Global Policy

Antitrust

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1 Management Summary

Antitrust – or competition – laws are designed to promote and protect fair competition. Envu is committed to ensuring fair, unrestricted competition through compliance with all applicable antitrust laws worldwide as stated in the Principles of Business Conduct set out in Envu's Compliance Management policy. All Envu employees are required to comply with applicable antitrust laws and regulations. In this course, Envu employees should also pay attention to and comply with all procedures related to contract management, as contracts are a central source of business opportunities.

This Policy provides a clear overview of antitrust laws relevant to Envu's business strategy in order to support Envu employees in ensuring that their activities are at all times fully compliant with such laws.

2 Introduction

2.1 Objective

The purpose of this Policy is to equip Envu employees worldwide with the basic knowledge necessary to recognize conduct which may infringe antitrust law and to implement measures to prevent and detect such infringements. Envu employees are expected to familiarize themselves with the basic principles of antitrust law set out in this Policy and to raise with the General Counsel or the Regional Counsels any questions they may have as to the meaning or application of these principles.

Section 3 of this Policy sets out the key principles of antitrust law applicable to Envu, identifies specific kinds of conduct prohibited under antitrust law and provides guidance on certain types of business activities where special caution is required to avoid antitrust infringements.

2.2 Scope and Target Group

This Policy reflects the current status of antitrust law in three key areas: Interaction with Competitors (Section 3.2), Interaction with Customers and Suppliers (Section 3.3) and Abuse of Dominance (Section 3.4). While many of the concepts and much of the specific guidance in these areas may be common to several countries, national antitrust laws may vary, in some cases requiring additional rules to be observed, in others even permitting certain kinds of conduct prohibited elsewhere. Regional Counsels should review the contents of this Policy and assess whether any variation exists between the principles of antitrust law set out here and the laws, rules or regulations in their countries.

- If no such variation exists, no amendment to this Policy is required and all of the principles set out in Section 3 shall apply.
- If national or regional laws, rules or regulations impose standards or requirements stricter than those set out in this Policy, such stricter standards or requirements must be followed in addition to the principles set out in this Policy.
- If national or regional laws, rules or regulations are less strict than those set out in Section 3.2 of this Policy (Interaction with Competitors), all of the principles set out in Section 3.2 must nevertheless be observed.
- If national or regional laws, rules or regulations are less strict than those set out in Section 3.3 (Interaction with Customers and Suppliers) or Section 3.4 (Abuse of Dominance), such less strict rules will apply.

For the US, US Antitrust Policy shall apply.

2.3 Risks Covered and Resulting Benefits

Consequences of infringing antitrust laws are extremely serious both for Envu as a company and for individual employees. These include:

- massive fines for Envu, e.g. the EU Commission can impose fines of up to 10 % of global group turnover in the year preceding the decision;

- substantial fines and, in some countries, prison sentences for individual employees, e.g. individuals involved in cartel offences can be fined up to € 1 million in Germany, and imprisoned for up to five years in the UK, and up to 10 years in the USA;
- claims for damages by customers, competitors or others injured by the conduct: in some countries, treble or other punitive damages may be awarded;
- serious loss of reputation for Envu with potential exclusion from certain government programs for specific infringements;
- in some countries, disqualification of directors guilty of anti-competitive activity;
- major internal and external legal and administrative costs in defending cases; and
- invalidity of contracts or contract terms found to be in violation of antitrust laws.

Antitrust authorities have a very high rate of success in detecting antitrust infringements especially through use of leniency and whistle-blowing programs. Once authorities even suspect Envu of being involved in an infringement, they will often launch so called dawn raids. This means a search of company – and possibly even private – premises with the aim of finding incriminating evidence. Given the expertise of agencies such as the European Commission in such searches, in particular IT-based, they usually find everything they require for taking action. Moreover, a lack of cooperation, destruction of documents or seals alone can lead to significant fines, possibly even criminal liability of employees, even if the company in the end is cleared of having infringed antitrust laws.

Infringements of antitrust law will be detected and the sanctions imposed on Envu and, in some cases, on individual employees, will always be greatly in excess of any commercial advantage to be gained from illegal conduct.

3 Main Section

Antitrust – or competition – laws protect fair competition in three main ways:

- by forbidding anti-competitive agreements or understandings between competitors and between customers and suppliers,
- by forbidding abusive conduct by a dominant company, and
- by reviewing mergers and acquisitions to prevent the creation of dominant positions or the unacceptable reduction of competition.

EU competition law also prohibits agreements and abusive conduct which restrict the free movement of goods or services between member states.

3.1 Basic Concepts

The antitrust laws of a particular jurisdiction will generally apply to agreements, practices and conduct which have an effect in that jurisdiction regardless of the nationality of the companies involved or the place where an agreement is reached.

> Representatives of three major manufacturers of herbicides – a Japanese company, an Australian company and a Canadian company – meet in Peru and agree that each company will raise prices for European and American distributors.
>
> All three manufacturers infringe EU and US competition law and are subject to sanctions from both the EU and US because their anti-competitive agreement impacts European and American markets.

In order for competition to function effectively, individual companies must make business decisions independently of each other. Antitrust laws worldwide prohibit companies from entering into agreements or understandings that restrict – or are designed to restrict – competition. Both agreements between competitors ("horizontal agreements") and agreements between customers and suppliers ("vertical agreements") can harm competition.

"Agreement" has a very broad meaning under antitrust law, covering all kinds of understandings, arrangements or coordination of conduct between companies.

- Agreements can be written or oral, formal or informal.
- Agreements can be binding or non-binding ("gentlemen's agreements"), express or implied; as long as there is a "meeting of minds" between two or more companies, an agreement exists for antitrust law purposes.
- It is not necessary for companies to meet physically or to exchange correspondence in order for an agreement to arise; all that is needed is some form of communication or information exchange – even via a third party such as a customer or consultant – through which a common understanding is reached.
- Existence of an agreement can be inferred from conduct, e.g. competing suppliers meet for an unexplained reason and then simultaneously raise prices.

- If a company is represented at a meeting where an unlawful agreement is reached, that company may be treated as a party to the agreement even if its representative said nothing or ultimately did not implement the agreement.

> Marketing Heads of four suppliers of rodent control products in France attend an industry event. They discuss trends in the pest control market. One complains about low profit margins, another comments that the only way to break even would be to implement a 15 % price rise in the next quarter. A third agrees, the fourth says nothing. All four increase their prices by 15 % in the quarter following the meeting.
>
> Each of the four companies has been party to an anti-competitive agreement punishable by severe fines and, in some countries, imprisonment.

Companies are competitors for antitrust purposes if they are active on the same relevant market, e.g. as manufacturers of competing herbicides in China or as distributors of competing pest control products in Spain. Antitrust law also treats companies as competitors if one company is currently active on a relevant market and another company is likely to become active on that same relevant market within a fairly short time, e.g. because it has an active ingredient in development for the same uses. Companies are not competitors if they are active only at different levels of the manufacture and distribution chain, e.g. one as supplier and the other as wholesaler of products. However, where a company sells a product both via third party distributors and directly to end customers (dual distribution), that company competes not only with rival manufacturers but also with third party distributors.

