applies at least insofar as the know-how and operating resources are absolutely necessary if the supplier is to be able to perform the agreement. In this respect the supplier is simply the client's "extended workbench". That is why the client may determine how its operating resources and know-how are used, without being subject to the antitrust prohibition. The client may also decide, for example, whether and to what extent a supplier may use its, the client's, trademarks.

2.2.3 Price Maintenance

It is generally **permissible** to publish **recommended retail prices**. In contrast, resale prices may not be set either directly or indirectly through the use of incentives or threats or in/on price lists, catalogues, price labels or packaging. Requiring dealers to sell at the recommended selling price, for example, is prohibited, as is breaking off business relations with a dealer because it fails to charge the recommended selling price. It is also forbidden to set prices together with the dealers depending on the market situation, to prohibit dealers from granting discounts and special prices, to give dealers instructions on how to calculate prices and to implement discount systems providing incentives to sell at a certain price. It is not permitted to stipulate profit margins, either. In special circumstances, it is however permissible to impose maximum selling prices.

2.2.4 Monitoring Sales Incentives

As explained above, in EU antitrust law a dealer must be free to decide at which price it wishes to sell Minebea's products to its customers. Maximum resale price maintenance, on the other hand, is generally permitted under EU antitrust law. **Monitoring** sales incentives can be problematic from an antitrust perspective, as a cartel authority could construe these activities as involving general monitoring of prices to ensure a minimum sales price level. This risk applies, in particular, if such monitoring is performed regardless of whether suspicion exists and on a large scale, as well as if its purpose is to check the dealer's resale price.

The obligation to pass on a sales incentive is a form of maximum resale price maintenance and as such generally permissible, provided that the dealer is free to sell below the price calculated taking into account the sales incentive, by granting additional discounts.

In any case, Minebea must ensure that monitoring of sales incentives does not pursue an anticompetitive object or permit the checking of resale prices. The employees who deal with this issue must receive special instruction or training on the basis of these rules.

2.2.5 Allocation of Customers and Territories

Under EU antitrust law, dealers must in principle be free to decide which territories/customers they wish to sell to. Under certain conditions, however, antitrust law does allow so-called *exclusive clauses*. Assessing exclusive clauses of this kind in a particular case is complex. In case of any doubt, you should therefore always consult the consultation center of the legal department as referred to in Chapter 5.

2.2.6 Exclusivity Clauses

EU antitrust law, in principle, prohibits exclusivity clauses in vertical relationships with certain exemptions. If an undertaking trades with a business partner on the condition that

it does not trade with the undertaking's competitors, this may constitute an infringement of antitrust law if it restricts competition. The same applies if a leading undertaking makes a large dealer that accounts for a substantial portion of the market purchase volume promise to purchase all or a considerable portion (considerable quantity) of the purchase volume it needs of specific products from the undertaking.

As a rule of thumb, such exclusivity clauses can be permissible if both Minebea's market share with regard to the sale of the specific product and the market share of the dealer/distributor with regard to the demand of the specific product are low and if the exclusivity is not intended to (i) last longer than 5 years maximum and (ii) if it does not survive the term of the vertical agreement.

Examples that may raise concerns:

– In relation to a leading product on the market, an undertaking prohibits an independent distributor that accounts for a substantial portion of the market's demand from handling other companies' products.

– In relation to a leading product on the market, an undertaking executes a long-term supply agreement with a distributor that accounts for a substantial portion of the market's demand under which the customer will purchase all or most of the purchase volume it needs from the undertaking.

2.2.7 Case Studies

Case Study 1:

A member of staff at the MPC in EU Member State X monitors the dealers' resale prices closely. If a dealer drops his resale prices too far, the employee calls him straight away and draws his attention to the advantages of a higher-price strategy.
Is this permissible?

⇨ **No!** According to EU antitrust law, such a course of action is impermissible if it will be viewed by the dealer as an attempt to pressure it with regard to its resale prices. This is typically viewed as being the case with systematic monitoring and immediate reaction.

Case Study 2:

The discount a dealer in EU Member State X gets for miniature bearings it resells to foreign customers is 4% less than that it gets for sales to domestic customers. Selling abroad is therefore no longer worth its while.
Is this permissible?

⇨ **No!** Such a course of action is impermissible according to EU antitrust law. The dealer is no longer free to decide whom it wants to sell to.

In EU Member State Z bearings are sold there through commercial agents. They only receive commission for their sales services. Minebea takes care of all the rest. Minebea also bears all the risks of the business.
Is this permissible?

⇨ **Yes!** In Z the commercial agent qualifies for the commercial agent privilege. It is integrated into the Minebea sales organisation and does not bear any market-specific risks. Consequently, Minebea can, if this is stipulated in a corresponding agreement, prescribe whom it can sell to and whom not. The reason being that the party that bears the risk can determine how the products are sold and to whom.

Case Study 3:

A fan motor maker wishes to implement a new bonus programme in EU Member State X under which the dealers receive a particular bonus if they sell a given quantity of the new super silent fan motor. However, the terms of the bonus agreement specify that the dealer only gets its bonus if it grants its customers a 3% discount.
Is this permissible?

⇨ **No!** According to EU antitrust law, dealers must be free to set their retail prices in the case of bonus programmes as well. Forcing dealers to grant a particular discount is therefore contrary to antitrust law.

Part 3. Abuse of Dominance

Besides the aforementioned multilateral conduct that involves multiple undertakings, EU antitrust law also prohibits anticompetitive conduct for which only one company is responsible (“unilateral practices”). As a rule, a dominant position in the market for the respective product is required for such unilateral practices to be regarded as illegal (see section 1.1.2 for further details).

Remember: It is also possible for a number of companies to be jointly dominant in a market (what is known as an oligopoly) and to violate the prohibition together. This is the case when these companies together have a very high market share and there is virtually no competition among them, for example where each company can quickly and easily see how the others are behaving in the market and adjust its own conduct accordingly. If you have reason to believe that this may be relevant to your work, please consult the consultation center of the legal department as referred to in Chapter 5.

In addition to the ban on restrictive agreements and concerted practices applicable to all companies (Article 101(1) TFEU), EU antitrust law provides for particularly strict rules for dominant companies in terms of their conduct on the market and the consideration to be given to other market players in Article 102 TFEU (see section 1.1.2 for further details). As is the case regarding restrictions of competition, all European countries have national laws equivalent to Article 102 TFEU regarding market dominant undertakings. Some countries even have even stricter special provisions for companies that, although not "dominant", nevertheless have a strong position in the market. Germany is one of these.

