

EUEW'S INFORMATION PAPER ON THE SCOPE OF ANTI-TRUST IN THE EUROPEAN ELECTRICAL WHOLESALE INDUSTRY

The EUEW has always paid great attention in ensuring that its internal affairs are not in infringement of anti-trust regulations and competition law. In addition to this, the EUEW has also been active in promoting a similar conduct amongst the member federations and, over the past year, the focus has also been placed in creating awareness at a wholesaler level.

The EUEW has appointed an external antitrust counsel – Dr. Kleine, partner of Norton Rose Fulbright LLP – to assess the potential problems under applicable antitrust law of the wholesale industry of electrical goods. The prime purpose of this exercise is to help members identify potential risk exposures, as early as possible, and to jointly resolve potential risk situation(s). It is the explicit focus of this exercise to establish a well-coordinated procedure between wholesalers and manufacturers to avoid any risk to the entire industry, and to ensure that the interests of wholesalers and manufacturers are fully aligned with regard to compliance with applicable antitrust law.

Increasing IT transparency, the rising importance of data access and utilization, and a quickly changing market environment gave birth to this initiative where EUEW committed itself to providing best practice guidance to its wholesalers members, in their relations with manufacturers, and establish commonly agreed standards for trade practices that fully comply with applicable data protection and antitrust legislation.

A survey was carried out to evaluate what common practices, governing the relationship between wholesalers and suppliers, may potentially infringe applicable antitrust law. While some commercial practices may be local and market specific, in the large majority of countries, there seems to be an ongoing practice, on behalf of the suppliers, to obtain information regarding wholesaler sales and activities (e.g. prices, customers, costs, sales and stock volume etc.).

While this is not necessarily an issue in terms of antitrust law, it may pose a potential risk. In trade supplier-distributor relations, the wholesaler relies on the supplier's support. However, most often the supplier has a non-exclusive relationship with the distribution channel and carries out direct sales to common customers. This may hypothetically place the supplier in a position in which he (ab)uses these strategic sensitive information for his own interest, conflicting with the activities of the wholesaler (direct sales).

Dr Kleine presented the findings and insights of the above research at the EUEW Annual Business Convention 2019 in Brussels. Each member association of EUEW were requested to create awareness amongst its members, so as to promote the evaluation of any local actions in the day-to-day supplier-distributor relationship that may bring about any possible infringement of anti-trust regulations and competition law.

The Brussels presentation also stressed clearly that any data regarding sales to customers, whether statistical or not, be aggregated so as to guarantee that the information regarding individual clients may not be reconstructed. Dr. Kleine's presentation is to be considered as an official guideline by EUEW to ensure that supplier request does not cause the distributor any infringement of anti-trust regulations.

EUEW has also helped facilitate several meetings and workshops, to agree on the scope and establish best practices. It is hereby clarified that the general assessment undertaken by the EUEW does not replace the requirement of individual assessments of specific relationships and thus the information paper is not suited for an assessment of individual distribution relationships, but the above is to serve for informative purposes.