Raben Group Policy of Compliance with the Competition Law

Valid for: all Employees of Raben Group

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PREAMBLE

WHEREAS:

- the Companies of Raben Group within their business activity develop relations with numerous business entities (suppliers, subcontractors, customers) and compete with many rivals on the market of logistics services;
- protection of competition is of vital importance for the appropriate functioning of the market. Competition constitutes a source of development and progress and contributes to the increase of effectiveness of business activities. Following the competition standards is one of the fundamental principles of Raben Group;
- competition law (competition law) constitutes a dynamically developing field of the European law and national law of the countries where Raben Group companies operate. The role of the competition law is the protection of competition against negative actions of market participants. The competition law stipulates the conditions for development and protection of competition, as well as the protection of interests of entrepreneurs and consumers. The scope and level of details of competition law is being increased continuously. Simultaneously, the catalogue of sanctions, which threaten the entities breaching the competition law regulations, is still growing and tightening;
- obedience of the competition law depends not only on the actions taken at the company management (the board) level, but also on the actions of individual employees representing the company in relations with third parties;

"**Raben Group Policy of compliance with the competition law**" is hereby implemented and shall be binding as of 20.03.2015.

1. PURPOSE AND SCOPE

The aim of **"Policy of compliance with the competition law"** is to ensure full compliance of undertakings of the companies controlled by Raben Group and all their employees with the competition law.

This Policy serves the purpose of building awareness of the issues related with the protection of the competition, as well as the indication of obligations and sanctions resulting from the competition law and potential consequences of their infringements.

Within the scope being its subject matter, **"Policy of compliance with the competition law"** is a document superior to other internal documents, procedures and policies binding in Raben Group. Any regulations regarding this scope must remain in compliance with this Policy.

Detailed rules of conduct in case of the inspection of the antitrust authorities have been described in the Inspection Regulations, which constitute a document related to this Policy.

2. DECLARATION OF CONDUCT COMPLIANT WITH THE COMPETITION LAW

Raben Group being aware of the significance of the issues related to the protection of competition hereby declares:

1. compliance with all of the regulations of the competition law resulting from the assumption that free and fair competition is a condition for sustainable development of Raben Group;
2. support for legal regulations within the protection of competition, including in particular the rules prohibiting the competition restricting agreements;
3. compliance with regulations concerning combating unfair competition and not undertaking actions which could be deemed to be the act of unfair competition.

3. RULES OF LEGAL PROTECTION OF COMPETITION

3.1 *Legal grounds*

The grounds of the competition law are:

1. Article 101 – 102 of the Treaty on the Functioning of the European Union;
2. Provisions of secondary European Union law, mainly Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Official Journal of the European Communities L 001 , 04/01/2003 P. 0001 – 0025) and Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (Official Journal L 024 , 29/01/2004 P. 0001 – 002);
3. National law.

3.2 *Protection of competition in the competition law.*

The competition law defines, among others, the kinds of unlawful practices within the competition and consumers protection and determines the activities aimed at preventing such practices, in particular:

1. preventing **competition restricting agreements** concluded by and between the entrepreneurs;
2. combating the actions of entrepreneurs having dominant market position, which constitute the abuse of this position;
3. carrying out supervision of concentrations, among others by granting approval or refusal for merger of entities with particular market force.

3.3 *Competition restricting agreements*

Pursuant to legal provisions, **agreements whose aim or effect is the elimination, restriction or breach in any other way of competition on the relevant market shall be prohibited. These agreements are in particular**:

1. Direct or indirect price fixing (**price rigging**) and other conditions of purchase or sales of goods;
2. Limiting or controlling production or sale and technical development or investments (**quota agreements**);
3. Sharing markets of sale or purchase (**subdivision agreements**);
4. Applying to equivalent transactions with third parties onerous or not homogenous agreement terms and conditions, thus creating for these parties diversified conditions of competition (**discriminatory agreements**);
5. Making the sale of primary good or provision of primary service conditional on the

purchase of other distinctive good or service (or acceptance or fulfillment by the other party of other performance), having neither substantial nor customary relation with the primary good or service (**tying agreements**);

6. Restricting access to the market or eliminating from the market entrepreneurs who are not parties to the agreement (**boycott**);

7. Collusion between tender participants or between the participants and the entrepreneur being the organizer of the tender, of the terms and conditions of the bids to be proposed, particularly as regards the scope of works or the price (**bid rigging**).