3.1. Dominant Undertaking

A dominant position is not prohibited as such, but is instead very often the result of a particularly high level of performance. As a **rule of thumb**: A company has a dominant position if it is sufficiently strong in a specific market for it to be able to act vis-à-vis competitors, suppliers and customers in a way that would be impossible under normal market conditions. The key question to be asked, then, is whether the company could act in the same way if it had to contend with strong competitors in the market.

A company's **market share** is a good indication of its position in a market. Once it has a market share of 50% or more, it is generally assumed to have a dominant position in the market concerned. But even a market share of more than 25 % should be treated with caution. The same applies if a company's own market share is more than twice that of its closest competitor. It can be difficult to assess whether a company has a dominant position in a specific market, and you should therefore always consult the consultation center of the legal department as referred to in Chapter 5 in problematic cases.

Indications that a dominant market position exists are:

– A market share of more than 25%.

– A market share that is twice that of the closest competitor.

– A market share of more than 50% (dominant position assumed).

Please note, that under **German** law a dominant position of undertaking is legally presumed dominant if it has a market share of 40 % or more. Furthermore, German law provides that three or fewer undertakings are presumed **collectively dominant** if they together reach a

combined market share of 50 %. The same applies to five or fewer undertakings if they reach a combined market share of two thirds.

In addition, as outlined above, German antitrust law provides for the same restrictions regarding undertakings with a strong market share (section 20 ARC), meaning that even though it is not market dominant, smaller companies depend on them.

– Example: A customer, supplier or competitor is much smaller than Minebea and has an annual turnover of less than EUR 500 million. This customer, supplier or competitor depends on Minebea's goodwill in the specific market concerned, so that Minebea could place it at an unreasonable disadvantage or discriminate against it.

Other than in Germany, Italy or France, UK antitrust law does not provide legislation that prohibits non-dominant undertakings to abuse "relative" market power in the form of dependencies of suppliers or customers.

Dominant companies may not unfairly hinder competitors nor may they discriminate against or exploit suppliers or customers without any objective justification for this.

3.2. Prohibition of Exclusionary Practices

The following practices, in particular, may constitute unfair hindrance. The examples given are prohibited under EU antitrust law:

– **Exclusivity** (explicitly agreed or achieved de facto). Example: According to a clause in a framework agreement, the manufacturer may only buy from other suppliers if the other party to the agreement – which has a dominant position – does not wish to supply it under the conditions offered by them.

– **Predatory prices.** Example: A miniature bearings manufacturer has a dominant position in the market in a particular country and is trying to poach a longstanding customer from its last remaining competitor by offering its bearings below cost price.

– **Tying arrangements.** Example: A supplier has a dominant position as far as a specific component is concerned and the manufacturer depends on it supplying this component. To sell another component of lower quality, the supplier ties the delivery of the first component to the purchasing of a minimum quantity of the second.

– **Discounts as an inducement.** Example: A fan motor manufacturer with a dominant position grants large customers a discount of an additional 7% if they increase the volume of fan motors purchased from it during the current year by at least 5%.

3.3. Prohibition of Exploitative Practices and Discrimination

A company will be deemed to have discriminated against or exploited its suppliers or customers under EU antitrust law in the following cases, in particular:

- **Granting unequal discounts** without there being any objective justification for this. Example: Customer A gets a basic discount of 5%, while customer B only gets 2%, without there being any good reason for treating them differently.
- **Refusal to deliver.** Example: The customer does not want to accept the new warranty conditions of a dominant company as from 1 May of the following year. The manufacturer then stops delivery in December of the previous year already, to force the customer to accept the new conditions.
- **Unequal terms of business.** Example: According to the terms of business, supplier A receives payment only 30 days after delivery, while supplier B must wait 65 days for payment, without there being any good reason for treating them differently.
- **Demanding inflated prices.** Example: The supplier, which is dominant in the market concerned, demands EUR 50,000 for a specific product in a particular country, because it is the only supplier worth mentioning in that country. In another country, in which the market conditions are otherwise virtually identical, but where the supplier has 3 strong competitors, the supplier can only get EUR 15,000 for the same product.

3.4. Case Studies

Case Study 1:

German bearings manufacturer A negotiates with airplane manufacturer B on the delivery of a significant number of bearings. A has a share of less than 20% in both markets. However, from the customer's point of view, B's could not build the intended airplane model if it were unable to acquire bearings from this specific manufacturer. B is therefore dependent on the delivery of a certain number of bearings from A. When, during the negotiations, B announces that it wants to reduce the number bearings ordered and get bearings from other manufacturers instead if A does not reduce its price, A replies that in that case it won't supply any bearings at all. It tells B to think carefully about whether it shouldn't just agree to the terms.

Can A simply act like this?

⇨ **No!** Even though its market share of less than 20% hardly puts A in a dominant position, it could be regarded as having a strong market position vis-à-vis B under German antitrust law, which would mean that such conduct would be impermissible in

Case Study 2:

Because of the extremely high quality of one of its components, a particular supplier is the dominant company in the market as far as this component is concerned. A bearings manufacturer that is unable to offer this component would be significantly less attractive in the eyes of its customers. The supplier demands that Minebea accepts a price increase of 6% as a fee for added brand value.
Can Minebea do anything about the supplier's actions?

⇨ **Yes!** The supplier has violated EU antitrust law. It is abusing its dominant position. The price demanded (increased by the fee for added brand value) is inflated, as it is based purely on the supplier's dominant position and could not be charged under normal competitive conditions.

Case Study 3:

A bearings manufacturer has a dominant position in the market in an EU Member State. It intends to introduce various discounts for large customers. These include a bulk discount per order which applies to orders for 10.000 bearings or more and increases in line with the quantity ordered. A further discount of 2% is granted for each quarter in which a customer keeps to the quantity ordered in the corresponding quarter of the previous year. A 5% discount is granted if the customer increases the quantity ordered by at least 5%.
Are these discounts permissible?

⇨ The **first discount** is **permissible.** The differential treatment in the case of the first discount is performance-based and therefore justified under EU antitrust law. Different sets of circumstances can be treated differently. The size of the deliveries and the cost savings resulting from the purchase of much larger quantities justify making a distinction in terms of the discount granted.

The **second discount** has nothing to do with performance, however, as it is granted regardless of the actual quantity ordered and its only purpose is therefore to ensure customers' loyalty and prevent them from buying from competitors. The discount functions as an inducement. This can be seen primarily at the end of the respective quarter, since from a certain point onwards, the additional percentage discount means that Minebea's products are free for the customer if it merely purchases the required percentage of products. This means that not only the percentage increase discount of 5% but also the customer loyalty discount of 2% are **impermissible** under antitrust law.

