



# Antitrust law rule

Infineon Technologies AG

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# Scope

This Rule applies to all employees and members of the representative bodies of all Infineon companies worldwide.

## Rule content

### Contact to competitors and basic principles of antitrust law

Contacts to competitors may lead to antitrust law violations, which may trigger high fines for Infineon, damage claims from customers, exclusion from public tenders and imprisonment for employees.

This also applies to certain vertical agreements with suppliers or customers as well as the abuse of a dominant market position.

Therefore all employees are obliged to act in accordance with antitrust law and to report potential infringements. This Rule provides information about basic principles of antitrust law including appropriate behavior when having contact to competitors.

### Approval- and notification duties towards the Compliance department

Contacts to competitors and direct benchmarking must be approved by the Compliance Department in advance using the CMAP-Tool. Memberships in trade associations and

other organizations as well as certain job interviews with employees from competitors must be notified and documented.



# I. General cooperation responsibilities

Employees are required to comply with all regulations of this Rule and statutory antitrust laws. In addition, employees are obliged to adhere to the processes set out in section II. A. and – provided that they have been selected for an antitrust law training – to attend it.

Employees, who become aware of or receive evidence about an antitrust law violation, must immediately report to their supervisor, the Compliance or Legal Department.

**Contact:**

E-mail: [Compliance@infineon.com](mailto:Compliance@infineon.com)

Corporate Compliance Officer (IFAG CO)

Hints may also be reported at any time to your superior, Regional Compliance Officers, the anonymous Infineon Integrity Line or the Infineon Ombudsman (for Europe).

# II. Approval and notification duties

## A. Approval of “contacts to competitors” and “direct benchmarking” (CMAP)

Contacts to competitors and direct benchmarking must be approved by the Compliance Department – in general two weeks in advance – using the Competitor Meeting Approval Process (CMAP-Tool), because the risk of exchanging strategic information, which is prohibited by antitrust law, is inherent in such contacts.

Competitors are companies (even customers or suppliers), which conduct business on the same product market like Infineon. Moreover, companies which are capable of launching a similar product within the next three years maximum are considered as competitors as well (potential competitors).

Direct benchmarking means you are planning to exchange information directly with one or more competitors, e.g. in terms of technical cooperation or to improve the production process.

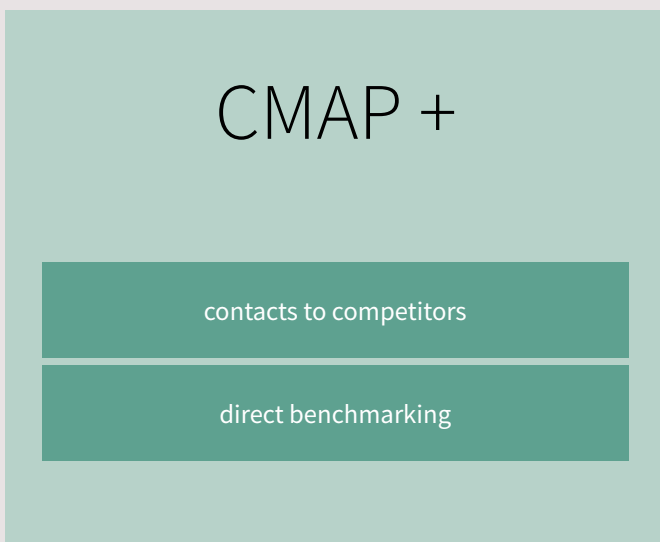
### Explicit exceptions from CMAP are

- > random, unplanned contacts to competitors,
- > contacts to competitors at trade fairs, association meetings, conferences, exhibitions, seminars or standardization committee meetings, or
- > indirect benchmarking.

An indirect benchmarking takes place, if the exchange of information is performed anonymously by an independent third party who is not a competitor and it is ensured that more than five competitors participate. If these conditions apply, the benchmarking must not be approved.

Even though CMAP is not applicable in such cases, we recommend to ensure sufficient documentation in case you had contact to a competitor.

Please get in contact with the US Legal Department or Regional Compliance Officer upfront any benchmarking activities in the US due to some deviating legal requirements.



## B. Registration Process „Interviews with candidates from competitors”

Interviews with candidates who are employed at competitors must be registered by HR department in advance to the Compliance Department. The reason for this process is that even interviews are considered as competitor contacts, because the candidate is still employed at the competitor at the time of the interview. Given that, illegal strategic information exchange between competitors shall be avoided.

