



Ducati Motor Holding S.p.A.

Antitrust Compliance Guidelines

(approved by the Board of Directors on March 26th 2021)



The reasons for and value of these Guidelines

Antitrust rules presuppose **fair competition** on the merits, i.e. on quality, innovation, price. This competition is the result of the natural and spontaneous confrontation between competitors, which leads, by virtue of market dynamics alone, to the constant improvement of products, technological development, the search for the highest quality and a price proportionate with value.

Antitrust rules only apply when the **competition between companies is distorted** by collusive, exclusionary or abusive exploitation of market power. They tend to restore fair competition and, in this sense, represent the 'visible hand' of the market.

Ducati has taken up the invitation of the Italian Competition Authority (AGCM) to adopt **guidelines for compliance with antitrust regulations**, which aim to ensure that the conduct of the Company and its employees is based on the strictest compliance with the rules and the prevention of unlawful behavior.

The purpose of these Guidelines is to illustrate in **simple and operational terms** the antitrust law as it has been interpreted by administrative authorities and courts in over 60 years of application. They have been developed in relation to Ducati's specific areas of risk. In this perspective they aim to give **certainty to the conduct of the Company** and avoid, as much as possible, legal risks and costs.

Nevertheless, the Guidelines are necessarily brief and general in nature. They do not constitute legal advice and can never replace a specific assessment of the actual case. If you have any doubts or need clarification, you should always contact the Company's **Legal Department**.

Antitrust compliance monitoring

These Guidelines have been developed taking into account the characteristics of the Company, the market environment in which it operates and the nature and degree of antitrust risk it may face.

Therefore, these guidelines do not cover all antitrust areas nor do they specify in detail every element of the legislation. Moreover, it is always possible that cases arise which are not covered or, given the necessary brevity of this document, only partially covered.

If you have any doubts or need clarification about the competitive acceptability of your conduct, you are therefore encouraged to contact the Company's Legal Department, which constitutes the **Antitrust Compliance Unit**, by writing to the email address loana.fior@ducati.com.

Reports

If you wish to report a possible antitrust infringement committed, even unintentionally, within the Company, or in which the Company may be involved, you may do so, even anonymously, using the channel of the Company's Whistleblowing System.

Ducati has implemented a whistleblowing system with the appropriate guarantees provided for the whistleblower such as the guarantee of anonymity, therefore various channels have been made available and disseminated to address any possible information/reporting. To have visibility of those channels visit www.ducati.com, section company/governance-risk-compliance/compliance/whistleblower-system.



The risks for Ducati and its employees

The rules

Two types of antitrust regulations apply in Italy: Italian law (L. 287/90) and European provisions (Articles 101 and 102 of the Treaty on the Functioning of the EU). However, these regulations are very similar and are applied on the basis of the same case law.

The prohibitions can be exemplified in two general categories.

1. Prohibition of **agreements that reduce competition** between undertakings (cartels, commercial coordination, discrimination between dealers and customers, etc.).
2. Prohibition of **abuse of a dominant position**, for companies that - enjoying strong market power - can independently impose unfair trading conditions on customers and adopt practices detrimental to competitors.

The consequences of rules infringement

Any violation of antitrust rules (both national and European) may have the following consequences.

1. A **fine of up to 10 per cent of the annual turnover of Ducati and the parent company within the Volkswagen Group** if the parent company has effective control over the Company. The fine is imposed by the Competition Authority or the European Commission and the parent company may be jointly and severally liable for its payment.
2. Risk of **actions for damages** before national courts, as regulated by Legislative Decree. no. 3/2017
3. **Reputational and image damage**: antitrust investigations and sanctions are widely publicized and stigmatized in the press, including international press.
4. **Administrative and legal costs**: Antitrust investigations may include inspections by the financial police at the company's premises, involve considerable management effort in preparing defenses and entail high legal costs.
5. **Civil and labor consequences for the Ducati employee**. The observance, by the Company's employees, of the provisions contained in the antitrust regulations, constitutes a fundamental part of their contractual obligations pursuant to and for the effects of Article 2104 of the Italian Civil Code. The violation of said provisions, therefore, shall constitute a breach of the obligations deriving from the employment relationship on the part of the employee and shall determine the application of sanctions and/or measures of a disciplinary nature, in compliance with the procedures prescribed by the applicable rules, with all legal consequences, also with regard to the preservation of the employment relationship and the obligation to pay compensation for any damage caused. The disciplinary measures that may be imposed on employees - in compliance with the procedures laid down in Article 7 of the Workers' Statute and any special regulations applicable - are those provided for in the disciplinary system of the CCNL for the engineering and plant installation industry. The disciplinary sanctions (in the case of employees) and the contractual measures (in the case of



