

# Competition Law Guidelines of the Geberit Group

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Dear employees,

Sustainability practised in all business areas is a fundamental cornerstone of Geberit's corporate culture. One of the characteristic elements of sustainable management is „Compliance“, meaning the comprehensive observance of applicable laws. For this reason, the Geberit Code of Conduct includes a clear commitment to fair competition. We strongly renounce any breaches of competition law, such as price-fixing or any anti-competitive practices.

To ensure that we correctly handle any competition law issues that may arise, it is essential to regularly raise awareness and train all employees who may be affected by these issues.

I am happy to provide you with this new version of our Competition Law Guidelines that will enable you to acquire the basic knowledge in a time-efficient manner and to refresh it whenever necessary.

Please note that these guidelines cover the most important problems but make no claim to be complete. For this reason the legal department must be involved in any competition law issues.

Geberit's main aim is the prevention of potential violations of competition law. Therefore please read these guidelines with particular care and apply the rules in your daily work.

A handwritten signature in black ink, appearing to read "C. Buhl".

Christian Buhl  
CEO

## 1 Why compliance is important

Failure to comply with competition laws could have the following serious consequences for Geberit and the employees involved.

- Severe damage to reputation and image of the company
- Extremely high fines for the company and the employees involved
- Imprisonment of responsible employees
- High third party damage claims of direct and indirect customers
- Nullity of affected contracts

## 2 Problem areas with practical relevance

### 2.1 Competition law prohibits:

**„Agreements between companies and coordinated practices which intend or merely result in the prevention, restriction or distortion of competition within the market.“**

as well as

**„The abuse of a dominant position“**

2.2 In competition law “substance supersedes form”. When making judgments under competition law the decisive factor is always what is purposed or effected by an agreement, not how the agreement is headlined or worded. Moreover, the sanction of practices in breach of competition law by the authorities requires nothing in writing in contracts or other documents. The mere action of companies or persons is entirely sufficient for a sanction.

2.3 The relevant problem areas can be grouped as follows and are described in detail by these guidelines:

- Horizontal restraints of competition (clause 3)
- Sharing of sensitive information (clause 4)
- Guidelines for meetings of trade associations (clause 5)
- Vertical restraints of competition (clause 6)
- Restricting internet sales (clause 7)
- Abuse of a dominant position (clause 8)
- Guidelines for dawn raids (clause 9)

## 3 Horizontal restraints of competition

As a rule, horizontal restraints of competition, i.e. restrictions based on agreements **between competitors**, are strictly prohibited. They are mercilessly prosecuted and punished by the competition authorities as so-called “**hard core cartels**”. For this reason the legal department must be involved right from the beginning in any discussion with competitors relating to a cooperation (including joint ventures), to avoid

any illegal agreements.

3.1 **DONT's:** Examples for prohibited horizontal restraints of competition:

3.1.1 **Price fixing:** Any agreement between competitors regarding prices or price components, in particular:

- purchase and sales prices, price increases or reductions, timing of price changes
- bonuses, rebates, conditions for delivery and payment
- exchange of any price relevant information (e.g. turnover numbers, raw material or commodity costs)

3.1.2 **Market sharing:** Any agreement between competitors for sharing markets by products, territory, type or size of customer or supplier, fixing of production, purchase and sales quotas.

3.1.3 **Collective boycotts** of specific market participants

3.1.4 **Assistance to a third parties cartel** (so called **“Hub and Spoke” Cartels**): Helping third parties, e.g. distribution partners, to coordinate practices with their competitors, e.g. to establish a specific price level by informing a wholesaler about the pricing strategy of the other(s).

Selling or purchasing cooperatives with competitors are not basically prohibited but very critical and **must in any case be checked in detail by the legal department.**

## 4 Sharing of sensitive information

Great caution is necessary when sharing market-related internal information with competitors because any coordinated practice (even unintended) is extremely problematic. This applies in particular for the cooperation within associations and the attendance at the respective meetings.

4.1 On the following subjects information must not be shared with competitors and under no circumstances there may be any coordinated practice:

- 4.1.1 Prices and conditions (see above)
- 4.1.2 Profit margins and costs
- 4.1.3 Production volumes and output limitations
- 4.1.4 Ongoing and planned activities in sales and marketing
- 4.1.5 Offers and sales areas
- 4.1.6 Information about suppliers and customers

4.2 There is no harm, however, in sharing information that is available to everybody by general (public) sources

4.3 Market information systems which can be used to deduce the abovementioned critical data of the individual competitors involved (so-called “identifying market information systems”) are prohibited.

## 5 Guidelines for meetings of trade associations

5.1 The membership of competitors in trade associations and other organisations as well as the participation in the respective association meetings is generally permitted. However, great caution is necessary as these meetings have been misused in the past as a platform for illegal agreements or the sharing of sensitive information. For this reason the following rules must be strictly observed:

**NO sharing of any sensitive information is allowed, not even „signalling“.**

5.2 Should there be any suggestion that information is to be shared at an association meeting regarding the prohibited subjects named above in clauses 3 and 4, you must act as follows:

- Promptly object hereto
- Leave the meeting, if the others do not follow your objection
- Ensure documentation of objection (and leaving) in minutes
- Inform superior / legal department immediately

### **PLEASE NOTE:**

You need to react as described above, even if you do not participate actively in the illegal conversation (but only listen) or if our products are not concerned at all by the shared sensitive information. Your very attendance at the meeting without any reaction can cause an investigation of the competition authorities.