Agreements infringe antitrust law if they have either the object or effect of restricting competition. This means that an agreement designed to restrict competition will infringe antitrust law even if it is ultimately not implemented or fails to have a significant impact on competition. Similarly, an agreement without restrictive object can still infringe antitrust law if its effect is to restrict or distort competition.

> The EU has special rules designed to protect trade among member nations. A Bulgarian supplier of herbicides agrees to provide special discounts to wholesalers on condition that they resell products only in Bulgaria. The wholesalers accept the discount but continue to export the herbicides to customers in other EU countries.
>
> Because the object of the agreement was to restrict parallel trade among EU countries, both supplier and wholesalers have infringed antitrust law and are subject to severe fines even though the desired anti-competitive effect was not achieved.

3.2 Interaction with Competitors

Antitrust laws worldwide prohibit agreements or understandings between competitors – actual or potential – which restrict, distort or prevent competition. Certain kinds of coordination between competitors, such as price-fixing, market-sharing, output restriction or bid-rigging, have such obviously harmful effects on competition that they are always regarded as most serious violations of antitrust law and punished accordingly. Other forms of cooperation, such as joint research or technical benchmarking studies, may be pro-competitive but require initial legal evaluation to ensure that they do not include unacceptable restrictions of competition.

Because there is always a risk that contact between competitors may lead to unlawful coordination of conduct, Envu employees should avoid such contact unless necessary in order to achieve a legitimate purpose. Where contact is legitimately required, for example to participate in a trade association or to negotiate a transaction, the principles set out in this Policy must be strictly observed.

3.2.1 Conduct Always Prohibited

Any agreement, understanding, plan, collusion or coordinated conduct with Envu's competitors on any of the following topics is always strictly forbidden.

3.2.1.1 Price-Fixing

It is illegal for competitors to agree, whether directly or indirectly, on the price or the price ranges at which products will be sold to third parties. All kinds of agreements or understandings to fix prices or any component of pricing, including the level of discounts or allowances to be granted, transport charges, payments for additional services, credit terms or the terms of guarantees are also strictly forbidden.

Representatives of three major suppliers of pest management products in Germany meet as part of an industry initiative against counterfeiting. Discussion turns to the level of discounts provided to key wholesalers in the country. All three agree that wholesalers' discounts should be reduced; each company implements the reduction.

All three companies have engaged in unlawful price-fixing and are subject to severe sanctions. Fines may also be imposed on the individual employees involved.

DO	*DON'T*
☑ Set prices and terms independently, i.e. without discussion or agreement with competitors. ☑ Refuse to participate in discussions with competitors on any aspect of pricing. ☑ Report to Regional Counsel any attempt by competitors to discuss pricing. ☑ Specify, when reporting on competitors' prices, the publicly available source – or internal assumptions as the case may be – from which data were derived.	☒ Do not discuss any aspects of pricing with competitors. ☒ Do not agree with competitors to increase, reduce or stabilize prices. ☒ Do not agree with competitors on any component of pricing such as rebates, margins or discounts. ☒ Do not agree with competitors on any conditions of supply such as terms of payment, credit terms, delivery terms, special promotions, guarantees or levels of after-sales service. ☒ Do not exchange data with competitors on pricing strategy or intentions, either

	directly or via third parties such as customers. ☒ Do not exchange any other non-public cost or price-related data with competitors except in specific situations where disclosure is necessary for a legitimate purpose and with prior approval of Regional Counsel.

3.2.1.2 Market Allocation / Sharing

It is illegal for competitors to agree not to compete with each other for certain customers or in certain geographic areas. Illegal market allocation can occur:

- where competitors agree to allocate customers between them, e.g. competing suppliers agree that orders from hospitals will be assigned to one supplier and orders from private practices to another (customer allocation) or
- where competitors agree to divide markets on a geographical basis, e.g. competing suppliers agree that one will launch products only in Japan while the other will launch only in Europe (territorial allocation).

An originator active ingredient company is facing loss of exclusivity for its leading product in Belgium. The product is difficult to manufacture but one generics company has succeeded and is planning to come to market in three months' time. A representative of the originator contacts his counterpart at the generics company with an offer to enter into a co-promotion agreement: the generics company will co-promote the originator's leading product in Belgium and will receive a guaranteed monthly payment (regardless of performance) for as long as no generic version of the product appears on the Belgian market. The originator's internal business case shows that the amount of the monthly payment is equivalent to an estimate of the generic company's monthly profits if it launched its generic version in Belgium. Both originator and generic company have entered into an unlawful market sharing agreement and are subject to severe sanctions.

DO	*DON'T*
☑ Compete for available customers unless there are valid commercial reasons not to do so. ☑ Consult with Regional Counsel before discussing with a competitor any potential collaboration, including supply, distribution, licensing, co-marketing or co-promotion agreements.	☒ Do not discuss or agree with any competitor which customers Envu will target or supply. ☒ Do not discuss or agree with any competitor not to enter any market or to coordinate marketing, sales or promotional activities on a market. ☒ Do not share or discuss with competitors marketing, strategy or launch plans.

3.2.1.3 Output / Development / Investment Limitations

It is illegal for competitors to enter into agreements or understandings which limit or control production, commercialization, technical development or investment, e.g. by agreeing on production or sales quotas or by agreeing to coordinate R&D or commercialization activities so as not to compete with each other.

Four producers of competing insecticides conclude that oversupply on the EU market is leading to price erosion. They agree to reduce output levels over the next three years. Three implement the agreed reductions, the fourth does not.

All four companies have seriously infringed antitrust law, including the company which did not implement the agreed reduction.

DO	*DON'T*
☑ Decide independently on production, development, commercialization and investment plans. ☑ Consult with Regional Counsel before discussing with a competitor any potential collaboration with respect to production, R&D or commercialization, including specialization or R&D agreements.	☒ Do not discuss or agree with any competitor how much product Envu or a competitor will produce or sell or what improvements, developments or (technical) investments are planned. ☒ Do not discuss or coordinate with competitors R&D, launch plans or capacity investments.

3.2.1.4 Bid-Rigging / Collusive Tendering

It is illegal for competitors to enter into any agreement or understanding regarding participation or the prices or terms or conditions to be submitted in a tender or bid process. Bid-rigging can take many forms the most common of which are:

- Bid Suppression: one or more competitors agree not to submit a bid or to withdraw a bid so that another designated competitor's bid will win.
- Complementary Bidding: some competitors agree to submit bids that are too high or contain other conditions that make them unacceptable to the buyer so that the designated competitor's bid will win.
- Bid Rotation: all colluding competitors submit bids but take turns being the lowest.
- Subcontracting: competitors who agree not to bid or to submit a losing bid are awarded subcontracts or supply contracts in exchange by the successful bidder.
- Market Allocation: competitors agree not to compete for contracts open to tender for certain customers or geographic areas.