managers) shall be commensurate with the level of responsibility and autonomy of the employee and/or manager, the possible existence of previous situations of violation against him/her, the intentionality of his/her conduct, as well as the seriousness of the same, meaning the level of risk to which the Company may reasonably be deemed to be exposed as a result of the conduct complained of.

6. **Possible criminal consequences for the Ducati employee:** in some countries (e.g., USA, UK, Germany), certain competition offences are associated with criminal sanctions, i.e., personally concerning the employees who took the decisions within the Company. This can also have criminal consequences in Italy. In fact, in the event that an anti-competitive conduct decided in the Company produces effects that are detrimental to competition in those countries, the Company employees responsible for such conduct may be subject to the criminal laws of those countries. Such employees may therefore be subject to criminal proceedings and penalties, including limitation of personal liberty.



Forbidden practices

The general principle underlying the antitrust rules is that the competition that must exist between companies means that commercial choices must be made by companies in **complete autonomy** and assuming the economic risks. Consequently, **all agreements** that reduce autonomy, reduce risk and restrict competition are **prohibited**.

Anti-competitive agreements are prohibited regardless of the size and characteristics of the companies involved. Therefore, justification such as: '**our company is a particular entity in the motorbike market**' does not exempt it from the application of antitrust rules.

The antitrust rules provide a - **non-exhaustive - list of prohibited agreements**, these include:

- agreements on sale or purchase prices or fixing resale prices
- agreements on quantities to be produced, exported or imported,
- agreements on transaction conditions (payment terms),
- geographic market sharing agreements, customer allocation,
- arrangements to restrict technical development or investment
- arrangements intended to influence the outcome of a tender procedure
- arrangements to discriminate against a distributor or supplier
- agreements to impose on the contracting parties services not justified by commercial usage

The **notion of anti-competitive agreement** is interpreted in a very broad sense, it includes:

- **agreements** = i.e. any meeting of the parties' minds whether oral or written and whether formal or informal. For example: a handwritten, unsigned note stating that company X and company Y agree to increase their respective prices by 7%.
- **concerted practices** = any direct or indirect contact between undertakings the object or effect of which is either to influence the conduct on the market of an actual or potential competitor or to disclose to a competitor the course of conduct which he has decided to adopt or contemplates adopting on the market. For example, an unsolicited e-mail from a competitor informing you of the prices that competitor intends to charge in the next quarter.

Anti-competitive 'object or effect' of the cartel

It may be that the anti-competitive agreement does not produce the desired effects for the undertakings, but it is nevertheless illegal and carries the penalties provided for in the legislation. As a matter of fact, the latter prohibits agreements whether they have an anti-competitive '**effect**' or merely an anti-competitive '**object**'.

Consequently, a justification such as: '**the cartel had no effect**' does not exclude the application of the rules.



Intra-group agreements

Companies that are part of the same group, i.e. a group subject to unitary control, **are not considered competitors** for the purposes of Italian and European antitrust rules. When one company exercises a decisive influence over another, they form a single economic entity and therefore constitute one and the same 'undertaking' within the meaning of competition law.

The same applies to **sister companies**, i.e. companies over which a certain influence is exercised by the same parent company. They are therefore not considered to be competitors even if they operate on the same geographic and product markets.



The abuse of dominant position

Dominant position

When an undertaking holds a dominant position in the market, it must take special precautions, because the antitrust rules impose on it additional obligations and prohibitions which also cover unilateral conduct and not only agreements with competitors.

