

FAIRNESS IN BUSINESS DEALINGS

PROCEDURES AND POLICIES RELATING TO
THE BUSINESS CODE OF CONDUCT

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1 Context and purpose

This procedure underlines the main rules of competition law and sets the guidelines for business practices that are fair and compliant with antitrust or competition laws. It seeks to prevent the commission of infringements, in particular by negligence or ignorance of these rules.

Through antitrust / unfair practices, the group and its employees could incur serious penalties and bring about negative effects in terms of reputation. Breaching rules in competition law can also make agreements void.

Econocom forbids its Representatives¹ from engaging in activities that run counter to antitrust or competition laws and it expects a similar commitment from its business partners.

2 Scope of application

This policy applies to all of the Econocom group's Entities¹ and activities.

When laws in force in the countries where the Econocom group is based and/or carries out its activities stipulate provisions that are stricter than this procedure, it is the applicable legislation that prevails.

3 Definitions

Competition takes place on a **market**, delimited both at product level and in its geographical dimension. Generally, the latter includes all goods and/or services which a consumer considers interchangeable or substitutable because of their characteristics, prices and intended use.

Unfair and anti-competitive practices can take various forms.

Unfair competition: Making excessive use of your freedom to do business, in the framework of authorised competition, by following procedures that run counter to rules and customs and that cause a prejudice.

Agreement (or cartel): An agreement or activity orchestrated among several firms that aims to, or can by effect, prevent, restrict or distort the free play of competition in a market of products or services. These agreements can be between competitors (**horizontal agreement**) or between firms at different levels in the chain of production or distribution, for example an agreement between a supplier and a distributor (**vertical agreement**). The most serious form of agreement is the cartel. The latter is an often-secret agreement, that aims to eliminate competition in the market. It can take several forms : agreeing on sales prices, sharing out a market (on a geographical or client basis), or boycott of a new market entrant.

Abuse of a dominant position: Anti-competitive business practices that a dominant company may engage in in order to maintain or strengthen its market position. This can take several forms: excessive exclusivity clauses, predatory pricing, entry barriers, denigration, etc.

¹ As defined in procedure #100 Chapter introduction

Denigration: Discrediting a firm or deliberately damaging its image, in any way, in order to divert its clientele away from it. For example, using language that calls into question the quality of a competitor's goods or services, their level of performance, their qualifications, their business methods, etc.

4 The main types of anti-competitive practices and applicable rules

Competition is healthy and drives growth and innovation. But it is not always kept alive on its own and some firms can be tempted to stifle it.

4.1 Agreements and cartels

By principle, agreements or orchestrated practices that aim to, or can by effect, restrict competition are forbidden, regardless of the form of agreement or its geographical influence (local, national or otherwise).

Examples of forbidden practices:

- pricing agreement (to put prices up or to stop them decreasing);
- agreements in other competitive conditions (margin level, discount level, payment conditions, delivery fees, etc.);
- sharing out certain markets (geographically or in terms of products/services) or client bases;
- setting production quotas between members of an agreement;
- shared boycott of a newcomer (for example, putting pressure on suppliers to refuse to supply the newcomer);
- orchestrated applications to distort the results of a call for tender;
- setting up a cover tender¹;
- etc.

4.1.1 Particular case: agreements as part of calls for tender – subcontracting and temporary groupings of firms

As part of a call for tender, competitors are forbidden from exchanging information and/or coordinating their tenders in any way.

They are, however, allowed to partner with one another to respond to a call for tender together, but without breaching prohibitions on agreements and on exchanging sensitive information.

¹ A cover tender seeks to appear like real competition. A tender can be considered a cover tender when a candidate agrees to submit a tender that includes at least one of the following characteristics: (i) a tender that is deliberately higher than that of the firm that is supposed to win the contract, (ii) a tender that is too high to be accepted, (iii) a tender that is combined with special conditions that are certainly unacceptable to the buyer.

Use of subcontracting and temporary groupings or consortiums of firms is lawful, provided that it is justified and that it does not constitute a means to prevent, restrict or distort the free play of competition.

The reasons, whether technical, economic or otherwise, that justify use of subcontracting or groupings (complementary areas of expertise or resources, economy of resources, risk sharing, etc.) should then be shown.

4.2 Exchange of sensitive and confidential information

Exchanging information among and about competitors is not forbidden, but this can, in some cases, become unlawful.

It is forbidden to exchange commercially sensitive and/or strategic information (volumes, discounts, margins, strategy, market share, future prices, forthcoming business strategies, stock levels, etc.).

It is forbidden to incite or allow employees to share confidential information about competitors for whom they previously worked.

Information shared during formal or informal meetings organised by professional associations require particular vigilance. Indeed, a simple exchange of information through spoken conversation can amount to an agreement, in the same way that attending an anti-competitive meeting, even passively, can amount to support for a pact.

If strategic or confidential information is exchanged during a professional association's meeting, you should immediately leave the meeting and make sure your departure is mentioned in the meeting's minutes.

Being a member of a professional association or organisation can also be a cause of conflict of interest. Econocom expects each of its Representatives to respect the principles detailed on this matter in procedure #105 Conflicts of interest.

