# code of conduct
# annex – avoid anti-competitive conduct

## further explanation

Almost all countries in which Aalberts is active have competition laws (or antitrust or anti-cartel laws). In essence the core of these laws is always the same: companies are not allowed to share any form of confidential information with their competitors and distributors/wholesalers that compete with Aalberts on sales markets where we sell the same products or services. Of course, price-fixing between competitors or agreeing (even informally) with competitors to respect each other's customer groups or focus is clearly prohibited.

The cartel prohibition even goes much further. Providing a representative of a competitor with information on our current policy, our intended action or even recent decisions relating to the commercial policy is a violation of the competition laws.

It is irrelevant whether the information is "important" according to us or whether the competitor was aware of the information already. Even the "confirmation" that the information a competitor has about our commercial policy is correct, will constitute a serious violation of the competition rules around the world. Sometimes you receive information via customers about the actions of competitors. The competition authorities have ruled in some cases that sharing information about the commercial policy of competitors via customers infringes competition law.

It may occur in daily practice that you meet with competitors. Talking to competitors is always very risky and if you choose to do so, it is your responsibility that no sensitive information is exchanged. The only alternative would be to forbid any communication between employees of Aalberts and competitors regardless of the subject (even insofar as legally allowed). However, Aalberts does not want to impose such an extensive prohibition because we trust that our employees act responsibly. In any case, you have to make absolutely clear in a conversation that you refuse to disclose or receive sensitive information even though such an information exchange may appear tempting or even useful for business.

The fines for violations of the competition rules are enormous and they apply to both the companies concerned and the individuals infringing competition law. In Europe, fines imposed on companies may be up to 10% of last year's group sales. To take Germany as an example, individuals may be fined up to EUR 1 million. In some of the countries where we do business people can even go to jail for violations of competition law. This will typically concern violations which involved contacts with competitors.

Naturally, there are areas of competition law which are more nuanced, like: can we co-operate with this competitor in R&D? Or can we procure raw materials together? Or which information can we share with our distributors/wholesalers? Or can we ask for or provide exclusivity to a supplier or a distributor/customer? These are all questions which require a delicate legal and economic analysis. Please do not make any decisions on such issues without prior consultation with your manager so that legal advice can be obtained in advance. Another aspect of competition law concerns control of companies having a strong position on a given market. If a company has a very strong position on a market (quasi-monopoly or dominance) the commercial freedom is significantly restricted by some of the competition laws.

The competition laws applies to all our agreements and contacts with parties outside our own companies. There are certain hardcore restrictions in your dealings with them.. It is for example not allowed to impose fixed or minimum resale prices on distributors or wholesalers. They must always be free to set their own resale prices. You are allowed to use recommended retail prices as long as they are not binding. Also, it is important to understand that your distributors/wholesalers are competitors when you compete with them on the sales market where we sell the same products or services. In this situation, you are not allowed to exchange information relating to future prices and discounts or information about specific end-users. It is also not acceptable to share information relating to identified end users of the goods or services, unless this exchange is strictly necessary. This may only be done with explicit consent from your manager and the legal department.
Can we still exchange information with others? Yes, you can but only information that is directly related to the implementation and necessary to improve the production or distribution of the contract goods or service (e.g. technical and logistical info). If you are faced with this situation, make sure you contact your manager so that prior legal advice can be obtained.

## examples

**example 1:** A trade association meeting is taking place. The issues discussed there pertain to, among other things, the current certification procedures and legislative proposals relating to product standards.

During a coffee break you get into a conversation with employees of two competitors. The conversation turns to the current annual negotiations with an important wholesaler. The latter claims higher rebates, extension of credit and return of goods terms, reduction of the minimum purchase orders, increase of advertisement support and contribution for various marketing activities. The competitors tell you that they are faced with the same requests and that they will probably accept the requests relating to the marketing support but that they will definitely reject the other requests. Now they ask you how we will respond to the requests. You answer that we have not yet made a decision, but that you consider the envisaged strategy of your competitors to be right. You state that, in your opinion, it would be helpful if at least the other requests would be rejected.

