



## **We support the principles of fair competition. Price fixing, market sharing and similar anti-competitive practices are prohibited.**

The European Union's competition laws, the US antitrust laws and the equivalent laws of other countries are designed to preserve a competitive economy. We support such laws, which aim to ensure free markets and give everyone the opportunity to succeed on the basis of superior products. Infringement of competition laws is not only contrary to our principles and This Policy but can also result in large financial penalties, damages and possible criminal liability and imprisonment for individuals. Competition/antitrust law violations can also result in substantial diversion of management time and effort, and adverse publicity that damages the Company's reputation.

All Stora Enso employees and business partners should be aware of and follow the requirements and the competition laws of the countries where they carry out their business operations. In addition, all employees should be mindful that the competition laws of in Europe or the US as example may also apply to business operations that take place elsewhere.

Because of the complexity of this topic, whenever you have a competition law concern or question you should consult Legal.

### 3.1 Fundamental Rules

All agreements between undertakings, decisions by associations of undertakings and concerted practices, that have as their object or effect the prevention, restriction or distortion of competition are normally prohibited under competition law (see [Section 3.2](#)).

Stora Enso must act independently both when selling to customers and when purchasing from suppliers, not try to influence the future market conduct of its Competitors, and take great care when meeting with Competitors. Safeguards must be considered in advance of Competitors contacts with regard to new memberships in Trade Associations (see [Section 3.2.1.5](#)), Mill Visits (see [Section 3.2.1.6](#)) and industry benchmarking (see [Section 3.2.1.7](#)). Certain Competitors contacts shall also be reported when they have already taken place (see [Section 3.2.1.8](#)).

A dominant position implies a position of economic strength, which enables an undertaking to prevent effective competition on the market and to behave substantially independently of the market. Certain behaviors by a dominant undertaking may amount to a prohibited abuse. Examples of abuse are unfair pricing, discrimination against certain customers and certain rebate schemes (See [Section 3.3](#)).

Structural changes of business such as mergers, acquisitions, divestments and establishments of joint ventures normally entail certain aspects relating to competition law (See [Section 3.4](#) and [Section 3.5](#)).

### 3.2 Prohibited Agreements, Decisions and Concerted Practices

#### 3.2.1 Relations with Competitors

##### 3.2.1.1 Agreements with Competitors

Under no circumstances should Stora Enso enter into any agreement, whether written or oral, express or implied, that could be seen as having the potential to restrict competition. Examples of agreements that are

particularly likely to constitute serious infringements of competition law include:

- Agreements on what prices to charge, e.g. agreements to charge the same price, apply the same discounts, adhere to a pricing formula, increase or decrease prices by the same percentage, etc.;
- Agreements allocating markets or customers, e.g. agreements not to compete with one another in a given geographic area or for a certain customer or category of customers (such as for one company to focus on direct sales and the other to focus on sales through distributors);
- Agreements on whether or not to deal with a certain supplier, customer or category of supplier/customer (e.g. agreements to collectively boycott certain suppliers seen to be charging excessive prices);
- Agreements to coordinate bids in any sale or purchasing process, e.g. in order to obtain the best prices; and
- Agreements to limit or control production, technical development or investment.

The prohibition on restrictive agreements applies to concerted practices as well as to formal agreements. This aims to prohibit situations where no formal agreement has been entered into but where a company, by direct or indirect contacts regarding business objectives, influences the market conduct of a competitor in a way that it is assumed will affect competition.

The prohibition does not only concern agreements that actually restrict competition but also agreements that are intended, by their very nature, to do so.

### 3.2.1.2 Sharing Information with Competitors

Stora Enso employees must never participate in any discussions involving Competitively Sensitive Information, supply Competitively Sensitive Information to a Competitors or receive Competitively Sensitive Information from a Competitors, unless otherwise permitted under This Policy or by Legal.

**“ Competitively Sensitive Information ”** means:

- Any confidential information<sup>1</sup> relating to Stora Enso or one or more Competitors on any market concerning its recent<sup>2</sup>, current or future competitive actions, strategies and/or plans, including :
  - Pricing (including actual prices as well as price lists or indicative prices, where relevant);
  - Discounts or discount policies;
  - Bidding practices or strategy;
  - Customers (including the identity of actual or potential customers, as well as categories of customers);
  - Market territories (where the Company does/does not sell or intend to sell its products);
  - Suppliers (including the identity of actual or potential suppliers, as well as categories of suppliers);
  - Terms or conditions of sale;
  - Policy or strategy regarding negotiations with customers;
  - Revenues, profits or margins;
  - Market shares;
  - Sales, marketing, advertising or promotion strategy or costs;
  - Data or views on the market, supply/demand, price trends, etc. (including but not limited to whether prices on the market(s) are too low, at what level prices should be, or how to achieve higher or more stable prices);
  - Expansion/contraction plans;

- R&D projects, strategy or costs;
- Production capacity, output or costs;
- Quantities produced or sold, and inventories; and
- Information on the internal organization of the firm;
- Any confidential information relating to Stora Enso that could be used by the recipient in making decisions on the matters indicated above, or to anticipate the strategy of Stora Enso with respect to the matters indicated above;
- Any confidential information relating to a Competitor that could be used by Stora Enso in making decisions on the matters indicated above, or to anticipate the strategy of the Competitors
- Any other confidential information relating to Stora Enso that might be used by the recipient in a manner than could reduce competition; or
- Any other confidential information relating to a Competitors that might be used by Stora Enso in a manner than could reduce competition.