Five competing suppliers agree to coordinate their bids for public contracts in Germany so that contracts are evenly shared between them over a year. The parties' submissions are coordinated by an accountant based in Switzerland. The suppliers and the accountant have infringed antitrust law. Bid-rigging in public tenders is a criminal offence in Germany so the individuals involved may also face prison terms.

DO	*DON'T*
☑ Decide independently whether to submit a tender and, if so, what the terms of Envu's offer should be.	☒ Do not discuss or agree any tender terms, including prices, sales and other conditions, with competitors /other bidders. ☒ Do not agree with competitors or other bidders whether to participate in a tender or whether to withdraw a bid. ☒ Do not exchange with competitors or other bidders any information regarding any tender business.

3.2.1.5 Boycotts / Collective Refusal to do Business

It is illegal for competitors to enter into any agreement or understanding not to do business with a particular customer or supplier or class of customers or suppliers, in order to prevent or discourage the customer or supplier from conducting business.

At a trade association meeting, competing suppliers of insecticides discuss their suspicions that a wholesaler is planning to launch its own brand competing product at a steep discount. The suppliers agree not to deliver products to this wholesaler. This boycott is illegal. All of the suppliers involved are subject to serious sanctions.

DO	*DON'T*
☑ Decide independently whether to do business with a particular customer or supplier. ☑ Inform Regional Counsel of any proposal by competitors to boycott a customer or supplier so that Envu's refusal to participate can be recorded.	☒ Do not discuss or agree with competitors not to deal with certain customers or suppliers or to deal only on specific terms.

3.2.1.6 Information Exchange

The exchange of non-public information on intended future prices or quantities of individual products is always strictly forbidden. It is also illegal to exchange commercially sensitive information with a competitor if such data exchange provides a basis for coordinated conduct between parties or removes uncertainty regarding their market conduct. Public communication of commercially sensitive information (e.g., in a press release) can infringe competition law where the information was released with the intent of signaling competitors regarding commercial activity rather than for legitimate commercial purposes.

Commercially sensitive data include non-public data on:

- pricing, including data on discounts, rebates and other terms of sale and methods of calculating prices
- customer lists, details of customer relationships
- terms and conditions of business, promotions and special offers
- costs, quantities, capacity, utilization and inventory levels
- marketing plans, data on risks, investments and profit margins and
- information on technologies, R&D programs and results.

In assessing whether a specific data exchange is lawful or not, it is necessary to consider not only the subject-matter of the data but also the reasons for the proposed exchange and other factors including those listed below. As this assessment is complex, advice should always be sought from Regional Counsel before any exchange of non-public information with competitors.

- Public / Non-Public Data: Exchanges of genuinely public data are not restrictive of competition. Data are not considered genuinely public if the costs involved in accessing the data deter competitors and customers from doing so.
- Aggregated / Individualized Data: Exchanges of genuinely aggregated data, i.e. where recognition of individualized company level data is not possible, are unlikely to have restrictive effects on competition.
- Historic / Non-Historic Data: Exchanges of historic data are unlikely to be problematic. Whether data are historic depends on specific characteristics of the relevant market, in particular on frequency of price renegotiations, pace of technological change and overall validity and information value of the data for the relevant industry. As a rule of thumb, data can be considered historic if several times older than the average length of contracts in the industry.

Data exchanges may also in certain circumstances be justified on the basis that they are indispensable in order to achieve certain efficiency benefits but prior consultation with Regional Counsel is always required prior to such exchange.

Competitors meet at an association meeting to discuss the potential impact of new laws on their industry. After the meeting, Company A mails to Company B a detailed spreadsheet setting out product and customer-specific pricing, cost and profit margins and how these will

be impacted by the new laws. Company B does not disclose any data in return but circulates Company A's mail widely in the company.

Both companies have infringed antitrust law as the exchange of confidential, commercially sensitive information allows them to coordinate pricing policy.

DO	*DON'T*
☑ Report to Regional Counsel immediately any disclosure or attempted disclosure by a competitor of commercially sensitive information. ☑ Object to any discussion or disclosure of commercially sensitive data at any meeting which you attend; if the discussion continues, leave the meeting and notify Regional Counsel immediately.	☒ Do not initiate any contact with a competitor without prior approval of Regional Counsel. ☒ Do not disclose to a competitor any non-public data regarding Envu's business, products or customers without prior approval of Regional Counsel. ☒ Do not accept from a competitor any non-public data regarding its business, products or customers without prior approval of Regional Counsel. ☒ Do not stay at meetings where competitors discuss or exchange non-public information. ☒ Do not use customers or suppliers or any other third party as an indirect mean of passing non-public data to competitors.

3.2.2 Interactions with Competitors: Conduct where Caution is Required

Not all forms of cooperation with competitors are prohibited. For example, collaboration in R&D can speed up technical progress while joint action on environmental initiatives can help achieve public policy objectives. However, because collaboration with competitors can lead to such serious infringements of antitrust law, you should not enter into any cooperation of any kind with competitors without prior advice from Regional Counsel.

Even where a specific collaboration is lawful, caution must be exercised to ensure that interaction with competitors is limited to the specific legitimate purpose and does not spill over into anti-competitive discussions or collusion.

Competing manufacturers participate in a working group to improve the environmental impact of their products. One outcome of the project is that package sizes are reduced by 15 %. The manufacturers agree to maintain prices as they decide that consumers are unlikely to notice the smaller package size.

Although the collaboration on environmental issues was lawful, the competitors then entered into an unlawful price-fixing agreement, seriously infringing antitrust law.

The following are examples of common forms of interaction with competitors which, while not inherently harmful to competition, involve risks of unlawful information exchange or collusion with competitors. Seek advice from Regional Counsel.

3.2.2.1 Trade Associations / Working Groups

Trade association activities can be useful and lawful, e.g. where they promote health initiatives or establish industry standards that protect the public or where they provide an industry response to proposed legislation or government decisions. However, antitrust agencies scrutinize trade association activities very closely as they provide a forum for competitors to meet and have in the past been used to facilitate or disguise anti-competitive activities such as price-fixing or collective boycotts. If a trade association is used for anti-competitive activities, not only the trade association but also each of the members, i.e. the company and its individual representatives, will be liable for infringement of antitrust laws.

