

NOVAFIELD Competition Law Guidelines

Novafield is a private limited company founded by European agricultural companies under German law with its registered office in Münster/Westphalia, Germany. The Novafield shareholders wish to pool certain economic and environmental know-how at European level in order to meet national and European regulatory requirements to lessen the impact of the practices of agricultural producers on water and air quality, biodiversity and health. The Novafield shareholders aim, in particular,

- to identify the best solutions to be offered to agricultural producers in each agricultural context;
- to assess by means of field tests the value for agricultural producers of the solutions currently on the market in a new context and to assess new solutions including new or existing active ingredients which suppliers wish to put on the market;
- to determine the optimal positioning for products in the farming production programmes offered to agricultural producers;
- to promote agronomic practices and solutions allowing agricultural producers to achieve sustainable technical and environmental performance;
- on account of their closeness to agricultural producer clients or interested parties, to carry out marketing studies;
- to build on the technical, environmental and agronomic references acquired to roll out information campaigns aimed at various stakeholders and
- to develop support decision tools.

In order to promote Novafield shareholders' purchasing position on the European or even global purchasing markets Novafield aims

- to negotiate refunds, discounts, rebates or reductions with suppliers on behalf Novafield of shareholders;
- to negotiate any remuneration from suppliers for services provided by Novafield or Novafield shareholders;

- to consolidate/pool purchasing volumes of Novafield shareholders under joint purchasing agreements;

Novafield and Novafield shareholders recognize that full compliance with applicable laws and regulations are a pre-requisite to achieve the aforementioned goals. Therefore Novafield and Novafield shareholders have agreed upon the following competition law guidelines that were approved by the Novafield shareholders as a binding Code of Conduct for all Novafield activities.

Novafield and Novafield shareholders commit to individually determine their behaviour on the market. Both Novafield and its shareholders agree to fully comply with EU competition law and equivalent provisions of national competition law in the EU and outside the territory of the EU.

EU and national competition laws contain two basic prohibitions:

- Prohibiting anti-competitive agreements between two or more undertakings;
- Prohibiting abuse of a single or collective dominant position (which may apply to both unilateral conduct and agreements involving several companies).

EU competition rules apply only where trade between Member States is affected to an appreciable extent, but since national competition law applies even in the absence of cross-border effects, Novafield and its shareholders commit to always comply with the rules even if arrangements involve a shareholder from one country only, or cover only one country or region.

European and national competition law is generally applicable between companies regardless of whether or not they compete with each other on the relevant markets. However, whether a certain business conduct between companies is in line with competition rules can very much depend on whether or not companies are either actual or potential competitors. Novafield shareholders as wholesalers are actual competitors in the relevant purchasing markets for crop protection, seeds and other agricultural commodity products (e.g. fertilizer).

With regard to their respective sales activities, Novafield shareholders are not active in the same relevant markets. Each Novafield shareholder is focused on national or even regional markets within an inherent territory. Therefore Novafield shareholders cannot be treated as actual competitors in their respective sales markets. It is furthermore unlikely, even in the event of a small and permanent increase in relative prices, that one Novafield shareholder would undertake the necessary additional investments or other necessary switching costs to enter the relevant geographic market of another Novafield shareholder. Therefore Novafield shareholders (currently) cannot be treated as potential Novafield competitors. However, in order to ensure full

compliance and to exclude any remaining risk, shareholders have agreed on behavioural standards, which also apply to their sales markets, as if they were potential competitors.

Infringement of EU and national competition law can lead to fines, civil liability for damages, and in some countries even to criminal sanctions. It is the responsibility of Novafield and each of its shareholders individually to ensure compliance with these guidelines.

The following guidelines apply to Novafield and Novafield shareholders with regard to Novafield-related activities including all working groups, individual representatives of shareholders, and any sub-group within the association, irrespective of size and name.

I. Prohibition of anti-competitive conduct

1. General issues

As a matter of principle, neither Novafield nor any Novafield shareholder should ever discuss or be involved in any of the following activities:

- Price-fixing, but also, and not limited to, the coordination of other pricing elements, including discounts, bonuses, surcharges, accounting procedures or profit margins;
- Market partitioning such as the allocation of customer groups or territories between competitors;
- Output restrictions, such as agreements on investment levels, production quotas or agreed restrictions on trade between EU Member States such as export restrictions, or prohibitions on sales to parallel traders;
- Exchange of competitively sensitive information, for instance on pricing elements, business plans, customer relations or ongoing or planned bids;
- Any other agreement restricting competition such as, for instance, a collective boycott, any arrangement to avoid direct competition, resale price maintenance, pricing policies designed to isolate national markets or joint action to exclude competitors or new entrants.