Price rigging, quota agreements, subdivision agreements and bid rigging are classified as the most serious breaches of the competition law, and the above enumeration is only an instance. Price and bid rigging will be discussed thoroughly herein below.

3.4 ***Kinds of competition restricting agreements***

Among the competition restricting agreements one may indicate the following:

1. **Horizontal agreements** – agreements concluded by and between the entrepreneurs acting on the same market level, between the competitors;

2. **Vertical agreements** - agreements concluded by and between the entrepreneurs acting on different market levels, who are in this commercial relationship not competitors towards one another (e.g. between the producer and wholesaler).

3.5 ***Forms of concluding competition restricting agreements***

The competition restricting agreements may be deemed the following:

1. **Contracts** concluded by and between the entrepreneurs, corporate associations and by and between entrepreneurs and their corporate associations, or some provisions of these contracts. The conclusion of the agreement in a form of a contract may be made in writing, but also it may have the oral form.

2. **Arrangements made in any form** by two or more entrepreneurs or their corporate associations. The arrangement may be concluded not only in the form of a contract stipulating the obligations of the parties, but also in any other form e.g. informally during a meeting, via exchange of e-mails or by the so-called tacit collusion when the competing companies willingly substitute competition with cooperation (e.g. by price signaling or other behavior allowing to align commercial policy)

3. **Resolutions or other acts of corporate associations or their governing bodies**.

The crucial factor shall have not the form but the scope of the concluded provisions. The understanding of the term included in legal provisions is very broad and covers any possible agreements between economic participants regardless of the duration of the agreement, number of pages or the per cent of its execution (including its conditional character).

The prohibition of anti-competitive agreements also relates to anti-competitive intention of the parties of the agreement, thus even not executed agreement - restricting the competition - constitutes the breach of the competition law.

The legal form of the agreement is not vital. It is significant; however, whether a given contract, arrangement or resolution aims at violation of the competition rules, or also whether as a result of its functioning such a breach occurred. The agreement is prohibited if its aim is against the competition, even if it does not provide - in practice - any unfavorable results on the market.

3.6 ***Participation of the Raben Group companies in trade organizations***

Trade organizations (corporate associations, unions, associations) constitute a popular form of associating entrepreneurs; these are often entrepreneurs competing with one another.
Any

actions undertaken within the trade organizations may be considered by the antitrust authorities regarding the observance of competition regulations, and in particular within the competition restricting agreements.

When joining the organization of entrepreneurs or participating in it one shall take every precaution and consult any potential actions with the Legal Department of Raben Group.

Moreover, the Raben Group company/employee/representative shall:

1. Before joining the organization - make sure that the statutes of the organization do not include any anti-competition regulations, e.g. regarding the limitation of the right to join the trade organization;
2. Take due caution during the meetings of the organization members e.g.:
   a. by guaranteeing the presence of an independent lawyer and preparation of protocols from meetings by an independent lawyer;
   b. make sure that members of the organization – during formal or informal meetings – do not engage in price fixing, market sharing or other forms of competition restricting arrangements;
   c. make sure that members of organization do not exchange commercially sensitive information related to e.g. customers, prices, markets or other vital aspects of commercial policy;
   d. If there is a suspicion that the activity of the organization may violate competition law - at least to express a clear opposition against it, and if it does not have the effect - leave the meeting & consult with the Legal Department. Make sure that the circumstances are reflected in the memo / minutes of the meeting.
3. Take every precaution when implementing common standards, resolutions, guidelines or recommendations for the trade or products, to make sure that they are in line with competition law requirements.

3.7 ***Price rigging as an example of the competition restricting agreement***

Price rigging, i.e. direct or indirect price fixing and other conditions of purchase or sales of goods or services, may base on direct fixing of prices, stipulating particular resell price of goods or services or indirect price fixing, establishing the factors influencing the level of the price, including the discounts, margins. Price rigging is a situation when the entrepreneurs eliminate the competition between one another by establishing the price, product margin, among others.

The entrepreneurs shall remember that the pecuniary fine may be imposed on them not only when they establish appropriate amounts of product prices, but also when they exchange information on the planned price fixing.

However, if the same prices are not the result of common arrangements of the entrepreneurs but they result from the own economic calculations of the entrepreneur then such shall be permitted. Thus, it is not prohibited to observe the prices of the competition and then adjust them to own prices. Whereas, if the prices are not established individually by the entrepreneur but jointly through arrangements with other entrepreneurs or as a result of decision made within the association or union, whose entrepreneurs are the members of, the entrepreneur shall be aware of the monetary fine.