Even particular and not large companies may have a dominant position in a particular market, because the market is defined by the set of interchangeable products or services.

When a company is **the sole or major customer of a supplier or distributor**, it may be considered to be in a dominant position vis-à-vis the latter. In these cases, even particular companies such as Ducati must pay particular attention to the respect of antitrust rules.

Abuse of dominant position

Market dominance is **not prohibited per se**, because it could be achieved through the commercial merits of the company. However, the antitrust rules seek to prevent the company in question from **abusing** its position.

A **non-exhaustive list of possible abuses** of dominant position includes:

- imposing excessive prices in relation to production costs and quality;
- Below-cost pricing practices aimed at eliminating competitors that are just as efficient but have less financial capacity;
- discounting practices that are not based on economic considerations but only aim at building customer loyalty at the expense of competitors;
- discriminatory treatment between customers and/or suppliers;
- concluding contracts conditional on the acceptance of additional products or services that are not justified technically or by commercial usage.



Direct relations with competitors: formal or informal agreements

Agreements between competitors or 'cartels'

Each company must make its own commercial choices.

Any '**meeting of minds**' of two or more competing companies concerning their commercial conducts qualifies as an **anti-competitive agreement**, even if it is expressed in **informal or oral terms**, or even if it **does not constitute a legally binding contract**.

In particular, the 'meeting of minds' must not have as its object the determination of:

- prices of products,
- discounts applied or to be applied,
- payment terms,
- sales volumes,
- export or import quotas,
- distribution of markets or customers,
- marketing strategy, etc.

This kind of agreement is also called a '**cartel**' and represents one of the **most serious** infringements of antitrust law.

Examples of cartel agreements

The 'salesmen' of two competing companies meet at a convivial dinner and agree on a common discount strategy for the last months of the year. The agreement is oral, but evidence of the agreement may emerge from subsequent confirmation e-mails.

The heads of the R&D departments of two companies prepare a 'memo' to regulate the timing and expense of their respective research activities aimed at reducing harmful nitrogen oxide emissions from motorbikes.

What to do, practically

Avoid any relationship with competitors that could even potentially result in common or coordinated business conduct.

In particular, do not enter into agreements - even informal or verbal ones - on prices, volumes, export or import quantities, customers, marketing policies.

If you have any doubts about the nature of your dealings with competitors, you should inform the Company's Legal Department, to assess the lawfulness or unlawfulness of such dealings, and to agree on the measures necessary to bring the practice to an end, if it is judged by the Department to be anti-competitive.



Direct relations between competitors: exchange of sensible information

Prohibited exchanges

The collection and/or exchange of technical and/or commercial information about competitors' products is allowed if these products **are already on the market**, i.e. are actually and freely available to the public.

On the other hand, any 'contact' – even indirect – between competing undertakings by means of which they transmit or receive commercially sensitive and/or technical information that is not yet genuinely and freely accessible to the public (i.e. contacts between undertakings **before the products are placed on the market**) is prohibited.

Exchanges of information prior to marketing are unlawful insofar as they are likely to **influence the conduct of a competitor**, or to **reveal to a competitor the conduct** that the Company has decided, or expects, to adopt on the market.

Sensitive business information that cannot be exchanged: prices, deliveries, sales or purchase volumes, production costs, turnovers, market breakdown, future business plans or forecasts, etc.

Contact in any form and anywhere: e.g. e-mails, phone calls, during business meetings (even if in a trade association), non-work occasions (lunches, sporting events, social gatherings, etc.).

Examples of illicit contacts:

In an e-mail: "Can you send me the usual monthly delivery figures per model?"

In an e-mail "Let's meet for lunch to brainstorm on US markets".

At a technical meeting with a competitor: "I would say that it is in our common interest not to push the development of this alloy for rims".

Mystery shopping and exchange of bikes and/or prototypes with competitors

Buying competitor's motorbikes for **benchmarking** purposes is legitimate, because it is a way to gather technical and commercial information that is actually present in the market.

