Behaviour in Competition

A Guide to Competition Law
## Contents

### I Introduction  
1. Statement  
2. Purpose  
3. Application of Competition Law  
   3.1 EC Competition Law  
   3.2 US Antitrust Law  
   3.3 National Competition Laws  
4. Responsibility of the Employees  
5. Consequences of Violations

### II Agreements and Coordinated Practices  
Eliminating or Restricting Competition  
1. Horizontal Agreements  
   1.1 Prices and Conditions of Supply  
   1.2 Market Allocation  
   1.3 Boycotts  
   1.4 Joint Ventures  
   1.5 Trade Associations  
2. Vertical Agreements  
   2.1 Resale Prices  
   2.2 Exclusivity  
   2.3 Export Bans/Parallel Trade  
   2.4 Non-Compete Clause  
   2.5 Patent, Trademark, Copyright  
   2.6 Improvements and New Applications  
   2.7 Supply Agreements

### III Abuse of a Dominant Position  
1. Discrimination/Different Sales Conditions  
2. Imposing Exclusive/Excessive Purchase Commitments on Customers  
3. Rebates  
   3.1 Fidelity Rebates  
   3.2 Target Rebates  
   3.3 Aggregated Rebates  
4. Unfair or Predatory Pricing  
5. Tying and Bundling  
   5.1 Tying  
   5.2 Bundling  
6. Refusal to Sell

### IV Guidelines on Tenders  
1. Tender Law Regulations  
2. Competition Law Requirements  
3. Integrity in Business

### V Intracorporate Agreements

Annex
Introduction

1. Statement

The maintenance of high ethical standards in adhering to national and international laws is one of the fundamental Roche Corporate Principles.

As a company with worldwide business activities, Roche is determined to adhere to the applicable laws and regulations in force in the various countries where it operates, as well as to implement high standards of integrity in business transactions. Such laws, regulations and standards include the EC Competition Law and the US Antitrust Law, as well as the Rules of Conduct laid down in the Report on Extortion and Bribery in business transactions issued by the International Chamber of Commerce (ICC).

Competition law (also referred to as antitrust law) is intended to help preserve the competitive, free enterprise system that is the basis of a free market economy. It is the belief of the management that even in the absence of such laws, the interest of the company, its shareholders, its employees and other stakeholders are best served by a policy of vigorous and fair competition. For these reasons, it is the policy of the Company to comply strictly, in all respects, with competition laws, and to object to all forms of extortion and bribery, which – in addition to being often a crime – may also constitute acts of unfair competition.

Following these principles, fair and correct behaviour in competition is mandatory for every employee.

Roche is aware that sometimes it is difficult for employees to understand the requirements of the competition laws in the various countries where Roche does business. In fact, in many cases the law itself is not entirely clear. Therefore, Roche encourages every employee to seek the counsel of the Roche legal department regarding any specific antitrust or competition question that comes up.

The Directive “Behaviour in Competition” is part of the comprehensive Roche Competition Law Compliance Program that also includes other elements, such as antitrust audits, mock dawn raids, general training on competition laws as well as an antitrust questionnaire for self-testing. In addition, we have developed an e-learning program called “RoCLID” (Roche Competition Law Interactive Dialogues), which is mandatory for all Roche Group employees worldwide that are faced with competition issues in their business activities. You will find a link to this e-learning program on the Group Legal Department website.
2. Purpose

The purpose of this “Behaviour in Competition” Directive is to explain the basic provisions of antitrust and competition laws, in particular the provisions as applied in the European Union and the United States. This is designed to make both management and employees aware of the basic rules, and how these rules affect their business behaviour in making commercial decisions.

This Directive cannot cover all facts and circumstances that an employee may encounter in his or her business activities. Accordingly, it is strongly recommended and expected that in every case of doubt or in any instance where an employee has a question as to whether a particular course of action is appropriate or not, he or she should contact the Roche legal department for advice.

“Behaviour in Competition” is designed to provide each employee with enough information about the competition laws to recognise situations that require legal advice and to obtain it.

I did not know it was illegal is not an excuse for the competition authorities.

Where you believe, in good faith, there is a violation of applicable competition laws and regulations, you should report the matter promptly to your line manager, the Roche legal department, the local Compliance Officer or the Chief Compliance Officer. The Roche Group SpeakUp Line is an additional channel for all of us to make a report when we in good faith believe that competition laws are violated. The Roche Group SpeakUp Line is managed by an external company, independent from Roche. If you wish so, you can report anonymously. Details for the Roche Group SpeakUp Line can be found either in the Roche Group Code of Conduct or on the Roche intranet.

