



FIAT CHRYSLER AUTOMOBILES

## GUIDELINES ON COMPETITION

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## Foreword by Corporate General Counsel

Dear Colleagues,

As reflected in the FCA Code of Conduct, the FCA Group is committed to complying fully with all applicable laws.

One set of laws that apply to FCA are the laws on competition, sometimes called the antitrust laws. These laws impose on us obligations in how we interact with competitors, suppliers, dealers and other distributors and retail customers.

In the Guidelines on Competition, we provide an overview of the topic, emphasizing the types of conduct that require special attention.

You should know that violations of competition law are very serious, and are often accompanied by heavy fines and penalties and often by imprisonment for the individuals involved.

Each of us is responsible for complying with these laws. Please take a moment to review your obligations, and do not hesitate to contact the Legal Department if you have any questions.



Giorgio Fossati

**Corporate General Counsel**

# The Impact of Antitrust and Competition Law on FCA

Competition laws (often known as “antitrust” laws) exist in many countries throughout the world. They share the common objective of ensuring that competition is not artificially distorted or restricted. In most countries, competition laws regulate four types of conduct:

- agreements or arrangements among competitors;
- agreements or arrangements with customers or suppliers;
- conduct by companies in a dominant position; and
- mergers, acquisitions, joint ventures and other types of business combinations.

The international nature of FCA's businesses brings the Company within the ambit of the competition laws of numerous countries. In particular, the competition laws in the European Union, United States, Canada, Latin America, Australia and Japan and China are highly relevant.



# Sanctions for Infringement

The sanctions for infringing competition law can be extremely severe for instance in the EU and US:

## ■ Infringement of European Union competition law

- fines of up to 10% of pre-tax group-wide annual turnover. Within this limit, the EC Commission's Guidelines for setting fines in antitrust cases (issued in 2006) provide that fines may be based on up to 30% of the company's annual sales to which the infringement relates, multiplied by the number of years of participation in the infringement. Moreover, the Commission may add to the amount as calculated above an "entry fee", i.e., a sum equal to 15% to 25% of the yearly relevant sales, whatever the duration of the infringement. In other words, the mere fact that a company enters into a cartel, for example, could "cost" it at least 15 to 25% of its yearly turnover in the relevant product market;
- invalidity of any contract or arrangement that infringes the rules; and
- monetary damages in favour of third parties who have suffered loss as a result of the infringement.

In addition, national law in certain EU member states, such as Germany and the UK, provide for criminal sanctions, including imprisonment, for individuals involved in committing certain types of infringement of competition law.

## ■ Infringement of US antitrust law

- criminal liability for the Company and the individual employees and executives responsible, including imprisonment;
- large fines on the Company;
- large personal fines on individuals;
- civil liability for the Company to pay treble damages to parties; and
- injunctions against the Company that prohibit certain conduct or require certain actions.

# General Overview of Antitrust and Competition Law

The purpose of these guidelines is to increase awareness of how antitrust and competition law affects FCA. Of necessity, such guidance as is provided here is general. When confronted with a competition law issue or even the possibility of a competition law issue, the cardinal rule is that you should take legal advice in each and every instance before proceeding – i.e., before proceeding at all. This is particularly important given that competition law analysis is often driven by the specific facts of a given situation.

As such, it can be very dangerous to assume that conduct that was permissible in one product market or geographic context will also be permissible in a different one.

One generalization that can be made is that most competition law regimes draw a basic distinction between conduct that is prohibited outright, (known, for example, in the US as “per se violations”) and conduct which may or may not be lawful depending on the circumstances in which it occurs.

## Agreements Among Competitors

Agreements among competitors raise the most serious competition issues. These agreements may restrain competition, resulting in higher prices, lower output, and less innovation. Because of this potential, competition law enforcers pay special attention to these types of agreements, which fall into two categories:

- (1) hard core cartel activities, which are never permissible; and
- (2) agreements among competitors that may be permissible under certain circumstances.