Mystery shopping is a system to collect information actually present in the market and therefore public and available to anyone. If these conditions are met, it is a legitimate. However, it can be abused if the supplier obtains confidential information and acts as a 'hub' of sensitive exchange of information. Therefore, the legal department should be contacted and appropriate protection clauses should be put in place.

To date, neither the AGCM nor the European Commission have taken position on the competitive legality of the **mutual exchange** of motorbikes with competitors. There is therefore no legal certainty about this practice. However, this exchange could be seen as a means of facilitating the transmission of information between competitors, in particular if it occurs systematically and in the context of other information exchanges.



In any case, the exchange - in the form of exchange or loan - of **prototypes** with competitors must not be carried out, because it is likely to convey technical and commercial information that are not available on the market.

Commercial sensitivity of data

The greater the commercial sensitivity of the data and information exchanged, the greater the antitrust risks.

Below is a table outlining the commercial sensitivity

| | | | |
|--------------------|-----------------------------|----------------|------------------------|
| Age of data | | | |
| 2 years | 12-24 months | < 12 months | Future |
| Form of data | | individualized | |
| aggregated | | individualized | |
| Number of contacts | | | |
| occasional | frequent | continuous | |
| Nature of data | | | |
| public | public but not easy to find | internal | internal and restraint |

What to do, practically

- in an **e-mail**: if you receive sensitive commercial information, reply immediately that you are not interested in receiving it, for reasons of anti-trust compliance.
- in **meetings**: always check the agenda to ensure that there are no discussions relating to sensitive commercial data; if a competitor discloses sensitive commercial data, end the discussion, **refuse** to receive any documents, ask to record in writing that you are dissociating yourself from the subject of the meeting and that Ducati intends to comply with antitrust law in all circumstances; after that, **leave** the meeting.
- in **meetings or presentations**: if a power point presentation of Ducati is planned and/or involves the circulation of internal information or documents, submit the presentation and documents to the Legal Department.



- **always** informs the Company's Legal Department, in order to assess any further disassociation measures.

Even in the case of exchanges of information that seem admissible to you, it is always a good idea to talk to the Legal Department, for a '**double check**'.



Direct relations between competitors: bid-rigging

A tender is a form of competition between companies, therefore any agreement between competitors or contact with competitors that may distort its course or its result is an unlawful conduct.

In particular, the following conduct is prohibited:

- agreeing among potential participants, to **boycott** the tender
- agreeing on a number of '**convenience**' bids among the participants in order to predetermine the winner
- set up an **ATI** (temporary association of undertakings, or RTI) with a partisan purpose.

What to do, practically

Participation in a tender should always be carefully considered by the Legal Department, therefore it is advisable not to accept any invitation (even informal) from a competitor to discuss the matter, for example to discuss the specifications or whether or not the Company or the competitor should submit a tender.

R&D agreements with competitors

Anti-competitive factors in R&D agreements

R&D agreements are those agreements between two or more parties which provide for joint research and development of products or technologies and, possibly, the use of the results by the parties, with or without commercial exploitation thereof.

These agreements often have positive effects on competition because they promote innovation and can lead to efficiencies in terms of cost reduction. However, they are sometimes liable to restrict competition between undertakings.

Each R&D agreement has to be assessed specifically in relation to its subject matter, however, the European Commission has indicated a number of factors which may flag that the R&D agreement is dangerous from an antitrust point of view. Those factors are the following:

- the parties to the agreement are **competitors**;
- ability of competitors to conduct R&D **individually**;
- the parties' combined **market shares** exceed 25% of the relevant product/technology sector (i.e. the market for improved, substitutable or replaceable products/technology of the product/technology subject to the agreement);
- the R&D agreement is aimed at improving or refining **existing products or technologies** where the parties have a strong position, entry into these markets is difficult, and other innovation activities are weak;
- the R&D agreement also extends to the **joint production and marketing** of the developed products or technologies.