Case Study 4:

A European manufacturer of airplanes wants to buy bearings from a bearings manufacturer, which it will use for its new luxury rear jet. Many of the bearings manufacturer's competitors also offer bearings suitable for this purpose. The bearings manufacturer only plays a minor role when it comes to supplying bearings for small rear jets. For reasons relating to its sales policies, the manufacturer decides not to supply this airplane manufacturer with the relevant bearings.
Is this permissible?

⇨ Refusing to supply goods is only problematic from the point of view of EU antitrust law if the undertaking has a dominant position in the relevant market. This is not the case here, so that there is nothing objectionable about the non-delivery in terms of antitrust law. Even if the manufacturer did have a dominant position in this scenario, the non-delivery would also have to constitute an abuse for the prohibition to apply. This would be the case if there were no objective justification for refusing to supply the goods in question. An objective justification could, for example, be that the airplane manufacturer still owes considerable amounts for previous deliveries. These kinds of cases should however always be discussed with the consultation center of the legal department.

3.5. Other Relevant Jurisdictions

This guideline sets out the minimum standards that Minebea employees, directors and executives are to adopt and, where necessary, modify to accommodate local requirements and characteristics. The guideline is based on European antitrust law which is rather strict from an international point of view. Thus, compliance with the outlined standards in most cases are to ensure compliance with antitrust laws in most countries in the world. In some countries stricter rules may apply. Please refer to your local legal department and/or corruption guide for further information.

Italian *antitrust law on dominance is very similar to Article 102 TFEU, expressly prohibiting abusive conduct in all or a significant part of the national market by one or more undertakings holding a dominant position. Like article 102, it provides some examples of abuse, but the list is not exhaustive. Italian antitrust law does not provide for specific thresholds above which undertakings are considered dominant. However, the Italian antitrust authority has, in the past, decided that a market share above 40% might suggest the possibility of dominance, in accordance with the principles laid down in European antitrust law.*

Moreover, as is the case under German law, under Article 9 of Law No. 192/1998 on sub-distribution, an undertaking may not "abuse the economic dependence" of other undertakings. Such economic dependence occurs when an undertaking has "relative"

market power over another undertaking so as to be able to unilaterally impose unfair conditions in a contract.

*In practice, **French** antitrust law covers essentially the same types of conduct as Article 102 TFEU. There is no formal threshold above which an undertaking is automatically considered dominant but the French antitrust authority follows EU case law in presuming dominance above 40-50% market share.*

Similar to German and Italian law, French antitrust law also prohibits the abusive exploitation by one or more undertakings of a state of economic dependence in which the undertaking holds a customer or a supplier as well. Such abuses include refusal to sell, tied sales, discriminatory practices or range agreements, and apply regardless of the existence of a dominant position.

*In the **UK**, as with Article 102 TFEU, antitrust law provides that any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market is prohibited if it may affect trade within the UK. Thus, dominance itself is not prohibited, only the abuse of dominance. Although there is no specific threshold above which an undertaking automatically is considered dominant, the UK antitrust authority has recognized EU case law in this regard and appreciates that a market share of above 50% suggests dominance while it is unlikely but not excluded that an undertaking with a market share below 40% is dominant.]*

Part 4. Germany: Boycott

Under German antitrust law, it is also illegal to jointly "boycott" other undertakings. For undertakings to collaborate with competitors in refusing to trade with a specific undertaking infringes German antitrust law. Joint refusal to deal (in any way) includes cases where undertakings collaborate to refuse deal (direct boycotts), and cases where undertakings put pressure on other undertakings to refuse to trade with specific third party companies (indirect boycotts); both are illegal under German law. This is not limited to suspension of transactions that are already ongoing. It also includes refusing requests for new transactions.

Examples of conduct that may raise concerns

Direct boycott:

– Discontinuing purchases or limiting purchases volume from a supplier in concert with other undertakings.

Indirect boycott:

– A company collaboratively with another undertakings demands a dealer not to purchase products from this newcomer in order to exclude a newcomer

On the other hand, independently deciding not to trade with a certain entrepreneur is not generally illegal, but it is illegal in the case where dealing is refused to attain wrongful purposes such as resale price fixing (see section 2.2)or if the refusing undertaking is strong or market dominant.

CHAPTER 2 CORRUPTION

Minebea seeks to uphold the applicable legal provisions in pursuing its corporate objectives. This guiding principle is expressed in the Minebea Group Code of Conduct, by means of which we commit ourselves to compliance with ethical principles and the law. This includes, in particular, the rules on preventing and fighting against corruption. Minebea is committed to meeting high ethical standards in its business; compliance with all legislation on the prevention of corruption is therefore a fundamental principle of our business at all levels of the company.

Corruption violations give rise to considerable business risks and – for the persons involved – personal risks. Minebea would like this guideline on Prevention of Corruption to serve as a point of reference and helpful resource for its employees concerning the most important corruption-related topics we encounter in our daily work. The purpose of the guideline is to provide specific instructions for ensuring that corruption-related issues are dealt with in a responsible manner and, in so doing, to minimize the risk of a violation.

This guideline sets out the minimum standards that Minebea employees, directors and executives are to adopt and, where necessary, modify to accommodate local requirements and characteristics. The guideline is based on German corruption law standards which are rather strict from an international point of view. Thus, compliance with the standards outlined below should ensure compliance with anti-corruption laws in most countries in the world.

Part 1. General Principles of the Prevention of Corruption

1.1. What are Corruption and Bribery?

Corruption is the use of entrusted power for personal gain (of the person itself or the company it acts for) either towards private business partners or towards public officials, then called bribery. Corruption is the offer, promise, giving, demanding or acceptance of a Benefit as an inducement for making a business decision. Acts of Bribery or Corruption are designed to influence individuals in the performance of their duties or induce them to act unlawfully respectively unethically. Bribes can take many different forms, but typically they involve corrupt intent. Corruption is both illegal on the giving end as on the receiving end of the bribe, so both parties commit a criminal act when corruptions take place.

The gift bestowed may take the form of money, goods, privileges, and emoluments, objects of value, Benefits, or merely a promise or undertaking to induce or influence the action or vote of another person. By its very nature, corruption can be difficult to detect, as it usually involves two or more persons entering into a secret agreement. The secret nature of the agreement means that it is difficult for anyone other than those involved to know what is going on.

