

## Group Regulatory & Compliance

# Global Competition Law Compliance Policy



### Policy

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### Contact

Compliance@messergroup.com

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## Foreword

### Competence and competition – keys to success

Messer stands for technological competence, innovation, and customer focus. We are also known for the skill, dedication, and integrity of our employees. These strengths form the foundation of our excellent reputation and are the key to our long-term success.

At Messer, we do not need to resort to unfair or illegal methods to win in the marketplace. We are confident that we can and will win on the basis of our strengths. Violating competition law would only undermine our success by exposing us to sanctions and raising doubts about our integrity. It would also show a lack of confidence in our ability to compete.

Anticompetitive behavior is never an acceptable means of winning business. At Messer, we would rather forgo a business opportunity than violate the law – even if this means failing to meet established business targets. Our reputation and long-term success are worth far more.

Messer expects all its employees to compete vigorously and fairly, wherever they do business. These guidelines will give you a better understanding of the general principles of competition law so that you can compete and win by the rules.



## 1. Purpose

Competition (or antitrust) laws are designed to benefit customers by promoting free and fair competition. They also benefit those competitors who are the most efficient, innovative, and customer focused.

Messer supports vigorous, lawful, and ethical competition – not only because it is our legal obligation, but because we believe we have a competitive advantage when everyone plays by the rules.

This guide will help you to know how to play and win by the rules of competition law. It will also help you avoid any harm to yourself or to Messer if these rules are violated.

Sometimes it may be difficult to tell whether a certain course of action is lawful. In these cases, please contact your Local Compliance Officer, your local legal department, or the Group Regulatory and Compliance division for help.

## 2. Scope

This Policy applies to all Messer Companies and their employees.

## 3. Messer's Competition Law Compliance Program

### 3.1. Overall Responsibility

The management of each Messer Company (Local Management) bears the overall responsibility and must ensure that all Company bodies and employees comply with the applicable national competition laws, internal regulations, regulatory requirements, and the stipulations of this Policy. To fulfill these responsibilities, the Local Management must establish the necessary processes, issue work instructions, and ensure that they are followed, implemented, and continuously monitored.

### 3.2. Competition Law Compliance Policy

Messer expects you to obey applicable competition laws with no exceptions. This is clearly set out in the Messer Group Code of Conduct and regional or local Supplements.

Any violation of competition rules is a serious breach of your duties as an employee and will have negative consequences that could include losing your job.

All employees of Messer should work as a team to follow competition rules. Look out for your colleagues and politely challenge or correct them if they appear to be violating these rules.

### 3.3. Competition Law Training and Support

This Policy provides you with a short and practical overview of the most important competition law rules and gives examples of situations that you may encounter.



Depending on your role in the company, you may be given additional training on competition rules, in the form of web-based eLearning, face-to-face sessions, or both.

If you have any questions about the competition rules, you should contact your line manager, your Local Compliance Officer, or a member of your local legal department, who will be happy to help.

### **3.4. Messer's Compliance Functions**

Messer's Compliance function helps Messer employees follow competition rules by providing training, both online and in person, by helping establish specific standards of conduct, and by giving day-to-day guidance on specific issues.

The core Compliance function is composed of the following:

- Chief Compliance Officer and Group Regulatory and Compliance Division
- Regional Compliance Officer(s)
- Local Compliance Officer(s)

For more information, please refer to the Compliance webpage on the Messer intranet.

## **4. Why is Competition Law important to Messer?**

Competition laws are actively enforced in more than 100 countries around the world and in every location where Messer does business.

Violations of competition law can cause serious harm to Messer. In particular, they can result in

- Heavy fines
- Damage claims by customers
- Invalidity of agreements
- Damage to our reputation – harming business relationships and Messer's value
- Significant legal fees and lost management time

Individual managers and employees who break competition rules can also suffer dismissal, fines, imprisonment, and serious harm to reputation.

In recent years, fines against individual companies for violating competition rules have increased dramatically, in one case recently surpassing the EUR 1 billion mark. Some fines have wiped out large parts of a company's profits and have even threatened to push certain companies into insolvency.

The industrial gases sector often gets attention from competition authorities. This is because anticompetitive agreements are more likely in an industry with a small number of major suppliers who compete mainly on price.