If you believe in good faith that competition law has been violated, you are expected to speak up using the available channels.

3. Application of Competition Law

The best economic and social results are achieved in an environment of free competition. Accordingly, competition laws prohibit unreasonable restraints on competition and acts of monopolisation.

Because of the worldwide business activity of Roche, all employees, regardless of their place of business, must comply with the EC Competition Law, the US Antitrust Law, and any other applicable local competition laws, where the intended business transaction affects these territories.

Competition law must be observed by all players in the market around the world.
3.1 **EC Competition Law**

The principal provisions of EC Competition Law are set forth in Articles 101 and 102 (formerly Articles 81 and 82) EC – as stated in the Annex. More detailed legal provisions are laid down in various Commission regulations and directives.

EC Competition Law applies to all companies doing business within the Member States or which may affect trade between the Member States of the European Economic Area (EEA) regardless of whether these companies are established in one of these countries or not.

3.2 **US Antitrust Law**


US Antitrust Law applies to all companies and individuals doing business in the United States or affecting US commerce.

3.3 **National Competition Laws**

There are national competition laws to be considered when doing business in the corresponding country. These national competition laws are generally similar to the EC Competition Law and/or US Antitrust Law. You should contact the Roche legal department with any questions regarding the applicability of local law.

4. **Responsibility of the Employees**

Compliance with the competition laws is the responsibility of every employee.

Roche employees are forbidden to knowingly engage in practices that violate the competition laws.

Each employee is responsible for acquiring a sufficient understanding of the competition laws to recognise situations which may involve competition law issues.

Where there is any question of whether a current business practice or a commercial decision might be in conflict with competition law, each employee must consult the Roche legal department.

**Compliance with the competition laws is the responsibility of every employee.**

**In case you are in doubt, seek advice.**

**If you believe in good faith that competition law has been violated, you are expected to speak up using the available channels.**
5. **Consequences of Violations**

Violations of the competition laws may result in extremely serious penalties.

The European Commission may impose fines up to 10% of the annual worldwide respective group turnover of the undertakings involved. When setting the amount of the fine, the European Commission considers the impact and severity of the violation.

Furthermore, any agreement violating EC Competition Law is automatically void.

For a violation of US Antitrust Law, a company may be subject to very substantial fines in the amount of hundreds of millions of USD.

Violations against national competition laws may also result in large fines. In Switzerland for example, the fine can amount to 10% of the Swiss turnover of the company in the last three years.

Besides large fines, violations of competition law may also give rise to civil lawsuits which may result in substantial damage claims from customers and competitors. In the US, successful plaintiffs in antitrust lawsuits may be entitled to receive triple the amount of their damages plus attorney fees.

The violation of US Antitrust Law and other national competition laws may also result in convictions of the involved employee(s). Individuals can be fined and/or given prison terms for such criminal antitrust violations.

Violations of competition laws may also result in the mandatory or discretionary exclusion of Roche from public tender procedures.

**Violating the competition laws never pays off.**

*In case of any doubt, the Roche legal department must be consulted. Employees who violate competition laws are subject to severe sanctions.*
In the EU, Article 101 (1) (formerly Article 81) EC prohibits all agreements or understandings which have as their object or effect the prevention, restriction or distortion of competition.

In the United States, the Sherman Act prohibits contracts, combinations or conspiracies that unreasonably restrain trade.

The form of agreements is of no importance. Special attention must be paid to all interactions with competitors wherever they may take place. Not only written agreements are deemed to fall within the scope of competition law, but also verbal agreements or so-called coordinated practices, i.e. deliberate and intended collaboration between individual companies for the purpose of eliminating or restricting competition in a certain market.

Restraints of competition under Article 101 (1) (formerly Article 81) EC are divided into two types: vertical and horizontal restraints. The United States does not specifically differentiate between horizontal and vertical restraints in its statutes, but both types of conduct could violate US Antitrust Law.

In the EC, horizontal restraints refer to agreements or coordinated practices between companies acting on the same level of trade, e.g. relationships between actual or potential competitors which restrict the competition freedom of the partners or third companies.

Vertical restraints refer to agreements or coordinated practices restricting competition between companies acting on different levels of trade, e.g. relationships with distributors and customers, licensees, suppliers or licensors, that restrict the competition freedom of the partners or third companies.

