

Competition Policy

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0. VERSION CONTROL

Version	Date	Amendments
01	23 February 2022	Initial version. Approved by the Board of Directors.



1. INTRODUCTION

The FCC Group's Code of Ethics and Conduct reflects the Group's commitment to the rules and principles of free competition in the sectors and markets where it operates.

This priority commitment is compatible with our strategic interests, one that requires the FCC Group to have a corporate policy on compliance with competition legislation.

This document ("**Competition Policy**" or "**Policy**") has been designed as an effective instrument to ensure that the FCC Group's activities are fully aligned with the pertinent legislation on competition.

2. SCOPE OF APPLICATION

All companies in the FCC Group, including their management team and employees, must apply this Policy.

Specifically, the commercial, business development, strategic planning and control, bidding and purchasing departments must be particularly sensitive to these rules in the exercise of their activity, ensuring compliance with them, especially by those who have contact with competitors, customers or suppliers.

3. PURPOSE

The Competition Policy pursues the following objectives:

- Outline the basic principles of competition law with which the management team and all employees of the FCC Group should be familiar; and
- Facilitate FCC Group companies, their management teams and employees with guidelines for action to forestall violations of competition legislation.

This Policy is part of the FCC Group's Compliance Model and must be considered together with the rest of the policies and procedures applicable to the companies that make up the Group.

The FCC Group's Code of Ethics and Conduct is the framework regulation that establishes the mandatory guidelines for conduct in the ethical, social and environmental spheres. The Competition Policy furthers the Group's express commitment, contained in its Code of Ethics and Conduct, to abide by free competition and good market practices.

4. LEGAL FRAMEWORK

4.1 Legislation

Competition law seeks to guarantee the proper functioning of markets by ensuring that all economic operators decide their strategy and behaviour in the market autonomously and independently.

The rules applicable in the field of competition law are similar in most of the countries where the FCC Group operates, as they are based on the same principles.

In particular, the following conduct is prohibited:

- Unfair agreements between undertakings which have as their object or effect the restriction of competition.
- Abuse of a dominant market position.

4.2 Consequences

Violation of competition law can have serious consequences for both Group companies and their employees.

Consequences for the companies in the Group:

- **High fines:** a violation of competition law may be punishable by a fine of up to 10% of the group's total turnover.
- **Prohibition from contracting with the public administration:** a finding of a serious competition violation can lead to a ban on contracting with the public administration for several years.
- **Claims for damages:** a competition violation may harm customers, competitors, suppliers or public administrations. Those harmed by an anti-competitive practice can claim compensation for the damage caused. The amount of damages claims can be even higher than the fine that can be imposed by the competition authorities.
- **Nullity of the agreements:** agreements contrary to competition law are void and not binding.
- **Reputational damage:** the decisions of the competition authorities are public and have a significant media impact. The sanctioning of a competition violation or even the mere opening of a disciplinary case damages the image of the company and the Group. This reputational damage can also affect the procurement of works or services, lead to the loss of potential investors or the early termination of contracts.

Consequences for the Group's employees:

- **Personal fines:** the management or persons who take decisions or act on behalf of the undertaking in breach of competition law may also be individually sanctioned by the competition authorities.
- **Damage to personal reputation:** personal fines imposed by the competition authorities are also public and have repercussions in the press. Involvement in a competition violation impairs the reputation of the person involved, professionally and even personally.
- **Occupational liability:** participation in anti-competitive behaviour by an employee of the FCC Group will result in disciplinary action up to and including dismissal.
- **Possible criminal liability:** Some countries provide for criminal consequences for persons who participate in a competition law violation.

5. PRINCIPLES OF BEHAVIOUR IN CONTACTS OR RELATIONS WITH COMPETITORS

Any agreement, understanding or cooperation with a competitor that has the object or effect, actual or potential, of restricting competition (e.g. an agreement on prices or market sharing) constitutes a very serious violation of competition law.

The concept of "agreement" is very broad. There is no need for a written agreement, the existence of an "understanding" (even if tacit) between competitors being sufficient.

