Competition law compliance guide

October, 2023

Veolia is committed

La plupart des pays dans lesquels Most of the countries in which our company operates have adopted laws and rules on free competition. These laws and rules contribute towards promoting vigorous but fair confrontation among firms working in the same sector of activity.

I attach the utmost importance to ensuring that all the business activities of the Group, **whose purpose is ecological transformation**, are carried out in strict compliance with these laws and regulations.

Insufficient knowledge of these laws and rules could expose Veolia, as well as the private individuals involved, to very serious risks. The consequences could damage the Group not only financially, but also in terms of image and reputation. This is the reason why Veolia expects all its employees to constantly ensure compliance with these rules and all the recommendations set forth in the Ethics Guide; this is the reason why I ask you, in addition to the full imple mentation of these laws and rules, to spread them and to facilitate their understanding as well as their systematic enforcement. In particular, it is necessary – and this is the purpose of this document – for each emplo- yee to seek to identify areas in which diffi- culties in terms of competition law may be encountered and, in such cases, to consult a direct superior and the company's legal department without hesitation.

Information and training programs offered by the company over the past years are therefore an important tool, helping to ensure that the principles of competition law are complied with by all the employees of Veolia.

Compliance with competition law provides an additional strength – alongside our creativity, our technical performance, our sales force and our flexibility in responding to client requirements – enabling us to continue in the future to deserve the trust of our customers and win new contracts.

Estelle Brachlianoff, Chief Executive Officer of Veolia

Introduction

Competition laws exist in most of the countries in which Veolia[1] operates.

The rules of competition law may vary from one country to another and fit within different legal systems, but they all aim to ensure that the behavior of the economic players on the market and the structure of the markets are such that there is efficient competition in the general interest of everybody.

Competition law infringements are in general (and in particular in the European Union and in North America) heavily sanctioned. There are many possible sanctions applying to corporation as well as natural person which commits such infringements. For corporations, sanctions can be fines, suspension or debarment from government contracts, as well as civil sanctions (invalidity of the agreements, damages, injunctions) in particular after collective actions. For individuals, criminal sanctions can be ordered (fines payable by the individuals or even imprisonment). The rules relating to criminal law are detailed for Veolia in the Guide *"to managing and minimizing criminal risk exposure in group operations"*.

[1] Veolia being referred to as all the entities that are linked to the Group.

Being condemned for violating competition laws can also be seriously harmful to the firm's reputation and image, notably through social networks.

In general, a given country's competition laws apply as soon as a transaction or practice has an effect on its territory. Thus, the managers and companies belonging to an international group may run risks of violating the competition laws of a country by virtue of an act or a transaction decided or conducted outside the said country.

The competition rules must not be seen solely as constraints; they can also apply in favor of our company by offering competitive opportunities and enabling access to new markets.

Veolia can itself be harmed by anti-competitive practices of its competitors, suppliers or clients and by denunciations. Therefore, it is important to know how to identify such situations in order to enable Veolia to assert its rights.

This Guide was elaborated by the Veolia Group and applies to each of its entities. Its main objective is to enable each employee of the group to understand the main rules of competition law in order to better identify the risks resulting from their breach, to avoid any negligence and to seize the opportunities we have just described. This Guide is not intended to replace the laws in force in each country where Veolia operates and specific variation to this Guide could be made locally.

Cartels: Agreements, concerted practices

Agreements and concerted practices between two or more competitors, the aim or the effect of which is a clear restriction of competition, are prohibited by competition law and very seriously sanctioned.

To sanction the violation of such prohibition, it is not at all necessary to establish the existence of a formal, written agreement: any competition authority or jurisdiction, based on the analysis of seized documents, may deduce the existence of a "cartel" from informal exchanges between the concerned parties (emails, phone conversation reports, etc.) and from the way in which the concerned parties behave in dealings with each other.

The main situations in which you may find yourselves are the following:

1.1/ Cartels between competitors

Agreements between competitors on prices, price lists, rebates or any other conditions of service provision (or products) constitute a particularly serious infringement to competition law.

The same applies to agreements according to which competitors share certain markets (geographically or services/products) or certain types of clients. It is therefore prohibited to agree (in a formal or informal way) on a sharing of geographic zone or that a certain activity or a specific type of client will be reserved – entirely or partly – to one or another operator.

1.2/ Bid rigging

In terms of government contracts or private contracts, competitors are forbidden to exchange information during the tender process and they are also forbidden from coordinating their bids in any way whatsoever.

Bids coordination may take very different forms, such as bids that are artificially less competitive (cover bids) or, unless explicit and clear justification, failure to submit a bid for a given bidding procedure.

Recourse to subcontracting or a momentary grouping of firms for a specific bid is allowed. However, the creation of a bidding group or the organization of subcontracting should not be used as a mean of market sharing (for instance: systematic subcontracting of a part of the tender to a firm that was not selected by the tenderer) or in order to

foreclose the market from competitors (for instance: clause of a grouping agreement limiting the access to the tender).

High vigilance is required when the grouping includes most of the market operators which may limit residual competition and facilitate market sharing.