## 5. Rules on Contact with Competitors

Strict rules govern behavior between competitors. Violation of these rules is especially serious because it attracts the most attention from the competition authorities and will lead to the heaviest fines. You must therefore understand these rules and follow them carefully.

### 5.1. Anticompetitive Agreements and similar Practices

Competition law prohibits any agreement between competitors that restricts or is intended to restrict competition. This applies to any agreement of any kind, whether binding or non-binding, written or oral, formal or informal – even implied or factual agreements.

Because it is sometimes hard to find evidence of actual agreement, competition rules also prohibit any communication between competitors that has the same effect as an agreement. This is, for instance, the case when competitors

- exchange sensitive business information, even if they don't agree on anything, and then
- act in parallel.

*Example: During an industry exhibition, two salespersons from competing companies have a chat. One of them mentions that his company is going through a difficult period and will be in serious trouble unless margins increase very soon. The other salesperson says that her company is in exactly the same situation. The discussion ends. Over the following weeks, both companies increase their prices at similar times and by similar amounts.*

In this example, the two salespersons did not make any agreement on prices. But they did exchange confidential information and then acted on that information. The result was the same as if they had made an agreement: the two companies increased their prices and customers suffered. The chat between the two salespersons therefore violated competition rules.

Parallel behavior by competitors is not unlawful if it is based on wholly independent decisions by each competitor. For instance, competing suppliers may raise prices at the same time in response to higher input costs. The added factor that makes parallel behavior illegal is the existence of an agreement or an exchange of information between the competitors.

Any contact between competitors may be suspected as providing an opportunity for agreement or exchange of information. Because of this, it is very important to keep your contact with competitors to the minimum necessary to carry on legitimate business.

### 5.2. Hardcore Restrictions

The following types of behavior are considered the most serious violations of competition law. They lead to the heaviest fines and should be avoided at all costs.

**Price fixing** includes agreements with competitors

- To set prices at a certain level or range



- To change prices by a certain amount
- To limit or eliminate discounts or rebates
- To sell with a certain (minimum) margin

**Market or customer allocation** involves an agreement among competitors to divide up customers or territories between each other.

**Bid-rigging** occurs when competitors coordinate their response to a bid invitation

- By agreeing to the terms (such as price) on which they will bid
- By limiting their participation in the bid

(Please note that cooperation between bidders may be permitted if the customer is informed in advance – as with a bidding consortium or joint bid. However, always clear any joint bidding arrangements in advance with your Local Compliance Officer and your local legal team or department.)

**Further hardcore restrictions:**

The following agreements with competitors are also prohibited:

- Agreements on important non-price terms (such as terms of payment, minimum order requirements, etc.)
- Agreements to limit capacity or output
- Collective boycotts (agreements among competitors not to do business with certain individuals or businesses)

Joint venture agreements, distribution agreements, joint purchasing agreements, and certain other agreements between competitors may be permitted under certain circumstances. To avoid competition law risks, always involve your Local Compliance Officer and your local or regional legal department or team when entering into any agreement with a competitor.

**5.3. Exchange of Confidential Information with Competitors**

Do not exchange confidential business information with your competitors, especially about

- Prices
- Customers
- Levels of sales to individual customers or regions
- Production capacity or output
- Costs
- Future plans, including R & D, investment, production, and marketing



Even the unilateral disclosure of business information to a competitor may violate the competition rules. It may be viewed by the competition authorities as an attempt to invite the other party to join an anticompetitive agreement, or as evidence of a wider arrangement between competitors.

However, in discussions with competitors it is legal to

- Exchange non-sensitive information
- Debate general market trends
- Discuss regulatory or technical questions (unless this involves the disclosure of sensitive information)
- Engage in joint lobbying activities

You may be allowed to exchange certain types of sensitive information in connection with a planned transaction (such as a joint venture agreement). Always check with your Local Compliance Officer and your local legal department or team first.

#### **5.4. How to react if a Competitor discloses Confidential Information to you**

In case a competitor discloses confidential information to you, you should:

- Not disclose any confidential information yourself
- Not pass on the information you received to other business colleagues
- Make a record of the disclosure, stating
  - o How you received this information
  - o That you did not ask for it
  - o That you did not disclose any confidential information yourself
  - o That you intend not to act on the information
- Inform your local Compliance Officer and your local or regional legal department/team.