**Hard-core cartel activities** are the most serious type of anti-competitive activities. They attract severe penalties and reputational damage irrespective of the size or market presence of their perpetrators. This category comprises agreements (written or verbal, formal or informal, binding or non-binding) and “understandings” (i.e., informal or “nod and wink” arrangements to behave in an agreed manner) with one or more competitors that either limit competition among the parties or coordinate action among the parties to exclude competition from others. This category includes agreements that:

- (1) set or influence the price, or any component of the price, at which one or more parties sell or offer to sell goods or services to customers (“price fixing”), and in certain circumstances, the mere disclosure among competitors of information relating to prices;
- (2) establish prices to be bid in a tender process (“bid rigging”);
- (3) restrict or seek to regulate output or services from one or more of the parties’ production facilities with a view to tightening supply in a target market (“production limitation”);

- (4) allocate customers to one or more of the parties, whether on the basis of the geographical location of the customer or other factors such as the size of that customer's demand or the use to which the customer intends to put the products being sold (so-called "market sharing" or "customer sharing");
- (5) allocate markets among the parties by, for instance, agreeing not to enter or compete in any markets ("market allocation agreements"); or
- (6) result in a concerted refusal to deal with any customer, supplier or competitor ("boycotts") that is not the result of an efficiency enhancing venture.

In the US, these offences are considered per se illegal and in most cases are prosecuted criminally by the Antitrust Division of the Department of Justice. In the EU, conduct of this type can be expected to lead to the imposition of fines of up to 10% of pre-tax worldwide company group turnover.

All of these hard-core infringements result from an agreement or "understanding" (even if informal) between two or more competitors. This being the case, great care is needed to ensure that any contact with our competitors neither constitutes, nor is recorded or referred to in such a manner as to suggest that it constitutes, any understanding or agreement of this type. Practical general guidelines on how to ensure that contact with competitors is carried out in a lawful manner are contained on pages 9-10 below.

It is essential that all FCA employees familiarize themselves with these guidelines.

**Some agreements among competitors may or may not be lawful** depending on: (a) the economic context in which it occurs; and (b) the market shares and market power possessed by its participants. In this category, the following types of arrangements raise competition law questions:

- (1) joint research and development with one or more existing competitors or with parties who reasonably could become competitors in the field to which the joint research and development relates;
- (2) information exchange arrangements with competitors;
- (3) joint ownership/operation of production facilities;
- (4) joint marketing of goods or services in collaboration with an existing competitor in the sale of those goods or services, or with parties who reasonably could become a seller of the relevant goods or services; and
- (5) exclusive licensing arrangements with competitors.

Sometimes these types of arrangements may be lawful. For example, if they lead to clear pro-competitive benefits and do not involve companies whose market position exceeds certain defined thresholds. But, whether or not these types of circumstances prevail is often a complex task which can be determined only with input, at an early stage, from competition law advisors. Again, the best action you can take when faced with issues of this nature is to refer immediately to the Legal Department and take no further action unless and until approved by the Legal Department.

## Agreements With Customers or Suppliers

Agreements with customers or suppliers that place restrictions on their ability to purchase from, or sell to, others, or that restrict the terms of those transactions, may or may not be lawful depending on: (a) the economic context in which the agreement occurs; and (b) the market shares and market power possessed by the parties to the agreement. Included in this category are the following types of agreements:

- (1) resale price maintenance, an agreement in which a customer agrees not to sell below or above a certain price (in some jurisdictions an agreement on a minimum resale price is per se unlawful);
- (2) exclusivity arrangements that require a customer to buy all or a significant proportion of their requirements for a particular product/service from FCA (this principle applies mutatis mutandis to licensing agreements pertaining to patents, software, know-how, and any other intellectual property rights);
- (3) exclusive supply arrangements that cover a sufficient portion of the supply market to make it difficult for competitors to obtain necessary inputs;
- (4) tying arrangements, which require customers to purchase a separate product or service in order to purchase a desired product or service;
- (5) refusing to continue to supply a customer in agreement with customer's competitors, especially in response to the customer's discounting practices; and
- (6) restricting customers as to how or where they may resell or use goods purchased from FCA.

As with certain types of agreements among competitors, sometimes these types of arrangements may be lawful. The best action you can take when faced with issues of this nature is to refer immediately to the Legal Department and take no further action unless and until approved by the Legal Department.

## Unilateral conduct/abuse of dominant market position

Unilateral conduct generally raises problems under competition law only when practised by a business in a dominant position. As a broad rule of thumb, the authorities generally view any market share of greater than 30% to indicate significant market power. This is not a hard and fast threshold. There are cases where businesses with much smaller market shares were determined to have market power. Any business that might be found to have market power must take special care. In effect, dominant companies are under a special legal duty to conduct their operations in ways that could not be regarded as an abuse of their position of power on the relevant market. In the EU, such businesses should not indulge in conduct aimed at – or which could be adjudged to be aimed at – eliminating any other competitor from the market.