Any information exchanged with regard to Competitively Sensitive Information , regardless of the context in which it was exchanged, may amount to an infringement of competition law.

### 3.2.1.3 Public Communications and Market Signalling

Stora Enso must comply with certain regulatory and stock exchange requirements in respect of public statements. We must also be aware that public statements in respect of the markets for our products could be perceived as market signalling between competitors and could raise serious antitrust issues. Stora Enso employees must therefore comply with the following main principles:

- Public communications on Competitively Sensitive Information , such as current or future prices, inventories, capacity utilisation and downtime, should be cleared/discussed with Legal in advance;
- Public communications on Competitively Sensitive Information , such as prices, inventories, capacity utilisation and downtime, that relate to the past only, and to Stora Enso and not to Stora Enso's Competitors, are normally acceptable from a competition law point of view;
- Public communications, in the form of reports, releases and announcements, of current and future prices and other terms of trades with customers (or suppliers) or downtime should only be given when required by applicable regulatory (including civil labour law) and stock exchange requirements;
- Public communications giving an overall description or assessment of general future market trends, that are necessary to make a fair market valuation of the company (forward looking statements), are normally required by regulatory and stock exchange rules and are generally acceptable. However, efforts shall be made to ensure the generality of the information, and to avoid the perception of market signalling. Thus, it is acceptable to state that, based on historical and present factors, demand and, hence, prices currently seem to be rising. To state that prices are likely (or desired to) to rise by X% or Y amount in the future is not acceptable from a competition law point of view;
- Stora Enso spokespersons should talk about Stora Enso only, and not for the industry in general, on market related issues or suggest what would be/not be desirable from a general industry point of view (unless within the framework of Trade Associations and on acceptable political issues only; e.g. discussions in a Trade Association about the need for higher prices or lower output in the industry are not acceptable);
- Stora Enso spokespersons should not comment on the actions or business of Stora Enso's Competitors; and
- Stora Enso should refrain from contributing to market survey publications. Such contributions may only take place when cleared by Legal. Such clearance can be obtained if accurate data is contributed in good



faith, if the publications collect data from sellers as well as buyers and if the published data is presented in an aggregated format not disclosing data from individual companies (or customers).

#### 3.2.1.4 Buying from or Selling to Competitors of Stora Enso.

Buying from and selling to competitors present special antitrust risks related to information sharing and market signalling. In order to prevent Competitively Sensitive Information from flowing between competitors, as well as to avoid the appearance of improper information flow, special precautions must be taken whenever Stora Enso buys from suppliers or sells to buyers that compete with Stora Enso.

Selling products to, or purchasing products from, Stora Enso's Competitors should only take place for legitimate business reasons. In the context of negotiating sales to or purchases from competitors, it may be necessary to exchange some Competitively Sensitive Information. However, no information should be exchanged beyond what is necessary for the purposes of reaching a selling/purchasing agreement. When negotiating sales or purchases with a Competitor, the following principles shall apply:

- No information received from a Competitor should ever be exchanged with another Competitor;
- No information should be exchanged with a Competitor about transactions involving other customers or suppliers of Stora Enso, or about other customers or suppliers of that Competitor (including prices and volumes of other transactions);
- No information should be exchanged with a Competitor about the costs of either company. If costs need to be part of a price formula, they should be obtained from a third party source, e.g. an independent transport company in the case of transport costs;
- Where possible, it is preferable to use public reference prices to set the price, in order to avoid disclosure of each company's individual price strategies; and
- In the case of swaps of products, a unit-for-unit exchange is a way to avoid the need for sensitive price negotiations between competitors.

##### *Internal handling of competitors' information*

Stora Enso employees involved in selling products to Stora Enso's Competitors will have access to Competitively Sensitive Information, such as the price agreed. These employees must not communicate this information to any employees of Stora Enso involved in purchasing those products or involved in selling downstream products incorporating those products.

Likewise, Stora Enso employees involved in purchasing products from Competitors must not communicate any Competitively Sensitive Information available as a result of this purchase (including the price agreed) to any employees of Stora Enso involved in selling those products.

Where possible, the purchasing and selling functions for given products should be separated and handled by different employees. If the same Stora Enso employee must handle both purchasing and selling activities, it is especially important to avoid price negotiations involving the disclosure of costs of either party or the pricing policy applicable to transactions with other external parties or other Stora Enso units. Public reference prices and third party cost information should normally be used in this situation.

