ANTITRUST & COMPETITION POLICY

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The Impact of Antitrust and Competition Law on MAN Oil & Marine S.r.l.

Competition laws (often known as "antitrust" laws) exist in many countries throughout the world. They share the common objective of ensuring that competition is not artificially distorted or restricted. In most countries, competition laws regulate three types of conduct:

- agreements or arrangements among competitors.
- conduct by companies in a dominant position; and
- mergers, acquisitions, joint ventures and other types of business combinations.

The international nature of MAN Oil & Marine's business brings the Company within the ambit of the competition laws of numerous countries. In particular, the competition laws in the European Union, United States, Canada, Latin America, Australia and Asia are highly relevant.

Sanctions for Infringement

The sanctions for infringing competition law can be extremely severe:

- Infringement of European Union ("EU") competition law
  - fines of up to 10% of pre-tax group-wide annual turnover. Within this limit, the revised Guidelines for setting fines in antitrust cases provide that fines may be based on up to 30% of the company's annual sales to which the infringement relates, multiplied by the number of years of participation in the infringement. Moreover, the European Commission may add to the amount as calculated above an "entry fee", i.e. a sum ranging from 15% to 25% of the yearly relevant sales, whatever the duration of the infringement. In other words, the mere fact that a company enters a cartel could "cost" it at least 15 to 25% of its yearly turnover in the relevant product.
  - invalidity of any contract or arrangement that infringes the rules; and
  - monetary damages in favor of third parties who have suffered loss as a result of the infringement, with a presumption that certain infringements do cause loss. The implementation of a specific directive this year has appreciably facilitated the recovery of antitrust damages by consumers and undertakings throughout the EU. In addition, national law in certain EU member states, such as Germany, the UK and Ireland, provides for criminal and/or monetary sanctions for the individuals involved, including imprisonment.

- Infringement of US antitrust law

- criminal liability for the Company, the employees and executives responsible, including imprisonment;
- large fines on the Company;
- large personal fines on individuals; and
- civil liability for the Company to pay treble damages to parties injured by the conduct.

Over the past year, the Department of Justice's Antitrust Division has pushed toward higher corporate fines, with year 2015 tolling more than US$3.6 billion in criminal fines and penalties, representing the highest annual yield ever in the Division's history, and the fourth year in a row exceeding US$1 billion. The Division also continues to insist on jail sentences with increasing frequency and for longer periods of time. The average number of individuals sentenced to prison increased 85 per cent from 2006 to 2015, and the average prison term for criminal antitrust violations is now 24 months. Further, the Division has significantly extended its extra-territorial reach over non-US companies and individuals whose cartel activities directly or indirectly affect US markets and users.

General Overview of Antitrust and Competition Law

The purpose of these guidelines is to increase awareness of how antitrust and competition law affects MAN Oil & Marine. Of necessity, such guidance as is provided here is general. When confronted with a competition law issue or even the possibility of a competition law issue, the cardinal rule is that you should take legal advice in every instance before proceeding – i.e., before proceeding at all. This is particularly important given that competition law analysis is often driven by the specific facts of a given situation. As such, it can be very dangerous to assume that conduct that was permissible in one product market or geographic context will also be permissible in a different one. One generalization that can be made is that most competition law regimes draw a basic distinction between conduct that is prohibited outright, (known, for example, in the US as "per se violations" and in the EU as "by object infringements") and conduct which may or may not be lawful depending on the circumstances in which it occurs.

Prohibited Conduct

This category comprises 'hard-core' cartel activities and certain types of unilateral conduct.

Hard-core cartel activities

They are the most serious type of anti-competitive activities. They attract severe penalties and reputational damage irrespective of the size or market presence of their perpetrators. This category comprises agreements (written or verbal, formal or informal, binding or non-binding) and "understandings" (i.e., informal or "nod and wink" arrangements to behave in an agreed manner) with one or more competitors that:

(1) set or influence the price, or any component of the price, at which one or more parties sells or offers to sell goods or services to customers ("price fixing");

(2) agree on prices to be bid in a tender process ("bid rigging");

(3) restrict or seek to regulate output from one or more of the parties' production facilities with a view to tightening supply in a target market ("production limitation"); or

(4) allocate customers to one or more of the parties, whether based on the geographical location of the customer or other factors such as the size of that customer's demand or the use to which the customer intends to put the products being sold (so-called "market sharing" or "customer sharing"). In the US, these offences are considered per se illegal and in most cases are prosecuted criminally by the Antitrust Division of the Department of Justice (as was the case for the DRAM cartel referred to above). In the EU, conduct of this type can be expected to lead to the imposition of fines of up to 10% of pre-tax worldwide turnover and, in a few Member states, to individual fines or even criminal sanctions.

All these hard-core infringements result from an agreement or "understanding" (even if informal) between two or more competitors. This being the case, great care is needed to ensure that any contact with our competitors neither constitutes, nor is recorded or referred to in such a manner as to suggest that it constitutes, any understanding or agreement of this type. Practical guidelines on how to ensure that contact with competitors is carried out in a lawful manner are contained on the following pages. It is essential that all MAN Oil & Marine S.r.l employees familiarize themselves with these guidelines.