#### **5.5. A few typical misconceptions**

Sometimes people justify violation of competition rules with arguments like those that follow. But don't let yourself be fooled – none of them are correct or acceptable.

<b>What they say</b>	<b>Comment</b>
“Everybody does it! This is common practice in the industry.”	This is no excuse. Besides, if everyone does it, they are more likely to be caught
“No one will ever know”	Very unlikely. At least two people or two companies know. And the other party may decide to disclose the violation and apply for leniency



“We didn’t expressly agree on anything”	Even an implicit agreement or a simple exchange of information, followed by parallel behavior, can violate the competition rules
“In any event, it did not work. (X cheated and undercut the prices that we had agreed.)”	Too bad. The attempt alone to restrict competition is a violation, whatever the result
“No one was harmed by our agreement. (Everyone would have increased prices anyway since costs had gone up significantly.)”	This is irrelevant. The agreement could have restricted competition, and that is enough
“I did it to save jobs”	This is not a valid defense. Competition authorities know and accept that free competition may result in job losses

## 6. Examples of Risky Relationships with Competitors

### 6.1. Participating in the Activities of Industry Associations

It is legal to

- Be a member of an industry association
- Attend official meetings of the association
- Participate in discussions on applicable regulations
- Engage in joint lobbying activities

However, competition authorities are suspicious of industry associations as they can be used as a forum for anticompetitive agreements or the illegal exchange of information. Competition authorities will therefore look very carefully at the activities of industry associations.

#### **Example 1**

*You receive an e-mail from the secretary of your national industrial gases association, inviting all members to the annual spring meeting. The agenda includes:*

- a) Relations with other industrial gases associations
- b) Discussion of recent bidding practices in industrial gases projects
- c) Appointing a consultant to conduct a survey on production capacity and capacity utilization in your country

#### **How to react:**

Do not confirm your attendance at the meeting before reviewing the agenda and checking that it does not contain items that could raise competition law concerns. If in doubt, contact your local Compliance Officer and your local or regional legal department/team for help.





Agenda item (a): No concerns.

Agenda item (b): Problematic. This subject of discussion could result in the sharing of competitively sensitive information and possibly lead to bid-rigging agreements. After consulting with your local Compliance Officer and/or your local or regional legal department/team, if you determine that this is a substantial risk, you should:

- Inform the association secretary in writing that you object to this agenda item on competition law grounds and will not take part in this part of the meeting
- Keep a copy of your letter

Agenda item (c): Appointing a consultant is not a problem in itself, but you must make sure that the survey does not lead to illegal exchanges of information between members (this is covered in more detail in Example 2 below).

### **Example 2**

*At the industry association meeting, the members select a consultant for a planned survey on production capacity and capacity utilization in your country. A few weeks later, you receive a letter from the consultant requesting the following information:*

- a) A detailed breakdown of your total production capacity and output for each of the main gases in the last three years
- b) Your average sales prices for each product category during the last year

*The letter states that the same request is being made of each industry association member.*

### **How to react:**

All of the requested data is confidential business information and should not be disclosed to competitors. When responding to the consultant's request for information, consider the following questions:

- Is it in Messer's interest to provide this data? Will the results of the survey be useful for Messer?
- Is the requested information necessary to accomplish a legitimate purpose? (Yes for item (a), probably not for item (b).)
- Can the person or entity requesting the data guarantee that each company's data:
  - Will be kept strictly confidential?
  - Will only be disclosed to others in an aggregated form so that the market position or market behavior of individual companies cannot be identified?

If, after consulting with your local Compliance Officer and your local or regional legal department/team, you decide not to provide the requested information, you should



- Decline politely and, if applicable, make clear that you are doing so for competition law reasons
- Keep a copy of your reply

### **Example 3**

*A few months later, the association organizes a workshop to discuss the results of the survey. The consultant's presentation includes a graph showing that production capacity has been increasing steadily, while demand has remained relatively stable over the last few years. One participant comments that it is no wonder prices have been falling during the last few years, and that the only way to halt this ruinous decline of prices and margins is to create discipline in regard to the build-up of capacity. Another participant also gives his opinion that something should be done about this.*

### **How to react:**

This discussion may be interpreted by authorities as an illegal agreement to restrict capacity growth, especially if it is followed by parallel behavior. Unless you show your opposition to these statements, you may be regarded as having silently accepted the illegal agreement. You should therefore do the following:

- State to the entire group that any discussion about restricting capacity growth would violate competition rules.
- Leave the meeting if the participants continue to discuss this topic.
- Ensure that your objections (and your departure) are recorded in the minutes of the meeting.
- Keep a copy of the minutes and inform your local Compliance Officer and your local or regional legal department/team of the incident.