In some situations, such as determining internal transfer prices that comply with tax laws, some internal communications may be necessary regarding pricing information for products sold to or purchased from

Competitors. In this case, Stora Enso employees should limit information passing between selling and purchasing employees to what is strictly necessary for that purpose. In particular, wherever possible, only information about average prices that reflect general market conditions should be exchanged.

### ***Active action***

- *Public communications on Competitively Sensitive Information, such as current or future prices, inventories, capacity utilisation and downtime, should be cleared/discussed with Legal in advance;*
- *Stora Enso should refrain from contributing to market survey publications. Such contributions may only take place when cleared by Legal; and*
- *Whenever you have a competition law concern or question you should consult Legal.*

### 3.2.1.5 Participating in Trade Associations

Trade Association serve an important role in business and help to develop the industry which is in the interests of other stakeholders too. However, activities within Trade Associations need to be carefully examined since Trade Associations by their very nature represent a forum for contacts between competitors and therefore present potential competition risks.

Stora Enso employees participating in Trade Association meetings (including both formal and informal discussions and communications) must fully comply with the rules on agreements with competitors, at [Section 3.2.1.1](#). and on sharing information with competitors at [Section 3.2.1.2](#).

#### *Best practices when attending a Trade Association meeting*

- Obtain an agenda before any meeting that accurately reflects the topics to be discussed. This agenda should be closely followed during the meeting;
- Ideally, each Trade Association meeting should begin with a reminder to participants that the meeting is to be conducted in compliance with the relevant competition laws, and this should be reflected in the minutes;
- Complete minutes should be prepared of the discussions held during the Trade Association meeting. The minutes should include a complete list of attendees;
- The agenda, any other documents to be exchanged in the meeting, and the minutes of the meeting should be reviewed and finalized by counsel (e.g. of the Trade Associations if it has its own counsel) in order to ensure that they do not contain ambiguous or misleading wording that may incorrectly imply the existence of improper discussions;
- If topics are raised in Trade Associations discussions which the Stora Enso participant considers may be improper from a competition law perspective, he/she should object immediately and ask that such discussions be tabled in order for Stora Enso to confer with Legal and to allow the other participants to seek counsel from their respective Legal departments. The minutes should clearly indicate that an objection was raised by Stora Enso and that the topic, while briefly raised, was not discussed. In the event that the conversation continues despite Stora Enso's objection, the Stora Enso participant should immediately leave the meeting and ask that his/her departure from the meeting be clearly noted in the

minutes;

- If the Trade Associations has its own counsel, this person should ideally attend all meetings. If the Trade Associations does not have its own counsel, Stora Enso should request that its own counsel attend the meeting if sensitive topics are on the agenda. Before making such a request, the situation should be discussed with Legal;
- Ensure that you are not part of any informal discussion on sensitive topics outside the formal meeting;
- All agendas, minutes and documents exchanged in connection with Trade Associations meetings should be preserved for at least 5 years;
- After the meeting check that the minutes accurately reflect the discussions at the formal meeting; and
- If, after a Trade Associations meeting, the Stora Enso participant is unclear whether any discussion or meeting activity may have violated competition law, he/she should discuss this with Legal level immediately.

### *Exchanging information*

Many Trade Associations exchange information amongst members on various issues, such as environmental concerns, safety, industry best practices and the like. Provided that the information is not Competitively Sensitive Information, its exchange should not normally raise competition concerns.

As a general rule, discussions and information exchanged during Trade Associations

- Activities contributing to the progress of the industry as a whole;
- Initiation of new legislation, modification of existing legislation or reaction to proposed legislation, whether at national or supranational levels; participation in industry-wide litigation;
- Reduction of tariffs and other legal barriers to exports or imports; and
- Research into the safety or other technical aspects of materials, products or product methods.

On occasion, Trade Associations may gather information on items such as past sales, costs or even prices of its members. Such information gathering will not necessarily be deemed to violate the competition rules if the information provided by the members is historical (typically at least one year old, if not older), if the information is compiled by an independent third party such as the Trade Associations itself, and if the findings are presented in an aggregated form (such that it is not possible for the recipients to identify company-specific information<sup>3</sup>).

#### **Active action**

- *Any new membership of a Trade Associations in which Stora Enso's Competitors, actual or potential, are also members, must be pre-approved by Legal, Ethics and Compliance. The application should be filed [HERE](#).*

### 3.2.1.6 Visits To Mills And Other Facilities

Visits to mills and other production facilities, also including plantations, laboratories and logistic hubs, ("Mill



**Visits**) can be conducted. However certain safeguards must always be in place to avoid risks of misinterpretation. Mill Visits can have perfectly legitimate reasons which ultimately benefit consumers.

Mill Visits to Stora Enso's own facilities or to and outside the sectors in which Stora Enso is active present no antitrust risks.

Mill Visits between competitors. While Mill Visits to or by competitors can benefit consumers they also present significant antitrust risks. Hence, Stora Enso should only visit competing mills or host visitors from competing mills when there are major potential benefits and where appropriate safeguards are in place.