## C. Registration Process of Corporate Memberships (COMP)

### **What must be reported to whom?**

Meetings of industry associations or similar organizations, which occurred regularly, were used by some competitors in the past to exchange illegal strategic information. To reduce this risk, memberships of Infineon or employees in industry associations, consortia, fora or standardization committees („Organizations“) must be reported to the IFAG C PAA department („Corporate Membership Process“ (COMP)). The same applies if neither Infineon itself, nor an employee is a member of an Organization, however an employee represents Infineon there. Representatives are deemed to be employees with a formal role such as chairperson, convener, secretary or expert in technical committees or working groups in such Organization and/or were designated as delegates of such Organizations at national or international conferences.

### **Who must report?**

Employees which

- > are a member in one or more Organizations, or
- > have decided to conclude a membership in an Organization or
- > represent Infineon in an Organization

must report these to IFAG C PAA department.

Please contact IFAG C PAA, Regional Compliance Officers or the Compliance Department for questions about the COMP process.

# III. Principles for contacts to competitors

Below you find guidance on essential – valid worldwide – general principles of antitrust law. This Rule may not consider by nature all circumstances and facts with which employees in daily business may be dealing with. Therefore it does not replace an individual, antitrust law advice taking into account country-specific antitrust regulations. Please refer to the Compliance or Legal Department for individual cases in time.

## A. Who is my competitor?

Competitors are companies (even customers or suppliers), which conduct business on the same product market like Infineon.

Moreover, companies which are capable of launching a similar product within the next three years maximum are considered as competitors as well (potential competitors).

## B. How does an antitrust violation occur?

Antitrust law violations („anti-competitive agreements“) can occur orally, in writing, by E-Mail or through conscious, practical cooperation. In some cases even unilateral measures or statements are sufficient, without having a direct contact between competitors ever.

## C. What types of cartel prohibitions exist?

Antitrust law requires companies to act autonomously and independently in the market. That means that competitors may not agree on their market behavior or coordinate it in any other way. Agreements between companies, decisions by associations of undertakings and concerted practices which can restrict competition or at least affect it are prohibited. However the mere observation of the market behavior of a competitor is allowed.





## D. Horizontal agreements between competitors

### 1. Price fixing

Agreements and/or an information exchange between competitors on prices are prohibited by antitrust law. This includes price components, price decreases, price increases, price calculations, pricing strategies, discounts, margins or other conditions (for example, delivery or payment terms).

### 2. Agreements on markets or production quantities

It is also prohibited to divide markets by areas or customers.

In addition, it is forbidden to make agreements on production volumes or capacities or to exchange information accordingly.

### 3. Agreements on tenders (bid-rigging)

Agreements between competitors on tenders are prohibited. This is true both for the content of the bid as well as the bid itself. Therefore competitors may not reconcile offer prices, other terms or even disclose details unilaterally on their bid. Also, any agreement about sham offers or about which tenders which company participates in or does not participate in, is prohibited.

Exceptions apply to bid-groupings/consortia, if a company is not capable to perform the order alone. The Legal Department must be contacted before a bid-group/consortium is formed and intends to submit an offer, in any case.

### 4. Customer/Supplier-Competitor relationships

Customers or suppliers of Infineon, which are also competing with Infineon, are in terms of antitrust law, competitors of Infineon as a whole, i.e. all prohibitions and regulations of antitrust law must be observed.

In these customer/supplier-competitor relationships only information, which are absolutely necessary for the contractual relationship, is allowed to be exchanged. An exchange of information concerning the competition between both companies is taboo.


If you have contact with customers/suppliers-competitors, please ensure that there is sufficient documentation in form of meeting minutes, notes or E-Mails from which one may always and unmistakably trace that you exchanged only information which was absolutely necessary for the fulfilment of the contractual relationship.

Contact Compliance or the Legal Department in advance if you are not sure what kind of information may be exchanged and which not.

### 5. Information exchange between competitors (e.g. benchmarking)

Exchange or unilateral disclosure of strategic information between competitors is prohibited. Information is considered “strategic” if it allows competitors to coordinate their market behavior and may have anti-competitive effects. Background of this ban is the previously-mentioned idea that companies shall act autonomously and independently on the market. If, however, companies exchange information that significantly affect their market behavior, they cannot act independently and autonomously anymore. This is because, based on the exchanged information, they may adapt their strategy regarding the market behavior of their competitors before it even becomes visible on the market.