## **6.2. Social Contact with Competitors**

Social contact with competitors should be kept to a minimum.

### **Example 4**

*Your competitor, ABC, organizes an open-house day at its local production plant. ABC's marketing director sends you a personal invitation to the reception, which includes a guided tour for local dignitaries and journalists.*

### **How to react:**

Attending the event by itself does not violate competition rules. However, there are several good reasons to decline the invitation:

Attendance increases the chances that you could become involved in unwanted anticompetitive discussions with ABC employees.



If both Messer and ABC increase their prices following your attendance at the open house, a competition authority may suspect that you communicated with your competitor at the event. Disproving such a link can be difficult, time-consuming, and costly.

Your attendance could be viewed as evidence of an unusually cordial relationship between Messer and ABC, a factor that could weigh against you if the competition authorities decide to investigate your industry.

#### **Example 5**

*An old friend invites you to join the local Rotary Club. The managing director of the local subsidiary of Messer's competitor, DEF, is also a member.*

#### **How to react:**

Joining the Rotary Club is not a problem, but you should avoid discussions with the managing director of DEF about your respective businesses. You should also avoid circumstances where such discussions could be suspected.

### **6.3. Swap Agreements with Competitors**

Swap agreements between competitors are often procompetitive and legal. However, there are situations where competition law concerns can arise.

#### **Example 6**

*You represent Messer in negotiations with competitor XYZ about entering into several product swap agreements. During the discussions, your counterpart at XYZ suggests that it would be convenient to exchange each other's full price lists. He also asks when Messer intends to implement its next price increase, and by how much prices will go up.*

#### **How to react:**

Since Messer and XYZ are competitors, you must avoid any exchange of information that is not strictly necessary for the swap.

You should only provide XYZ with the prices at which Messer is willing to sell the products in question to XYZ under the swap agreements. Do not disclose any information about planned price increases unless strictly necessary to implement the swap agreements.

#### **Example 7**

*An important Messer customer becomes insolvent and closes its plant. As a result, the local Messer plant is forced to reduce production, leading to a further reduction in margins. Messer management therefore considers shutting down the local Messer plant and obtaining supplies for local customers from competitor QRS.*

#### **How to react:**

There is a danger that competition authorities could interpret Messer's proposed arrangement with QRS as the outcome of an illegal agreement between Messer and QRS to



reduce production capacity. Discuss with your local or regional Messer legal department or the Group Regulatory and Compliance division before proceeding.

#### **6.4. Obtaining and Gathering Information about Competitors**

You may collect and record information on your competitors' production, sales, customers, prices, and so forth, so long as you do not obtain this information from the competitor – directly or indirectly – or in violation of confidentiality obligations.

##### **Example 8**

*A few years ago, your sales department began developing a spreadsheet collating information obtained by all members of the department on prices charged by different competitors. The table is updated regularly. You have been asked to revise the table to enable the recording of more detailed information and to make it more user-friendly.*

##### **How to react:**

Messer may gather market intelligence on competitors and create internal records if the information was obtained legally.

It is important to record the source of any competitor information to avoid any suspicion on the part of competition authorities that it has been obtained improperly. You could, for instance, add a column to the spreadsheet where people updating the table must state their name and the source of the information they are entering.

#### **6.5. Price Increase Announcements**

##### **Example 9**

*Due to increases in input costs, Messer has decided to raise its prices for bulk products in your country by 5 percent in the next quarter. You have been asked for ideas on how to announce the price increase. Possibilities include*

- a) Publishing complete and detailed price lists on Messer's local website
- b) Asking the country manager to mention the price increases in his upcoming interview with a trade journal
- c) Publishing an announcement in the local business newspaper
- d) Sending a letter to your customers informing them of the price increase.

##### **How to react:**

Public announcements of price increases are not illegal in themselves, but if competitors raise prices in parallel then such announcements may be viewed by the competition authorities as evidence of an illegal agreement to fix prices. In order to minimize this risk, the content and audience of price-increase announcements should be limited to that which is necessary to inform customers. You should clear all actions that involve a publication or



public disclosure of a planned price increase in advance with your local Compliance Officer and your local or regional legal department/team.