A dominant company is subject to additional legal scrutiny. In at least the EU and perhaps also in the US, a company can be said to have a special responsibility with regard to competition on such market if it is found to be dominant. Additional rules that must be observed in cases of dominance are explained in chapter III.

1. **Horizontal Agreements**

Agreements or coordinated practices between competitors which affect the terms on which they do business may raise very serious competition law concerns.

The following general principles should be followed in connection with any dealings with competitors:
1.1 **Prices and Conditions of Supply**

Every manufacturer is free to establish and change its own prices, and in doing so, it may take account of, in the absence of any coordination, the conduct of its competitors. However, it is a violation of competition law to agree or to cooperate in any way with competitors to fix or stabilise prices. In particular:

<table>
<thead>
<tr>
<th>It is prohibited to:</th>
<th>exchange cost or price-related information with competitors unless the parameters of the exchange are carefully constructed and the exchange is occurring for otherwise pro-competitive reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>• jointly determine selling or purchase prices</td>
<td>• exchange cost or price-related information with competitors unless the parameters of the exchange are carefully constructed and the exchange is occurring for otherwise pro-competitive reasons</td>
</tr>
<tr>
<td>• jointly determine price increases</td>
<td></td>
</tr>
<tr>
<td>• jointly fix specific minimum or maximum prices or price ranges</td>
<td></td>
</tr>
<tr>
<td>• jointly agree rebates, discounts and other conditions of supply</td>
<td></td>
</tr>
<tr>
<td>• exchange cost or price-related information that will be followed by fixing similar pricing</td>
<td></td>
</tr>
</tbody>
</table>

* In case of doubt, the Roche legal department should be consulted prior to any exchange of price-related information.

**Do not fix any price-related conditions with competitors.**

**Never discuss any aspects of cost or pricing with competitors.**

1.2 **Market Allocation**

An agreement among competitors to share or allocate markets or customers in any form is forbidden. More specifically:

<table>
<thead>
<tr>
<th>It is prohibited to:</th>
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</thead>
<tbody>
<tr>
<td>• share or allocate markets between competitors in respect of specific territories, products, customers or sources of supply</td>
<td></td>
</tr>
<tr>
<td>• fix production, buying and selling quotas between competitors</td>
<td></td>
</tr>
</tbody>
</table>

**Do not arrange any market sharing or allocation with competitors.**
1.3 Boycotts

The refusal by a group of competitors to deal with one or more customers or suppliers in order to hinder the customer or supplier from conducting business in a market is prohibited.

- mutually agree not to supply certain customers or not to purchase from certain suppliers
- agree with competitors to make the supply or purchase of goods subject to certain mutually agreed conditions

1.4 Joint Ventures

Joint venture agreements between competitors may produce useful efficiencies but can also affect or restrain competition. Consequently, such agreements must not be entered into without first obtaining legal advice.

Advice should be sought if you intend to:
- enter into an agreement with a competitor on joint research and/or development
- enter into an agreement with a competitor on joint manufacturing
- enter into an agreement with a competitor on joint marketing
- enter into an agreement with a competitor on joint distribution

1.5 Trade Associations

Joining a trade association where competitors meet is generally permissible. However, any meetings or other activity that involves sharing of information among competitors can raise significant antitrust risks. Accordingly, Roche’s participation in such associations or meetings must be monitored carefully.

It is prohibited to:
- share information about prices, rebates, discounts, conditions of supply, profit margins, cost structures, calculation practice vs distribution practices, territories, customers, new products, etc. during meetings of a trade association without advance consultation with the Roche legal department

It is possible to:
- agree joint petitioning, government relation matters and similar topics within a trade association

Do not exchange competitively sensitive information with competitors.
If competitively sensitive information is exchanged at a trade association, immediately leave the meeting and contact the Roche legal department right away.
2. **Vertical Agreements**

Vertical agreements affect business partners that are not acting at the same level of the production or distribution chain, such as distributors, customers, licensees, licensors and suppliers.

- Treatment of certain vertical agreements in the US differs from that of the EU.
- In the EU, certain categories of vertical agreements as well as license agreements on technology transfer do not violate EC competition law if the requirements of the applicable Block Exemption Regulations are met.

