



ERBE ANTI-TRUST GUIDELINES

We have published an Erbe code of conduct that commits the company's conduct to comply with all applicable legal regulations. The companies of the Erbe Group are subject to intense competition. We are in continuing competition regarding innovations, prices, and customers against our competitors, some of which are parts of powerful international industry conglomerates. This competition needs to be unrestricted and genuine.

Erbe therefore regards it as important that we avoid the risk of legal violations in competition. We protect the reputation and integrity of the company through exemplary and legally compliant competitive conduct. We are committed to responsible business practices in alignment with anti-trust regulations adopted to protect competition in all countries where Erbe is operationally active. All employees are required to strictly adhere to these provisions.

Violations of anti-trust law are not only inconsistent with our understanding of unrestricted and fair competition, but can also result in significant fines and compensatory damage claims against our company. All employees are therefore called upon to immediately report any anti-trust regulation violations to their supervisor, the compliance officer, or to the assigned ombudsmen. Ombudsmen can also accept anonymous reports.

These Erbe anti-trust guidelines are intended to outline the basic anti-trust legal regulations governing the activities of all employees within companies of the Erbe Group, and to provide tips for risk-free conduct. This policy is based on the European anti-trust laws.

By its nature, this outline cannot describe every possible contingency. If you have general questions, or questions related to a specific case, our Compliance Officer, Karl-Heinz Kraft (Karl-Heinz.Kraft@erbe-med.com), is available as a point of contact.

As a rule: ask once too often rather than not at all!

A. What conduct is permitted and prohibited by anti-trust law?

1. Collusion with competitors

Basic rule: Any collusion with competitors that limits unrestricted competition violates anti-trust laws, and is therefore strictly prohibited.

Competitors are other companies that do not belong to the Erbe Group, insofar as their products or services are substitutes for our own products or services from the customer's point of view.

Tip: In cases of doubt, you are best advised to assume that a competitive relationship exists.

In addition to actual competitors, there are also potential competitors. A potential competitor is any company that could reasonably become a competitor of ours over the short term, but also in individual cases, e.g. hospital project sponsors.

Tip: Collusion with potential competitors is specifically prohibited when the purpose of collusion is to prevent a market entry.

Collusion is principally any mutual understanding. It is not necessary that a legally binding agreement is made. Moreover, the collusion does not have to be documented in writing, or made at a certain location. An informal agreement is already sufficient ("*gentlemen's agreement*"). The only important consideration is that two persons agreed to a certain approach, e.g. to the detriment of customers.

Tip: Even an informal discussion with confidential content at an association meeting or a hotel bar can constitute collusion.

Restriction of competition: Collusion among competitors is prohibited when it restricts free competition. But not every act of collusion among competitors restricts competition. There certainly are agreements with competitors that are clearly permitted. Inversely, there is collusion with competitors that is clearly prohibited. A gray area exists between these. It is not always easy to make a correct assessment. The following listing provides non-inclusive guidelines:

The following is permitted:

- Simple supply agreements (without additionally restrictive regulations) with competitors (e.g. Erbe sells products to Competitor B, because B wishes to supplement its portfolio, needs to bridge a bottleneck, or wishes to install the components into its products).
- A proposal published jointly with competitors, e.g. also for tenders, but only when the proposals can only be provided jointly for technical or economic reasons, e.g. when neither of the participating companies could have done this by themselves.

Under certain circumstances, collusion with competitors can be permitted in cases involving:

- The mutual supply with products (cross-supply), even when this agreement involves discontinuing the manufacturing of certain products, and these products are then respectively procured from the other contractual party.
- The sale of the own product via the other competitor.
- The joint manufacturing of a product.
- The joint research and development and subsequent sale of the developed product.
- Joint procurement.
- Logistical cooperation.
- Marketing cooperation.
- Technical standards, types etc. (e.g. in standards committees of professional associations).

TIP: All of these cases involve a prior anti-trust legal review, because the permissibility of these collusions depends on other factors (including the market share of the participating companies). Consequently, the Executive Management must be informed about this in advance.

Collusion is always prohibited in cases involving:

- Selling prices, pricing components and terms (e.g. discounts, rebates, bonuses).
- Timing of price increases.
- Participation and non-participation in tenders.
- Contents of proposals for tenders.
- Allocating customers, supply quantities and/or markets.
- Forwarding of certain external cost factors (e.g. raw material prices or transportation costs) to customers.