The main difference between corruption in connection with business partners in general and public officials in particular is that a gift towards a public official is generally considered illegal while a gift to a private business partner is only illegal if it is granted or accepted with the intention to motivate an unfair advantage. Such gifts are generally illegal, regardless of the amount of the gift bestowed. However, in certain cases it can be reasonable and does not exceed reasonable bounds as long as it is "socially acceptable". The thresholds for the gift to be considered illegal are very low. Between private business partners gifts may be considered reasonable, as long as their amount is within socially acceptable limits and they are intended for use in the professional practice (see 3.1. for further details). The threshold for gifts towards public officials is even lower. Although socially acceptable gifts towards public officials might be legal in some cases, as a general rule, Minebea employees should consider gifts towards public officials prohibited (see 3.4. for further details).

1.2. Unfair Advantage Will Not Be Accepted or Granted

Minebea will not tolerate unfair practices by employees and business partners. We must not allow business partners to influence our business-related acts or decisions by demanding, promising or accepting (hereinafter "accepting") unfair advantages. Just as we must not be influenced in our business dealings or decisions by accepting unfair advantages, we must not influence business partners by offering, promising or granting (hereinafter "granting" or "extending") unfair advantages.

1.2.1 Definition of *Business Partners*

Business partners within the meaning of this guideline are persons with whom Minebea is in contact for business purposes such as, for example, customers and suppliers. In addition, the definition of business partners in the context of this guideline also includes public officials such as, for example, civil servants, judges, notaries or politicians.

1.2.2 Definition of *Advantages*

Advantages within the meaning of this guideline are any kind of gratuity that the beneficiary has no claim to and which objectively improves the beneficiary's (for example, a business partner's) economic, legal or personal situation. This includes not only cash payments, but also all kinds of gifts, invitations to events and other benefits of a

private/personal nature. *Advantages* also include gratuities granted to closely associated persons such as spouses, partners, friends and relations.

1.2.3 Definition of *Unfair Advantages*

An advantage is *unfair* within the meaning of this guideline when it is not customary and inappropriate in light of all the circumstances of the particular case, in particular the occasion for accepting or granting the advantage and the personal position of the beneficiary. This is the case, for example, if an advantage has the aim of influencing business decisions.

1.3. Accepting or Granting of Advantages that Are *Not Unfair*

In special cases, advantages that are not unfair can be permissible. However, advantages (any kind of incentives, gifts, invitations etc.) may only be granted or accepted if they **clearly** fulfill the following **conditions**:

– they have **no corrupt intent**

– they are **appropriate** and **socially acceptable**

– they have been granted and accepted in a **transparent** way.

The conditions for determining whether an advantage is permissible are described in greater detail below.

Part 2. When Corruption Occurs

Corruption can take many different forms, for example bribery or the acceptance/granting of advantages. It frequently entails further violations such as the falsification of documents, money laundering or inducing subordinates to commit a crime. A violation of applicable legal provisions can have serious consequences for both the company and the employee in question. For example, under German law bribery can be sentenced with up to five years of imprisonment.

Reputational damage, fines, the recovery of illegally obtained assets (fortfeiture of profits), the exclusion from contracts and civil law action (such as claims for damages) are some of the most serious legal consequences companies face in connection with corruption.

Corruption also has serious consequences for the perpetrator. Not only can the employee lose their job, they are also usually subject to penalties, administrative fines or prison sentences. What's more, perpetrators may also face additional civil law action (e.g. claims for damages) on account of corruption.

Part 3. Conduct towards Business Partners

The following rules of conduct are intended to help you assess individual business-related acts or decisions vis-à-vis business partners. The general principles outlined above must always be complied with in this connection.

3.1. Gifts and Comparable Advantages

Accepting or giving/granting gifts (for example, promotional gifts) and other similar advantages (for example, discounts or rebates) is permitted provided their value does not exceed EUR 35 and the advantages are not unfair. Accepting and giving/granting gifts from business partners in the form of cash or cash equivalents (for example, vouchers, checks or credit cards) is not permitted.

3.1.1 Permissibility of Gifts and Comparable Advantages

When it comes to accepting or giving/granting gifts and comparable advantages, gratuities with a value of up to EUR 35 are appropriate and customary, and therefore, not *unfair*, yet one must always take into account the appropriateness of the overall circumstances. Should there be uncertainty as to whether a gift or a comparable advantage exceeds the EUR 35 limit or is unfair, you should contact the consultation center of the legal department as referred to in Chapter 5.

In individual cases it can be permissible to accept or give/grant presents and comparable ad-vantages that exceed a value of EUR 35. In such cases, before accepting or giving/granting a gift or comparable advantage, you should always notify the legal department of

- the name and position of the beneficiary,
- the description of the current business relationship with the beneficiary,
- the time the advantage was accepted or granted,
- the nature of the advantage,
- the value of the advantage and,
- where applicable, the special circumstances for exceeding the EUR 35 limit.

They will assess and document the relevant occurrence. Gifts and comparable advantages that generally exceed the relevant limit may only be accepted or given/granted if the legal department has reviewed the individual case and given prior written consent to the exception.

3.1.2 Transparency

To avoid creating any impression of influencing by means of unfair advantages it is extremely important to only accept/grant advantages that are clearly identifiable as advantages in connection with business. This is not the case, for example, if gifts or written invitations are sent by business partners to employees' home addresses. This implies that the granted advantage is not intended for the company itself but rather to influence the natural person. Thus, if advantages are sent to our employees at their home address, they must refuse to accept them and request that the business partner send them to their business address. In case of any doubt, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.1.3 Accumulation of Gifts or Comparable Advantages

The legal permissibility of accepting or giving/granting a gift or a comparable advantage cannot be assessed purely on the basis of the single gift or comparable advantage. One must always check how often the employee has already received gifts or comparable advantages from the respective business partner in the past. An unfair accumulation of gifts or comparable advantages that are somehow related in terms of time or object (relevant period is generally one year) is generally not permitted.

Should there be uncertainty as to whether gifts or comparable advantages have unfairly accumulated, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.1.4 Relinquishing Gifts

Should it, in a particular case, not be possible for you to refuse a gift that obviously exceeds a value of EUR 35 (e.g. because this would mean a violation of the generally accepted courtesies) or should there be doubts as to whether the gift exceeds a value of EUR 35, you must notify your superior as well as the consultation center of the legal department immediately. The legal department decides on how to proceed, especially on whether the gift should be relinquished. The gifts handed over to the consultation center of the legal department will be passed on to charitable organizations in consultation with Minebeas's compliance steering committee.