- Proposals for Mill Visits to or by Competitors must be reviewed and cleared on a case by case basis by the Division Head or Business Unit Head, as applicable. Once approved by the Division Head or Business Unit Head, the proposals also need approval by Legal, Ethics and Compliance;
- Visits to competing mills by invitation from suppliers for the purpose of demonstrating supplier equipment installed at the competing mill are only allowed if the Mill Visit is part of a concrete and documented investment process;
- Stora Enso mills may only allow Competitors reasonable access to Stora Enso mills for the purpose of demonstrating supplier equipment installed at our mills if there is written confirmation from senior management at the competitor that the visit is made due to a decision on a substantial investment;
- Mill Visits to or by competing mills for the purpose of learning how to solve purely technical problems in respect of production similar for the participating mills are likely to be cleared;
- Mill Visits to or by competing mills in connection with legitimate industry or Trade Associations meetings and activities are likely to be cleared; and
- Mill Visits to or by competing mills as a tool for benchmarking of general human resources and organizational practices, health and safety issues and general environmental issues are likely to be cleared.

*Exception.* To the extent that the Competitor is a customer or supplier of Stora Enso, Mill Visits in connection with ordinary commercial contacts in respect of the customer/supplier relationship, do not require previous clearance from Legal, Ethics and Compliance. Please do, however, read [Section 3.2.1.4](#) of the BPP if you are planning to make or host such a visit.

Discussions between Stora Enso employees and employees of Competitors on Competitively Sensitive Information during a Mill Visit are prohibited. In addition, certain meetings and contacts with Stora Enso's Competitors shall be reported to Legal, Ethics and Compliance according to the rules on Competitor Contacts, read [Section 3.2.1.8](#) of the BPP for further guidance.

### **Active action**

- *Once approved by the Division Head or Business Unit Head, proposals for Mill Visits to or by Competitors must be reviewed and cleared by Legal, Ethics and Compliance. The application should be filed [HERE](#).*
- *There is, however, one exception from this general rule:  
If the Competitor is a customer or supplier of Stora Enso, Mill Visits that are made in connection with ordinary commercial contacts in the customer/supplier relationship do not require previous clearance. If you are planning such a visit, do however inform your Division Head or Business Unit Head, and read*

### 3.2.1.7 Industry Benchmarking

Benchmarking can be done in many ways and is the practice of comparing cost, practices, efficiencies, organizational structure, equipment or other competitive information against other organisations. The practice has risks when competitors are involved, and certain safeguards must be in place before these activities are undertaken.

Benchmarking internally and outside the sectors in which Stora Enso is active. This type of benchmarking activity presents no antitrust risks and is encouraged.

Benchmarking with Competitors. Using publicly available information such as financial reports, press releases, media information etc., presents no antitrust risks and is encouraged. However, benchmarking with Competitors must be undertaken only when there are major potential benefits and where appropriate safeguards are in place.

- Proposals for benchmarking with Competitors must be reviewed and cleared on a case by case basis by the Division Head or Business Unit Head, as applicable. Once approved by the Division Head or Business Unit Head, the proposals also need approval by Legal, Ethics and Compliance.
- Benchmarking with Competitors will only be cleared if the benchmarking is on topics generally considered as acceptable from a competition law point of view, such as:
  - General human resources;
  - Organizational practices;
  - Health and safety issues; and
  - General environmental issues.
- Further, benchmarking with Competitors on purely technical matters (e.g. on purely technical machine or production process solutions) can be cleared if the benchmarking takes place occasionally and not as a regular event.
- In case Competitively Sensitive Information is benchmarked, the information made available to participating companies should not specifically identify individual companies or facilities or enable such information to be identified. Further, such information must be historical, at least more than six months old.
- Prospective or forward-looking data must never be used for benchmarking activities.

*Exception.* A benchmarking application is not required if a mill visit application is made for the relevant event whereby the benchmarking activity is disclosed. In addition, an application for benchmarking against competitor data via third party sources, e.g. databases, is not required if the data is (i) at least more than six months old, (ii) anonymous and (iii) aggregated, and where there is no direct contact with any competitors.

Discussions between Stora Enso employees and employees of Competitors on Competitively Sensitive Information during a benchmarking event are prohibited. In addition, certain meetings and contacts with Stora Enso's Competitors shall be reported to Legal, Ethics and Compliance according to the rules on Competitor Contacts, read [Section 3.2.1.8](#) of the BPP for further guidance.

### **Active action**

- *Once approved by the Division Head or Business Unit Head, proposals for benchmarking with Competitors must be reviewed and cleared by Legal, Ethics and Compliance, prior to the benchmarking project. Applications to perform a benchmark study shall be filed [HERE](#). There are, however, two exceptions from this general rule:*
  - *A benchmarking application is not required if a mill visit application is made for the relevant event whereby the benchmarking activity is disclosed.*
  - *An application for benchmarking against competitor data via third party sources, e.g. databases, is not required if the data is (i) at least more than six months old, (ii) anonymous and (iii) aggregated, and where there is no direct contact with any competitors.*

### **3.2.1.8 Competitors Contacts**

Each Stora Enso employee must take great care when meeting with Competitors in order to comply with the applicable competition rules. Discussions between Stora Enso employees and employees of Competitors on Competitively Sensitive Information are prohibited.