3.8 ***Bid rigging as an example of the competition restricting agreement***

It is prohibited to establish the terms and conditions of the placed bids, in particular the scope of works or the price, by and between the tender participants or between entrepreneurs/entrepreneur being the organizer of the tender and tender participants.

Any stipulations of the terms and conditions of placed bids, regardless of their importance, are prohibited. The most often prohibited tender related restrictions of competition include:

1. agreeing on the manner of participating in the tenders (e.g. the obligation of not participating in a tender, withdrawing the bid, obligation to submit incomplete offer, which due to formal reasons will be then rejected);
2. agreeing on the terms and conditions of the placed bids (e.g. establishing the prices offered in a tender).

3.9 ***Market sharing as an example of the competition restricting agreement***

Market sharing is an agreement by which the contracting parties agree to stay out of each other's way and reduce competition on the specific market. The market which is "shared" (or divided) can be defined using various criteria. The most typical is reduction of the competition in the agreed-upon territories (geographic allocation). However, similarly anti-competitive character have agreements providing for division of a common market using as a criterion:

1. customers (Company A offers goods or services to some customers and Company B offers the same only to the others) or
2. type of an offered service or good (Company A and Company B agree to offer different range of products or services i.e. to avoid overlapping of product or service ranges).

The market sharing may apply both to the market of supply (sale) and demand (purchase). Any such agreement resulting in or aimed at reduction of fair competition are strictly prohibited.

4. SANCTIONS FOR BREACH OF THE RULES

Participation in the competition restricting agreement may result in:

1. invalidity of the contract or its particular provisions by law - the contract or its particular provisions, which have been deemed as the competition restricting agreement are not binding for the parties;
2. civil damage claims raised by the customers (suppliers) aggrieved by the unlawful anti-competition agreement;
3. monetary fines amounting **up to 10 % of the revenue** reached in the financial year preceding the year of imposing the fine;
4. in some jurisdictions - there is a possibility of imposing the monetary fine or even imprisonment on a person managing the entrepreneur (company**)**, who within the position held deliberately by his/her actions or nonfeasance - led to the violation by this entrepreneur of the prohibition of concluding competition restricting agreements.

5. RULES OF APPROPRIATE CONDUCT

Within the conducted business activity the companies of Raben Group and all their employees shall be obliged to observe the following guidelines resulting from the abovementioned rules of protection of the competition:

1. **Any agreements with other entrepreneurs whose direct or indirect aim is the restriction of the competition are prohibited. The companies and employees of Raben Group do not engage in any projects which have or may have anti-competitive character;**

2. **It is unaccepted to make any arrangements in any form with other competing entrepreneurs (and their employees) aiming at establishing or supervising the prices for the rendered services and the division of the market according to any criteria (geographical, kind of rendered services, customers), etc. Such agreements are clearly and always against the competition law.**

3. **Participation in professional organizations must be based on clear and explicit terms. Raben Group companies are not involved in organizations:**

   - **which are informal (do not have a legal entity or are not properly registered);**
   - **which aims or actions are in fact or may be considered to be contrary to the competition law (for instance they consist in establishing or coordinating prices, market sharing, etc.).**
   - **which do not have a good reputation (in particular, if they have been or are party to the proceedings conducted by the antitrust authorities).**

   Joining the professional organizations shall be confirmed with the Legal Department of Raben Group. Participation in the work of professional organizations must be every time minuted.

4. **The companies of Raben Group shall avoid concluding in the contracts with the customers the provisions guaranteeing the exclusivity of rendering the services for a particular customer (and simultaneously prohibiting the rendering of services by the company of Raben Group for the benefit of the entities being competitors of this customer). Due to the significant market share which the companies of Raben Group have in transport and logistics market, such clauses may be recognized as the unlawful anti-competition agreement, restricting other entities the access to the market of logistics services.**

5. **Raben Group companies should avoid concluding agreements with suppliers offering Raben Group companies services on the exclusive basis (and thus prohibiting by supplier providing services to other entities). Such clauses are permitted only in exceptional circumstances, e.g. if the supplier uses facilities of Raben Group to provide services**.