These EU Regulations apply if the contracting parties are not competitors and if the market share of the supplier or licensor does not exceed certain market share thresholds. Furthermore, the EU Regulations list a number of prohibited agreements and practices which cannot be exempted and therefore should never be used. The following principles, based on the EU Regulations, should be considered (see following pages):

As the competition laws and the following principles have to be carefully checked, the Roche legal department should always be consulted prior to the establishment of a vertical agreement.
Resale Prices

The producer must not set the resale prices charged by the distributor. More specifically:

In the EU*, it is prohibited to:

- fix or set the resale prices to distributors or dealers for any product
- fix or set the resale prices in letters, offers, invoices and the like
- state resale prices in order forms
- state resale prices in price lists, catalogues, displays, price labels, tags, packings, brochures, etc.
- require the distributor to adhere to the recommended resale prices
- terminate the agreement with a distributor because of its refusal to adhere to the recommended resale prices
- coordinate the price policy with the distributor according to the market situation
- prohibit the distributor from granting any rebates or discounts
- provide the distributor with formulas to calculate prices
- state the profit margin of the distributor
- prescribe minimum resale prices
- systematically monitor the resale prices of the distributor

In the EU*, it may be possible to:

- give a non-binding price recommendation for resale prices of branded products, if no direct or indirect pressure is exercised or any incentive is offered to enforce such recommendation, provided there is no dominance
- state maximum resale prices
- mark all statements of resale prices as *recommended resale prices* **

** Non-binding price recommendation may, under certain circumstances, be prohibited under Swiss or other national competition law. Advice from the Roche legal department should be sought.

* The law in the United States and other countries may differ from that of the EU. The Roche legal department should be consulted prior to the establishment of any resale price maintenance initiatives.

Do not impose any resale prices. Always consult the Roche legal department prior to the establishment of any resale price maintenance initiatives.
2.2 **Exclusivity**

By entering into agreements to buy exclusively from one source or to supply exclusively to one customer (exclusive distribution, purchase, franchise or license agreements) certain general principles must be considered:

- **In the EU**, it is prohibited to:
  - prescribe not to passively supply customers from outside the territory
  - forbid a distributor to accept a customer’s inquiry from outside the territory
  - forbid a distributor to supply the products to other distribution channels upon corresponding orders
  - refuse orders from distributors exporting the products with the argument of territory restrictions
  - forbid internet promotion by a distributor

- **In the EU**, it may be possible to:
  - grant an exclusive distribution, purchase, franchise or license right in a certain territory or to a certain group of customers
  - prohibit an active marketing policy outside the agreed territory. Therefore, outside the contract territory and in relation to the contract goods, the partner can be obliged to refrain from actively seeking customers, establishing any branch or maintaining any distribution depot. However, the partner may not be prohibited from advertising on the internet

* The law in the United States and other countries may differ from that of the EU. The Roche legal department should be consulted prior to the establishment of any exclusive relationships.

2.3 **Export Bans/Parallel Trade**

Parallel trade is a consequence of the free trade within a given territory.

- **In the EU**, it is prohibited to:
  - impose export bans
  - prescribe to the partner not to export the product upon a customer’s inquiry from outside the territory
  - refuse orders from partners exporting the products with the argument of territory restrictions

- **In the EU**, it may be possible to:
  - prohibit an active marketing policy outside the agreed territory (as long as internet advertising is not prohibited), if Roche’s market share is below 30%
  - inform the partner about any differences affecting the product’s acceptance in another country or other legal requirements in another country
  - unilaterally limit the amount of products sold to a partner

* The law in the United States and other countries may differ from that of the EU. The Roche legal department should be consulted prior to taking any measures that might limit parallel trade.
2.4 Non-Compete Clause

Under certain circumstances, it may be possible to forbid a distributor or licensee to sell or manufacture any competing products.

In the EU*, it is prohibited to:
- forbid the manufacturing and selling of competing products in a distribution agreement for a duration of more than five years from the start of the agreement
- forbid the manufacturing and selling of competing products in a license agreement including the distribution of the licensed products for a duration of more than five years from the start of the agreement
- forbid the manufacturing and selling of competing products beyond the duration of the agreement

In the EU*, it may be possible to:
- forbid the manufacturing and selling of competing products during the first five years of the duration of a distribution or license agreement

* The law in the United States and other countries may differ from that of the EU. The Roche legal department should be consulted prior to the establishment of any competition clause.