3.1.5 Discounts

Discounts can also be regarded as advantages comparable to gifts. These are therefore accordingly subject to principles referred to above. If business partners offer you discounts for goods or services for personal use, or if you offer a business partner such discounts, these advantages are, as an exception, not subject to the EUR 35 limit if a larger number of employees receive the same discount and this is generally known. In this case the

acceptance or granting of a discount does not create the appearance of a targeted benefit that is intended to influence business-related acts or decisions of third parties.

You should contact the corporate consultation center of the legal department if there is uncertainty as to whether an accepted or granted discount is permissible.

3.2. Invitations to Meals and Events

3.2.1 Invitations to Meals and Comparable Hospitality

In the case of invitations to meals and comparable hospitality, a distinction must be made between business-related invitations to meals and hospitality and non-business-related ones.

3.2.1.1. Permissibility of Invitations that Are Clearly Business-related

Accepting or extending invitations to meals and comparable hospitality are permitted provided that they have a clear connection to business and do not constitute unfair advantages. A meal or comparable hospitality is generally considered to have a clear connection to business if, on this occasion, employees, as representatives of Minebea, discuss business-related matters with the business partner. At least one representative of the inviting business partner must be present during the meal or comparable hospitality at all times.

Accepting or extending business-related invitations is not considered unfair if the invitation is customary and appropriate in light of all the circumstances of the particular case, in particular the occasion for the invitation (e.g. an invitation to a simple working lunch or a prestigious invitation to a corporate hospitality event to mark the conclusion of a large deal), as well as the hierarchical status of the invitee within his or her company (e.g. clerical staff member or managing director).

Should there be uncertainty as to whether an invitation is business-related or unfair, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.2.1.2. Invitations that Are Not Clearly Business-related

Accepting or extending invitations to meals and comparable hospitality is not permitted if they have no clear connection to business. Invitations to meals and comparable hospitality that are not clearly business-related may only be accepted or extended if the consultation center of the legal department has reviewed the individual case and given prior written consent to the exception.

In these cases, before accepting or extending an invitation you should provide the consultation center of the legal department with the following information:

– the name and position of the beneficiary,

– a description of the current business relationship with the beneficiary,

– the time/date of the meal or the comparable hospitality or event,

– the type of invitation, and

– the value of the invitation.

They will assess and document the relevant occurrence.

3.2.2 Invitations to Events

In the case of invitations to events, a distinction must be made between business-related invitations to events and non-business-related ones.

3.2.2.1. Permissibility of Invitations that Are Clearly Business-related

Accepting and extending invitations to events are permitted provided that they have a clear connection to business and do not constitute unfair advantages.

An event is generally considered to have a clear connection to business if, on this occasion, employees, as representatives of our company, discuss business-related matters with the business partner. At least one representative of the business partner must be present during the event at all times. These include courses or product-related events such as trade fairs, promotions or training seminars. Accepting or extending business-related invitations is not considered unfair if the invitation is customary and appropriate in light of all the circumstances of the particular case, in particular the occasion for the invitation (e.g. invitation to a simple seminar or a prestigious invitation to a trade fair lasting several days), as well as the hierarchical status of the invitee within his or her company (e.g. case handler or managing director).

Should there be uncertainty as to whether an invitation is business-related or unfair, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.2.2.2. Permissibility of Invitations that Are Not Clearly Business-related

Accepting or extending invitations to events is not permitted if they have no clear connection to business (e.g. concerts, football matches or other recreational events, etc.).

Invitations to events that are not clearly business-related may only be accepted or extended if the consultation center of the legal department. has reviewed the individual case and given prior written consent to the exception. In these cases, before accepting or extending an invitation you should report

– the name and position of the beneficiary,

- a description of the current business relationship with the beneficiary,
- the time/date of the meal or the event,
- the type of invitation, and
- the value of the invitation

to the consultation center of the legal department as referred to in Chapter 5. They will assess and document the relevant occurrence.

3.2.3 Common Principles Regarding Invitations to Meals and Events

3.2.3.1. Valuation

The value of an invitation should always be established on the basis of the services the beneficiary actually received. In the case of food served at meals or comparable hospitality, its value should be assessed on the basis of what was actually consumed by the beneficiary. Invitations to events usually requiring the purchase of a ticket should be valued on the basis of the normal purchase price.

If it is not possible to reliably determine the value of the advantage, and it therefore cannot be ruled out that it constitutes an unfair advantage, we recommend - in the interest of the company and our employees - to refrain from accepting or extending the invitation.

3.2.3.2. Companions

Invitations to meals or events that involve bringing a companion (spouse, partner etc.) may generally not be accepted or extended for such person. The only exception is where the presence of such individual is customary and appropriate.

The aggregate value of both invitations is decisive for determining the value of the advantage (i.e. the value of the advantage for the employee and their companion are added together; the sum then represents the value of the advantage for the employee).

Should there be uncertainty as to whether it is permissible to invite a companion, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.2.3.3. Travel Accommodation Costs

If invitations accepted or extended also cover travel and accommodation costs, this can easily be mistaken as an attempt to unfairly influence business decisions by employees or business partners. Beneficiaries (or their employers) should therefore bear the costs of travel and accommodation themselves in connection with invitations accepted or extended.

Should there be uncertainty as to whether the assumption of travel and accommodation costs is permissible, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.3. Common Principles Regarding Gifts, Comparable Advantages and Invitations

3.3.1 Timing

If advantages coincide with a key business decision, this can easily create the impression that employees are attempting to unfairly influence that decision. Where such a temporal link exists, advantages should therefore only be accepted/granted with great care. In case of any doubt, you should always consult your superior.

Should there be uncertainty as to whether an advantage coincides with a key business decision, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.3.2 Taxes

Depending on applicable laws, accepting or granting advantages may result in taxable income (e.g. wage or income tax) on the part of employees or business partners. Employees are both responsible for paying their own taxes on advantages accepted as well as all other relevant tax obligations. Where advantages are granted Minebea may, subject to applicable laws, be obliged or voluntarily agree to pay any requisite taxes on the advantage granted (in place of the business partner or their employer). Should this be required by law, the employee must ensure that the business partner is informed that Minebea will be paying the relevant taxes (for example by indicating this on the gift or invitation).

Should there be uncertainty as to the taxation of advantages, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.4. Special Principles Regarding Conduct towards Public Officials

Strict legal requirements apply when accepting advantages from or granting advantages to public officials. Special caution should therefore be applied when doing so. In most countries public officials are completely prohibited from accepting even small gifts or invitations. Thus, as a general rule, Minebea employees should consider gifts to public officials prohibited. The following rules of conduct are intended to help you assess individual business-related acts or decisions vis-à-vis public officials. In addition, the general principles outlined above must always be complied with in this connection as well.