To be prohibited by competition law, an agreement or a decision of an association of undertakings need not to be in writing or binding. A verbal information exchange or an informal agreement can be an infringement even if it is merely a "gentleman's agreement".

On the other hand, an agreement does not need to be exercised in order to infringe competition law. The potential anti-competitive effect is sufficient.

2. In particular: Information exchange

Novafield shareholders must never, neither at formal gatherings nor at other informal meetings, exchange confidential or otherwise competitively sensitive business information. Novafield cannot be used as a forum to discuss such topics either. Subjects which must never be discussed are:

- Prices, discounts or price-related contractual terms. This includes planned or implemented price increases (whether or not the precise amount of the increase is included), the dates of planned price increases or announcements, mark-ups, rebates, allowances, credit terms, promotions or any other data that would have a bearing on price (e.g. costs, production volumes, capacity, inventories or sales);
- Client relations and customer credit risk including, among others, the identities of individual customers or sales territories;
- Contract (downstream) tenders, ongoing bids or plans to bid for business as well as the corporate procedures for responding to tenders;
- Business plans or commercial strategy or forecasts of market evolution;
- Competitive strengths/weaknesses in particular areas;
- Production planning or output levels, including inventory/order backlog;
- Individualised data about production volumes, sales or capacity;
- Product development or investment in research programmes which are not yet publicly known;
- Individualized market share data.

II. The prohibition of abuse of a dominant position

A company or group of companies may be in a dominant position if it can act, to an appreciable extent, independently of its customers and suppliers in a given market. A dominant position is not in itself anti-competitive, but if the company or group exploits this position to eliminate competition, it is considered to have abused it. Companies that have

the economic power to act independently and set prices regardless of customers' or suppliers' demands or competitive pressure have a special duty not to restrict competition and not to exploit their customers. Dominance is, in essence, the power to overprice, which is assumed if a firm accounts for a dominant share of supply or demand (normally 40% or more).

Even if individual shareholders are not dominant, Novafield shareholders may be considered collectively dominant in a particular product market if five or fewer of them account for a large share of supply and if they have contacts with each other through the trade association. Dominant positions can be held by single firms and, in certain circumstances, be held collectively. In other words, Article 102 TFEU can apply to oligopolies. In such an oligopolistic market, parallel behaviour that restricts competition or exploits customers might be found abusive even if there is no evidence of active collusion.

As soon as a dominant undertaking's behaviour has an anti-competitive object or effect, without objective justification, fines and civil liability may result. There is no need to demonstrate the existence of an agreement or collusion. Examples of possible abuse of dominance include:

- Imposing excessive or discriminatory terms on customers or suppliers;
- Limiting production or technical development;
- Refusing to supply parallel traders;
- Refusing to supply customers with products that they need and cannot buy elsewhere;
- Obstructing competitors in the market (or in another related market) by forcing suppliers to sell a product exclusively to Novafield shareholders;
- Refusing to deal with certain customers or suppliers.

III. Novafield activities

1. Testing co-operations

The Novafield shareholders have elaborated a model contract between Novafield member companies and suppliers of plant protection, seeds and fertilizers. Based on this model contract the Novafield shareholders enter into agreements with suppliers that include the

development of the testing concept, the actual testing, results handling and the access and distribution process. With regard to testing co-operation the following shall apply:

- Each Novafield shareholder decides individually upon its own participation in a testing project.
- To ensure comparability of the testing results, Novafield shareholders in co-operation with the supplier may jointly agree upon testing concepts and results handling as stipulated in the model contract.
- Following such agreement with the respective supplier, Novafield shareholders may share technical testing results among themselves.

2. Joint marketing projects

On behalf of its shareholders, Novafield may negotiate joint marketing rebates payable by the suppliers to (i) Novafield or (ii) to Novafield shareholders. On negotiation of such joint marketing rebates the following procedure shall apply:

- Each Novafield shareholder shall decide individually upon its own participation in a joint marketing project.
- Minimum participation in a joint marketing project shall be three Novafield shareholders.
- Novafield shareholders shall agree mutually upon supplier and product qualified for a joint marketing project.
- Novafield shareholders shall notify the Novafield secretariat of their individual sales targets.
- Novafield shareholders shall only announce sales targets by volume, not by value.
- The Novafield secretariat shall use an aggregated volume target of the participating Novafield shareholders for negotiation of applicable joint marketing rebates.
- The Novafield secretariat shall not disclose individual volume targets of a respective Novafield shareholder to any other Novafield shareholder.