2.5 Patent, Trademark, Copyright

When licensing patents, copyrights, know-how or trademarks in the EU, consider the following:

It is prohibited to*:
- forbid the partner to contest the secrecy of the licensed know-how or the licensed trademarks and patents
- forbid the partner to contest the validity of the licensed patent
- fix the price which the licensee has to charge for its product

* The Roche legal department should be consulted prior to the establishment of any agreement by licensing patents, copyrights, know-how or trademarks.
2.6 Improvements and New Applications

In patent licensing and know-how licensing agreements either party should generally be free to compete with its own developed products, improvements or new applications of the technology in question in so far as these are severable from the licensee’s initial know-how.

**It is prohibited to:**
- oblige the licensee to grant an exclusive license to the licensor or a third party for any own severable improvement and new application of the licensed technology
- restrict either party from competing with the other party in respect of research and development, manufacture, use or sale of any own developed product, improvement and new application of the technology in question

**It is possible to:**
- oblige the licensee to grant a non-exclusive license to the licensor for any improvement and new application of the technology in question

* The Roche legal department should be consulted prior to the establishment of any of the above.

2.7 Supply Agreements

Many clauses in supply agreements do not affect the free competition. However, the following should be considered when establishing a supply agreement in the EU:

**In the EU**, it is prohibited to:
- agree an exclusive supply agreement if the buyer is dominant
- agree the exclusive supply of the ordered product if the supplier is capable of producing the product in question without the know-how and the auxiliaries of the buyer
- forbid the competition by the buyer or the seller with their own developed products, improvements or new applications of the technology in question in so far as these are severable from the know-how of the supplied product
- take any influence on the resale prices charged by the buyer

**In the EU**, it is possible to:
- agree an exclusive supply agreement if the buyer’s market share is below 30%
- establish requirements and arrangements referring to quality, specifications, quality control, raw materials, packing materials, quantities, terms of delivery and the like
- oblige the supplier not to use the know-how and/or technical means for other purposes than for the supply to the buyer, if the protection of the buyer’s know-how is the sole purpose of the restriction

* The law in the United States and other countries may differ from that of the EU. The Roche legal department should be consulted prior to entering into any exclusive supply agreement.
Being or striving to be in a dominant position is as such not illegal or prohibited. However, in the EU Article 102 (formerly Article 82) EC prohibits the abuse of a dominant position.

Similarly, in the US, the Sherman Act prohibits monopolisation, attempts to monopolise and conspiracies to monopolise.

Therefore, companies in a dominant position must pay special attention to some additional principles. A company having a dominant position is entitled to compete on the merits and to meet competition. However, a dominant company has a special responsibility not to hinder effective competition still existing in the market or the growth of that competition. For a dominant company, a conduct that makes it more difficult for other companies to compete, such as the different treatment of distributors, licensees and customers, is not permitted without additional justification.

In the EU, the dominant position is defined as a position of economic strength enabling a company to prevent effective competition on the relevant market by having the power to behave to an appreciable extent independently of its competitors, customers and consumers in a specific market.

Several factors are considered to determine whether a company has a dominant position in the EU. In December 2008, the European Commission issued a guidance document concerning its enforcement priorities in applying Article 102 EC (formerly Article 82 EC) to abusive exclusionary conduct by dominant companies. This guidance document introduces a “more economic approach” for the assessment of dominance and the abuse of a dominant position.

In this approach, market shares still provide a useful indication of the market power of a company in the EU. The Commission considers that low market shares are generally a good approximate for the absence of substantial market power. If the market share is below 30%, dominance is unlikely.

However, the European Commission will always interpret the market shares in the light of the relevant market conditions, such as (i) the dynamics of the market (expansion and entry), (ii) the extent to which the products are differentiated and (iii) the constraints on the company from actual or potential competitors as well as from its customers and suppliers.

It is not necessary to have a dominant position in an entire industry to be subject to the legal provisions related to dominance in the EU. To determine if a company is dominant, the relevant product market and the relevant geographical market have to be identified. As a general rule, products belong to the same product market if they are “reasonably interchangeable” on both the demand and the supply side.

1 Guidance on the Commission’s Enforcement Priorities in Applying Article 82 EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings
Furthermore, the geographical market is defined as the area where there are identical or comparable conditions for competition. For pharmaceutical and diagnostic products, the relevant geographical market is typically national. However, the definitions may differ for technical markets. The relevant geographical market may, for example, cover the world, several continents, a single continent, several countries (e.g. the EU or EEA), a single country and even parts of such countries. Consequently, the definition of the relevant market must be assessed on a case-by-case basis.