Strategic information include, in particular, prices (see the list under “Price-fixing”), quantities, costs, demand, customers, sales, turnover, profits and profit margins, capacities, utilization, quality, marketing and strategic plans, risks, investments, technologies as well as research and development programs and its results.



Information exchange between competitors, for example in form of benchmarking, may be allowed in very limited exceptional cases if efficiency gains, e.g. in form of cost savings and process optimization, are achieved. Benchmarking should not, however, be used as a pretext, to exchange strategic information between competitors, which allow conclusions about the market behavior of individual competitors.

In general the exchange of publicly available information is permitted, however no additional details beyond those which are published may be exchanged. In case of doubt you should avoid such exchange, because it may be difficult to differentiate between information which was already publicly known and information which was not.

Please keep in mind that direct benchmarking must be approved by the Compliance Department (see above section II. A. “CMAP”).

## 6. Information exchange through third parties (reverse engineering, business intelligence)

Exchanging strategic information between competitors via third parties may be critical from an antitrust law point of view.

If competitors use a third party systematically on a regular basis (e.g. distributor, customer) as a messenger to receive information about the future market behavior of other competitors, which they may not exchange directly, that is prohibited in any case (hub-and-spoke).

During price negotiations with a customer the mere appearance of information exchange, which is prohibited pursuant to antitrust law, must be avoided. Under no circumstances should a customer be actively asked about strategic information of our competitors. If the customer discloses to us price information from our competitors, we should immediately reject such disclosure with reference to the prohibition of strategic information exchange via third parties. Moreover such price information must not be forwarded internally.

Monitoring the market behavior of a competitor, however, is allowed. I.e. from legal or public sources Infineon may gather information about its competitors and vice-versa (Business Intelligence).

Information is considered “public” only if they are accessible to everyone under equal conditions. This applies to all information contained in the press, the Internet or other public available media. Information that can be retrieved only for a high fee or under other restrictions is, however, not considered public. Even information that we receive from customers or communicated in the context of investor-calls is classified as non-public.

It is permitted by investigation, demolition or simply test to obtain information from a competitor’s product already freely available on the market (“Reverse Engineering”).

A source is considered “legal” only if the information is obtained in compliance with all contractual and statutory regulations. It is prohibited therefore, to gain or receive information – which is covered by confidentiality – by criminal offence or participation in a criminal offence. Also, suborning employees of other companies to provide Infineon with information in breach of confidentiality obligations or by means of a criminal offence is prohibited. The same applies when newly hired employees spread confidential information/documents of their former employer at Infineon.



## 7. Associations - standardization – trade fairs - funding projects

Contact to competitors at association meetings, standardization committees or trade fairs is generally permitted, however no strategic information may be exchanged here as well. Do not discuss commercial topics in this context such as market behavior or product strategies, not even outside official meetings, e.g. during informal meetings at the hotel bar etc.

Decisions by associations may have anti-competitive content violating antitrust law. You should therefore request an agenda before participating in each meeting and critically examine its content. Ask for the draft of meeting minutes and review its content critically as well. In case antitrust law sensitive topics arise during the meeting,

- > immediately stop the conversation,
- > protest against this incident,
- > have your protest filed,
- > leave the room and
- > write a note and report the incident to Compliance or Legal Department.

Do not get entangled into a conversation with a competitor, e.g. during a trade fair with the objective to exchange antitrust law sensitive information. Immediately stop further conversation here and follow the procedure described above.

Information exchange within funding projects or standardization committees primarily focus on technical level and are

therefore less critical to antitrust law. However, you should follow the discussion attentively and always pay attention to a comprehensible documentation.

Any exchange on technical level between competitors may only occur in official working groups within established committees (e.g. associations, standardization committees) to which all competitors have access to, which meetings are documented and which results are published. Under no circumstances may working groups be attended, albeit technical or of other kind, outside of such committees.

Please keep in mind that memberships in certain Organizations (e.g. associations, standardization committees) must be notified to the Department IFAG C PAA (see above section II. C. “COMP”).

## 8. Agreements about salaries and poaching of employees

Agreements and/or an information exchange between competitors or other companies re-garding salaries are prohibited under antitrust law as well. For example maximum amounts or band-widths for non-tariff entry wages may not be agreed between competitors or other companies.

Also, agreements not to poach employees mutually or not to hire employees from competitors or other companies in general are prohibited.