5.1. Anti-competitive agreements

5.1.1. Banned practices

The following agreements with competitors are strictly prohibited, even if they are not ultimately implemented, as they constitute a very serious violation of competition law:

- **Coordination of commercial or strategic policy in the market** with competitors, except in the framework of co-operation agreements that are justified from a competition perspective.
- **Bid-rigging or collusion**, e.g. by coordinating bids with competitors, aligning bidding terms, agreeing not to bid or to submit artificially high or low bids, fixing compensation to unsuccessful bidders, etc.
- **Sharing of commercially sensitive information** with competitors, including the mere receipt or provision of information (e.g. information on prices, costs, commercial or service conditions, supply of suppliers or bidding for tenders).
- **Allocations of customers or territories** with competitors.

- **Agreements on sales volumes or market shares.**
- **Agreements limiting production.**

5.1.2. Rules of engagement

- If there is a contact with a competitor that constitutes a competition violation, the contact should be terminated by stating in writing (e.g. by e-mail) that it is improper and indicating that it should not be repeated.
- Pay particular attention to the vocabulary used in verbal or written communications with competitors. In particular, expressions that could be misinterpreted and mislead a competition authority into believing that anti-competitive conduct may have taken place should be avoided.

5.2. Sharing information

5.2.1. Banned practices

Competition law prohibits exchanges of commercially sensitive information between competitors because they reduce uncertainty about their current or future market behaviour.

Such exchanges of information are prohibited whether they take place directly between competitors or indirectly (through third parties). The medium used is irrelevant (even if it occurs in a conversation, an e-mail or an instant messaging application).

It is also prohibited to demand from customers or suppliers information about specific commercial conditions offered by competitors.

- **What information is commercially sensitive?**

The confidentiality of information from a competition perspective depends on the specific characteristics of the market, strategic nature of the data, the frequency of the information sharing, and also the scope and age of the information exchanged.

Any sharing of information between competitors that reduces uncertainty as to the commercial or strategic behaviour of undertakings in the market constitutes a competition violation.

Increased risk	Less risk
Information on current or future behaviour	Historical information
Information on commercial strategy	Public information
Individualised information	Aggregate information
In a concentrated market	In a slightly concentrated market

5.2.2. Rules of engagement

- If commercially sensitive information is received from a competitor, it must be recorded in writing (e.g. by e-mail) that the communication is inappropriate because it violates competition law.

- If we receive commercially sensitive information about a competitor (e.g. prices), even from lawful sources (such as in a negotiation with a customer), the source and date should be indicated in the internal document in order to be able to prove, if necessary, that it has not been received from a competitor.

5.3. Sector associations

5.3.1. Banned practices

Contacts with competitors are often made within the framework of industry associations. Accordingly, extreme care must be taken to avoid a competition violation. In particular, the following practices are strictly prohibited:

- Coordination with competitors on commercial or strategic policy in the market.
- Sharing of commercially sensitive information.
- Class action suits against companies that are not members of the association.

5.3.2. Rules of engagement

- Mere attendance or presence at a meeting where an anti-competitive practice takes place may be considered by competition authorities as participation in anti-competitive conduct.
- If possible, the agenda should be requested in advance of the meeting and it should be checked that no exchange of commercially sensitive information or any agreement that could be considered anti-competitive is planned (see section 5.1).
- It is advisable to ask for minutes of meetings attended by competitors and to obtain a copy of the minutes.

5.4. Business cooperation with competitors

5.4.1. Justification

Cooperation agreements between competitors (alliances, consortia, *joint ventures*, etc.) entail a risk of infringement of competition law and caution should be exercised when they are concluded.

Cooperation agreements between competitors, such as temporary consortia or joint ventures, are fully justified when there is an objective need for companies to join forces in order to carry out a project or participate in a tender, due to a lack of sufficient technical, professional, economic, organisational or operational capacity. They may also be justified where it is unreasonable or less attractive to go it alone because the same economic efficiencies, operational advantages or financial risks cannot be achieved.

Situations in which the formation of a temporary consortium is always anti-competitive:

- When the purpose of the temporary consortium (joint venture) is to avoid competition between the companies in that consortium.
- When the temporary consortium or joint venture is formed to alter or manipulate a tender (e.g. by determining the winning bid, avoiding the qualification of low bids, etc.).