DO	*DON'T*
☑ Consult with Regional Counsel before joining a trade association. ☑ Consult with Regional Counsel before joining the board of any decision-making body of a trade association. ☑ Ensure that an agenda is reviewed in advance of any meeting. ☑ Limit interaction with competitors to discussion of the agenda items; avoid all formal or informal commercial discussion. ☑ Ensure that accurate, detailed notes of each meeting are taken. ☑ Ensure that, if anyone raises or discloses information on topics which should not be discussed between competitors, you: • request the immediate end of such improper discussions, • if the improper discussions continue, immediately leave the meeting and ensure that the minutes reflect your objections and departure, and • make meeting notes and send them to Regional Counsel marked "privileged	☒ Do not have any discussion or information exchange on any of the following topics: • prices, price changes, sales terms, margins, discounts or any other element of pricing, • production or distribution costs, including methods of calculating costs, • territorial restrictions, customer allocation, division of markets, • information on individual suppliers, distributors or customers, • company plans for R&D, marketing and sales, production or supply, • general market or commercial conditions, unless approved by Regional Counsel in advance. ☒ Do not use the trade association to take decisions which would not be allowed if taken by an individual company or a group of competitors.

and confidential; prepared at the request of the Legal Department". ☑ Consult with Regional Counsel on any request from trade associations to submit sales data / other commercially sensitive data.	☒ Do not implement any decision taken by a trade association which infringes antitrust law; inform Regional Counsel immediately of any such decision.

3.2.2.2 Benchmarking Activities

Benchmarking exercises, where companies compare their practices, methods or performance against those of others, can benefit consumers in terms of increased efficiency and lower costs. However, benchmarking exercises carried out between competitors can also lead to unlawful collusion. The purpose of the exercise may be inherently anti-competitive, e.g. where competitors exchange current confidential data on costs in order to align prices. Even if the purpose of a benchmarking exercise is legitimate, it may be used as a forum for unlawful data sharing or for development of standards which unlawfully exclude other competitors. Participation in a benchmarking exercise requires prior approval by Regional Counsel.

Twelve competing chemical companies in a particular region establish a benchmarking exercise under which HR representatives meet regularly to share detailed information on compensation paid to managerial, professional and technical employees plus current and future salary budgets for these employees.

Because information exchanged is specific and non-aggregated, and includes data on current and future intentions, the exchange is likely to be considered anti-competitive as it allows competitors to coordinate conduct regarding an important element of competition, i.e. the compensation to be offered to senior executives.

DO	*DON'T*
☑ Consult with Regional Counsel before taking part in any benchmarking exercise. ☑ Limit benchmarking activities to technical, safety, scientific and similar initiatives which do not involve exchange of non-public pricing, capacity or production data, cost data, profit margins or marketing and sales information. ☑ Ensure that a written plan is prepared in advance setting out clearly the purpose of the exercise, the participants, the kind of data to be exchanged, the improvements	☒ Do not participate in any benchmarking exercise with competitors where non-public data are collected with respect to: • intended future prices or quantities of individual products; • pricing in general, including data on discounts, rebates and terms of sale; • customer lists and details of customer relationships; • costs, quantities, capacity, utilization and inventory levels;

to be gained and the agreed process for carrying out the benchmarking exercise. ☑ Ensure that, if non-public data are being collected as part of the exercise: • data are collected from at least five participants for each category of information collected with no one company accounting for more than 25 % of the total for any category; • participation is voluntary; • data are collected in writing by an independent third party with no exchange of data or other contact between individual competitors; • data are aggregated by the third party in such a way as to prevent recognition of any individual participant's data, and only those aggregated results are made available to participants. ☑ Ensure that only participants suitably qualified to discuss the legitimate subject matter of the exercise participate, e.g. that sales and marketing personnel do not participate in a study on quality controls.	• marketing plans, risks, investments and profit margins; or • technologies, R&D programs and results. ☒ Do not exchange information on any of the topics listed above with competitors during or after a benchmarking exercise. ☒ Do not discuss the results of the benchmarking exercise with other participants or agree upon industry standards without prior approval of Regional Counsel.

3.2.2.3 Competitive Intelligence

Gathering competitive intelligence is a normal and necessary function for Envu and other companies across all industries. Collecting information from genuinely public sources of information, e.g. newspapers, websites, press releases, SEC reports or market research reports issued by reputable sources such as IMS or Kleffmann is allowed. However, gathering non-public, commercially sensitive information from competitors and, in some cases, from suppliers and customers can in certain circumstances raise significant antitrust issues.

Company A regularly uses the services of a market research company to gather competitive intelligence on likely pricing developments in the vegetation management market. The research company provides similar services to Company A's two key competitors with the result that all three competitors receive information on the pricing plans of the others via the market research company's monthly report.

Exchange of non-public, commercially sensitive information between competitors is not allowed, even where the exchange is carried out indirectly via a third party.

DO	*DON'T*
☑ Consult with Regional Counsel before participating in a competitive intelligence exercise conducted jointly with competitors – the rules on benchmarking at Section 3.2.2.2 above must generally be applied. ☑ Ensure that any third party commissioned to collect competitive intelligence on behalf of Envu is made aware of and undertakes to comply with the rules set out in this Policy. ☑ Ensure that in making any contact with competitors the provisions of this Policy are strictly observed.	☒ Do not obtain non-public, commercially sensitive competitive intelligence from a competitor (directly or via an agent) or share such information with a competitor except as advised by Regional Counsel. ☒ Do not request or accept from an employee who has recently joined Envu from a competitor non-public information gained during prior employment. ☒ Do not solicit from customers or suppliers detailed non-public information regarding a competitor's offer in circumstances where you have reason to believe that a competitor is using customers or suppliers as a channel to exchange commercially sensitive information with competitors.

3.2.2.4 Transactions with Competitors

When companies who compete with each other in one market wish to enter into a transaction which affects that market, any such transaction requires individual analysis by Regional Counsel to assess whether it is permissible under antitrust laws. Even if the companies wish to enter into a transaction affecting a different market – where they do not compete - care must be taken to avoid spillover into unlawful collusion in the area in which they compete.

Company A makes and sells a product for stored grain treatment, and it also sells active ingredients that competitors use in making their own product for stored grain treatment. Company B is planning to launch a competing product that would include one of its own active ingredients as well as one it plans to purchase from Company A. The proposed supply agreement requires Company B to purchase all of its requirements for the additional ingredient from Company A and also caps the amount of the ingredient it can purchase from Company A. This arrangement raises several issues.

First, Company B will be placing orders that will reveal competitively sensitive information to Company A, i.e., the volume of competing product that it is about to launch. Company B may have negotiated a contract preventing Company A's wholesale operation from sharing that information with the business people who run Company A's competing business. If that is the case, Company A must be careful to limit the availability of that information within the company. But the fact that Company A has some access to this information is not a problem because it is a necessary part of a legitimate supply relationship between the companies.

Second, the requirements nature of the supply agreement, combined with the cap on the amount that can be purchased, effectively limits the competitive threat from Company B. That could lead to questions about whether the companies may have used the agreement to effectuate an illegal market allocation agreement. Enforcers may want to know why Company B would have agreed to such terms and if the price at which it was purchasing the active ingredient was unusually favorable. Such a market allocation scheme, if it was proven, would be subject to criminal sanctions in many jurisdictions.