Suggestion (a): This is not a good idea because the content is too detailed and the audience too broad. By posting our prices on our website, any competitor can easily obtain this information.

Suggestions (b) and (c): It is best to avoid these methods as the audience is too broad. While general statements to the media about prices may be permissible (without mentioning specific products or the exact amount of price increases), such statements would not be very useful to customers and more detailed statements would attract risk.

Suggestion (d): Contacting customers individually is the safest approach. The content of the announcement should be limited to price information for product categories relevant to that particular customer.

## 7. Rules on Agreements with Customers and Suppliers

Agreements with customers and suppliers can also raise competition law concerns. Rules on this subject vary between countries, and their application in some cases may depend on Messer's market position.

**Seek advice from your local Compliance Officer and your local or regional legal department/team if you intend to enter into an agreement that contains any of the restrictions listed below.**

### Examples of conduct that may be illegal

Types of restrictions that frequently raise competition law concerns are set out below. Whether Messer has market power may be a factor in the analysis, and please also keep in mind that a customer or supplier may also be a competitor.

- Fixing of resale prices: Messer is, in general, not allowed to set a resale price or a minimum price below which the product cannot be resold by distributors. There may be exceptions in some countries that would allow such resale price maintenance following a well-documented analysis of why the business justification and pro-competitive effects outweigh any restraints on competition. However, mere recommendations of resale prices are generally allowed.
- Exclusive purchase obligations: In some markets, especially where Messer may hold a strong market position, Messer cannot require a customer to purchase its entire demand exclusively from Messer.
- Long-term purchase obligations: In the EU, there are limits on the permitted duration of gases supply agreements. Similar restrictions may apply in other countries where Messer may hold a strong market position.
- Prohibition of resale: In certain countries, Messer cannot prevent a customer from reselling products supplied by Messer, unless this is justified by safety considerations.



- Territorial restrictions: In some countries, Messer cannot prevent a distributor from selling Messer's products outside a defined territory.
- Price discrimination: Charging different customers significantly different prices for the same product without a good reason (such good reasons may include, e. g., different supply volumes, different transportation costs, or the need to meet a competing offer). (NOTE: In some countries, only dominant companies are prohibited from engaging in price discrimination.)

## 8. Special Rules where Messer may hold a particularly strong Market Position

There are special rules for companies that are “dominant” or have “monopoly power”. Such companies have a special responsibility not to engage in conduct that may weaken competitors or harm consumers.

### 8.1. Definition of Dominant Position/Monopoly Power

Typically, a company will not be found to be dominant or have monopoly power if its market share is below 30 percent, while a market share of more than 50 percent is viewed as clear evidence of a dominant position. (NOTE: In the US, these thresholds are somewhat higher – below 50 percent and above 70 percent respectively.) To determine market share in the gases industry, competition authorities usually consider each type of gas as a separate market. In addition, a distinction is made between tonnage, bulk, and cylinder sales.

There may also be situations where the leading suppliers jointly occupy a dominant/monopoly position.

**Seek advice from your local Compliance Officer and your local or regional legal department/team if you intend to engage in any type of behavior described below in relation to a product for which Messer may be viewed as holding a strong market position (market share of 30 percent or more).**

Annex 8.1 contains a table of contractual limitations applicable for Messer Companies acting on the European markets. Those restrictions might be guidance also for Messer Companies in other Regions.

### 8.2. Examples of Conduct that may be illegal

When combined with a strong market position, the conduct described below may infringe competition laws.

- Predatory pricing: Charging excessively low prices (below variable unit cost of production) to drive a weaker competitor out of the market.
- Exclusive dealing: Requiring a customer to buy exclusively from Messer or requiring a distributor to sell only Messer products.
- Rebates: Encouraging customers to buy from Messer through loyalty rebates or retroactive rebates conditioned on meeting a certain purchase volume.



- **Bundling/tying:** Requiring the purchaser of one Messer product to buy another Messer product as a condition for (i) being allowed to purchase the first product or (ii) receiving a bundled discount.
- **Refusal to supply:** Refusing to supply an existing or prospective customer or distributor without a valid reason (valid reasons include, for example, overdue payment or credit unworthiness, or failure to meet safety standards or marketing commitments).