Situations in which caution should be exercised when forming a temporary consortium (joint venture):

- When any of the companies that form part of the joint venture has in the past bid alone for similar tenders and has been awarded the contract. In this case, it is advisable to record in the preparatory documents of the temporary consortium/joint venture (e.g. memoranda, *MOUs*, etc.) the specific circumstances of the company or the market which justify the need to bid jointly with other companies.
- When any of the companies that form part of the temporary consortium/joint venture has the required technical, professional and economic capacity and/or the availability of material resources and personnel necessary to compete alone.
- When the company goes individually to the tender and subcontracts the execution to competitors who could have bid for the tender.

5.4.2. Rules of engagement

- There must be documentation that the cooperation is justified in order to be able to prove, if necessary, that it does not serve an anti-competitive purpose. Accordingly, a **memorandum or report** must be prepared justifying the collaboration on the grounds of **(i) lack of technical capacity or availability of resources** (impossibility of competing alone) or **(ii) the economic or operational reasonableness or efficiency of** entering into a temporary consortium/joint venture (e.g. financial risk, ensuring a profitability margin or loss limit, operational capacity or the desirability of having the knowledge or experience of a local partner, etc.).
- Precautions should be taken in contacts with competitors prior to the formation of a temporary consortium/joint venture, and any exchange of information outside the joint venture should be avoided.
- Avoid entering global consortia/joint venture agreements or agreements covering more than one project, and each agreement to form one such grouping must refer to specific works or projects.
- The participation of the companies in a temporary consortium/joint venture must be maintained only for the duration of the project or work for which it was formed, except in exceptional and justified situations.

6. ENGAGEMENTS IN THE FCC GROUP

The management team and employees of the FCC Group must be aware of and observe competition-specific legislation. Therefore, access to training materials and specific advice will be provided to ensure a culture of compliance with competition law.

In this regard, the FCC Group undertakes to provide its personnel with the appropriate tools to carry out their work without violating competition laws and regulations. In addition, each business area or subsidiary of the Group may develop additional specific actions based on its degree of exposure to potential violations.

In general, the following lines of engagement will be implemented throughout the FCC Group:

- **Training:** knowledge and awareness of competition-related matters in the FCC Group is essential to limit exposure to the risk of violations. Therefore, a regular training programme will be implemented, including training materials and conduct guidelines.
- **Advice:** individuals responsible for regulatory compliance and the legal advice for each business area or subsidiary of the FCC Group will resolve any doubts or queries that may arise regarding compliance with this Policy and with competition law.
- **Whistleblowing Channel:** any potential anti-competitive behaviour/conduct in the FCC Group should be reported through the Whistleblowing Channel, with guaranteed anonymity.
- **Detection:** the businesses of the FCC Group will conduct controls of their business activities to detect potential violations.

The degree of implementation of these instructions will be periodically assessed in order to implement additional actions, if necessary.

In addition, specific procedures may be laid down for handling certain situations which may entail a higher risk of exposure to competition infringements, particularly regarding:

- **Sector associations:** creation of a register identifying sector associations or professional forums in which they participate, including a review of memberships to such entities.
- **Business cooperation:** any project involving business cooperation with competitors (consortia, commercial agreements, joint ventures, etc.) must include prior justification for such cooperation. In particular, a memorandum or report including a technical and economic appraisal must be drawn up for internal authorisation.
- **Commercial distribution agreements:** business areas or subsidiaries of the FCC Group that enter into distribution agreements shall pay special attention to prevent specific violations such as resale price fixing, allocation of final sales territories or exclusive distribution agreements that may restrict competition (where the market share exceeds 30% or the duration of the agreement exceeds 5 years).
- **Dominant position:** dominant undertakings must act in the market to prevent abuse of a dominant position by avoiding unilateral actions that could be qualified as abusive. Accordingly, the FCC Group will periodically check its position or market power in markets

where it operates to preclude abusive conduct that could lead to the exclusion of competitors (such as predation, loyalty discounts, product tying, etc.) or abusive exploitation of customers (such as abusive prices, discrimination or refusal to supply).

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