Should there be uncertainty on how to handle accepting advantages from or granting advantages to public officials, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.4.1 Definition of Public Officials

Public official within the meaning of this guideline are persons who occupy a public agency position or who have been otherwise appointed to carry out tasks of public administration at another entity or on behalf of such other entity, regardless of the organizational structure chosen for the performance of such tasks. These may be, for example, civil servants, judges or notaries. They may also, however, include politicians or members of parliament, who do not belong to the civil service. In several countries even persons carrying out duties in public interest (such as public transport, community energy supply, municipal hospitals et seq.) or within Private-Public-Partnership (PPP) companies may be considered Public Officials.

3.4.2 Gifts and Comparable Advantages Accepted from or Granted to Public Officials

Accepting or giving/granting gifts and comparable advantages from/to public officials is only permitted in exceptional cases where used as a way of expressing special respect for the public office. The principles and values outlined above also apply to gifts and comparable advantages accepted from or given/granted to public officials. Please note, however, that – depending on the specific occasion and their position within the organization – certain limits often apply to public officials with regard to the acceptance or giving/granting of gifts, which may be considerably lower than the above limit of EUR. As a general rule you should refrain from any gifts to public officials.

Should there be uncertainty as to whether a gift or comparable advantage can be accepted from or given/granted to a public official, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.4.3 Invitations to Meals and Events

3.4.3.1. Accepting Invitations from and Extending Invitations to Public Officials

Accepting or extending invitations to meals and comparable hospitality are permitted in exceptional cases where they have a clear connection to business and are used as a way of expressing special respect for the public office if they are socially acceptable. The principles outlined above also apply to invitations to meals and comparable hospitality or events accepted from or extended to public officials. Please note, however, that – depending on the specific occasion and their position within the organization – certain limits often apply to public officials with regard to accepting or extending invitations.

Invitations to meals and comparable hospitality or events that have a clear connection to business should only be extended to public officials if their employer has been informed thereof in advance and given its consent, where necessary. Invitations to meals and comparable hospitality or events that are clearly business-related and are generally regarded as a polite gesture (such as an invitation to lunch at the company canteen or a cup of tea/coffee during a business meeting) do not require the employer's prior consent.

Should there be uncertainty as to whether an invitation to a meal, comparable hospitality or event can be accepted from or extended to a public official, you should contact the consultation center of the legal department as referred to in Chapter 5.

3.4.3.2. Companions

Invitations to meals or events that involve bringing a companion may generally not be accepted from or extended to public officials. The only exception is where the presence of such individual is customary and appropriate.

3.5. Special Principles Regarding the Commissioning of Third Parties and Investment Decisions

When commissioning third parties (e.g. advisers, brokers, sponsors, representatives and other agents) to act for Minebea in the context of business dealings, care must be taken to ensure that these persons do not use any unfair business practices. In particular, employees may not use third parties to circumvent the above rules.

3.6. Special Principles Regarding Conduct towards Suppliers

Suppliers are to be selected on the basis of objective criteria, such as prices, quality and performance. Relations with suppliers are based on trust and honesty. Offers must be assessed fairly and impartially, and personal and arbitrary considerations may not be factored into the decision-making process.

On no account may employees unduly influence the awarding or conclusion a contract (e.g. by accepting or granting advantages).

Part 4. Donations and Sponsorships

Minebea is fully aware of its social responsibility and supports community involvement through donations and sponsorships. Donations and sponsorships must be transparent and traceable. They may not be abused for unlawful purposes. In particular, it is forbidden to grant unfair advantages to third parties in the guise of donations or sponsorships.

4.1. Donations

Donations refer to the promotion of projects, organizations or institutions by means of money or payments in kind or services made without any economic consideration expected in return. The following principles apply to granting donations:

– Granting donations must always be transparent and traceable.

– The identity of the recipient and the intended use of the donation must be disclosed and documented.

– Significant donations require the consent of group management. Donations are significant in this sense if they exceed an amount of EUR 5.000.

– Donations to individuals and to private accounts are strictly forbidden.

4.2. Sponsorships

Sponsorships refer to the promotion of undertakings, persons, events or institutions with the aim of giving Minebea an economic advantage that is not unfair. The following principles apply to granting sponsorship funds:

– Granting sponsorship funds must always be transparent and traceable.

– The identity of the recipient and the intended use of the sponsorship money must be dis-closed and documented.

– The size of the payments must be in proportion to the advantages linked to the sponsor-ship, i.e. especially the expected promotional effect.

Part 5. Conflict of Interest

A conflict of interests may arise where there is an overlap between Minebea's business interests and the private interests of employees. This can involve serious criminal offences, in particular breaches of trust and corruption. Minebea's business interests are to be kept strictly separate from employees' private interests. Situations in which there is conflict between private interests and Minebea's business interests are to be avoided. Employees must inform Minebea through their superior, the hotline desk or the legal department in the event of any conflicts of interests arising from their work for a Minebea company.

All transactions between Minebea, on the one hand, and employees or persons/companies closely associated with employees, on the other, must meet the standards customary in the industry. Significant transactions require the consent of the group management. A transaction is significant in this sense if it exceeds an amount of EUR [●].

Conflicts of interests may also arise in the context of human resources decisions. Care must be taken to ensure that private interests and personal relations are not used as criteria in taking human resources decisions.

Part 6. Other Relevant Jurisdictions

The guideline is based on German corruption law standards which are rather strict from an international point of view. Thus, compliance with the outlined standards should ensure compliance with anti-corruption laws in most countries in the world. However, differences are of a minor degree, since anti-corruption law is vastly based on international treaties

such as the United Nations Convention against Corruption, the Convention on the Fight against Corruption Involving Officials of the European Community and the Criminal Law Convention of the European Council on Corruption. Rough principles in other relevant jurisdictions in Europe are:

Italy *is party to several of the above mentioned treaties and further international treaties and has criminal laws against corruption and bribery which comply with the standards set out in those treaties. With respect to individuals, the sentence for bribery offences can be imprisonment of up to three years and with respect to companies criminal fines, disqualifications and confiscation. Other than German corruption law, Italian law mostly concentrates on public bribery as opposed to commercial corruption. However, the corruption of private corporate officers is punishable by imprisonment for up to three years, for both the briber and the corporate officer, on the condition that the corporation suffers damage from it and that the bribe is given or offered to its directors, general managers, internal auditors, liquidators or external auditors. These provisions have been amended by Law No. 190 of 6 November 2012, implementing a new definition of private sector corruption and new sanctions. The EU Framework Decision 2003/568/JHA of 22 July 2003 on Combating Corruption in the Private Sector, that provides for an extension of offences relating to private commercial bribery, has not yet been fully transposed.*