## 9. Document Creation and Management

### 9.1. Nothing can be concealed

There are many ways in which Messer's internal documents may come to the attention of a competition authority:

- Disclosure in response to an authority's request for information, or in connection with court proceedings
- Copy or seizure during an on-site investigation by a competition authority (see next Section below)
- Disclosure by a customer or competitor in support of a complaint to a competition authority

Almost any recorded information – hard copy or electronic, formal or informal (e. g., telephone notes, calendar entries, voicemail, and text messages) – may be subject to disclosure. Even deleted items may often be retrieved with special software.

### 9.2. Mind your Language

You should write all internal documents with the assumption that they may come to the attention of the competition authorities or the media.

If a document looks suspicious, it may be difficult to persuade the authorities otherwise, even if the original intent of the document was innocent.

When you are dealing with a sensitive subject, consider whether you need to write anything down at all. You may want to speak to a member of your legal department before committing words to paper.

#### *"Write Right" – some advice on careful communication:*

- The "Front Page Rule": Do not write anything that you would be embarrassed to read on the front page of a newspaper.
- Do not speculate in a document whether particular conduct is legal (e. g., "This action may be anticompetitive"). This suggests illegal behavior where none may exist.
- Avoid language suggesting that there is an understanding with a competitor (e. g., "XYZ's price cut came as we expected").



- Avoid language suggesting that Messer holds a dominant position (e. g., “control the market”, “dominant position”). It is better to refer to a “significant” position in the market.
- Avoid hostile language about competitors or customers (e. g., “kill”, “destroy”, “eradicate”, “block”, “foreclose”, “punish”, “put under pressure”, “discipline”, “drive out of the market”, etc.).
- Avoid words implying that there is something to hide (e. g., “for your eyes only”, “do not copy”, “destroy after reading”, “off the record”).
- When you report market information, always state clearly the source of the information (e. g., published information, information obtained from customers, hearsay, own estimates) to avoid suspicion that you might have received it from an improper source.

### 9.3. Legal Privilege

Under the laws of some jurisdictions (in particular in the USA), communications between Messer and its legal advisers may benefit from “legal privilege”. Documents that are legally privileged do not have to be produced to competition authorities. While such documents may still be examined, copied, or seized by competition officials during an on-site investigation, they cannot be used against Messer unless Messer has waived the privilege.

To enable Messer to claim legal privilege, you should follow the following guidelines in jurisdictions where the privilege is available:

- Make sure that each request for legal advice sent to legal counsel clearly displays the name of the legal counsel, and that the words “PRIVILEGED AND CONFIDENTIAL – REQUEST FOR LEGAL ADVICE” appear at the beginning of the communication.
- Do not send copies of your communication with legal counsel to anyone else.
- If you reply to a request for information from legal counsel, ensure that the words “PRIVILEGED AND CONFIDENTIAL – PREPARED AT THE REQUEST OF LEGAL COUNSEL” appear at the beginning of your reply.
- Keep all correspondence passing between you and legal counsel under a separate tab in a file or in a separate folder that is clearly marked “PRIVILEGED AND CONFIDENTIAL”.
- Object, but do not obstruct, if authorities examine, copy, or seize legally privileged documents.

### 9.4. Document Management and Retention

Never hide or destroy a potentially damaging document. This may be a criminal offence and could result in severe penalties. Company documents may only be destroyed in accordance with a clearly stated company policy on document retention, subject to any legal holds that may be in place, or after consultation with your local Compliance Officer and your local or regional legal department/team.





If a document contains incorrect or misleading information that could be misinterpreted in a competition law proceeding, you should bring it to the attention of your local Compliance Officer and your local or regional legal department/team. In most cases, the best solution is to correct the document in a separate note that can be attached to the document in question.

## 10. Investigations by Competition Authorities

Competition authorities may start an investigation based on

- A complaint by a customer or a competitor
- Information received from a member of a cartel in exchange for leniency
- Other information leading to suspicion of illegal activity, such as uncompetitive market conditions, news reports, or information received from another authority

Competition authorities have broad powers to gather the necessary information for their investigations. Companies may be required to answer written questions or supply documents, with fines imposed for failure to respond.

