Annex 4

Guidelines for the Conduct towards Competitors

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1 Objective and Scope of Application

The main objective of these Conduct Guidelines is to specify the principles described in the *Principles of Business Ethics.*

The "*Guidelines for the Conduct towards Competitors"* shall serve as binding guidance for all Chief Executives and employees of GKW Companies. They may also be made available to our business partners.

GKW Companies and its employees are committed to the principles of free and fair competition and adhere to anti-trust rules, which are valid in all countries where GKW executes business activities. GKW Companies stand out for their good prices, their performance, the quality and qualification of their services and products.

Treat your competitors correctly. Do not engage in collusive agreements. Any agreements with competitors and concerted activities among companies, which aim at, or lead to the limitation of competition, are prohibited.

Since it may be difficult to correctly assess certain practices within different situations, which occur in business dealings, and within the framework of applicable law, legal advice is to be considered in case of doubt.

There are, however, practices, which clearly represent a violation of competition and antitrust laws.

Prohibited practices include specially: concerted agreements on prices, proposals and sales conditions or the distribution of areas and clients. Neither is it allowed to exchange not-publically accessible, competition-relevant information between competitors.

Particular care has to be taken that apparently inoffensive meetings with competitors or their representatives cannot be interpreted as willingness to engage in collusive practices.

The below guidelines are intended to explain in detail the relevant facts, well aware, however, that it will not be possible to take into account all constellations, which may occur in the day-to-day business.

2 Principles

2.1 Exchange of Information

Secret, market relevant information, which is classified as confidential trade or business secrets, shall not be transmitted, neither directly nor indirectly, to competitors or be exchanged with competitors.

It is not allowed to exchange information with competitors on internal company affairs, such as prices, price components, profit margins, proposals, cost calculations, terms and conditions, com-

missions, utilisation of capacities, contractual provisions, clients, market shares, marketing and investment plans, business strategies and other confidential issues. Preparing a proposal with full knowledge of the competing bid, does already constitute a violation of competition laws.

The prohibition also applies to all other information that is classified as, or is to be recognised as confidential information and which allows to draw conclusions on the present or future market conduct of a competitor.

It is not allowed to accept information provided by non-competitors that has been obtained or transmitted by violating legal provisions.

Always avoid to create the impression that the principles of confidentiality and secrecy have been violated during the process of procuring information.

The purpose and the cause of business contacts with competitors shall be transparent and fixed in an agenda, if possible. As far as usual and necessary business contacts with competitors are concerned, special precautionary measures must be followed.

Never create the impression of participating in a „secret meeting“, which aims at exchanging market-relevant information or which may be interpreted as willingness to engage in competition limiting collusive agreements.

Never tolerate in your presence any collusive practices, even if you do not actively take part in these practices.

If, during a meeting with a competitor, the situation arises that, due to the membership in an inter-trade organisation, during trade fair events or a symposium, confidential information is exchanged or if other collusive practices are being initiated, immediately interrupt the conversation, clearly formulate your legal objections vis-à-vis your interlocutors, and leave the meeting. Immediately inform the Compliance Officer, the Company Management or the Director Operations on the incident in writing.

In contrast, market and competition related information, which has been obtained on the basis of publically accessible sources, such as publications of products and price lists of competing companies, publications of market research institutes, empirical surveys and surveys from auditing and management consulting companies on activities of competitors, or information provided by industry services may be collected and evaluated.

During getting contact with competitors, it will be unobjectionable to have an experience exchange on market development, for example, or to talk about other branch-specific subjects, which are outside individual control and influence.

2.2 Cooperations

Any deliberations with competitors on Joint Ventures, cooperation agreements and fusions may already influence free and fair competition. Since it may be difficult, in individual cases, to clearly differentiate between prohibited agreements and permitted collaboration, the Company Management or the Director Operations will have to be consulted (who, if required, will ask for the intervention of an external legal advisor), before these activities are being initiated.

2.3 Working in a competitor's company

Working as member of the management board, Managing Director, member of the supervisory board or counsellor in the company of a competitor of GKW Companies may conflict with anti-trust provisions. In these particular cases, the intervention of the Director Operations will be required.

2.4 Collusive Agreements

Any agreements concluded between competitors on present or future prices are forbidden. The same applies to agreements on conditions, which may indirectly influence prices or price components, such as discounts.