The restrictions on the conduct of dominant companies or monopolists are less clear under US Antitrust Law.

1. **Discrimination/Different Sales Conditions**

A company with a dominant position must not discriminate in its sales conditions when dealing with similar customers under comparable circumstances.

- **It is prohibited to**:
  - grant different sales conditions (prices, rebates) to distributors or customers meeting the same requirements

- **It may be possible to**:
  - grant different sales conditions (rebates) to distributors providing special services that are not met by other distributors
  - grant different sales conditions to distributors of another stage in the distribution channel (wholesalers – retailers)

* The law in the United States and other countries may differ from that of the EU. Under US law, the Robinson-Patman Act establishes a complex web of governing principles affecting rebate/discounts programs. Importantly, this complex rule applies equally across all competitors, not merely those that are considered dominant. Any rebate/discount programs should be reviewed carefully with the Roche legal department.

Do not discriminate between similar customers.
Do not abuse your market power.
2. **Imposing Exclusive/Excessive Purchase Commitments on Customers**

Dominant companies are not permitted to substantially restrict the access of competitors to customers or dealers by exclusive purchase obligations or by excessive terms.

* The law in the United States and other countries may differ from that of the EU. Purchasing requirements intended to be imposed on a customer should always be reviewed carefully in advance together with the Roche legal department.

3. **Rebates**

3.1 **Fidelity Rebates**

Fidelity rebates are granted to buyers on the condition that they buy their supplies exclusively from the dominant supplier.

* The law in the United States and other countries may differ from that of the EU. Any fidelity rebates should always be reviewed carefully with the Roche legal department.

3.2 **Target Rebates**

Target Rebates are rebates which are granted to buyers if they reach a certain quantity or turnover with the dominant products.

* The law in the United States and other countries may differ from that of the EU. Any target rebates should always be reviewed carefully the Roche legal department.
3.3 **Aggregated Rebates**

Aggregated sales rebates which develop a foreclosure/tying effect in favour of the company dominating the market are generally forbidden.

<table>
<thead>
<tr>
<th>It is prohibited to*:</th>
<th>It may be possible to*:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• grant aggregated rebates on the overall turnover reached with the supply of different goods</td>
<td>• grant rebates in return for efficiencies</td>
</tr>
</tbody>
</table>

* The law in the United States and other countries may differ from that of the EU. Any rebates that might have a tying effect on the customer should always be reviewed carefully with the Roche legal department.

4. **Unfair or Predatory Pricing**

In the US and the EU it is forbidden to continuously sell products below own average avoidable costs or long-run average incremental cost with the aim or effect of eliminating a competitor.

<table>
<thead>
<tr>
<th>It is prohibited to*:</th>
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<tbody>
<tr>
<td>• grant prices below cost (dumping prices)</td>
</tr>
</tbody>
</table>

* The Roche legal department should be consulted.
5. **Tying and Bundling**

5.1 **Tying**

Tying clauses, which make the supply of a product subject to the acceptance of supplementary obligations to buy other goods and/or services which, either by their nature or according to commercial usage, are not part of one system (e.g. instrument and test) or have no connection with the other product, should not be used if Roche is dominant in one product.

- **It is prohibited to***:
  - make the supply of product A conditional upon the obligation to buy product B
  - make the supply of a product subject to the obligation to enter into a service agreement

- **It may be possible to***:
  - require a customer to buy a full range of products including accessories, reagents and controls
  - require a customer of an instrument to enter into a service agreement for reasons of product safety
  - prescribe in license agreements to buy materials and special tools which are necessary for a technically satisfactory exploitation of the license

* The law in the United States and other countries may differ from that of the EU. The local Roche legal department should always be consulted prior to the establishment of any agreement foreseeing that multiple assets must be purchased together.
5.2 Bundling

A bundle is the case when two or more distinct products are only sold together in fixed proportions (“pure bundling”) or if the products are also sold separately but the sum of the prices when sold separately is higher than the bundled price (“mixed bundling”).

Bundling of two or more products can be harmful on competition if at least one of the products is dominant since the bundle might foreclose the market for products competing with the single products in the bundle.