## 6 Vertical restraints of competition

A more differentiated approach is necessary regarding the legal assessment in the case of vertical restraints of competition (agreements between market participants of different trade levels, e.g. manufacturers and customers or suppliers, which limit the freedom of action of at least one of the parties). The legal department should also be involved early in any such matters, except in cases, which are clearly not critical.

6.1 **DON'Ts:** Generally prohibited vertical agreements / practices

6.1.1 **Resale price maintenance:** Fixing, controlling or influencing the resale prices of distribution partners, e.g. in form of fixed or minimum resale prices, price ranges, threads, price monitoring systems or penalties like delaying or refusing deliveries.

6.1.2 **Restricting resale territories:** Prohibition for distribution partners to take orders from customers outside a defined territory; prohibition or sanction of cross border sales (so called “restriction of parallel trade”); prevention of cross-deliveries between distribution partners

6.1.3 **Restricting resale customers:** Prohibition or sanction of resale to specified groups of customers (e.g. DIY or internet retailers)

6.1.4 **Non-compete obligations:** Prohibition for distribution partners to sell products of other manufacturers that compete with our products (“exclusivity”) provided that our products have got a market share above 30 % or the term of the prohibition is exceeding five years

The agreements / practices mentioned above are not only illegal in form of an explicit prohibition or sanction but also in form of an incentive-system (e.g. bonus or rebate) for a respective behaviour of the distribution partners, i.e. not only the “stick” but also the

“carrot” is prohibited by competition law.

## 6.2 **DOs:** Permitted vertical agreements / practices

6.2.1 **Recommended retail prices:** No enforcement by sanctions or incentives allowed, clear declaration as „non-binding“ and „recommendation“ necessary!

6.2.2 **Maximum resale prices:** Determination of maximum resale prices for distribution partners.

6.2.3 **National marketing concepts of manufacturers:** Customer requests for direct supply can be referred to a national sales company of the Geberit group that is responsible for the territory in which the requesting customer has got its seat (exceptions possible for products with a dominant position, that are not part of the responsible company’s portfolio → complex legal situation: Please inform the legal department about this kind of cross-border supply requests).

6.2.4 **Non-compete obligations:** During the contractual term up to a maximum period of five years and provided that our affected products do not have a market share above 30 %.

6.2.5 **Direct supply only to wholesalers** (no retailers)

6.3 As regards the legality of other vertical agreements (e.g. quality requirements, rebates and bonuses, etc.) the market shares of the involved parties are crucial. If the market share of any party in the related product market is above 30 % (indication for dominant position), particular caution is necessary! If the market shares of the parties are below 10%, as a rule there is no relevant restraint of competition except in the cases listed in clause 6.1 above.

## 7 **Restricting internet sales**

The protection of internet sales is a clear priority of the competition authorities. From their point of view this distribution channel perfectly encourages free competition across national borders and - as a result - innovation and low prices for end customers. For this reason any attempt to restrict internet sales will be investigated and sanctioned very strictly.

7.1 **DON'Ts:** A manufacturer is not allowed to impose the following restrictions on its distribution partners:

7.1.1 Prohibition to resell the products via internet as well as the imposition of requirements for the resale of the products that have the same effect (factual exclusion of internet sales)

7.1.2 Limitation of the volume of internet sales or definition of a quota for online sales in relation to the total sales

7.1.3 **Dual pricing** for online or offline resale, i.e. different sales prices of the manufacturer for the same product, depending on whether the distribution partner resells the product online or offline

7.1.4 Prohibition to resell the products also via sales platforms of third parties (e.g. Amazon, eBay, etc.)

7.1.5 Discrimination or sanction of a wholesaler due to the fact that it supplies internet dealers

7.2 **DOs:** Permitted are under certain conditions only the following demands:

7.2.1 Obligation to run a brick and mortar store

7.2.2 Imposition of quality criteria for the online presentation of the products, if these criteria correspond to the criteria imposed for offline sales, e.g. quality of pictures, server response time, update intervals, appropriate presentation of the trademark, etc.

7.3 When talking about internet sales with distribution partners or third parties the right diction is essential. Refrain from any negative remarks regarding this distribution channel!

## 8 Abuse of a dominant position

A company has a dominant position in a specific market if its market share and / or other factors (e.g. financial power, market structure) allow it to act largely without regard to its competitors, customers and, ultimately, consumers. Market dominance itself is not illegal. It is only the abuse of a dominant position that is prohibited.

Market-dominating companies have a particular responsibility for ensuring free competition in the market they dominate. Some behavioural patterns that are permissible for non-dominant companies can constitute an abuse for dominant companies (and therefore be prohibited).

### 8.1 Delimitation of the market

The relevant market needs to be defined / delimited (1) along geographic lines and (2) with regard to the affected products.