2. Opinion and information exchanges with competitors

Basic rule: the exchange of information with competitors is always critical when the information is typically confidential, market relevant and current.

Exchange of information: even a one-time exchange of information can be prohibited. It is therefore not relevant that information is repeatedly exchanged. The method of the information exchange is equally irrelevant. It is therefore of no consequence whether the information was obtained in a bilateral discussion with a competitor, or for instance at an association meeting, at trade shows, through market information systems, or even benchmarking studies.

***TIP:** When a competitor volunteers information to you about his company that has competitive relevance, you should reject such information and state that you do not wish to receive such information.*

Information via third parties: It is permitted to obtain information about competitors from third parties, e.g. from customers, suppliers, or from market research providers. But caution: this naturally does not apply when two competitors intentionally communicate ("indirectly") about a third.

Restriction of competition: Based on the opinion of antitrust regulators, there is normally no reason for companies to communicate sensitive data to their competitors. If they do so nonetheless, they create the basis for coordinated actions between competing companies. For instance, when a company knows what price increases its competitor is planning, it can respond to this to the detriment of its customers. Collusion among competitors is prohibited when it restricts free competition. As is the case with collusion, there are also informational exchange topics that may be discussed with competitors. Inversely, there are topics that cannot be discussed. Here as well, there is a gray area. The following listing provides a non-inclusive guideline:

Information exchange with competitors is permitted in cases involving

- Legal and political framework conditions (e.g. proposed legislation) or general economic developments.
- Generally known (e.g. mercantile exchange prices of raw materials), easily accessible (e.g. data already published online) data, or strictly historical company specific data.
- Current and/or future prices, whenever, and to the extent that the competitor is also a customer, and this involves information typically exchanged as part of a normal customer-supplier relationship (e.g. announcement of a price increase).

The exchange of information may be permitted under certain circumstances in cases involving:

- Current list prices.
- Certain operating or sales performance metrics.

TIP: All of these cases involve a prior anti-trust legal review, because the permissibility of these collusions depends on other factors. Consequently, Executive Management must be informed about this in advance.

The exchange of information with competitors is prohibited in cases involving:

- Future selling prices and/or components of selling prices.
- Current net sales prices and/or components of selling prices.
- Timing of planned price increases, even when this strictly involves average prices, or involves the possibility of price increases.
- The own response to customer and/or supplier demands, e.g. for price concessions.
- The own sales or turnover figures, when these are not strictly historical.
- The own future market conduct, new products, timing of product rollouts.

TIP: The following specifically applies when exchanging sensitive information with competitors: It is better to be silent once too often than to speak once too often.

3. Price specifications for resellers

Basic rule: Whenever Erbe sells products through third parties (resellers), these third parties may not be given a fixed price and/or a minimum price to be used for resale.

Resellers are all third parties who purchase and then resell Erbe products in their own name and on their own account (e.g. distributors, service providers, and logistics service providers that supply hospitals and purchase Erbe products for this purpose).

Binding maximum prices are permitted. However, these may not be structured in such a way that they effectively work like a binding, fixed, or minimum price.

Recommended prices are also permitted, but only if these are and remain non-binding. An inadmissible price specification has already been put in place when pressure is exerted on the customer to comply with the "recommended price", or when economic benefits are promised in return (e.g. performance bonus).

4. Sales restrictions for resellers

Basic rule: certain sales restrictions are permitted, but only when the market shares of Erbe and the reseller in the respective market are not excessively high (rule of thumb: 30 %).

Restrictions: a sales restriction can already have occurred when (i) special terms and conditions are promised to the reseller if it limits reselling, or when (ii) pressure is applied on the reseller (e.g. threats to suspend shipments) to limit reselling.

When market shares are not excessively high, the following may be specifically permitted:

- Exclusive customer ties (sole supplier) for a limited number of years (rule of thumb: maximum 5 years).
- Exclusive supplier ties (sole distribution).
- Sales limitations for the customer for selling into certain territories or to certain customer groups. However, territory and customer group limitations can only be permitted with respect to *active* selling into another territory and/or into another customer group. A complete prohibition on reselling outside of the own territory and/or the customer group is not permitted.

TIP: All sales restrictions must first undergo an anti-trust legal review.