In order to participate in bidding groups or recourse to subcontracting, firms must be able to show the technical, economic or other reasons which have led them to proceed in a given way[2] (complementarity of competence or resources, economy of means, risk sharing...).

[2] For tender process in France, exchanges of information regarding sub-contracting must be declared during the bidding, even if they did not reach their goal; If the establishment of a bidding group fails, the concerned undertakings are not allowed to submit separate offers, unless they did not exchange information which may affect their offers' independence (for instance, exchange of information on their prices) and they inform the contractor about such exchange.

1.3/ Exchanging commercially sensitive information between competitors, in particular when participating in the work of professional organizations or trade associations

Any exchange between competitors of commercially sensitive or confidential information, is prohibited; this includes prices, price lists, rebates or discounts, market shares, production or services (osales) volumes and values, production or services (or sales) forecasts.

An exchange of information is even more damaging when it covers future behavior than when it involves prices observed or services (or sales) carried out during a prior period.

Because competitors meet there to discuss issues within their economic sector, participating in the work of professional organizations or trade associations constitutes a major source of risk in the field of competition law. The risk stems not only from official meetings but also, and perhaps above all, from informal exchanges which may take place outside the official workshops.

You must therefore limit as much as you can your participation in professional organization or trade association working groups where you can find the main operators. You should furthermore refrain from participating in any informal exchanges with competitors' representatives which are organized outside the meetings of the trade association.

If confidential information protected by business secrecy are exchanged during the meeting of a trade association, you must immediately leave the meeting, making sure your departure and your disapproval are noted in the meeting's minutes.

1.4/ Collusion and "good understanding"

Partnerships between existing or potential competitors, with or without creation of a common subsidiary, aiming to conduct a common activity or project, often responding to an industrial tender, or for research in order to develop a new product or enter together on a new market, are often in favor of economic progress and consumer welfare. However, certain agreements, or certain of their clauses, can distort competition.

The legality of any partnership project between competitors requires a case by case assessment based on their market position, the goal of their agreement and their contractual clauses. This complex analysis should be done by the group legal department with the help of the project managers.

1.5/ Vertical agreements

Agreements or concerted practices between an operator and its supplier or clients (vertical relationships) can also constitute a competitive restriction under certain conditions.

Therefore such agreements should be assessed on a case by case basis and receive a prior approval.

- **Exclusivity clause**

In principle, Veolia is not prohibited from granting exclusivity to a service supplier (or goods retailer). However, it should be noted that, irrespective of the question of its compatibility with competition law, Veolia internal recommendations discourage granting exclusivity to suppliers.

With regard to competition law, exclusivity clauses are assessed on a case by case basis: they are valid if certain conditions are met (concerning in particular their scope, their duration which must be limited, and the positioning of the parties concerned in the relevant markets). This internal key procedure n° 13 "compliance with competition law" can be accessed from the legal intranet.

- **Competitiveness clause, also called "English" clause for purchasing**

Under these clauses, a supplier commits to align its offer on the most favorable one of a competing supplier.

These clauses increase market transparency (by communicating competing offers) or enable a supplier to oust its competitors and can therefore be indicators for cartels or abuse of a dominant position.

- **"The most favored client" clause**

This clause enables a client to ask his supplier for the benefit of any more favorable conditions that he could apply to other clients.

Under certain circumstances, this clause may have anti-competitive effects and be considered as void.

Abuse of dominant position

2.1/ Definition

The concept of "dominant position" does not necessarily mean that the firm in question is the only provider on the market, but indicates that in this market it has the power to control prices or to exclude competitors. Generally speaking, and even though the assessment criteria are multiple, the existence of a dominant position must be considered as soon as a corporation owns a market share above 40% of market of a services and/or goods market within a given geographical area.

Holding a dominant position is not forbidden in itself on condition that such position has been acquired and is maintained or improved upon exclusively by competing with other firms "on the merits", that is to say thanks to the quality of its products or services and thanks to better economic efficiency.

Nevertheless, holding a dominant position leads to there being a "particular responsibility" incumbent on the firms concerning fair competition in the markets in which this dominance is exercised as well as on neighboring markets.

Consequently, certain practices that are acceptable for non-dominant firms are prohibited for the dominant firm, as they are considered to entail the "abuse of a dominant position".

In certain market configurations (oligopoly/duopoly) several firms may together hold a "collective dominant position".

2.2/ Examples of practices which constitute abuses

As far as dominant firms are concerned, competition law prohibits the following practices: excessive or predatory pricing, refusal to provide services (or sales), related services (or sales), exclusivity imposed to suppliers or clients, or excessive priority right or matching on competitors' offer, most favored client clause (which enables a client to ask his supplier for the benefit of any most interesting conditions that he could apply to other clients), loyalty schemes, discriminatory practices, disparagement, etc.

Concentrations (mergers, acquisitions and joint-ventures, etc.)

Competition law not only controls the behavior of companies in the markets but also the transactions carried out by firms which affect the very structure of the markets: this is the question of "control of concentrations".