Unilateral conduct

This generally raises problems under competition law only when practiced by a business in a dominant position. As a broad rule of thumb, any market share of greater than 30% should be taken to indicate significant market power. This is not a hard and fast threshold. There are cases where businesses with much smaller market shares were determined to have market power. Any business that might be found to have market power must take special care. In effect, dominant companies are under a special legal duty to conduct their operations in ways that could not be regarded as an abuse of their position of power on the relevant market. In the EU, such businesses should not indulge in conduct aimed at – or which could be adjudged to be aimed at – eliminating any other competitor from the market. Thus, "predatory" pricing practices (such as pricing at below average variable cost of production) or seeking to tie customers or incentivize them to boycott the targeted competitor are likely to be illegal when practiced by a company having market power in the relevant product market. In the US, companies with power may be prohibited from entering exclusive contracts, entering tying arrangements or refusing to deal with other companies who need their goods or services. Similar, but not necessarily identical, legal constraints may apply in the EU system, which generally requires a lower standard to substantiate an abuse of dominance compared to US. Conduct which may or may not be lawful depending on the circumstances. Certain conduct may or may not be lawful depending on: (a) the economic context in which it occurs; and (b) the market shares and market power possessed by its participants. In this category, the following types of arrangements raise competition law questions:

(1) exclusivity arrangements or tying customers to buy all or a significant proportion of their requirements for a particular product;

(2) restricting customers as to how or where they may resell or use goods purchased from MAN Oil & Marine;

(3) joint research and development with one or more existing competitors or with parties who reasonably could become competitors in the field to which the joint research and development relates;

(4) information exchange arrangements with competitors, including by means of software and the use of algorithms.

(5) joint ownership/operation of production facilities; and

(6) joint marketing of goods or services in collaboration with an existing competitor in the sale of those goods or services, or with parties who reasonably could become a seller of the relevant goods or services.

Sometimes these types of arrangements may be lawful. For example, if they lead to clear pro-competitive benefits and do not involve companies whose market position exceeds certain defined thresholds. But, whether these types of circumstances prevail is often a complex task which can be determined only with input, at an early stage, from competition law advisors. Again, the best action you can take when faced with issues of this nature is to refer immediately to MAN Oil & Marine's Board of Directors and take no further action unless and until the Board of Directors clears you to do so.

Practical Guidelines

The Guidelines that follow cover three areas:

(a) General guidelines,

(b) Guidelines on meetings with competitors; and

(c) Guidelines regarding documents and public statements.

General Guidelines

1. Never discuss competitively sensitive matters with representatives of our competitors. The principal subjects that are deemed competitively sensitive are: past, present or future prices, price related terms (such as discounts, rebates or surcharges), bids, cost structures or any matter relating to individual customers or to the Company's commercial strategy.

2. Never make agreements or have written or unwritten understandings with competitors (whether they are existing competitors or companies that might enter the relevant market) which fix or stabilize prices, margins or output, or allocate customers. Never have discussions that could be construed as giving rise to any such agreements or understandings.

3. It is contrary to company policy to send any kind of price information to a competitor, or receive any kind of price information from a competitor. Where a competitor is a customer or supplier of the Company, it is permissible to discuss and agree upon prices changed to or by the Company for the applicable products to be sold to, or purchased from, the competitor.

4. Remember the sensitivity attaching to meetings with competitors. Specific guidance on dealing with meetings with competitors is given on following pages. Again, we expect all of you to familiarize yourselves with these.

5. Do not make telephone calls to competitors unless they relate to legitimate business needs, such as when MAN Oil & Marine supplies products to, or purchases products from, the competitor. When you do make a call to, or receive a call from, a competitor for legitimate reasons, exercise care to limit the conversation to the legitimate matter and make a contemporaneous record of the purposes of the call.

6. Do not, without prior approval from the Board of Directors, refuse to participate in a bid, or refuse to sell products to potential customers for any reason other than creditworthiness or unacceptability of proposed contract terms, profitability of the sale or capacity constraints that limit the Company's ability to fulfill the order.

7. When a price list from a competitor or other information about a competitor's past, present or future prices is on our file, it looks as though we have had inappropriate discussions with the competitor. If you receive a competitor's price list or other price information from a customer or someone other than the competitor itself, make a contemporaneous record of how and from whom the price list/information was obtained. Never exchange prices orally with a competitor, regardless of the reason.

8. In product markets in which the Company has a significant market position (as a rule of thumb, a market share in excess of 20%) specialist legal advice should be taken before embarking upon the following:

(i) refusal to supply a given customer or category of customers for reasons that cannot be said to be objectively justified: for example, well-founded fears about the customer's creditworthiness or suspicion that the customer will on-sell the products to an area which is the subject of UN or national trading sanctions could constitute an objectively justified reasons to refuse to deal with the particular customer;

(ii) arrangements requiring customers to purchase all or a significant proportion of their requirements from the Company;

(iii) rebating which is so extensive as to generate a very low (or even no) margin or conditioned upon customers purchasing all or a significant proportion of their requirements from the Company.