- Novafield shareholders may entrust one particular Novafield shareholder with the negotiations of joint marketing rebates as part of a joint marketing project (mandate holder).
- In cases of assignment to a mandate holder, the Novafield secretariat shall aggregate the individual volume targets and communicate the aggregated volume target to the mandate holder.
- In cases of a joint marketing rebate linked to a market share increase of the relevant product, such market share increase shall be calculated not on a national level but as an aggregated increment for the territory covered by the joint marketing project.
- Any refunds, rebates, bonuses, kick-backs etc. to be paid by the supplier (national sales organisation of supplier) shall be paid directly to the Novafield shareholder.
- In case of a direct payment of a rebate to Novafield, the Novafield secretariat shall disburse such payments individually to the Novafield shareholders.

In joint marketing projects no Novafield shareholder shall ever disclose to the Novafield secretariat or to any other Novafield shareholder

- individual purchasing conditions including, but not limited to, parameters like prices, rebates, bonuses, kick-backs;
- individual sales prices on the respective sales markets.

3. Joint purchasing projects

Novafield shareholders may enter into joint purchasing projects on a case-by-case basis. Joint purchasing in this respect shall mean the bundling of the purchasing volume related to particular products of those Novafield shareholders that participate in a joint purchasing project. Before entering into a joint purchasing project, the Novafield shareholders together with the Novafield secretariat shall verify (by best estimates) the overall market share of the participating Novafield shareholders in the overall purchasing market. If this overall market share is below the threshold of 15%, the Novafield secretariat will declare the relevant products as qualified for a joint purchasing project. If the market share is above 15%, the Novafield secretariat will consult the Novafield's legal counsel.

For a joint purchasing project the following rules shall apply:

- Each Novafield shareholder shall notify the Novafield secretariat of its expected demand to be pooled for the joint purchasing project.
- The Novafield secretariat will aggregate the specified volumes.
- The Novafield secretariat or a Novafield shareholder as mandate holder shall negotiate purchasing conditions for the overall volume with the respective supplier and communicate the results of the negotiation to the other Novafield shareholders via the Novafield secretariat.
- Each Novafield shareholder shall be responsible for individual purchases from the supplier based on the jointly negotiated conditions.
- In joint purchasing projects no Novafield shareholder shall ever disclose to the Novafield secretariat, or any other Novafield shareholder, individual sales prices in the respective sales market for the relevant product(s).

IV. Procedure for Novafield meetings

The Novafield secretariat shall take every reasonable precaution to ensure that meetings are managed in such a way as to ensure that the risks of inappropriate discussion taking place are minimised.

As a practical matter Novafield therefore undertakes the following:

- Novafield will post these guidelines on its website so that shareholders and the public have access to it.
- Written agendas for each Novafield meeting must be drafted and circulated prior to the meeting and every agenda will contain, as its first and standing item, a competition law reminder.
- Either the chairman or the secretariat representative shall make sure that all participants are aware of EC competition law obligations and the fact that all Novafield meetings will comply with them. This will be recorded in the minutes of the meeting.
- The Novafield shareholders shall approach the Novafield secretariat in cases of doubt regarding the compliance of any agenda items with competition rules. The

Novafield secretariat shall contact legal counsel for review of this particular agenda item.

- It is still possible that a sensitive matter will be discussed during a Novafield meeting. The Novafield secretariat together with Novafield shareholders will consider having legal counsel present at a particular meeting.
- Comprehensive minutes of each meeting shall be drafted and any comment or request for amendment shall be communicated to the meeting chairperson and to the chair of the Novafield secretariat as soon as possible following receipt of the minutes.
- In each meeting, a list of participants shall be circulated during the meeting and signed by all participants. The list shall be appropriately filed by the secretariat. The list of participants shall be included in the meeting minutes.
- Novafield shall keep agendas, minutes and attendance lists of every meeting chronologically.
- Novafield shall give meeting participants access to agendas and minutes of the meetings they have attended upon request.