6. **However, regarding the above points 4 and 5 respectively, following shall be, in principle, acceptable:**

   - **the undertaking of Raben Group company to inform the customer on the intention of establishing the cooperation within the scope of logistics services with the competitor of the customer;**
   - **reservation in the contract for the benefit of the company of Raben Group of the exclusivity of rendering logistics services (meaning that the customer shall refrain from the use of logistics services offered by other logistics operators).**

7. **All agreements containing provisions raising doubts as to their compliance with competition law should be consulted with the Legal Department of Raben Group before execution. Mandatory legal consultation is required in case of following agreements:**

   - **agreements (resolutions) re. establishing or joining professional organizations;**
   - **agreements with business partners establishing co-operation in the field of logistics services;**
   - **agreements with customers or suppliers providing for exclusivity for the customer or Raben Group company (other than described in point 6**

above) or containing other competition-sensitive regulation;

8. **The participation in the anti-competitive agreement is threatened by the monetary fines amounting to 10% of the previous year's revenue. The personal liability (financial sanctions) may be also imposed on the members of the management board of company;**
9. **Each director, officer and employee of the company of the Raben Group is obliged to notify Raben Group Management Board forthwith on every interaction with the antitrust authorities (inspections, summons etc.);**
10. **Each employee of the company of the Raben Group is obliged to notify his/her immediate superior on any situation which constitutes unlawful anti-competition practice or there are reasonable circumstances to suspect such practice;**
11. **Ignorance of the law does not excuse from the liability for its non-observance.**

6. RULES OF FAIR COMPETITION

Raben Group shall be obliged to obey the rules of integrity and respecting the interests of their competitors and customers.

Competition law uses a term "**the act of unfair competition**" as an action contrary to the law or good practices which threatens or infringes the interest of another entrepreneur or customer.

The following is regarded by Raben Group as acts of unfair competition:

1. misleading designation of the company,
2. false or deceitful indication of the geographical origin of goods or services,
3. misleading indication of goods or services,
4. **infringement of the trade secret,**
5. inducing to dissolve or to not execute the contract,
6. imitation of products,
7. slandering or dishonest price,
8. impeding access to the market,
9. **bribery of a person holding a public office,**
10. unfair or prohibited advertising,
11. organizing a system of pyramid selling,
12. organization or carrying out business in a consortium system.

The abovementioned catalogue is not complete, and the recognition of a particular action of the entrepreneur as an act of unfair competition shall be each time the competence of the court.

A particular kind of an act of unfair competition is **the infringement of the trade secret**. It is based on providing, disclosing or using someone else's information constituting the company secret or when it is obtained from the unauthorized person, if it threatens or infringes the business of the entrepreneur.

The trade secret shall be understood as the technical, technological and organizational information of the enterprise, not disclosed to the public, or other information having economic value, regarding which the entrepreneur has taken necessary measures in order to maintain its confidentiality.

In case of the committing an act of unfair competition, the entrepreneur whose business has been threatened or infringed may request, among others, to remedy the damage under general rules of the civil code, adjudicate the appropriate amount of money to be paid for social cause.

Moreover, in case of the infringement of the trade secret the person who has committed such an infringement constitutes criminal act and is punishable by a fine or even prison penalty.

Bribery means offering, giving, receiving, or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties. The expectation of a particular voluntary action in return is what makes the difference between a bribe and a private demonstration of goodwill. This type of action results in matters that should be handled objectively being handled in a manner best suiting the private interests of the decision maker. A bribe can consist of immediate cash or of personal favors, a promise of later payment or kick back, or anything else the recipient views as valuable.

Regardless of who initiates the deal (the one who offers or provides payment in order to persuade someone with a responsibility to betray that responsibility or the one with power who seeks payment in exchange for certain actions), either party to an act of bribery can be found guilty of the crime independently of the other.

7. ACTIONS TAKEN BY THE RABEN GROUP COMPANIES TO ENSURE THE COMPLIANCE WITH COMPETITION LAW

In order to ensure compliance with competition law Raben Group companies provide the following:

1. the annual training for employees of the different levels; training topics should take into account the current changes in the provisions of competition law, internal regulations and cases imposed by competition authorities.
2. the annual submission of a declaration by the management board and managers of the actions conducted and the objectives pursued in accordance with competition law;
3. carry out internal audits of compliance with the antitrust rules by individual departments and employees;
4. the establishment and implementation of internal control rules defining the rules of conduct in the case the Raben Group company is investigated by antitrust authorities and the conduct of annual simulation of such controls;
5. documenting of participation the Raben Group companies or its representatives in meetings of professional organizations;
6. creating mechanisms to anonymous informing the board of Raben Group company about activities against the competition law (dedicated e-mail box, helplines, ethics committees).

8. RELATED DOCUMENTS

Inspection Regulations.