DO	*DON'T*
☑ Consult with Regional Counsel before approaching a competitor to discuss a potential transaction. ☑ Keep agenda and minutes for all meetings with competitors. ☑ Maintain strict controls to govern the exchange and use of non-public data. ☑ Ensure that the cooperation between competitors is confined solely to the boundaries of the written agreement.	☒ Do not discuss or exchange non-public data with a competitor regarding a potential transaction without prior approval of Regional Counsel. ☒ Do not enter into any agreement or understanding with a competitor without prior approval of Regional Counsel.

Antitrust authorities recognize that some forms of cooperation between competitors are generally not harmful to competition if for example the parties involved have low shares on the relevant markets and if the agreement does not include "hard core" restrictions of the kind described in Sections 3.2.1 and 3.3.1 of this Policy. These include, for example: R&D Agreements, Production and Specialization Agreements, Joint Purchasing Agreements, and Licensing Agreements.

Other kinds of cooperation between competitors present significant antitrust risks regardless of the market position of the contracting parties and require in every case prior and in-depth consultation with Regional Counsel. These include:

- Joint Commercialization Agreements, i.e. agreements where competitors cooperate in marketing, sale, distribution or promotion of one or more of their competing products, e.g. through a co-marketing or co-promotion agreement.
- Agreements with Generic Competitors, i.e. agreements between an "originator", such as Envu, and a company which is developing, manufacturing, launching or selling a generic version of the originator's product.
- Swap Agreements, i.e. agreements between competing manufacturers where one company supplies a certain product to its competitor in a specific region and receives – either simultaneously or with a delay – a similar product of comparable quantity and quality back from that competitor in another region where the production facilities of that competitor are located.

- Any arrangement between competitors outlining their reciprocal intentions to support each other and bridge emergency situations, e.g. unplanned shutdowns.
- Any arrangement between competitors involving co-operation resulting in joint price setting, output limitations, prevention of innovation or market or customer sharing.

3.3 Interaction with Customers and Suppliers

Although interaction with competitors carries the greatest risks, serious antitrust concerns can also arise in the case of vertical interactions, i.e. agreements between companies who are active at different levels of production and distribution, such as supplier and customer. Vertical agreements can infringe antitrust law when they restrict or distort competition to an appreciable extent. Certain restrictions, e.g. fixing the price at which products may be resold, are prohibited in most jurisdictions. Other restrictions only raise antitrust concerns if either the supplier or the customer – or both – have some degree of power on the market affected by the transaction.

DO
☑ Consult with Regional Counsel before entering into any agreement with a supplier or customer which includes a restriction on the other party's conduct.
☑ Remember that a customer or supplier may also be a competitor of Envu; in this case, guidance at Section 3.2 must also be followed.

3.3.1 Prohibited Conduct

Any agreement, understanding, plan or coordinated conduct between Envu and its customers or suppliers on the following topics is strictly forbidden in many jurisdictions.

3.3.2 Resale Price Maintenance

It is illegal in the EU and most other countries of the world for a supplier and a reseller to agree upon a fixed or minimum price at which a product will be resold, to fix a distribution margin, to provide better conditions to resellers who maintain fixed or minimum resale prices or to impose or threaten to impose worse conditions on resellers who fail to maintain a fixed or minimum resale price.

A supplier of household insecticides sells products to a wholesaler who resells to retailers. The supplier negotiates a special price directly with a powerful chain of specialist retailers and notifies this price to the wholesaler. The wholesaler resells the household insecticides to the retail chain at the price notified by the supplier.

This arrangement amounts to an unlawful resale price maintenance agreement between supplier and wholesaler punishable by major fines.

DO	DON'T
☑ Make clear in any distribution, sale or supply agreement that the distributor or reseller is free to determine the price at which it will resell product.	☒ Do not fix the distribution margin or maximum discount a reseller may give to customers. ☒ Do not make payment of rebates, reimbursement of promotional costs or provision of other positive incentives to a reseller conditional upon maintenance of fixed or minimum resale prices. ☒ Do not threaten or impose less favorable terms of payment, delivery, credit, discounts etc. to resellers who do not maintain fixed or minimum resale prices. ☒ Do not link resale prices to competitors' resale prices. ☒ Do not state binding fixed or minimum resale prices in order forms or other documents for unmodified use by the reseller. ☒ Do not pass on price-related information from one reseller to another, facilitating indirect price coordination between resellers.

Recommended Resale Price ("RRP"): A supplier may indicate an RRP provided that the reseller is meaningfully free to sell at other prices, including lower prices. Enforcers will examine the incentives to maintain the RRP and the disincentives to deviation from it to assess whether the reseller is meaningfully free to resell at prices other than the RRP.

Company A sells bedbug detection devices to distributors with RRP notified at time of sale. Company A's representative calls a distributor who has recently started offering the company's products online at a price significantly below RRP. Representative tells the distributor that he cannot economically comprehend the distributor's recent prices. The distributor asks whether this means that he will not be supplied with products in future; the representative replies: "Draw your own conclusions."

By contacting the distributor after initial RRP notification and by replying ambiguously to the question of whether supplies will be stopped, Company A has infringed antitrust law, changing a legitimate RRP indication to unlawful resale price maintenance.

DO	DON'T

☑ Consult with Regional Counsel before implementing an RRP scheme. ☑ Make clear to resellers that RRP is for guidance only and does not bind the reseller.	☒ Do not provide any incentive to resellers to stick to RRP. ☒ Do not threaten to or impose unfavorable terms on resellers who deviate from RRP. ☒ Do not contact resellers, after initial communication of RRP, to try to influence the reseller's pricing practices. ☒ Do not make available to resellers packaging, advertising materials or display stands for point of sale pre-printed with the RRP without making clear that the RRP is recommended only and that the materials may be changed by the reseller. ☒ Do not systematically monitor whether resellers stick to RRP.

Maximum Resale Price: In many countries, where a supplier's share of the relevant market is moderate, agreements on maximum resale prices are permitted provided that they do not operate in practice as disguised fixed or minimum resale prices.

DO
☑ Consult with Regional Counsel before agreeing maximum resale prices. ☑ Make clear to resellers that they are free to resell at prices below the maximum agreed resale prices.

3.3.2.1 Territorial and Customer Restrictions in the EEA, Switzerland

In the case of agreements affecting any country of the European Economic Area ("EEA") or Switzerland, it is illegal for a supplier to restrict the EEA territory into which or the EEA customers to whom products may be resold or to restrict imports from or exports to Switzerland. Free movement of goods within the common market is a key principle of the EU. The EU Commission and national competition agencies are vigilant in detecting export / import bans and impose severe sanctions on companies who engage in such activities.

