



## F&L COMPETITION LAW COMPLIANCE POLICY

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### Introduction – Respect Competition laws

The European Freight and Logistics Leaders Forum ASBL (“F&L”) creates awareness amongst the F&L staff, the F&L members and the participants to F&L events about the obligation and importance of competition law compliance in all F&L-related events.

All F&L staff, all F&L members and all participants and speakers at F&L events shall, at all times, behave compliant with the Articles 101 and 102 of the Treaty on the Functioning of the European Union (“TFEU”), as transposed in national laws by the EU Member States:

#### **Article 101 TFEU: Prohibition of cartel behaviour**

*“1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*

- a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
- b) limit or control production, markets, technical development, or investment;*
- c) share markets or sources of supply;*
- d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

*2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.*

*3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:*

- any agreement or category of agreements between undertakings,*
- any decision or category of decisions by associations of undertakings,*
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*



- i. impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;*
- ii. afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.”*

**Article 102 TFEU: Dominant undertakings are not allowed to abuse their dominant position**

*“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.*

*Such abuse may, in particular, consist in:*

- a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- b) limiting production, markets or technical development to the prejudice of consumers;*
- c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”*

In addition, no abusive behaviour of any economic dependant relationship can be tolerated. Several EU Member States have adopted legislative instruments in this regard, and those rules must also be respected at all times.

To ensure compliance with these fundamental rules, F&L insists to strictly honour the codes of conduct set out below.

**Code of conduct to be respected for contacts with competitors**

1. Do not discuss with any actual or potential competitor about any topics that may have a restrictive or distortive effect on competition within the meaning of Article 101 TFEU.
2. In particular, refrain from discussing with any actual or potential competitor about any of the following:
  - prices, price policy, sales conditions;
  - credit facilities or billing policy;
  - company profits or profit margins;
  - costs (structure);
  - market shares;
  - (intended) participation, or nonparticipation to tender procedures;
  - (intended) refusal to enter into an agreement with certain suppliers;
3. Do not collude with competitors and avoid at all times the impression that there may be collusion with competitors.



4. Do not gather any price information of competitors directly from the competitors in question.
5. Do not try to circumvent any of the above by any so-called 'signalling' activities (e.g. presentations, etc.)
6. Should you opine that any of the above points occurs, distance yourself in a clear manner by leaving the meeting in question immediately and have this recorded. Immediately inform the General Secretary of F&L.

<b>Code of conduct to be respected for unilateral conduct</b>
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1. Do not pose any activity that could be qualified as a form of abuse within the meaning of Article 102 TFEU and/or that could be qualified as a form of abuse of an economic dependent relationship;
2. Do not signal any commercially sensitive information, such as e.g. the information listed under point (2) above;
3. In particular, for dominant undertakings, never pose any behaviour that could be interpreted as an attempt to:
  - Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions. This form of abuse usually captures the so-called exploitative abuses<sup>1</sup>, which cause direct harm to consumers, such as for example excessive pricing behaviour by dominant undertakings;
  - Limiting production, markets, or technical development to the prejudice of consumers. This usually captures exclusionary abuses<sup>2</sup>, which cause harm to the competitive process and ultimately to the consumers, such as for example predatory pricing, refusal to deal and exclusionary excessive and discriminatory pricing practices;
  - Applying dissimilar conditions to equivalent transactions (or similar conditions to non-equivalent/different situations) with other trading parties, thereby placing them at a competitive disadvantage. This behaviour captures discriminatory pricing as a type of abuse;
  - Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
4. Should you opine that any of the above points occurs, distance yourself in a clear manner by leaving the meeting in question immediately and have this recorded. Immediately inform the General Secretary of F&L.

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<sup>1</sup> Exploitative abuses: where the dominant undertaking abuses its market power by lowering capacity and/or degrading quality of service and increasing the price of its products above the competitive level to the detriment of customers. Examples of this kind of abuse include the charging of excessive or predatory prices or the application of discriminatory prices and rebates.

<sup>2</sup> Exclusionary abuses: which aim to foreclose competitors from the market. Examples of this kind of abuse include the refusal to supply and exclusive dealing agreements.



### Questions

For questions relating hereto, please contact the General Secretary of F&L.

For technical legal questions on competition law, please seek legal advice with specialist counsel.