Stora Enso must act independently on the market and must not seek to influence the future market conduct of its Competitors or to ascertain in advance the future market conduct of its Competitors.

Stora Enso may speculate and make forecasts. It should not for this purpose obtain business secrets from its Competitors concerning their future plans.

It should be emphasized that Stora Enso is not only in competition on the markets where it sells but also on the markets where it purchases and shall comply with the same rules in relation to its Competitors whether acting as a seller or as a purchaser.

It is especially important that the employees of Stora Enso do not make agreements or even communicate with Competitors in relation to Competitively Sensitive Information (see [Section 3.2.1.2](#)).

### **Active action**

- *Members of Stora Enso's Group Leadership Team and members of each Division<sup>4</sup> Leadership Team shall report all meetings and contacts with Stora Enso's Competitors to Legal, Ethics and Compliance. There are, however, two exceptions from this general rule:*
  - *To the extent that the Competitor is a customer or supplier of Stora Enso's ordinary commercial contacts in respect of the customer/supplier relationship do not need to be reported;*
  - *To the extent that the contact takes place at an official trade association (or similar) meeting*

*from which official meeting minutes reflecting the discussions are produced and distributed the contact does not need to be reported; or*

- *Other Stora Enso employees shall report contacts that they have with Competitors if the contact or meeting touches upon Competitively Sensitive Information.*

*The report should be filed [HERE](#).*

### 3.2.1.9 Joint Purchasing

Joint purchasing includes any arrangement under which two or more parties agree to jointly source products or services. The joint purchasing can take many forms. It may be carried out by a jointly controlled company, by a company in which many other companies have non-controlling stakes, by a contractual arrangement or by even looser forms of co-operation. The products or services may be used by each party in the manufacture of other products or resold in their existing form.

Joint purchasing agreements can create significant benefits for consumers and markets. For example, they may create cost savings in the form of lower purchase prices or reduced transaction, transportation and storage costs, which can in turn be passed on to customers. They can also encourage suppliers to innovate and introduce new or improved products on the markets. Purchasing goods or services together with other companies can therefore be fully legitimate and a way for companies like Stora Enso to save costs, to the benefit of both shareholders and customers.

However, joint purchasing may entail considerable competition law risks if it prevents, restricts or distorts competition in any way. For example, agreements that involve the fixing of purchase prices can be a serious restriction of competition, and joint purchasing arrangements which serve as a tool to engage in price fixing, output limitation or market allocation in a selling market can be seen as disguised cartels.

Whether joint purchasing is allowed or not depends on the circumstances of each case, and a thorough competition law analysis is often required. Extra care is required where:

- The purchasing companies are competitors in one or several selling markets;
- The purchasing companies together account for a large share of the purchasing market and/or a downstream selling market;
- There are only a limited number of suppliers of the concerned product or service, and/or the barriers to enter into the supply market are high;
- There are a low total number of competitors in the selling market, and/or few competitors outside the purchasing cooperation;
- The cooperation extends to activities other than the coordination of the conditions for purchase of the goods or service in question (i.e. to joint marketing or sales activities);
- Participating competitors reach a high commonality of costs through the joint purchasing;
- Pre-existing links exist between the participating competitors, such as other joint purchasing agreements.

#### **Active action**

*If you are contemplating to engage in joint purchasing of goods and/or services with another company, please consider the information above and fill out the form. Once you have submitted the form, await instructions from Legal before proceeding*

### 3.2.2 Relations with Customers, Distributors and Suppliers

The competition rules do not only apply in respect of the relationship between competitors (the horizontal level) but can also apply in relation to a company's customers, distributors and suppliers (the vertical level), either because practices include anti-competitive agreements or because they constitute an abuse of dominant position.

Special attention should be paid to the following topics:

- **Agreements restricting the right of a distributor or other buyer to determine its own selling prices.** Setting a minimum sales price is prohibited. Setting a maximum price or making recommendations is generally permitted so long as it is not indirectly a minimum price requirement;
- **Restrictions on the rights of the distributor, or other buyer, to re-sell, by reference to geographical territories or specified customers.** This rule is subject to certain exceptions. As a rule, Stora Enso's buyers should not be prohibited from selling to customers outside of their territory who contact them (i.e. "passive sales" must be allowed);
- **Long-term sale or purchase agreements.** Long term selling or purchasing agreements that cover all or a substantial part of the needs or output of a customer or a supplier (exclusivity arrangements) may by their very nature be an area of concern since such arrangements lock up the parties and restrict the possibilities of other suppliers or purchasers to do business on the market. However, there are certainly situations where such arrangements could be justified, e.g. when the supplier has to undertake major investments in order to supply or when sponsoring a new market entrant;
- **Agreements containing exclusive supply or purchase obligations.** Exclusive obligations on a customer to only buy a type of product from Stora Enso and not from any competing manufacturer will generally be automatically allowed if (1) Stora Enso's market share in the product is less than 30% and the buyer's share of the market on which it buys the product is less than 30% and (2) the agreement is no longer than five years and not tacitly renewable beyond a period of five years. Similarly, exclusive obligations on a supplier to supply only Stora Enso may in some cases also be allowed; and
- **Where conclusion of contract is subject to acceptance of unrelated supplementary obligations.** Tying is a particular concern in markets where Stora Enso has a significant market share. A typical example of tying would be for Stora Enso to only supply a product in which it has a significant market share to a customer if the customer also buys another product for which Stora Enso has a weaker market position, unless justifiable technical or safety related circumstances are in place.

### 3.2.3 Research and Development

R&D agreements generally go along with high investment costs, long term commitments of the parties, and high expectations that such investment in time and money will eventually pay off by successful commercial exploitation of its results. Access to such results and the valid allocation/restriction of exploitation rights are thus of key importance for companies entering into such collaboration.

The following R&D agreements are unlikely to impose any competition law concerns:

- R&D agreements that relate to cooperation at an early stage, far removed from the exploitation of possible results;
- R&D agreements between non-competitors, unless there is a possibility of a foreclosure effect and one of the parties has significant market power with respect to key technology;
- The outsourcing of R&D to research institutes and academic bodies which are not active in the exploitation of the results; and
- “Pure” R&D agreements that do not extend to joint exploitation of the results, unless they appreciably reduce effective competition in innovation.

R&D agreements which may have the effect of restricting competition are those where the parties to the co-operation have market power on the existing markets and/or competition with respect to innovation is appreciably reduced.

The following R&D provisions are likely to impose competition law concerns, unless it can be demonstrated that they are indispensable to an R&D agreement:

- A restriction of the freedom of the parties to carry out R&D in a field unconnected to the agreement;
- A limitation on output or sales. There are exceptions to this: the setting of production or sales targets in the event of joint exploitation or joint distribution; specialization in the context of exploitation; and a non-compete clause during the period of joint exploitation. Further, field-of-use restrictions will not be regarded as constituting limitations of output or sales (nor as restrictions on territories or customers);
- The fixing of prices when selling the contract products or licensing the contract technologies to third parties, with the exception of fixing the prices or royalties charged to immediate customers in the event of joint exploitation or distribution;
- A restriction of the territories to which or the customers to whom the parties may passively sell the contract product or license the contract technologies, with the exception of the requirement exclusively to license the results to another party; and
- A requirement not to make any, or to limit, active sales in territories or to customers which have not been exclusively allocated to one of the parties by way of specialization in the context of exploitation.

### 3.3 Abuse of Dominant Position

The term “dominant position” implies a position of considerable economic strength, which enables an undertaking to prevent effective competition on the market by the power to behave substantially independently of its competitors and customers.

Dominance is not simply a question of a company having a large market share. Several other factors have to be taken into account. Dominance can only exist in relation to a particular product and geographical market. Market definition can be a complex task, and requires both legal and economic assessment.

There is no clear legal threshold beyond which a company is considered to be dominant. However, Stora Enso personnel should exercise special care and consult Legal in conducting its business in products where Stora Enso has a leading position or market share exceeding 25%. A company in such a position must not, without objective justification, act in a manner which constitutes an abuse.

Examples of behavior that could amount to abuse of dominant position include:

- Imposing unfair purchase or selling prices or other unfair trading conditions e.g. to charge prices that are so high that the prices have no relation to the economic value of the product supplied or so low that they are below cost, which may be assumed to be intended to drive competitors from the market;
- Limiting production, markets or technical development to the prejudice of consumers;
- Discrimination, i.e. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, if the different prices do not reflect the differences in costs of supplying the different customers;
- Tying, i.e. 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;
- Discount and rebate policies if they are loyalty rebates aiming at committing the customer to buy all or most of its requirements from the supplier. Volume rebates are allowed if the rebates reflect the suppliers' cost savings in mass production; and
- Refusing to supply if the refusal is a part of a boycott system. There should typically be objective reasons for a refusal to supply on market terms, e.g. the financial position of the customer.

### 3.4 Mergers and Acquisitions

Competition authorities monitor and investigate mergers and acquisitions in order to make sure that they will not harm free competition, e.g. by reinforcing or creating dominant positions.

The rules on merger control vary but usually include an obligation on the merging companies to make a filing where certain thresholds are met (based on e.g. revenue, market share and asset value). The relevant authority will be based on the filing investigate if the transaction is harmful for competition or not.

Merger control issues must always be referred to Legal. However, it is important for each Stora Enso employee to understand that such matters may require that the organization provides extensive information on very short notice.