## E. Vertical agreements with suppliers, distributors and customers

Agreements concluded between companies on different economic levels (non-competitors) for the purchase of goods or services may also have anti-competitive effects and would therefore be prohibited (“vertical agreements”). Here we are dealing with agreements between Infineon and our suppliers, distributors and customers.

In any case, fixing or influencing the resale price of a distributor is prohibited. Even indirect influence on the resale price is prohibited, e.g. by threatening with supply suspension, penalties, sanctions or granting financial incentives. Under very narrow conditions a recommended resale price

may be allowed by the manufacturer to the distributor, however the Compliance or Legal Department must be contacted in advance in any case.

Exclusivity agreements may however be allowed between non-competitors under certain circumstances.

Prior to the conclusion of contractual “vertical” agreements, the Legal Department must be contacted in any case.

## F. Abuse of a dominant market position

Antitrust law prohibits companies with a dominant market position to abuse their position.

### 1. When has a company a dominant market position?

A dominant market position is determined by many factors. However the laws in some countries may presume such dominant market position if the companies’ market share on the relevant product market exceeds 40%. This figure should not be confused with the share of the demand of a single customer covered by a manufacturer. Therefore, no dominant market position exists, if a manufacturer supplies 80% of one customer’s demand, but has only 10% market share on the product market (demand of all customers). To determine whether Infineon could have a dominant market position in a particular case, the relevant product market must be distinguished factually and geographically. In order to do so, please contact the Legal Department.

### 2. What is meant by “abuse”?

It is not prohibited to have a dominant market position. A company having a dominant market position may not, however, abuse its position by impeding effective competition. Such company cannot behave on the market in a way that makes it impossible or substantially more difficult for other companies to compete with him.

### 3. Exclusivity agreements or loyalty discounts with business partners

A dominant company which requires its customers to obtain their entire demand only with him, acts abusively, because smaller vendors could no longer supply these customers. This applies in relation to suppliers of the dominant company as well. By means of exclusive supply, the supplier would be blocked for the remaining, smaller competitors of the dominant company.

Similar effects may occur with so-called loyalty discounts (e.g. target rebates or total sales discounts), in which a discount is granted only if the customer covers its entire or nearly entire demand from the dominant company. Because of this customers generally are kept away from purchasing at least a part of their demand from competing suppliers. The result would be a de-facto exclusive binding of the customer to the dominant company, which antitrust law intends to avoid.

However, other forms of discounts, such as volume discounts connected solely to the volume or compensation discounts that will offset particular costs, are allowed (for example: certain design-in-, marketing- or research & development services).

If you plan and/or negotiate certain discounts please always contact Compliance or Legal Department in advance.



#### 4. Abusive selling prices

It is also prohibited for a dominant company to offer its products to predatory pricing – i.e. below costs – to replace smaller suppliers from the market in the short run and then raise prices again significantly.

A dominant company may also not sell its products at unreasonably high prices which are not proportionate at all to the economic value of the product.

#### 5. Bundling/refusal to supply

A dominant company may also not connect the supply of one product with an obligation to purchase another product. Caution is required if – contrary to customers explicit intent – two or more products are offered to one customer only in a bundle, or specific rebates are granted only in case of sourcing such bundled products (“bundling”). The prohibition against such bundling prevents companies extending their dominance to other products and therefore replacing competitors from these product markets.

Finally, a dominant company may refuse to supply a customer only by reasonable means. Thus a delivery is mandatory in certain cases, if e.g. the customer adheres to the same conditions as other customers, which are supplied with this product or the customer may not, without this product, be able to offer his end-product on the downstream market anymore.

If you plan any bundling or intend to refuse supply please always contact Compliance or Legal Department in advance.

