

Antitrust Guidelines of DLMS UA

I. Introduction

The DLMS User Association is a non-profit association based in Zug, Switzerland. The Association is formed to promote the application of communication Protocols based on DLMS (Device Language Message Specification) and the COSEM (Companion Specification for Energy Metering) Object model. Hence, DLMS UA itself as well as its members are active internationally. It is one of the principals of DLMS UA to comply with national and international laws and to maintain a high ethical standard.

II. Purpose

The purpose of the “Antitrust Guidelines” is to provide an overview of the antitrust and competition laws with a focus on Swiss law. While it cannot cover all circumstances, it shall improve awareness of the basic rules and help the directors, officers and employees of DLMS UA to comply with antitrust regulations.

III. Swiss Federal Act on Cartels and other Restraints of Competition

The Swiss Cartel Act applies to private or public undertakings that are parties to cartels or to other agreements affecting competition, which exercise market power or which participate in concentrations of undertakings. While art. 5 refers to unlawful agreements affecting competition, art. 7 relates to unlawful practices by dominant undertakings.

Article 5

- (1) Agreements that significantly restrict competition in a market for specific goods or services and are not justified on grounds of economic efficiency, and all agreements that eliminate effective competition are unlawful.
- (2) Agreements affecting competition are deemed to be justified on grounds of economic efficiency if:
 - a) they are necessary in order to reduce production or distribution costs, improve products or production processes, promote research into or dissemination of technical or professional know-how, or exploit resources more rationally; and
 - b) they will under no circumstances enable the parties involved to eliminate effective competition.
- (3) The following agreements between actual or potential competitors are presumed to lead to the elimination of effective competition:
 - a) agreements to directly or indirectly fix prices;
 - b) agreements to limit the quantities of goods or services to be produced, purchased or supplied;
 - c) agreements to allocate markets geographically or according to trading partners.
- (4) The elimination of effective competition is also presumed in the case of agreements between undertakings at different levels of the production and distribution chain regarding fixed or minimum prices, and in the case of agreements contained in distribution contracts regarding the allocation of territories to the extent that sales by other distributors into these territories are not permitted.

Article 7

- (1) Dominant undertakings behave unlawfully if they, by abusing their position in the market, hinder other undertakings from starting or continuing to compete, or disadvantage trading partners.
- (2) The following behaviour is in particular considered unlawful:
 - a) any refusal to deal (e.g. refusal to supply or to purchase goods);
 - b) any discrimination between trading partners in relation to prices or other conditions of trade;

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- c) any imposition of unfair prices or other unfair conditions of trade;
- d) any under-cutting of prices or other conditions directed against a specific competitor;
- e) any limitation of production, supply or technical development;
- f) any conclusion of contracts on the condition that the other contracting party agrees to accept or deliver additional goods or services.

IV. Application of other Antitrust Laws

Other antitrust laws may apply to private or public undertakings. For example, EU competition law (set forth in Articles 101 and 102 of the Treaty on the Functioning of the European Union) applies to all companies and individuals doing business within the Member States or which may affect trade between the Member States of the European Economic Area (EEA). In addition, US antitrust law (primarily set forth in the Sherman Act, the Clayton Act, the Federal Trade Commission Act and the Robinson Patman Act) applies to all companies and individuals doing business in the US.

V. Violation of Antitrust Laws

Violations of antitrust laws may trigger an investigation of the competent authority and may result in serious fines. According to article 49a of the Swiss Cartel Act any undertaking that participates in an unlawful agreement pursuant to Article 5 paragraphs 3 and 4 or that behaves unlawfully pursuant to Article 7 shall be charged up to 10 per cent of the turnover that it achieved in Switzerland in the preceding three financial years.

VI. Compliance with Antitrust Laws

Compliance with antitrust laws is in the responsibility of every director, officer and employee. Directors, officers and employees shall consult the Board of Directors of the DLMS User Association in case of any doubts related to antitrust issues.