4.3 Abuse of a dominant position

Being in a dominant position is not in itself forbidden if this position can be justified by the free play of competition. However, **it is forbidden to abuse this position.**

Competition rules mainly forbid dominant firms¹ from practising the following:

- excessive or predatory pricing,
- refusal of services (or sales),
- offer of related services (or related sales),
- use of clauses with anti-competitive effects (cf. § 4.3.1),
- reductions, discounts and loyalty schemes
- discriminatory practices,
- excessive market concentration (cf. § 4.3.2),
- etc.

¹ In general, a firm's position is deemed dominant when the firm has a considerable market share in a market of services and/or products in the relevant geographical region (generally, a market share greater than 40%).

4.3.1 Particular case: clause with anti-competitive effects

Some clauses can have anti-competitive effects that can, in some cases, lead to them being void.

Examples of clauses requiring special vigilance:

- **exclusivity clause:** there is no prohibition in principle and validity is assessed case by case, taking into account the extent, duration, and the position of the parties in the market, etc.
- **competition clause:** this type of clause allows a supplier to match the most favourable tender from a rival supplier. It can suggest an agreement or abuse of a dominant position.
- **most-favoured-nation clause:** this type of clause allows a client to ask their supplier to ensure they are not treated less advantageously than any other one of their clients; in some circumstances it can have anti-competitive effects and be considered void.

To make sure you are not breaking competition rules, you should submit all these clauses to the Legal Department.

4.3.2 Particular case: market concentration – mergers, acquisitions, sales, etc.

To make sure that mergers and acquisitions of firms do not reduce competition, many countries have set up checks on market concentration. As soon as a project exceeds thresholds set by authorities, it requires prior approval from the competition regulator for the transaction to go ahead.

Any failure to notify the regulator of such a project can call into question the transaction and lead to a large fine being paid.

In the case of an acquisition, sale, merger or joint venture, the Legal Department and/or the M&A advisors should be consulted to check the applicable rules in competition law.

4.4 Denigration

Denigration is a forbidden form of behaviour, whether or not the revealed facts are true.

Denigrating a competitor, or highlighting their failings or mistakes, is an act of unfair competition, regardless of how this denigration is conveyed (in writing or orally) and regardless of the extent to which it is spread.

The Econocom group adopts a respectful approach towards its third parties (competitors, partners, clients, etc.). Any unfair practice like denigration is prohibited.

5 Rules of conduct

To engage in fair practices that comply with anti-trust or competition laws, each Representative¹ of Econocom should respect the following rules:

- to manage professional activities honestly and fairly;

¹ As defined in procedure #100 Chapter introduction

- to respect applicable anti-trust or competition laws, including the rules set forth in sections §4 and §5 of this procedure (e.g. to not take part in a pact on prices or competitive conditions, to not share out markets or activities among competitors, etc.);
- to make business decisions independently of other market players (suppliers, clients, distributors) and to refrain from any act that deprives a competitor of a supply source or business opportunities;
- to treat business partners fairly and to select them using objective criteria;
- to ensure that sensitive and/or confidential information is not exchanged (prices, margins, discounts, costs, etc.) with competitors;
 - to not seek to unlawfully gain confidential information about the market and/or competitors (to use information from public sources, to not incite new employees to share confidential information about competitors for whom they worked previously, etc.);
- to send to the Legal Department the exclusivity clauses and other clauses that could impact the free play of competition before signing any contract;
- to check the applicable rules of competition law with the Legal Department and/or the M&A team advisors in the case of transactions in acquisitions, sales, mergers or joint ventures.
- to not engage in deceitful or aggressive business practices:
 - to share authentic, unambiguous information that is not misleading or is not likely to mislead;
 - to promote Econocom's strengths and to not denigrate competitors or highlight their failings or mistakes;

The group's Ethics Committee should be immediately informed of any failure to respect this procedure via the whistle-blowing platform: <https://report.whistleb.com/fr/econocom>

If you have any doubts about a situation, or if you think Econocom is the victim of an unfair practice, ask for advice from your managers of the Legal Department.

5.2 Relations with competition regulators

It is imperative to **immediately inform the local / Group Legal Department of any exchange (spoken or written) with a competition regulator**, especially when it concerns the following matters:

- search,
- investigation,
- questionnaire,
- market concentration transactions (acquisitions, sales, etc.).

Requests from a competition regulator should be answered within the specified time period.

6 Penalties incurred if competition regulations are not respected

Failure to respect competition regulations not only damages Econocom's image and reputation, but can also lead to serious penalties both by the competition authorities and by the European courts.

There are many possible penalties:

- fines¹ or prison sentences;
- signed agreements being made void;
- temporary or definitive ban on taking part in calls for tender in public procurement;
- compensation;
- projects being interrupted, obstacles to acquiring assets;
- internal disciplinary penalties.

The simple fact of acting in good faith or not knowing about the applicable rules does not exempt anyone from the penalties.

¹ European Regulation 1/2003 of 16 December 2002 on the implementation of the competition rules provided for in Articles 81 and 82 of the Treaty (Articles 101 and 102 TFEU) Chapter VI, Article 23, 2° for each undertaking and association of undertakings participating in the infringement, the fine does not exceed 10 % of its total turnover in the previous financial year.