The authorities may also carry out unannounced inspections (so-called “dawn raids”) at the premises of a suspected business or even at the homes of employees. The authorities are typically entitled to enter the premises, examine, copy, or remove documents and records, and (in some jurisdictions) interview staff.

The following are guidelines to follow if a dawn raid occurs. Check with your line manager or your local Compliance Officer and your local or regional legal department/team to see if there are more specific guidelines prepared for your jurisdiction.

### **DO:**

- Be cooperative and courteous
- Get the names of the investigating officers, and confirm their authority and mandate (such as a search warrant) to carry out the dawn raid
- Alert senior management and your local or regional legal department/team immediately
- Make sure investigators are accompanied at all times by company staff
- Make copies of all physical or electronic material copied or seized by investigators
- Take complete notes of everything that happens: where the investigators go, all questions and answers, which documents they look at, points of dispute, etc.
- Seek to protect legally privileged documents and those that are not relevant to the investigators’ mandate whenever possible
- Seek immediate legal advice if you are uncertain as to your rights and responsibilities


**DON'T:**

- Alert third parties (such as competitors or news media) about the raid
- Hide or destroy documents (CAUTION – doing this can lead to serious penalties!)
- Feel compelled to speak with the authorities without the benefit of legal counsel in those jurisdictions where you have such right, e.g., the USA
- Lie to the authorities, speculate, or volunteer information that has not been requested
- Consent to the search/seizure or any expansion of the search/seizure unless you are authorized to do so

## 11. Training and Awareness

Messer Companies shall provide training and awareness programs to educate their management and their employees about their obligations under this Policy and relevant Competition Laws.

## 12. Dealing with Internal Violations of this Policy/ Reporting Channels (e.g., Whistleblower-Hotline)

The Messer Companies shall identify, address, and remedy any violation of this Policy, and must report any significant violation to the Regional Compliance Officer. The Regional Compliance Officer will report regularly to the Group Regulatory and Compliance Department.

The Messer Companies shall enable their employees and Business Partners to speak up in the event of non-compliance with the requirements set out in this Policy. The Messer Companies shall enable their employees and Business Partners to access the Messer Whistleblowing System to submit reports.

## 13. Policy Review

This Policy shall be reviewed periodically and updated as necessary to ensure its effectiveness and compliance with changing legal and regulatory requirements.

## 14. Classification of the Policy

Classification	Target Group	Status	Typ
Internal	All Employees	Active	Policy



15. Change History

Date	Version	Author	Description
06/06/2024	1.0	Michael Yap Dr. Tobias Dietrich	Creation of the document

16. Appendices

Appendix 8.1: Contractual Limitations for Europe

**Bad Soden** 04.07.2025

**Messer SE & Co. KGaA**

DocuSigned by:  
*Bernd Eulitz*  
400373C50ACA45D...  
**Bernd Eulitz**

Chief Executive Officer

DocuSigned by:  
*Helmut Kaschenz*  
276718EB21FA43F...  
**Helmut Kaschenz**

Chief Financial Officer

DocuSigned by:  
*Virginia Esly*  
3A3A1335773045B...  
**Virginia Esly**

Chief Operating Officer  
Europe

Signed by:  
*Elena Skvortsova*  
A40A5CB940854B1...  
**Elena Skvortsova**

Chief Operating Officer  
Americas

Signed by:  
*Werner Hickel*  
7E40E473EDE24C0...  
**Dr. Werner Hickel**

Chief Operating Officer  
Asia



## **Annex 8.1 Contractual Limitations for Europe**

(term, exclusivity, take or pay)

Contractual Terms	Market Share		
	< 5 %	< 30 %	≥ 30 %
<b>Minimum purchase obligation</b>			
> 80 % of customer's demand	✓	✓	✗
< 80 % of customer's demand	✓	✓	✓
<b>Term</b>			
> five years (or indefinite)			
with minimum purchase obligation of < 80 %	✓	✓	✗
with minimum purchase obligation of > 80 %	✓	✗	✗
≤ five years	✓	✓	✗
≤ two years	✓	✓	✓
<b>Automatic Prolongation</b>			
> one year	✓	✓	✗
≤ one year			
without minimum purchase obligation	✓	✓	✓
with minimum purchase obligation	✓	✓	✗
<b>English Clause</b>	✗	✗	✗
<b>Prohibition of resale</b>	✗	✗	✗