8.1.1 The relevant geographical market is for most sanitary products the territory of the respective country, i.e. there are different national markets and not one European market.

8.1.2 The relevant product market comprises all products that - from the perspective of the end-customers in the country - are suitable for the same intended use / function and are therefore substitutable and in competition with one another. For our sanitary products the following definitions of relevant product markets are possible:

- Total market for toilet flushing systems, comprising concealed and exposed cisterns, irrespective of material (plastic and ceramic), if the different flushing systems are in competition with one another in the respective country
- Separate markets for concealed and exposed cisterns, if there exists no relevant competition between the different versions, e.g. because the concealed cistern is already state of the art in the respective country and the exposed version is used for renovation (or very specific tasks) only
- Total market for complete toilet solutions, comprising all kinds of flushing systems (concealed, exposed, ceramic, plastic), toilet bowls, seats and caps, if the different flushing systems / toilet versions are in competition with one another in the respective country **and** are sold predominantly in the form of bundles for complete toilet solutions.
- Market for ceramic sanitary ware (WCs, wash basins, bidets and urinals, each as separate or as total market)

- Market for water supply pipes (drinking water and heating), irrespective of material and joining technology
- Market for drainage pipes, irrespective of material and joining technology
- Market for shower toilets (seats and complete toilets)
- Market for bath tubs
- Market for shower enclosures

**PLEASE NOTE:**

The above list contains the most relevant market definitions but is not exhaustive. The correct delimitation of the relevant product market might be quite different in various countries and might also change over the years. Please seek advice from your legal department to assess the correct market definition.

8.2 Dominant position

The most important criteria for the assessment of a dominant position is the market share of the company in the respective market (primarily based on value and not on volume). The following rule of thumb applies:

- **Market share < 30 %:** generally uncritical (no dominance given)
- **Market share > 50 %:** dominance is generally given (presumption EU law)
- **Market share between 30 % and 50 %:** Market needs to be analysed in detail. Based on the market structure, in particular the market shares of competitors and customers, dominance could be given or not, e.g. according to German law there is a disputable presumption if the market share exceeds 40 %. **In such cases please seek advice from your legal department to assess whether or not your company is dominant in a specific market!**

8.3 Prohibited activities in case of a dominant position:

The following activities are considered to be an abuse of a dominant position and are therefore prohibited:

8.3.1 **Exploitation of customers / suppliers**

Enforcement of extremely inadequate / unfair prices or conditions (rather high demands)

8.3.2 **Discrimination of customers**

With regard to dominant products comparable customers must not be treated differently without an objectively justified reason. Example: Wholesalers A and B are quite similar regarding turnover and function. Geberit is supplying A. As far as dominant products are concerned, Geberit must not refuse a request for supply from B or supply B only on the basis of significantly worse sales terms without any objectively justified reason for this disparate treatment.

8.3.3 **Tying and bundling of products**

A dominant position for a specific product must not be used to support the turnover of another product, with regard to which no dominance is given, by way of selling the dominant product only in combination with the other (tying) or creating a package of both products that is sold significantly cheaper than the total price for the two individual products (bundling).

#### 8.3.4 **Obstruction of competitors**

With regard to dominant products any agreements or conditional rebates / bonuses for distribution partners (wholesalers, plumbers, retailers, etc.) that have a market foreclosure effect for competitors of Geberit, are prohibited. These are in particular:

- Non-competition clauses / exclusivity agreements (e.g.: the distribution partner is not entitled to sell any products that are in competition with the dominant products of Geberit)
- Exclusivity / loyalty rebates (or bonuses)
- Target rebates (or bonuses) for increased turnover, in particular with an individual and / or retroactive scale

#### **PLEASE NOTE:**

These rebates (or bonuses) are also prohibited if the allocation base is not only the turnover with the dominant products themselves but the total turnover with Geberit products or the turnover of a specific product division that comprises the dominant products.

## **9 Guidelines for dawn raids**

In case of a dawn raid by the competition authorities the following rules must be strictly observed:

- No physical resistance
- Always stay calm, accommodating and polite → Limited cooperation instead of confrontation
- Never try to destroy, hide or dispose documents
- No comment regarding the allegation
- Verify the scope of investigation allowed by the search warrant, i.e. which rooms are allowed to be searched and which individual documents the competition authority is searching for
- Notify immediately the company management, an external lawyer and / or the legal department
- Ensure permanent escort of all investigators by a Geberit employee
- There is no obligation to provide active assistance – do not guide the investigators or make comments without being asked, just follow the instructions of the investigators
- Answer questions regarding the allegation only in the presence of a lawyer
- Prepare minutes regarding any discussions with / questions of the investigators
- Request minutes regarding any seized documents and disputes
- Try to prevent the investigators taking documents with them that are exempted from seizure and insist that all disputed documents are sealed
- Make your own copies of all documents that are copied or seized by the investigators



## **10 Practical approach / contact person**

- 10.1 These guidelines cover the most important competition law issues but due to the large extent of this field of law make no claim to be complete.
- 10.2 For this reason the legal department must be involved in any competition law related issues, the sooner, the better!
- 10.3 Your contact person in the corporate legal department for competition law issues is:

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