Like Germany and Italy, ***France*** *is party to several of the above mentioned international treaties and provides for harsh anti-corruption law. Sanctions for individuals violating foreign bribery laws and regulations are the same as those imposed for violating domestic bribery law, namely up to a maximum term of 10 years imprisonment and steep criminal fines; additional penalties may be added. Criminal liability of companies is a general principle under French criminal law and companies can therefore be punished by steep criminal fines and other penalties such as being placed under judicial supervision, closing the establishment or one of the establishments of the company which was used to commit the offence, being disqualified from public tenders, etc. In addition, French anti-corruption law prohibits both passive and active private commercial bribery. The conditions are the same as those that apply to the domestic bribery of a public official. Bribery of a private person may be sanctioned by a term of five years imprisonment or a criminal fine and other penalties.*

In the ***UK*** *corruption and bribery are punished by criminal penalties of imprisonment of up to ten years and criminal fines as well as the disqualification of the directors of companies and the debarment of companies which took part in corrupt conduct from public tenders. UK was the first country to legislate on private-to-private bribery and the Bribery Act makes no distinction between the bribery of public officials and private individuals.*

CHAPTER 3 MONEY LAUNDERING

Part 1. German Regulation

This guideline sets out the minimum standards that Minebea employees, directors and executives are to adopt and, where necessary, modify to accommodate local requirements and characteristics. The guide is based on German money laundering law which is rather strict from an international point of view. Thus, compliance with the standards outlined below should ensure compliance with money laundering laws in most countries in the world. In some countries stricter rules may apply. Differences in other jurisdictions are of a minor degree, since, as is the case with anti-corruption law, money laundering law is vastly based on international treaties.

In Germany there are two laws that deal with the prevention of money laundering (which also includes combating the financing of terrorism and other criminal acts that could compromise the institution's assets) and these distinguish between two large groups of addressees.

The German Banking Act (*Kreditwesengesetz*, hereafter "KWG") targets credit institutions and financial service institutions. In addition, the German Money Laundering Act ("*Geldwäschegesetz"*, hereafter "GwG") names further "obligors" besides credit institutions and financial service institutions and groups of such institutions (section 2 GwG) and sets out in detail the measures (internal safeguards and general due diligence) that have to be taken to prevent money laundering. These measures then apply alongside the organizational and due diligence obligations to institutions that come under the German Banking Act (hereafter "KWG"), but also to finance companies, insurance companies and brokers, lawyers and notaries, auditors, as well as trustees, realtors and, lastly, "persons who deal in goods for commercial purposes". Thus, the GwG applies to Minebea as well.

Part 2. Internal Safeguards pursuant to Section 9 GwG

- Appropriate risk management
- Processes and principles that help to combat money laundering, terrorist financing and other criminal acts
- Create and update appropriate business- and customer-related safeguards
- Monitoring systems
- Strategies designed to prevent the abuse of new financial products and technologies
- Only for credit institutions: data processing systems for the monitoring of business relationships and individual transactions

- Appointment of an Anti-Money-Laundering officer (hereafter “AML officer”), who must report directly to the management.
- Processes and documentation for employee training
- Measures for verifying employee reliability
- Appointment of a deputy AML officer to stand in if need be

2.1. AML Officer

The AML officer enjoys a large degree of independence when performing his tasks; he is to be granted access to all the company’s relevant information and documents. Besides combating money laundering and terrorist financing, he is also intended to be responsible for the general prevention of criminal acts that may compromise the institution’s assets and to carry out this task in the form of a central desk (section 9 GwG. He is the contact for supervisory and investigation authorities, decides whether to report suspected offences, must report regularly to the board/management, and carries out controls.

2.2. Specific Measures

The internal safeguards and organizational obligations explicitly set out a number of measures that are to be taken:

- The credit institutions’ data processing systems must be in a position to identify business relationships or individual payment transactions that are to be regarded as potentially suspicious or unusual. (obligation to monitor)
- Any and all situations that appear “potentially suspicious or unusual” must be investigated, and the risk presented by the business relationship or transaction in question must be monitored and assessed, and a decision made as to whether to report suspicions of money laundering (section 11 GwG) or other criminal offence to the relevant authority. Records are to be kept of the investigations carried out in accordance with the general obligation to keep records (section 8 GwG).
- The general due diligence obligations (section 3 GwG), especially the duty to identify (section 4 GwG)
- The simplified due diligence obligations (section 5 GwG)
- The duty to keep and retain records (section 8 GwG)
- The obligation to report suspicious cases (section 11 GwG)
- The duty of secrecy following the reporting of suspicious cases (section 12 GwG)

Part 3. General Due Diligence (§ 3 GwG)

The general due diligence obligations that all those that the legislation addresses must satisfy in the course of their business consist in **identifying their contracting partner** which means (i) **obtaining information about the purpose and the nature of the business relationship**, (ii) **establishing the identity of the economic beneficiary**, and (iii) **continuously monitoring the business relationship** with a view to the customer's profile, the provenance of the assets and the performance of individual transactions. Those concerned must also update the information on an ongoing basis.

The aforementioned general due diligence obligations are to be met

- when entering into a new business relationship,
- in the case of individual transactions in excess of EUR 15,000.00 outside of existing business relationships,
- whenever there are indications of money laundering, and
- in the case of doubts about the identity of one's contracting partner or the economic beneficiary.

3.1. Identification Obligation

The obligation to identify contracting partners involves obtaining full and complete information as to their identity – in the case of natural persons, on the basis of valid identification documents, in the case of legal entities, on the basis of information from public registers or certified documents. As a general rule, the identification process is twofold: Establishing the data and verifying the data.

For the economic beneficiary it is only necessary to establish their name. Whether further information needs to be obtained in order to establish their identity depends on an assessment of the potential risks. The economic beneficiary is the natural person at whose behest the business is being transacted, who controls the contracting partner or is the quasi-owner of the assets or is the beneficiary of a structure set up for the benefit of third parties (e.g. foundations, trusts). A controlling position is assumed if the natural person holds, directly or indirectly, 25% in the customer. In the case of multi-tier participation structures, the economic beneficiary is to be established, right through to the natural person at the end of the chain of participation.