This conversation constitutes a serious violation of competition law. The competition authorities presume that the information exchanged in this conversation have an influence on the negotiations with customers and thus on competition. Such presumption can hardly be rebutted in competition proceedings. In this context, the fact that the wholesaler may have a strong position on the wholesale market is of no relevance.

What should you do when a competitor (even a former colleague, friend or relative) provides you with commercial information about his company?

Tell them that you are not allowed to talk about wholesaler requests, the state of negotiations with wholesalers or about our negotiation strategy. It is however permissible to talk about end customers satisfaction with the wholesaler or about the opening of a new wholesale warehouse or the location of wholesale warehouses. As a rule of thumb you should keep in mind for any contact with competitors that you are not allowed to exchange information which, as a result, may prompt us or any competitor to adapt our/his business strategy, prices, product portfolio, production process etc. or at least to consider doing so.

**example 2:** You attend a meeting of an interest group. The interest group comprises various manufacturers of a market sector which markets a specific product type. The participants discuss what conclusions should be drawn from a jointly assigned product study. In the course of the discussions it becomes clear that several changes of the product and modifications of the manufacturing process will be required to comply with certain technical standards/norms.

During lunch, a manufacturer tells you that the raw material prices and the results of the study will lead to a price increase. He states that, in his opinion, marketing efforts should focus on the improved product characteristics. The meeting as such may be deemed legitimate but you must always keep in mind when having contact with competitors not to discuss any impermissible subjects. Anything going beyond the legitimate purpose of joint development and marketing of products (such as any information about the participants' own marketing activities, prices, markets or the exchange of information about production or purchase costs) is inadmissible. So, if the conversation is about a price increase in raw material and its effects on production costs and prices, you have to distance yourself from such discussion and make clear that you do not want to participate in such an information exchange. This also applies to other sensitive information relating to customers, turnover, sales figures, capacities, investments, innovations and technologies. It may at best be admissible to talk about overall sales or business developments in general which do not allow any conclusions to be drawn as to specific products or individual manufacturers.

**example 3:** You participate in a trade fair and present our products. An employee of a competitor visits your stand and introduces himself as an employee of the competitor. He says that he would like to learn more about product developments and asks about specific products exhibited at the stand. He wants to know prices, productions and development costs as well as the materials used. How should you react?

Do not disclose any information to that person other than that contained in the product brochures, price sheets, or other information already available at the stand or your company website. Information relating to market launch, production and development costs as well as know-how is highly sensitive business information. An exchange of this information constitutes a violation of competition law. Even if that person offers to disclose information about the competitor's product development etc., too, you are not allowed to provide him with such sensitive information.

## Q&A

**question 1:** I received confidential business information about a competitor. What should I do?

**answer 1:** It is decisive where the information comes from. If, for instance, the wholesaler voluntarily provides you with information about the terms and conditions of your competitor, such information is legitimate and you can also use it in your own price negotiations. If such information is however received from a competitor, the principles explained in the examples above apply. Generally, you are not allowed to use such information. Immediately speak to the sales management or your manager about the situation.

**question 2:** I am participating in a working group in which representatives of competitors also participate. I sometimes pick up relevant information at these events. What can I do with this information?

**answer 2:** The principles explained in the examples above apply. In personal conversations you must reject such an information exchange. You are not allowed to use such information. Immediately speak to the sales management or your manager about the situation.

**question 3:** We have a situation where we sell certain products to end users directly and we thus compete with our wholesalers on this market . A wholesaler requests that you send information related to future pricing plans and planned discounts. May I share such information?

**answer 3:** No, in this situation you are a competitor of your wholesaler. You are not allowed to share his information. You are also not allowed to receive similar information from your wholesaler. Immediately speak to your manager about the situation and liaise with the legal department.