Supplier sells products through third party distributors in EU countries. The German distributor complains that products from other EU countries are being sold in Germany and threatens to withhold payment until the problem is solved. Supplier places a marker on products supplied to lower price countries and establishes that products are being sold by Romanian distributors into the German market. Supplier notifies the Romanian distributors that the supply price of products will be increased by 30 % "until such time as orderly

distribution is resumed." The Romanian distributor stops exporting product to Germany and Supplier reverses the 30 % price increase.

Supplier and its German and Romanian distributors have infringed EU competition law by making a tacit agreement to restrict product flow from Romania to Germany.

DON'T
☒ Do not impose export / import bans/customer restrictions affecting EEA countries or Switzerland. ☒ Do not directly or indirectly prevent imports or exports between EEA member states, e.g. by - refusing or delaying supplies or otherwise applying less favorable supply terms to resellers on the basis that they may export products, or - limiting the validity of guarantees or after-sales service to end users located in the country in which the product is put on the market by the supplier. ☒ Do not differentiate between prices for products sold in one EEA country based on whether they are resold in that country or in another member state. ☒ Do not track or monitor whether EEA wholesalers or other resellers export products or not. ☒ Do not require a distributor in one member state of the EEA to refer orders received from a customer in another member state to the supplier or distributor based in that customer's member state.

Permissible Restrictions: In certain cases, where a supplier and distributor both have market shares below 30 %, it may be possible to prohibit a distributor from actively approaching customers in countries or in customer groups which have been expressly reserved to the supplier or his other distributors. However, even in these circumstances the distributor cannot be prevented or discouraged from responding to unsolicited requests for supply from customers in such reserved countries or groups or from promoting products online even if this means that online promotions reach countries or customers reserved to the supplier or other distributors. Suppliers are generally allowed to prohibit wholesalers from selling or promoting products to end users, i.e. to keep wholesale and retail levels of trade separate.

DO
☑ Consult with Regional Counsel before agreeing with a distributor to restrict active sales.

3.3.2.2 Restrictions concerning Online Sales

In the EU and some other jurisdictions, certain restrictions imposed by a supplier on its distributors regarding resale of products via the internet are unlawful. The following restrictions on distributors are not permitted under EU law:

- a requirement automatically redirecting customers to another distributor's or to Envu's website where the website in question is located in a different country to the customer;
- a requirement to terminate a customer's order once credit card details reveal an address outside the distributor's home territory;
- a requirement that the distributor will pay higher prices for products which are intended for resale online than for those intended for sale off line;
- a requirement that the distributor limit the proportion of its overall sales made online. However, requiring a distributor to achieve a certain value of sales through "brick and mortar" outlets is allowed.
- the imposition on an authorized distributor of criteria in relation to online sales which are not equivalent to the criteria imposed on sales through a "bricks and mortar" shop.

It is permissible to impose quality standards on distributors, e.g. requiring distributors to have one or more bricks and mortar shops, i.e. a distributor may be prevented from reselling solely via the internet. A supplier may also require that third party platforms on the internet are used only in accordance with the quality standards agreed between supplier and distributors. In certain situations, use of third party platforms by authorized distributors in a selective distribution system can be prohibited provided that certain criteria are met.

DO
☑ Consult with Regional Counsel before imposing any restrictions on buyers regarding resale of products via the internet.

3.3.2.3 Conduct Where Caution is Required

Vertical agreements which simply establish basic terms of sale and purchase, such as price, quality and quantities, will not normally be anti-competitive. However, restrictions on supplier or customer may raise antitrust risks and should not be agreed without Regional Counsel approval. The assessment of whether a particular restriction is permissible or not will depend on a number of factors including the nature of the restriction and the market positions of supplier and customer. These are all some form of loyalty or exclusivity programs in which the business options of the purchaser or seller are curtailed. The concern reflected in competition laws is the effects such restrictions have on the competitors of the party seeking / imposing the restriction. Examples of restrictions which are not automatically anti-competitive, but which may raise antitrust concerns include:

- Single Branding, where a buyer is required to purchase all or most of its requirements of a particular kind of product from the supplier.
- Exclusive Distribution, where a supplier commits to sell the contract products to one distributor only for resale in a particular territory.
- Exclusive Customer Allocation, where a supplier commits to sell the contract products to one distributor only for resale to particular group of customers.

- Selective Distribution, where the supplier restricts the number of authorized distributors and their possibilities of resale to non-authorized distributors.
- Exclusive Supply, where the supplier is required to sell the contract products only or mainly to one distributor.

DO
☑ Check with Regional Counsel before entering into agreements which include any of the above restrictions.

Restrictions in License Agreements: When licensing patents or know-how to third parties, antitrust laws in most jurisdictions provide that licensors may not require licensees to sell products at fixed or minimum resale prices. Certain other restrictions, e.g. obligations not to sell products in countries or to customer groups reserved to the licensor or restrictions on competing R&D, may or may not be permissible depending on whether the parties are competitors and have market power.

DO
☑ Consult with Regional Counsel before including restrictions in a license agreement.

3.4 Abuse of Dominance[1]

A company which is considered dominant in a particular market is not allowed to abuse its power to exclude equally efficient competitors from the market or to exploit customers unfairly. Being dominant in a market is not unlawful but a dominant company is subject to special rules which do not apply to its non-dominant competitors. For this reason, it is important to identify any markets in which Envu could be dominant and to understand what behavior is considered abusive.

Dominance is assessed with respect to a "relevant market", i.e. a group of products generally seen by consumers as substitutable for each other and which are sold in a geographical area where market conditions are similar. This means that even if a company is not market leader in an industry as a whole, it can still be dominant in a specific product market or in a particular country.

A company is considered dominant on a relevant market if it has sufficient economic strength to behave independently of competitors, customers and consumers on that market. Market share, barriers to entry and other factors are relevant to the assessment. As a general rule, a company will not be considered dominant on a relevant market if its market share is less than 40 % while a company with a market share of 50 % or more will generally be assumed to be dominant.

[1] Outside the EU, different antitrust laws may apply to the assessment of market power and how the conduct of companies with significant market power is regulated. In such cases, section 2.2 applies.

Company A sells a pharmaceutical product in the US for treatment of a rare congenital heart defect in babies. Its share of the overall cardiovascular market in the US is minimal. The only alternative pharmaceutical product for treatment of this heart defect in babies was launched last year by Company B but physicians have been slow to switch to the new product and Company B's sales are only 10 % of Company A's. Prior to Company A's product, the defect could only be addressed surgically.

The relevant product market here does not consist of cardiovascular products in general but only those products regarded by physicians as adequate substitute treatments. When Company A's product was launched it competed against surgical interventions. Depending on whether surgery is still considered a good alternative treatment, surgery still might be included in the "relevant market." But if surgery is now considered only a distant option, it may be that the products offered by Company A and Company B are the only competitors in the relevant market, where Company A has 90% of sales. At that level, Company A is very likely to be considered dominant, but this will depend on how quickly Company B's product gains acceptance and sales.