3.2. Simplified Due Diligence

The simplified due diligence obligations apply only to the groups of cases stipulated by the law, and then only if a risk analysis shows that there is no increased risk of money laundering. The obligation to identify still remains in force, but verifying identity and

ongoing monitoring measures can be reduced appropriately. The groups of cases in question are transactions and business relationships by and between credit institutions, financial services institutions, payment institutions and capital investment companies, business relationships with listed companies and public authorities, as well as particular types of contract - which are listed - such as sales financing loans, leasing agreements and contracts in the context of state aid programs.

3.3. Enhanced Due Diligence

Enhanced due diligence obligations apply in cases where an increased risk is inherent in the business relationship. There is a statutory presumption of increased risk in the cases of payments among correspondent banks, especially ones domiciled in high-risk countries, exchange transactions that are not directly linked to a client account, and certain kinds of factoring transactions.

In business relationships with natural persons, enhanced due diligence obligations apply in the following cases:

- in the case of politically exposed persons (“PEPs”)
- when contracts are closed but the contracting partner is not present
- if the customer comes from a high-risk country.

In this respect too, there is a special obligation to investigate any situation that appears potentially suspicious or unusual and to consider reporting any suspicions.

3.4. Report Obligation

The obligation to report suspicious cases applies if there are indications that a transaction involves assets that are linked to a money laundering offence, i.e. may originate from a predicate offence - section 261 StGB, or that the assets are linked to terrorist financing. Reports are to be made on the basis of even the slightest suspicion of an offence; they must not be made dependent on the assumption of reasonable suspicion in the sense of German procedural law. Reports are also to be made if a transaction is simply presented or if the contracting partner fails to comply with its obligations to cooperate in identifying the economic beneficiary. Failure to report suspicions where they should have been reported is a regulatory offence and may be subject to fines of up to EUR 100,000.00.

If suspicions have been reported, neither the person concerned nor third parties may be informed. The reporting party is released from civil and criminal responsibility provided he did not deliberately or negligently provide false information.

There is no obligation to report suspicious cases of criminal offences other than money laundering.

- Records must be kept and maintained for at least five years, and this obligation concerns all matters linked to the performance of the above-mentioned obligations.
- The German Money Laundering Act also states that the Federal Office of Criminal Investigation is the central organisation for handling reports of suspected offences, but that reports are also to be filed with the local criminal investigation authorities. Public authorities may also have an obligation to report suspicions (section 14 GwG).
- Section 16 German Money Laundering Act details who is responsible for the various areas of supervision. For all the institutions referred to above, this is the Federal Financial Supervisory Authority (BaFin), for lawyers, auditors and tax consultants, it is the relevant professional chamber, and for other businesspeople, a barely quantifiable multiplicity of federal, regional and local authorities.

3.5. Legal Consequences

A number of contraventions of provisions of the German Money Laundering Act, especially failure to identify contracting partners, failure to establish the identity of the economic beneficiary, and infringements of the duty to keep records or of the duty to report suspicions are regulatory offences and, as such, are subject to fines of up to EUR 100,000.00.

According to the BaFin, which has not issued any rules of its own (circulars, announcements, minimum requirements), all those that the legislation addresses must apply the rules on the basis of a risk-based approach. The BaFin has acknowledged the guidelines for interpretation and application published by the German credit industry in its circulars 1/2012 (GW) and 1/2014 (GW) and has said that it will incorporate them into its administrative practice.

CHAPTER 4 UNFAIR COMPETITION

Commercial practices of an undertaking that are unfair towards competitors, suppliers, customers and first and foremost consumers are defined as **unfair competition**. These unfair commercial practices have to be distinguished from antitrust related competition restrictions. Unfair commercial practices are, for example, misleading advertising, discrediting goods or services of competitors, exploiting consumers, selling replicas of goods of competitors, deliberately obstructing competitors etc.

There is no uniform EU regulation that addresses unfair competition with direct effect to undertakings. Unfair competition is therefore a matter of the national law of EU Member States. In some European countries unfair competition is under regulatory oversight of special authorities and infringements can be sanctioned with administrative fines. However, in other countries, such as **Germany**, unfair competition is mostly deemed a

matter of “private law”, meaning that there are no state sanctions such as administrative fines for most infringements of the German Unfair Competition Act (hereafter “UWG”). If an undertaking violates unfair competition law in Germany, it can, however, be sued by competitors for damage claims or for seize and desist orders.

However, some violations of the UWG can lead to sanctions in the form of criminal fines or imprisonment of up to five years. This concerns sections 17 et seq. UWG which prohibit the **disclosure of business secrets** and **economic espionage**. Pursuant to this regulation it is illegal for employees to communicate trade or industrial secrets to third parties outside the Minebea group without authorization of the company. It can also be illegal to acquire such secrets from other companies, e.g. by using technical means. Moreover, it is even illegal to just *attempt* to procure another person to commit such disclosure of business secrets or espionage. Minebea must therefore refrain from disclosing business secrets to third parties without authorization of their superiors. When in doubt, employees should always contact the consultation center of the legal department as referred to in Chapter 5. Furthermore, it is prohibited for employees to try to gain access to business secrets of another undertaking.

CHAPTER 5 CONSULTATION, SUPPORT AND REPORTING

Minebea employees are aware of their special responsibility when it comes to preventing and combating corrupt practices, antitrust violations and conduct that infringes money laundering regulation. Only if employees report violations and suspected violations can this guideline effectively contribute to preventing and combating unlawful conduct.

If employees have questions regarding compliance topics or are uncertain whether a specific conduct might infringe antitrust law, anticorruption law or other relevant regulation outlined above, they can contact the consultation center of the legal department at any time.

Should employees become aware of any **violations** or suspected cases of corruption, antitrust infringements or money laundering, they **must inform** their **superior**, the **hotline desk** or the **consultation center of the legal department** at any time. Minebea will investigate and redress based on the information in the report. Employees who make a report will not be treated adversely as a result of the report.

Contact details are:

Hotline Desk

Ralf Weydt

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Inna Pääkkönen

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Consultation Center of the legal department

Ralf Weydt

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If requested, communications received from employees will be treated as confidential. When following up on information about (suspected) violations, care must be taken not to compromise possible subsequent investigations by the prosecuting authorities.

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This Antitrust Manual does not provide legal advice.

It is simply intended to help give Minebea employees a basic understanding of antitrust law, corruption and money laundering regulation and the corresponding legal responsibilities. The legal assessment of antitrust, corruption and money laundering violations can be extremely complex, thus, employees should always contact legal advice through the legal department if they encounter any critical conduct or find themselves in situations where they are unsure of the risk involved. If you have any questions about this Guideline, please get in touch with the consultation center of the legal department. This Guideline is intended solely for internal Minebea use. Both the Guideline itself and its contents are strictly confidential.