5. Customer retention

Basic rule: Customer retention mechanisms that require customers to purchase their entire or at least a large portion of their requirements for a certain product type at Erbe are permitted when the market share of Erbe is not excessively high in the respectively affect the market (rule of thumb: 30 %).

Market share up to 30 %: At a market share of up to 30 % it is always permitted to bind the customer (e.g. a hospital) for up to five years.

TIP: When the market share is not significantly above 30 % (rule of thumb: up to 40 %), a prior anti-trust legal review is required.

Market share above 40 %: Proceed with caution starting at a market share of 40 %.

Discounts: Please note that discounts have a similar effect as expressly agreed customer retention mechanisms. Under all circumstances, starting at a market share of 40 %, certain forms of

discounts may no longer be used, or may only be used after a thorough legal review. The following guideline applies to this.

Starting at a market share of 40 %, the following are highly questionable under anti-trust law:

- Loyalty discounts (additional discounts in exchange for a commitment to purchase the entire requirement, or at least a significant portion thereof, for a product type at Erbe).
- Retroactively applied staggered discounts (when a turnover threshold is met, the higher discount is applied to the entire purchasing volume, and not only to the volume that exceeds the threshold).
- Annual target discount (additional discount when a specified turnover objective is met).
- Escalation discounts (additional discount of x when the prior-year volume is exceeded).
- Composite discounts (discount systems that combine low-sellers and bestsellers).

The following are generally permitted:

- Function discounts (e.g. discounts for participating in product tests).
- Non-retroactive staggered discounts (when a turnover threshold is met, the higher discount only applies to the volume that exceeds the threshold).

TIP: The available discount types and their effects are highly varied. For this reason, all discounts that provide special purchasing incentives may only be granted after an anti-trust legal review.

6. (Un)equal treatment of customers

Basic rule: Whenever Erbe has a high market share for a certain product type (rule of thumb: 40 %), and/or customers are particularly dependent on deliveries of our products, similar customers may not be treated differently, unless there is a good reason to do so.

Mandatory supply: Equal treatment also implies equal treatment with respect to deliveries. Erbe may therefore be subject to a mandatory supply requirement on a case-by-case basis.

TIP: Any refusal to supply, or to discontinue shipments of products for which Erbe has a market share of at least 40 % must first undergo an anti-trust legal review.

Prices and terms: The equal treatment requirement only has limited applicability to prices and terms. Erbe is not required to grant all customers the same prices and terms, but may respond to price competition at a certain customer with more favorable offers.

Good reasons for unequal treatment: Customers may always be treated unequally when there is a good reason to do so. Good reasons can, for instance, be:

- The customer fails to pay.
- The customer fails to handle products in a proper manner.

B. What are the possible consequences of violations?

Anti-competitive behavior can result in significant fines. In a worst-case scenario, the fine can be up to 10 % of the group-wide prior year turnover.

Moreover, senior managers can be fined up to 1 million Euros. This not only applies when the senior managers were personally involved in the violation, but already when they violated their managerial oversight in the company. Such a violation of managerial oversight can already have occurred when inadequate controls were in place to monitor employee conduct with respect to antitrust sensitive activities.

Moreover, other conceivable claims for compensation can come from customers who feel that they have been victimized by anti-competitive behavior.

C. Golden rules for practitioners

There are a series of golden rules for practitioners that will help to minimize the risk of anti-trust legal violations. These include:

- Never discuss the corporate strategy with competitors. Specifically never discuss prices and terms.
- Do not attempt to obtain inadmissible information about the business strategy, prices, or terms from employees at competitors.
- Do not complain to competitors about their pricing at customers.
- Do not entertain legally inadmissible proposals from competitors (e.g. to agree to price collusion), not even for show.
- Pay particular attention to rules that apply to companies with high market shares (starting at 40 %). In these cases, customer retention mechanisms and certain discount types are risky.

Always communicate with care, specifically with emails. Avoid ambiguous formulations, such as:

- We control the market for this product.
- We are the undisputed market leader.
- We will blow them out of the market.
- We will boycott.
- The competitor told me that.....
- I will check with the competition.....

Always immediately inform the Erbe Executive Management and/or the Erbe compliance officer when:

- You have questions or concerns regarding a certain approach,
- A customer or competitor informs you that they intend to discontinue a practice previously employed with Erbe for anti-trust legal reasons.
- Anti-trust legal audits are being conducted at competitors or customers.
- You become aware of behavior by competitors or customers which have anti-trust legal implications.