# Practical Guidelines of Do's & Don'ts

The Guidelines that follow cover three areas:

- (a) General guidelines;
- (b) Guidelines on meetings with competitors; and
- (c) Guidelines regarding documents and public statements.

## (a) General Guidelines

1. Never discuss competitively sensitive matters with representatives of our competitors.  
The principal subjects that are deemed competitively sensitive are: past, present or future prices, price related terms (such as discounts, rebates or surcharges), bids or any matter relating to individual customers or to FCA's commercial strategy.
2. Never make agreements or have written or unwritten understandings with competitors (whether they are existing competitors or companies that might enter the relevant market) which (i) fix or stabilize prices or margins; (ii) reduce services or output, (iii) allocate customers or markets, (iv) boycott customers, suppliers or rivals; or (v) result in concerted action to disadvantage other rivals. Never have discussions that could be construed as giving rise to any such agreements or understandings.
3. It is contrary to these Guidelines to send any kind of price information to a competitor, or receive any kind of price information from a competitor. Where a competitor is also a customer or supplier of FCA, it is permissible to discuss and agree upon prices charged to or by FCA for the applicable products to be sold to, or purchased from, the competitor.
4. Remember the particular sensitivity attaching to meetings with competitors. Specific guidance on dealing with meetings with competitors is given on pages 11. Again, we expect all of you to familiarize yourselves with these.
5. Do not make telephone calls to competitors unless they relate to legitimate business needs, such as when FCA supplies products to, or purchases products from, the competitor. When you do make a call to, or receive a call from, a competitor for legitimate reasons, exercise care to limit the conversation to the legitimate matter and make a contemporaneous record of the purposes of the call.
6. Do not, without prior approval from the Legal Department, refuse to participate in a bid, or refuse to sell products to potential customers for any reason other than creditworthiness or unacceptability of proposed contract terms, profitability of the sale or capacity constraints that limit FCA's ability to fulfill the order.

7. When a price list from a competitor or other information about a competitor's past, present or future prices is on our file, it looks as though we have had inappropriate discussions with the competitor. If you receive a competitor's price list or other price information from a customer, dealer or someone other than the competitor itself, make a contemporaneous record of how and from whom the price list/ information was obtained. Never exchange information regarding prices orally with a competitor, regardless of the reason.
8. Specialist legal advice should be sought regarding agreements with customers that may influence or restrict the price at which the customer resells products. or otherwise restricts the terms of resale.
9. In product markets in which FCA has a significant market position (as a rule of thumb, a market share in excess of 30%) specialist legal advice should be taken before embarking upon the following:
  - (i) refusal to supply a given customer or category of customers for reasons that cannot be said to be objectively justified: for example, well-founded fears about the customer's creditworthiness or suspicion that the customer will on-sell the products to an area which is the subject of UN or national trading sanctions could constitute an objectively justified reasons to refuse to deal with the particular customer;
  - (ii) arrangements requiring customers to purchase all or a significant proportion of their requirements from FCA;
  - (iii) tying arrangements;
  - (iv) loyalty or bundled rebating which is so extensive as to generate a very low (or even no) margin on the incremental sales.

In addition to these sensitivities, if you believe that the business activity in question has, or potentially could have, a significant impact on a market you should avoid:

- (a) strategies aimed at eliminating competitors, whether by pricing at low levels or by any other means intended or likely to seriously reduce their ability to compete with FCA; and
- (b) price increases in excess of demonstrable increases in production cost or in the cost of delivering the product to the relevant customers.