In the EU*, it is prohibited to:
- strategically bundle two or more products with the sole purpose of exclude competitors and without pursuing innovative, scientific and/or medical efforts
- set a predatory price for a product bundle to the effect that the price has a foreclosing effect on competitors

It may be possible to*:
- bundle two or more products when there are robust scientific and medical arguments for the bundle
- bundle two products that are part of a system

* The law in the United States and other countries may differ from that of the EU. Any measures that might be considered as a refusal to sell should be reviewed carefully together with the Roche legal department.

6. Refusal to Sell

A refusal to sell to distributors or customers may constitute an abuse of a dominant position. The following principles have to be considered:

In the EU*, it is prohibited to:
- refuse to sell to a customer which meets the same requirements as other customers which are supplied
- reduce supplies to comparable customers in different ways without objective justification

It may be possible to:
- refuse to sell to existing or new customers provided such refusal is reasonable and proportionate to protect commercial interests
- refuse to sell to a customer because of insufficient capacity

* The law in the United States and other countries may differ from that of the EU. Any measures that might be considered as a refusal to sell should be reviewed carefully together with the Roche legal department.
Guidelines on Tenders

When participating in a tender Roche has to make sure that the applicable rules of conduct are observed, including tender law regulations, competition laws and integrity in business regulations.

1. Tender Law Regulations

In any jurisdiction, when involved in a tender process, in compliance with the applicable local tender law regulations, the following general principles have to be observed by any participant during the entire tender process:

- Transparency must be maintained throughout the procurement cycle by adhering to applicable formal procedures
- Governmental decision makers must be provided with correct and transparent data

2. Competition Law Requirements

The general principles of dealing with competitors are also valid for the tender process, in particular but not limited to:

- It is prohibited to*
  - discuss tender offer terms, such as prices, sales conditions, etc., with competitors or other bidders
  - agree on an allocation of tender participation
  - make any agreements with competitors to participate in a tender with only a mock offer
  - withdraw from a public tender under the condition to get compensation from a competitor for such withdrawal
  - fix the price offered by the wholesaler(s) in the tender if the wholesaler(s) participate(s) in a tender process in his name and with his own business risks
  - discriminate against other customers when offering low prices for a dominant product (assess carefully the impacts that a low-price offer in a tender might trigger, e.g., reactions of other customers who pay higher prices or reactions in the media or political implications with health authorities)
  - offer dumping prices (prices below cost) when having a dominant market position

- It is possible to*
  - provide an offer that includes correct and transparent information and figures
  - autonomously decide to directly participate in a public tender
  - ask the wholesaler (or several wholesalers) to participate in a public tender, however without fixing the prices offered by the wholesaler(s) or coordinating the offers of the wholesaler(s)
  - give a non-binding price recommendation for the prices to be offered by the wholesaler(s)
  - make an offer below the standard list price for a dominant product in order to be awarded a tender, provided such offer is not below cost exploitation of the license

* The Roche legal department should be consulted in case of questions regarding a tender process.
3. **Integrity in Business**

As a participant in a tender process you are not allowed to influence in an undue way the tender process itself or any decision makers involved in any jurisdiction. Violations of these principles may result in severe sanctions such as exclusion from tender procedures.

**It is prohibited to**:  
- exert any illicit influence on the content of the tender documents  
- act as a ghost writer for tender documents  
- maintain undue contacts with the decision makers  
- influence tender decision makers by granting any undue advantage or gift

**It is possible to**:  
- provide existing technical documentation upon inquiry of the tender authority  
- provide product specifications to potential customers

* The Roche legal department should be consulted in case of questions regarding a tender process.
Intracorporate Agreements

Agreements between affiliated companies do not, in principle, fall within the scope of competition law. Therefore, the above mentioned rules of competition are not applicable with respect to the relation of the parent company to its solely controlled affiliates or between sister companies belonging to the Roche Group.

However, it is essential that all information given by the parent company to its affiliates for its customers, such as advertising material, brochures, price lists, internal calculating documents, marketing plans, etc., must themselves meet the requirements of competition law.
Annex

THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

ARTICLE 101 (formerly Article 81 EC)

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
   (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
   (b) limit or control production, markets, technical development, or investment;
   (c) share markets or sources of supply;
   (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (e) make 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.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
   – any agreement or category of agreements between undertakings,
   – any decision or category of decisions by associations of undertakings,
   – any concerted practice or category of concerted practices,
   which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
   (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
   (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

ARTICLE 102 (formerly Article 82 EC)

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:
   (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
   (b) limiting production, markets or technical development to the prejudice of consumers;
   (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
   (d) 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.