#### *Information exchanges in the due diligence process*

It should be noted that information exchanges in the due diligence context have an obvious potential to raise antitrust concerns in particular where the buyer, seller or target are competitors, as exchange of confidential information may violate competition regulations (see [Section 3.2.1.2](#)).

The European Commission has stated that the exchange of market information may lead to restriction of competition in particular in situations where it is liable to enable companies to be aware of market strategies of their competitor. To this end, confidentiality agreements normally offer important assurance that the exchange of information in due diligence will not normally have an anti-competitive object or effect. Provisions that may prove particularly relevant from an antitrust perspective include (i) the prohibition against using confidential information except to evaluate the transaction, (ii) the prohibition against disclosing such information to anyone other than the parties' representatives engaged in such evaluation, and (iii) the obligation to return or destroy such information if the transaction does not proceed.

Where the parties are competitors, disclosure of Competitively Sensitive Information may violate competition law, especially if the team responsible for reviewing the information includes individuals responsible for the

receiving party's commercial policy. Compromises to satisfy the receiving party's legitimate interest in evaluating the risks of the transaction, while mitigating antitrust risks, include (i) disclosing such information only in aggregated or historical form, and/or (ii) disclosing such information only to counsel, accountants or business consultants who agree (with their client's consent) not to disclose such information to the receiving party. These representatives; sometimes referred to as "clean teams", may also sign supplementary confidentiality agreements restricting the use of the information exchanged for the limited purposes of assessing the suitability of the transaction, negotiating the transaction price etc. An internal form of clean team would be a team on the receiving party's side where no one is responsible for the receiving party's commercial policy in relation to the relevant competing goods or services.

### **Active action**

- *Merger control issues must always be referred to Legal.*

## 3.5 Joint Ventures

There are many situations in which a company, looking at possible developments of its future commercial activities, will decide that it needs a partner (or more than one) to share in a particular project. The task of choosing a partner will involve careful consideration of the known abilities and resources of the companies in question. Such companies may be actual competitors already or merely potential competitors.

The degree of co-operation proposed may be quite limited, e.g. the operation of joint purchasing arrangements or shared laboratory work, or alternatively may be very extensive, e.g. a proposed merger of the parties' entire interests in a particular field with a consequential need to give up their individual business in that market in favour of a new enterprise.

For purposes of competition law, certain joint ventures are treated as a merger or acquisition and thus subject to relevant merger control rules. Other joint ventures fall outside of the merger control rules and are instead subject to the competition rules relating to agreements.

Particular guidelines can be found in relation to the following specific types of agreements:

- Agreements on research and development (see [Section 3.2.3](#)) research
- Purchasing agreements (see [Section 3.2.1.9](#))

When establishing a joint venture, it should be considered if there is a - theoretical - risk that the parents utilize the joint venture to co-ordinate their behavior on any market where the parents are competitors and in particular on any markets related to the business of the joint venture. Certain guidelines shall normally be implemented if this would be the case.

## 3.6 Investigations

*Handling enquiries from the competition authorities*



Stora Enso's policy is to cooperate fully with investigations of competition authorities.

To ensure that any investigation is conducted legally, properly and on time, and to take into account the experiences of the entire Group, any investigation or request for information should be referred to Legal immediately, and any reply should be given via Legal.

Competition authorities have far reaching rights to request information when investigating anti-competitive behaviour or assessing various kinds of mergers.

#### *Handling dawn raid inspections at company premises*

An unannounced inspection by a competition authority is normally referred to as a "dawn raid" inspection.

Each Stora Enso office and production facility shall have one person to represent Stora Enso in case of a dawn raid inspection (a "Responsible Person"). In addition, at least two deputies shall be appointed by the Responsible Person. The Responsible Person shall ascertain that the identities of the Responsible Person and the deputies are kept up to date on [this list](#). If an office or production facility fails to appoint its Responsible Person, Legal, Ethics and Compliance shall make the appointment. Under no circumstances should Stora Enso's staff provide any false or misleading information to investigators, tamper with or destroy documents during an investigation, break a seal affixed by investigators or endeavor to hinder the investigation in any way.

Under EU legislation, inspectors from the European Commission have the right to:

- Enter any company premises and seal them as necessary. The European Commission can also conduct an inspection in any other premises, land or means of transport, including the private homes of directors, managers and other members of staff, if a reasonable suspicion exists that books or other records related to the business and to the subject matter of the inspection, which may be relevant to prove a serious violation of EU competition legislation, are being kept there;
- Examine and take copies of all books and other records related to the business, irrespective of the medium on which they are stored. The inspectors are, however, only entitled to obtain materials on matters that fall within the scope of the investigation;
  - If Stora Enso becomes subject to a dawn raid inspection, notes shall be made of all files and documents examined by the inspectors, whether or not the inspectors want copies to be taken; and
  - each document photocopied shall be copied in three copies: one for the inspectors, one for Stora Enso and one for Legal. Ascertain that each document is restored in its initial position after it has been copied.
- Ask any representative or member of staff for explanations on facts or documents, relating to the scope of the investigation, and to record the answers;
  - If Stora Enso becomes subject to a dawn raid investigation and the inspectors ask questions, it is normally the company (not the inspectors) that is entitled to decide who should provide the explanation. However, if the inspectors demand to speak to a specific person who logically could easily provide an explanation, such as the author of a document, the person should be made available to the inspectors.
  - If the best qualified person or the information necessary to answer a question is not available, this shall be explained to the inspectors with an offer to provide the answer later in writing.
  - If questions are answered, they should be answered as to facts but without any assessments. If the answerer is uncertain, this should be mentioned.
  - Detailed notes shall be made of all oral explanations given to the inspectors a copy of the notes taken by the inspectors shall be requested.