In addition to these sensitivities, if you believe that the business activity in question has, or potentially could have, a significant impact on a market you should avoid:

(a) strategies aimed at eliminating competitors, whether by pricing at low levels or by any other means intended or likely to seriously reduce their ability to compete with MAN Oil & Marine; and

(b) price increases in excess of demonstrable increases in production cost or in the cost of delivering the product to the relevant customers.

Meetings with Competitors

Eight rules should **ALWAYS** be followed:

1. Competition authorities presume that a meeting between two or more competitors will be either motivated by unlawful intent, or will lead to discussions of an inappropriate nature. We

have the obligation to make clear from our written records, both prior to and after the meeting, that no inappropriate conduct took place. Be always sensitive as to how your remarks might be interpreted.

2. Each meeting with one or more competitors should be the subject of a clear and lawful agenda agreed in advance among those participating at the meeting.

3. If there is ever any doubt as to the lawfulness of the purpose of a particular meeting, the meeting should not take place.

4. There should be an accurate and clear record of the meeting stating why it occurred, who initiated it and the contents of the discussions. This record should be agreed between all participants at the meeting.

5. In the event of a discussion at a meeting (even a trade association meeting) turning to inappropriate subjects, the MAN Oil & Marine attendees should, as soon as the conversation strays into inappropriate areas, leave the meeting and ensure that their departure is recorded in whatever records are kept in relation to that meeting. The employees in question should make their own brief record stating when they left the meeting and should report the matter to the Board of Directors.

6. If, during a meeting, the conversation touches on an area that you suspect might be inappropriate, do not be afraid to mention this fact and stop the conversation. If the other participants refuse to stop the discussion, follow rule 5 above – i.e., leave.

7. Large and particularly sensitive meetings may need to observe added precautions. It may even be appropriate for a competition lawyer to be present at such meetings to ensure that inappropriate discussions do not take place.

8. Trade associations may be joined only upon approval by the Board of Directors (who will review their constitutive documents and operating procedures) and when justified by a legitimate business purpose. MAN Oil & Marine employees should not attend any “side meetings” or additional meetings held prior or subsequent to bona fide trade association meetings.

If in doubt as to any of the guidelines above, please consult the Board of Directors before acting further.

Documents and Public Statements

Competition authorities attach great importance to written communications. Documentary evidence, including e-mail and electronic messages or notes, seized by the competition authorities through exercise of their investigative powers often is the principal source of evidence in their prosecutions. The following guidelines on document creation and public statements should be observed:

1. Remember that all written communications, including e-mails and electronic messages or notes contained in smart devices, are seizable by the competition authorities.

2. Do you need to write or type it down at all? If not, do not do so. Whenever you write or type something down, remember that it could be made public one day. Would you be happy for the authorities to see what you have written? If not, you should not have written or discussed it.

4. Never use the term 'dominant' – whether written or spoken to describe any of our businesses and do not overstate the significance of our competitive position in any market. In any event you could be wrong.

5. Ensure that all drafts of documents are clearly labelled 'draft'.

6. If you think that it might be a sensitive area, do not commit it to paper or to email or to your device.

7. Written communications with competitors are particularly sensitive. Every letter, fax, e-mail or electronic message to a competitor (no matter how short) should have a clear and lawful purpose and be clearly written in unambiguous language. Similarly, every letter, fax, e-mail or electronic message to a competitor should have the benefit of scrutiny and/or input from the Board of Directors.

8. The purpose of all communications should be apparent on the face of the document or message. Ambiguous statements always should be avoided.

9. Do not use vocabulary that implies guilt such as 'Please destroy' or 'Delete after read'.

10. Do not question whether an activity is legal or illegal, e.g., 'this strategy could cause legal problems.'

11. Clearly state the source of any pricing information to which you may refer so as not to give the false impression that it came from discussions with a competitor.

12. Avoid referring to the activities of MAN Oil & Marine and other major market players as if it were some kind of club.

13. Avoid power or domination vocabulary. For example, 'we now corner the market', 'we dominate the market', 'we have succeeded in disciplining the competition', 'our position will be unassailable'.

14. Avoid ambiguous buzzwords that lend themselves to suspicion of unlawful conduct such as 'orderly market', 'the rules of the game', 'responsible competitors', 'the usual practice' or 'price leadership'.

Reporting Suspected Infringements

All employees of the Company have a duty to report promptly any actual or suspected infringements of antitrust and competition law by another employee or agent of the company. Such reports should be made to the Board of Directors and can be given anonymously and without fear of reprisal. If any employee believes that infringing conduct has occurred, or is about to occur, and does not promptly report it, he or she will be subject to appropriate disciplinary action, including demotion or dismissal. If an employee has any doubt as to the legality of a certain practice involving MAN Oil & Marine, he or she should promptly contact the Board of Directors.