It is also prohibited to engage in defining maximum or minimum prices, to engage in agreements on the distribution of regions and to enter into agreements on "client protection" or for the protection of "domestic markets".

Not only formal arrangements are prohibited but also any concerted action achieved by informal talks or other agreements and by unilateral declarations, which aim at, or lead to the limitation of competition.

It is not absolutely necessary that competition is actually impeded; the simple fact that the agreement is qualified to potentially impede competition will be sufficient to be considered a collusive agreement.

2.5 Ambiguous Wording

Any ambiguous wording in oral statements made vis-à-vis competitors, which may be misinterpreted as anticompetitive and collusive agreements, will have to be avoided.

The same applies to correspondence with co-competitors, clients and business partners, but also to documents, notes, e-mail correspondence, etc. within the company, which relate to contacts with competitors.

2.6 Client Protection Clauses

Agreements with cooperation partners and sub-contractors, which include client-protection clauses, may be legally permissible. These contracts will have to be submitted to the Company Management or to the Director Operations prior to their signing.

2.7 Submission of Concerted Bids

Concerted, i.e. collusive agreements may also be relevant as to criminal law implication.

In Germany, for example, and pursuant to § 298 StGB (German Criminal Code), concerted bids, in which the tender organiser procures proposals for the purchase of goods or commercial services, will be sanctioned as collusive tendering. According to this legal provision, punishable acts are already committed as soon as bidders submit concerted bids in order to influence the result of the tendering procedure by submitting one or several manipulated proposals so that the decision of the tender organiser is lead into a certain direction.

Not all competitors need to engage in this collusive bidding; it is sufficient if only two bidders enter into anticompetitive agreements or if there is a collusive agreement between one bidder and the tender organiser.

Typical scenarios of collusive agreements according to § 298 StGB may refer to the fact that a competitor abstains from participating in the tender procedure.

It is also prohibited to submit a non bona fide proposal, i.e. a so called sham offer, with excessively high prices, so that the proposal submitted by one particular competitor turns out to be the most economic proposal.

The same applies to the submission of intentionally incomplete or incorrect proposals, which are submitted with the aim that these proposals are not being accepted and disqualified.

In addition, it is prohibited to grant the reimbursement of proposals costs to the bidder who is not awarded the contract or who will not be involved in the project execution process.

Non-binding queries addressed to co-competitors to know whether or not the proposal has been submitted or its submission is seriously intended, do not represent a binding agreement in the sense of § 298 StGB. These queries have to be avoided, however, in order not to risk the initiation of investigation procedures by prosecution authorities on suspicion of collusive agreements.

The prohibition of collusive agreements applies to public sector tender procedures as well as to comparable procedures of private sector companies and private individuals.

It does not matter, whether or not the proposal, which has been “favoured” by the parties involved in the collusive agreement, is finally awarded the contract. The mere submission of a proposal based on collusive agreements represents a criminal offence in the sense of § 298 StGB.

2.8 Foreign Tender Organisers

Even if a tender organiser is domiciled abroad, it will be a sanctionable offence to dispatch the manipulated proposal in Germany.

Concerted bids, which have been submitted abroad and are sent to a foreign tender organiser, will be prosecuted only if the act is considered a punishable offence in the relevant country.

2.9 Bidding Consortium

Undisclosed cooperation between several competitors, which are constituted in the form of a bidding consortium or joint venture for the submission of a common proposal, are generally permitted. Joint ventures and/or bidding consortiums have to be treated as single bidders.

Since the establishment of such a cooperation may represent – in exceptional cases – a collusive agreement, the Director Operations should be consulted in case of doubt before contacting other competitors.

2.10 Parallel Participation

Incompatible with competition laws is the submission of two competing proposals by one bidding company - as single company bid and, at the same time, it its capacity as a member of a bidding consortium.

Neither will it be allowed to submit proposals by two companies, which have the same Managing Director or which are in any other proposal-relevant aspect personally linked. The same applies to the parallel participation of two bidders in a tendering procedure if the two bidders belong to one company group.

It is, however, allowed to enter into a group agreement between the holding company and the subsidiary on the restriction of competition between these two companies.

The autonomous adjustment to the competitive practices of one competitor will not represent a collusive act.