- When possible a lawyer shall always be present during any form of interview with Stora Enso employees.

Search a company's IT environment (servers, desktop computers, laptops, tablets and other mobile devices) and all storage media (CD-ROMs, DVDs, USB-keys) using both the European Commission's own hardware and software and the search tools built into the company's media. This covers also private devices used for business purposes (BYOD), external hard drives, backup tapes and cloud-computing services. The inspectors may make an integral copy of a digital storage medium; and

- If the inspection is not finished during an on-site inspection, the European Commission can copy the data set, secure it in a sealed envelope and invite company representatives to be present when the sealed envelope is later opened at the European Commission's premises. Alternatively, the European Commission may decide to return the sealed envelope to the company for safekeeping until further notice. The company will receive a data carrier (e.g. a DVD) on which all final data selected by the inspectors are stored and it will be requested to sign printed lists of data items selected. Personal data, e.g. names, telephone numbers and e-mail addresses of employees, although not being the targets of the inspection, may be copied and obtained by the officials if included in business documents.

On the other hand, inspectors from the European Commission do not have the right to review and take copies of documents:

- That contain communication between Stora Enso and external lawyers. Documents to or from external lawyers (i.e. not in-house lawyers) are often protected by attorney-client privilege. Any such documents should be clearly marked as containing attorney-client communication;
- That contain commercial secrets of a technical nature; or
- That fall outside the scope of the inspection.

Any disagreements between Stora Enso and the inspectors in a potential dawn raid investigation regarding whether e.g. a document is covered by legal privilege shall be written down in a detailed note.

The powers of national authorities are at least broadly similar to the powers of the European Commission.

#### *Reception/Arrival*

In order to protect the legal interests of Stora Enso and make sure that a dawn raid inspection is conducted legally and properly, the following shall be noted:

- When inspectors arrive at company premises, they normally go to the reception desk, identify themselves and ask to see a senior manager. The receptionists or security personnel at the reception should immediately contact the Responsible Person or, in his or her absence, one of the deputies; and
- The inspectors should remain in the reception until the Responsible Person and when possible, a member of Legal come to meet them. If the inspectors believe that they are being unreasonably delayed at reception, it may result in the company being fined for failure to cooperate. Therefore the inspectors should be dealt with promptly and courteously at reception.

Under no circumstances should Stora Enso's staff provide any false or misleading information to investigators,



tamper with or destroy documents during an investigation, break a seal affixed by investigators or endeavor to hinder the investigation in any way.

Detailed instructions for Responsible Person, Receptionists and other company functions on how to behave in case of a dawn raid inspection are available [HERE](#).

### 3.7 Documents

All documents (in the widest sense of the word; including letters, memos, notes, e-mails etc.) produced in the course of Stora Enso Group's business can be a target for competition authorities' review. Sometimes documents may convey the false impression that there have been contacts with Competitors on anti-competitive matters. It is therefore of great importance that all documents are written clearly and carefully in order to avoid this misinterpretation.

Guidelines for document creation:

- Ask yourself whether anyone could interpret what you are saying as meaning something you do not intend;
- Make clear references to the source of business intelligence material. For example information on Competitors' prices received from a customer will look extremely suspicious unless the source is clearly stated (i.e. name of customer, name of individual, date etc.);
- Do not use language that falsely suggests collusive conduct such as "this pricing is in accordance with industry policy";
- Do not overstate the significance of Stora Enso's competitive position or market power or Stora Enso's product and market strategy by using such phrases as "dominant position", "this will cripple the competition" or "price leader";
- Do not understate the competitive position of Stora Enso's Competitors by using such phrases as "enormous barriers to entry/expansion";
- Do not use words suggestive of illegal or questionable behaviour such as "please destroy after reading";
- Do not speculate or comment on legality or potential illegality of any particular business conduct; and
- Do not describe as undesirable or objectionable competitive activities of Competitors or customers (e.g. customers are lost not stolen, price-cutting is not "disruptive" or "against the interests of the industry").

Documents lacking references of the source or containing careless and/or inappropriate language may make lawful conduct look suspicious, which may lead to unnecessary investigations by the competition authorities, and thereby generate significant legal costs for Stora Enso and damage Stora Enso's public reputation. The time spent in writing clearly and following these guidelines is an important part of This Policy.