## IV. Dawn Raids - Investigations

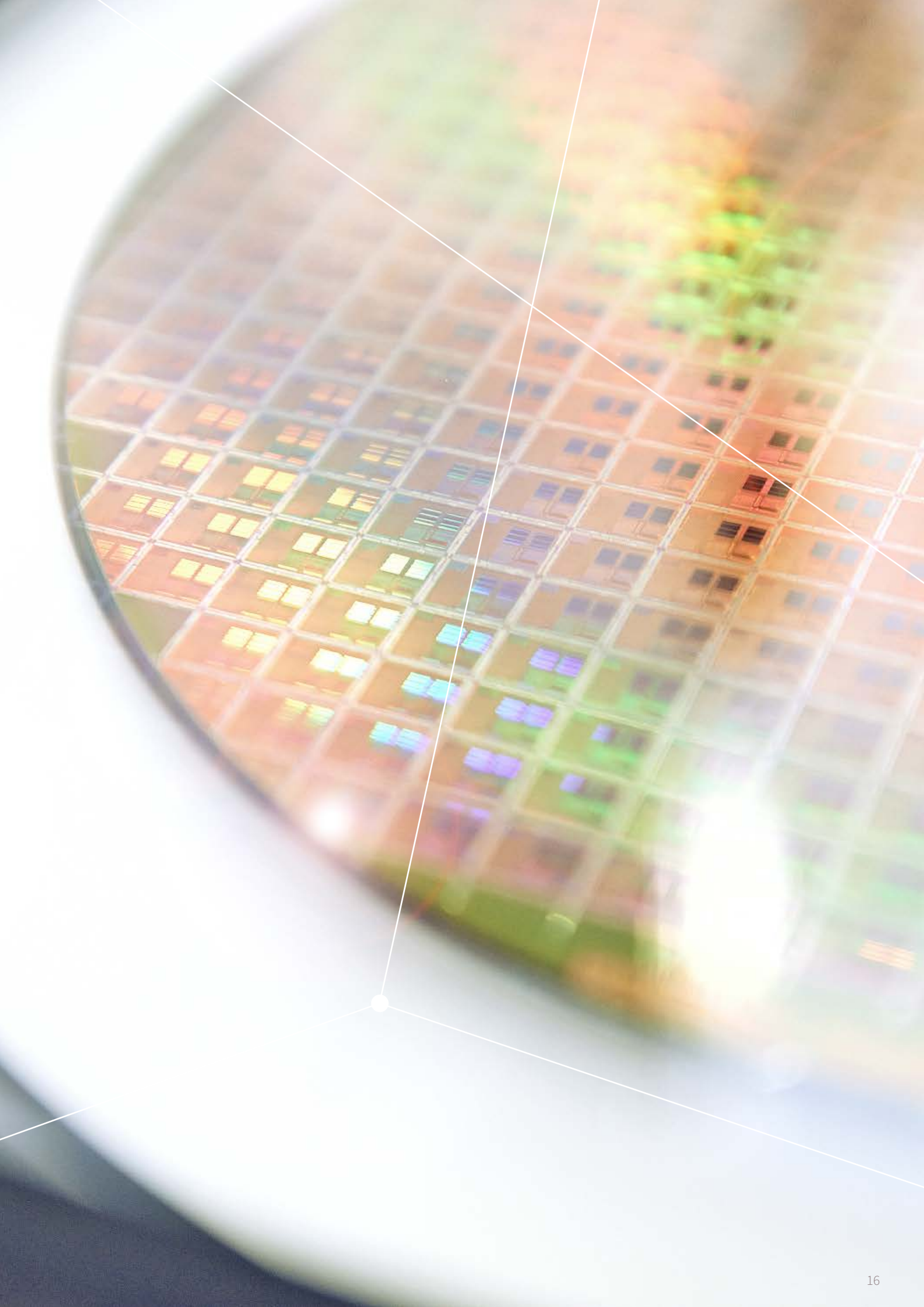
Investigations by e.g. cartel authorities – also called Dawn Raids – may occur unannounced at all Infineon locations anytime. Antitrust officers – usually accompanied by local police – have wide investigation powers and may e.g. enter all business premises and offices and have interviews with employees. In addition all business documents and devices (computers, mobile phones, USB flash drives, etc.) may be seized, examined and evaluated. Please adhere to the following rules in the event of an investigation to avert damage from you and Infineon:

- › Immediately inform Compliance, Business Continuity or the Legal Department!
- › Ask officers to show the search warrant
- › Behave cooperatively
- › Release no documents or make any statements to the officers without legal advice
- › Do not let officers wander around Infineon's premises unaccompanied during the investigation
- › Do not destroy or conceal any documents or mobile devices
- › Never break-in rooms sealed by officers
- › Record the entire sequence of the investigation in writing including copies and a list of all copied or seized documents, as well as minutes of all statements made to the officers

## V. Compliance Program, Consulting and Training

The Compliance Department is responsible to operate an antitrust-specific Compliance program ("Antitrust-Compliance-Program").

Employees of this area are contact persons for questions about Infineon's Antitrust Compliance Program including its processes, trainings and guidelines.





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