DO
☑ Take advice from Regional Counsel on whether Envu can be considered dominant in a specific market with a particular product or range of products.
☑ Avoid making statements which suggest that Envu is dominant in a particular market; inaccurate statements can give a misleading impression to authorities.

Examples of Abusive Conduct

Antitrust law does not provide a definitive list of "abuses". Conduct by a dominant company which exploits consumers or tends to have an exclusionary effect on competitors is likely to constitute an abuse. Examples are given below.

Don't engage in the following conduct without prior approval of Regional Counsel.

3.4.1 Discrimination

A company which is dominant in a relevant market may not, without objective justification, apply different conditions to similar dealings with similar customers. Examples of objective justification for treating customers differently include:

- differences in costs of serving one customer over another, e.g. costs of transport or taxes;
- economies of scale, e.g. volume rebates;
- price reductions in return for services of genuine value provided by a customer, e.g. promotional, logistics or storage services; and
- price reductions when launching a new product or entering a new market.

A supplier may offer different terms to wholesalers than those offered to retailers.

Company A, the leading supplier of rodent control products in Greece, is facing competition from a new market entrant, Company B, which is starting to build up business with retailers in one region. Company A develops a strategy to offer very steep discounts only to the specific retailers which have been approached by the new entrant with the intention of driving the new entrant out of business.

Company A abuses its dominance in the relevant market by targeting discounts only to Company B's customers. While a dominant supplier may sometimes reduce prices to a customer to meet competition, it is not allowed to target selected customers in order to eliminate a competitor.

DO	*DON'T*
☑ Seek advice from Regional Counsel before applying different terms to similar customers in similar transactions. ☑ Ensure that any objective justification for difference in treatment is clearly established and documented in advance.	☒ Do not discriminate between customers for an unlawful purpose, e.g. to reward customers who maintain prices at a high level or to punish customers who export products to other countries of the EEA.

3.4.2 Pricing Abuses

Even dominant companies are generally free to decide the prices at which they will sell products. However, a company which is dominant in a relevant market is subject to special rules with respect to exploitative or exclusionary pricing practices.

- Excessive Pricing: a dominant company may not sell products at excessively high prices which bear no reasonable relation to the economic value of the product supplied.
- Predatory (below cost) Pricing: a dominant company may not lower its prices below cost level in order to drive out competition (often with the intention of raising prices again once rivals have been eliminated).
- Margin Squeeze: if a dominant company operates at different levels of the supply chain, e.g. as a supplier of a raw material and as a retailer of finished products incorporating the raw material, the dominant company may not price the raw material at such a level as to drive its competitors on the finished product market out of business.

But high prices and burdensome terms are generally only issues outside of the US. Competition law in the US does not prohibit "exploitative" acts such as charging high prices. The ability to charge high prices is treated as a reward and incentive to innovation as well as an incentive for other businesses to invest to displace the dominant company. Only in rare instances would US law require a dominant company to assist its competitors.

Company A is dominant on the market for contrast media injectors and also supplies disposables for use with the injectors. Company A offers to supply contrast media injectors

to hospitals at a price below cost in order to dissuade hospitals from investing in alternative injectors offered by competitors

Company A abuses its dominant position by charging predatory prices designed to exclude competitors.

DO	*DON'T*
☑ Consult with Regional Counsel before offering products at below cost price.	☒ Do not introduce pricing strategies targeted solely at elimination of a competitor.

3.4.3 Tying and Bundling

Where a company is dominant in the market for one product (Product X), it is illegal in most countries to make the sale of Product X conditional upon customers' buying an unconnected product (Product Y) which would otherwise be available from other suppliers at similar or better terms. Tying can be contractual or technological.

- Contractual Tying occurs when the dominant company refuses to sell Product X – or to sell with a discount - unless a purchaser buys Product Y.
- Technological Tying occurs when Product X is technically modified so that it will only function properly when used with Product Y or other products of the dominant supplier and not with alternatives offered by competitors and when there is no objective justification, e.g. quality or safety reasons, for the technical modification.

It can also be abusive to "bundle" products by offering economic inducements to customers to buy Product X and Product Y as a package where the price reduction has no objective justification based on genuine cost savings.

Company A holds a dominant position in the weed management market in France. It offers discounts to French distributors on its patented formulations provided that the distributors also buy other products facing generic competition.

Company A is abusing its dominant position on the weed management market to exclude generic competition on a market for unconnected products.

DO	*DON'T*
☑ Consult with Regional Counsel before offering unconnected products only in combination or offering a discount on products if bought together.	☒ Do not seek to leverage power in one market to exclude competition on an unconnected market.

3.4.4 Loyalty-Inducing Rebates and Discounts

Discounts and rebates are effective and legitimate elements of competition. Even a dominant supplier may offer such discounts provided that they reflect a genuine reduction in the cost of supplying a customer, e.g. volume rebates, which reflect cost efficiencies arising from larger sales volumes, or discounts offered in return for services of genuine value offered by a customer. However, rebates or discounts offered by a dominant supplier can be anti-competitive and abusive if they are designed to reward or encourage loyalty and to discourage customers from switching their business to rival suppliers and the effect is to exclude "as efficient" competitors.

Examples of loyalty-inducing rebates or discounts include the following:

- Fidelity Rebates, i.e. rebates offered to a customer on condition that he buys all or most of his requirements from the dominant supplier.
- Target Rebates, i.e. rebates offered to a customer on condition that he reaches certain targets such as quantities of products or percentages of annual requirements that exceed the previous year's quantities or percentage.
- Retroactive or "First Dollar" Rebates, i.e. rebates which apply not only to quantities of product purchased above a certain target level but also, once the target level is reached, apply retroactively to previous purchases especially where the retroactive effect applies for a relatively long period such as a year.
- Exponentially Increasing Discounts, i.e. discounts which increase exponentially when a customer reaches a certain target level of purchases, so inducing the customer to purchase all or most of its requirements from the dominant supplier.

A distributor's annual requirement of termite control products is 100,000 units. List price of the dominant supplier is € 10 per unit. Supplier offers that if the distributor buys more than 90,000 units in 2020 it will receive a 10 % rebate not just on units above the 90,000 target but also retroactively on all units purchased in 2020.

This could be considered an abusive, loyalty-inducing rebate as a rival supplier might not be able to effectively compete for the last 10,000 units required by the distributor because of the impact of the dominant supplier's retroactive rebate.

DO	*DON'T*
☑ Ensure that discounts and rebates are granted in a non-discriminatory way, i.e. that similar customers are not treated differently without objective justification. ☑ Ensure that all discounts and rebates are granted in a transparent way and are based on objective criteria, i.e. so that a customer can assess the terms and	☒ Do not grant discounts or rebates which are linked to maintenance of a fixed or recommended resale price. ☒ Do not grant discounts or rebates which have the object or effect of restricting within the EEA the territory into which or the kind of customer to whom products are sold.

conditions as well as the amount of any discount or rebate. ☑ Consult with Regional Counsel before offering any rebate or discount which includes loyalty-inducing elements.	☒ Do not grant discounts or rebates which result in a net sales price below cost without prior consultation with Regional Counsel. ☒ Do not grant discounts or rebates with tying or bundling effects without prior consultation with Regional Counsel.