The aim of control of concentrations' rules is to preserve the market's competitive equilibrium by preventing the concentration of economic power creating or strengthening a dominant position which could significantly impede effective competition.

In most countries where control of concentrations exists, there is an obligation to give advance notification before the transaction is carried out when the foreseen concentration exceeds a certain threshold, under penalty of heavy fines. It is therefore imperative, in all cases, to consult the competition law legal department and to follow the Group internal procedure applicable to the management and the notification of concentration transactions. This internal key procedure n° 12 can be accessed on the legal intranet site.

State aid

The European Union has implemented regulations to control "State aids", that is to say any advantages granted by government entities, local government authorities, or any public entities or through public resources which might obstruct the opening of national markets within the European Union.

Any project of state aid must be notified before implementation to the European Commission by Member States.

State contributions for "public service compensation" (or other services of general economic interest) that are not excessive are not considered as State aid and, when their amount is decided within the framework of a free competition procedure, they are presumed to be adequate.

There are also regulations that authorize certain types of aids (for the protection of the environment, research...).

Illicit aids must be returned by the beneficiary firm. It is therefore necessary to be careful and to consult your legal department regarding any question on public aid.

Control of internal and external communication

It is imperative not only to comply with competition law, but also to take the necessary measures to avoid any situation that might erroneously lead others to suspect incorrect behavior.

In this respect, tight control over internal and external communication is essential.

It is a common error to think that oral communication cannot be traced or that totally informal or personal notes (handwritten notes in the margin of a document, post-it, agendas, e-mail, instant messages) are devoid of any possible legal consequences. Case law provides many examples of elements found in a firm's file that at first glance appear to be harmless. In this respect, stamping "personal", "confidential" or "secret" on a document is a recommended precaution, although it rarely prevents the document from being obtained during an investigation or called up during trial proceedings.

Informal or personal notes are likely to arouse the suspicion of an investigator when they briefly touch upon information that are sensitive from a competition law standpoint without explicitly indicating their sources. It is therefore essential to explicitly refer to the legitimacy of the information sources (other than competitors) and the use for which they are destined (improving the economic efficiency of the firm).

The same caution is required in the area of external communication so as not to erroneously arouse suspicions on the compliance of Veolia's actions with competition law. Special attention must be given when dealing with communications destined for financial markets.

It is necessary to consult the Group legal department for prior opinion on any sensitive communication.

It should also be noted that, within the European Union, any correspondence between lawyer and client is considered as confidential, within certain limits. This protection does not apply to communication between an internal lawyer and other persons within the firm or third parties.

Practical recommendations

To ensure that the rules of competition law are complied with and in order to avoid any risks of sanctions on the company or on individuals, generally speaking:

- You must avoid any contact with representatives from competing operators;
- In case of a meeting, you must assure yourself of the legitimacy of such meeting (association, unions, sub-contractor or grouping agreement for instance) and ensure that the conversation does not shift on other topics;
- You must prohibit any exchange of sensitive and/or confidential information;
- Consult your operational hierarchy and the Group legal department before any project which implies relationships with a competitor (sub-contracting, grouping, partnership) and in case of doubt on the legitimacy of a situation;
- Submit to the Group legal department any draft contract which includes exclusivity clauses (see internal key procedure n° 13 compliance with competition law, accessible on the legal intranet site), non-compete clauses, English clauses, rebates, or any condition possibly abusive.

So as not to arouse suspicions or to appear to be violating competition law (in particular in the event of an investigation) ensure tight control of the company's internal and external communications.

In case of acquisition or merger project, divestiture or creation of a joint venture, refer to the Group internal key procedure n° 12 for concentrations, which is available on the legal intranet.

To draw advantages from the opportunities offered to Veolia by competition law: always be aware that competition law also applies to competitors, clients and suppliers and that it may provide a way for Veolia to develop its activities or even to be compensated pursuant to a sanction decision, notably condemning dishonest suppliers, or benefit from the opening up of new markets.

Competition law Compliance program

To ensure the compliance with competition law by its employees and to prevent legal risks pertaining to competition rules, Veolia has established for many years an internal key procedure n° 13 for competition law compliance, which requires: the active involvement of all, in particular managers, the implementation of group procedures and recommendations, reinforced legal monitoring and deployment of training modules.

This program includes the organization of competition audits. Such audits, which are pedagogical, consist of (i) trainings in competition law given by the competition legal

department and specialized lawyers, both working closely and (ii) real-life situations during individual interviews between lawyers and certain employees.

The purpose of these audits is to enable Veolia to:

- Verify that employees comply with the rules set in this Guide;

- Identify the possible presence in professional files of any document which may reveal an infringement to the rules explained in this Guide.

Proven misconducts in breach of the rules set in this Guide could lead to disciplinary sanctions provided by the internal rules.

In compliance with data collecting and processing rules, employees are given a right to access, modify and correct the data which concerns them and were collected during the audits by contacting their Human resource department or their local Data protection officer (DPO), depending on the local applicable data protection laws.

For the company Veolia, the access right can be exercised by contacting:
access-right-group.dpo@veolia.com

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