## (b) Guidelines on Meetings with Competitors

Eight rules should ALWAYS be followed:

- (i) **Be sensitive at all times as to how your remarks might be interpreted.** Competition authorities presume that a meeting between two or more competitors will be either motivated by unlawful intent, or will lead to discussions of an inappropriate nature. We have the obligation to make clear from our written records, both prior to and after the meeting, that no inappropriate conduct took place. Be sensitive at all times as to how your remarks might be interpreted.
- (ii) **Agree to an agenda in advance.** Each meeting with one or more competitors should be the subject of a clear and lawful agenda agreed in advance among those participating at the meeting.
- (iii) **Avoid questionable contacts.** If there is ever any doubt as to the lawfulness of the purpose of a particular meeting, the meeting should be re scheduled upon your request waiting for clarification, or else not take place.
- (iv) **Create a record.** There should be an accurate and clear record of the meeting stating why it occurred, who initiated it and the contents of the discussions. This record should be agreed between all participants at the meeting.
- (v) **Leave inappropriate discussions.** In the event of a discussion at a meeting (even a trade association meeting) turning to inappropriate subjects, the FCA attendees should, as soon as the conversation strays into inappropriate areas, leave the meeting and ensure that their departure is recorded in whatever records are kept in relation to that meeting. The employees in question should make their own brief record stating when they left the meeting and should report the matter to the Legal Department.
- (vi) **Stop questionable conversations.** If, in the course of a meeting, the conversation touches on an area that you suspect might be inappropriate, do not be afraid to mention this fact and stop the conversation. If the other participants refuse to stop the discussion, follow rule (v) above – i.e., leave.
- (vii) **Have a lawyer present at sensitive meetings.** Large or particularly sensitive meetings may need to observe added precautions. It may even be appropriate for a competition law trained company lawyer to be present at such meetings so as to ensure that inappropriate discussions do not take place. Such a meeting may include, for instance, competitors meeting to discuss a potential joint venture.
- (viii) **Beware of Trade Associations.** Trade associations' may be joined only upon advice and approval by the Legal Department and Communications and when justified by a legitimate business purpose. FCA employees should not attend any "side meetings" or additional meetings held prior or subsequent to bona fide trade association meetings.

If in doubt as to any of the guidelines above, please consult the Legal Department before acting further.

### (c) Guidelines on Documents and Public Statements

Competition authorities attach great importance to written communications. Documentary evidence, including e-mail, seized by the competition authorities through exercise of their investigative powers often is the principal source of evidence in their prosecutions.

The following guidelines on document creation and public statements should be observed:

- (1) Remember that all written communications, including e-mails, are seizable by the competition authorities.
- (2) Do you need to write it down at all? If not, do not do so.
- (3) Whenever you write something down, remember that it could be made public one day. Would you be happy for the authorities to see what you have written? If not, you should not have written or discussed it.
- (4) Never use the term 'dominant' – whether written or spoken to describe any of our businesses and do not overstate the significance of our competitive position in any market. In any event you could be wrong.
- (5) Ensure that all drafts of documents are clearly labelled 'draft'.
- (6) If you think that it might be a sensitive area, do not commit it to paper or to e-mail.
- (7) Written communications with competitors are particularly sensitive. Every letter, fax or e-mail to a competitor (no matter how short) should have a clear and lawful purpose and be clearly written in unambiguous language. Similarly, every letter, fax or e-mail to a competitor should have the benefit of scrutiny and/or input from the Legal Department.
- (8) The purpose of all communications should be apparent on the face of the document or message. Ambiguous statements always should be avoided.
- (9) Do not use vocabulary that implies guilt such as 'Please destroy' or 'Delete after read'.
- (10) Do not question whether an activity is legal or illegal, e.g. 'this strategy could cause legal problems.'
- (11) Clearly state the source of any pricing information to which you may refer so as not to give the false impression that it came from discussions with a competitor.
- (12) Avoid referring to the activities of FCA and other major market players as if it were some kind of club.
- (13) Avoid power or domination vocabulary. For example, 'we now corner the market', 'we dominate the market', 'we have succeeded in disciplining the competition', 'our position will be unassailable'.
- (14) Avoid ambiguous buzzwords that lend themselves to suspicion of unlawful conduct such as 'orderly market', 'the rules of the game', 'responsible competitors', 'the usual practice' or 'price leadership'.

## Reporting Suspected Infringements

All employees of FCA have a duty to report promptly any actual or suspected infringements of antitrust and competition law by another employee or agent of the company. Such reports should be made to the Legal Department and can be given anonymously and without fear of reprisal. If any employee believes that infringing conduct has occurred, or is about to occur, and does not promptly report it, he or she may be subject to appropriate action including a possible dismissal. If an employee has any doubt as to the legality of a certain practice involving FCA, he or she should promptly contact the Legal Department.





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