3.4.5 Exclusive Dealing

In most jurisdictions, a dominant company may not exclude competitors by entering into exclusive arrangements with customers requiring that they purchase all or most of their requirements from the dominant company.

3.4.6 Refusal to Supply

In general, a supplier is free to decide whether to supply product to a customer. However, in the EU and some other jurisdictions, a dominant company may not cut off or reduce supplies to an existing customer without reasonable and fair justification, e.g. genuine shortage of supply or legitimate concerns regarding the customer's solvency.

DO	*DON'T*
☑ Discuss with Regional Counsel any claims by a potential new customer that our company is legally required to supply the customer due to an allegedly dominant position.	☒ Do not refuse to supply normal orders placed by an existing customer without previous consultation with Regional Counsel.

3.4.7 Abuse of Administrative / Regulatory Processes

Dominant companies have a special responsibility when dealing with regulatory (including patent) authorities to provide transparent information, to avoid misleading representations, to clarify ambiguity and to notify errors. In addition, it can be an abuse for a dominant company to use regulatory procedures for the sole purpose of excluding competition. Examples of practices which have been considered abusive by the courts include:

- providing false or misleading information to regulatory agencies in order to obtain or extend exclusivity in a market, e.g. through patent or data protection; and
- withdrawing product registrations in certain countries with the objective of hindering generic access to the relevant markets.

Company A applied for supplementary protection for its blockbuster drug on the basis that the drug had first been authorized for sale in Germany in 2010. In fact, the date of marketing authorization was 2009 although reimbursement approval was first granted in 2010. On the

basis of Company A's submission, its blockbuster was protected from generic competition until 2015; if the correct date had been submitted, protection would have expired in 2014.

Enforcers will consider whether Company A abused its dominant position to exclude generic competition for a period longer than that to which it would have been entitled had it submitted full and accurate data to the authorities.

DO	*DON'T*
☑ Consult with Regional Counsel before planning or implementing life cycle management or other strategies relating to products nearing end of patent life. ☑ Be careful to make full disclosure of relevant facts or legal theories when making submissions to the authorities in order to obtain or extend protection for products in a relevant or related market where Envu is dominant. ☑ Correct any innocent mistakes made in a submission to the authorities without delay and without waiting for the authorities to raise questions.	☒ Do not prepare or implement strategies designed solely to hinder generic competition. ☒ Do not mislead governmental or regulatory authorities, either through misstatements or through material omissions or lack of transparency.

3.4.8 Other Abuses

Other kinds of conduct by a dominant company which have been considered abusive by the courts in exceptional circumstances include:

- Predatory Design Changes, i.e. introduction or alteration of a product by a dominant company with the sole objective of making competitors' products incompatible and driving them from the market.
- Vexatious Litigation, i.e. the pursuit of obviously baseless litigation by a dominant company solely for the purpose of harassing a competitor.
- Abusive Acquisition or Registration of Patents, i.e. the exceptional case where a dominant company acquires key technology with the sole intent of limiting market entry by competitors.
- Disparagement of Competitors, i.e. concerted campaigns by a dominant company to disparage falsely a rival product, particularly a generic competitor.

3.5 Merger Control

In contrast to the aforementioned areas of antitrust law which focus on a specific arrangement or action, merger control aims at preserving fair competition on a structural level. It does so by subjecting mergers and acquisitions of undertakings to a formalized review by competition authorities. Normally, the transactions which are subject to merger control review are share or asset deals, i.e. a majority of the shares in a company or certain assets which provide a market position (intellectual property, customer lists, marketing authorizations etc.) are acquired. The review in most cases becomes mandatory regardless of whether a competition issue arises or not because most jurisdictions provide for turnover thresholds, the exceeding of which triggers the need to notify a transaction. The turnover is calculated on a global and consolidated basis, i.e. regardless of whether the turnover has anything to do with the markets affected. Hence, if any Envu subgroup wishes to acquire a company, the entire Envu group turnover is taken into account to verify notification requirements. On the other hand, if Envu wishes to sell a company or business, in most jurisdictions only the turnover attributed to such will be taken into account.

Once a notification has been made, the authority will review whether the activities of the merging parties overlap in specific markets or whether there is a real or possible vertical relationship among them. Should this be the case, the authority will assess whether the transaction will lead to a “significant impediment of effective competition”. It will most often find this to be the case where a dominant position of the merged company is created or reinforced. For this, the principles set out under Section 3.4 are employed. In case such a finding is made, the participating undertakings have the possibility to make adjustments to the transaction (divest certain affiliates or assets, license technology, etc.) to remove the authority’s concerns to obtain clearance. Only upon clearance by the authority may the transaction be completed. Moreover, if the merging companies are competitors, the principles set out under Section 3.2 fully apply prior to completion of the transaction.

4 Roles and Responsibilities

4.1 Employee

- Each Envu employee is accountable for his or her compliant behavior as regards antitrust.
- If an employee discovers any possible infringement of antitrust laws, he or she should immediately report the event to his or her supervisor or the responsible Regional Counsel.

4.2 Manager

- Each Envu manager is accountable to ensure that his or her organization conducts business activities in line with the antitrust requirements.
- Each Envu manager makes sure each employee in his or her organization knows and follows the principles of this Policy.

4.3 Regional Counsel

- Regional Counsel carries out the review and possible local adaptation of this Policy set out under Section 2.2.
- Regional Counsel advises Envu employees on any question arising from this Policy.

5 Implementation Measures & Training

The content of this Policy has to be communicated to all employees affected.

The local availability has to be ensured.

The translation into local language is recommended.

5.1 Functional Processes

Control measures must be implemented in order to ensure that the rules set out above are followed in day-to-day operations. These are especially Controls, Monitoring and Training solutions established within the Integrated Compliance Management System (ICM).

The Regional Counsels are responsible for the local implementation of this Policy and the Antitrust Functional Processes.

Locally, there can always be a decision on additional antitrust compliance measures specific for the given needs.

5.2 Training

All Envu employees who may be exposed to the risk of antitrust law infringements must complete a mandatory antitrust training to be aware of high-risk situations and obtain practical advice. Further, additional training might be obligatory based on an individual risk assessment and/or regarding globally and / or locally identified training needs. The list of employees to be trained is determined by Regional Counsels.

6 Definitions and Abbreviations

EEA	European Economic Area (28 member states of the European Union plus Norway, Iceland and Liechtenstein)
EU	European Union
Regional Counsel	Legal and Compliance members of the Envu Group Law, Patents and Compliance community
R&D	Research and Development
UK	United Kingdom

USA	United States of America

7 Change History

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