Non-anti-competitive factors in R&D agreements

The European Commission has also indicated the factors in the R&D agreement whose presence is an indication of antitrust harmlessness: They are the following:

- the parties to the agreement do not compete with each other;
- the parties are not able to carry out the R&D activities themselves, e.g. due to their limited technical capabilities;
- the parties' combined market shares are less than 25% of the relevant product/technology sector (i.e. the market for improved, interchangeable or substitutable products/technology of the product/technology subject to the agreement);
- the subject matter of the R&D agreement is limited only to research and development, with no joint commercialization activities;
- R&D activity is aimed at developing a completely new product or technology.

What to do, practically

Before making contact with the prospective partner, consult with the Company's Legal Department to explain in detail the content and objectives of the planned activity.

When drafting the agreement, the objectives of research and technological development should always be highlighted, taking care not to include the anti-competitive aspects that have been highlighted.



Activities in trade associations

Trade associations legitimately promote the interests and development of the sector. Participation in them is legitimate.

However, sometimes certain activities organized by the association or carried out by its members on its premises may give rise to forms of contacts through which competitors conclude agreements or exchange commercially sensitive information, leading to collusive conduct in breach of antitrust rules.

Meetings in the association

Experience has shown that meetings or business meetings organized in the trade association are the circumstances where this type of exchange is most likely to take place.

Therefore, in case of meetings or

- it is necessary to ensure that an **agenda** is prepared for the meeting and that it does not include the discussion of agreements or the exchange of commercially sensitive information of the participating companies;
- If the **discussion deviates from the agenda** and extends to sensitive competition issues (prices charged, volumes produced or to be produced, market shares, exports, imports, discounting practices, business development plans, relations with distributors or suppliers, etc.), the participant must immediately distance himself from the subject matter of the meeting and have his **dissociation** recorded in writing;
- it is necessary to request the **minutes of the meeting**, in case they are not sent, and to make sure that they correspond faithfully to the discussion and the deliberations taken, and that they do not use expressions that could be interpreted as forms of collusion between the participants;
- If you intend to submit a **document** or **power-point presentation**, you should check its content with the Legal Department in advance to ensure that it does not contain any competitively sensitive data or information.

Services offered to members

If the association provides **statistical processing of data** collected from members or **similar services**, it is necessary to check that such processing does not contain information of prohibited content or form. Please refer to the table on page 10.

What to do, practically

Before each meeting or meeting in the association **check the agenda** and in case of doubt consult the Legal Department.

Disassociate yourself publicly in front of the other participants if commercially sensitive topics are discussed at the meeting or commercially sensitive data is circulated; then inform the Legal Department.



Check with the Legal Department that data and information contained in Company **documents** or **power-point presentations** are not relevant to collusive activities.

Avoids any transmission of commercially sensitive company **data** to the association.

In the event of receipt, even unsolicited, of commercially sensitive data from competitors by the association, consult the Legal Department immediately.



Relations with data collection companies

Data collection companies

The communication of sensitive information with competitors can also take place **indirectly** through the activities of data collection companies. When such companies obtain business data directly from companies and, after processing, circulate them within the industry, they **realize indirect contacts between competitors**, which are just as prohibited as direct contacts. As a matter of fact companies are able to collude, even though indirectly transmitted information,.

The fact that contact with competitors is made through a **hub** and not directly does not in any way exclude liability for anti-competitive conduct.

Below is a table illustrating the legality or illegality of sending/receiving information to/from data collection companies

| Conduct | Evaluation |
|--|---|
| Companies that receive data from Ducati covered by a confidentiality agreement and re-transmit them processed only to the Company. | The transmission of data and the receipt of processing is lawful because it concerns only the Company and not those of the competitors |
| Companies that transmit easily available public processed data to the company (e.g. DMV). | The receiving of such processing is lawful because the data are genuinely public |
| Companies that provide Ducati with processed public data, although not freely available. | The receiving of such processing could raise antitrust risks and should be carefully assessed with the Legal Department |
| Companies that collect data from players of the sector, process them, possibly together with public data, and redistribute them the players in the sector. | The sending of company data and the receiving reprocessed data must be avoided because it can be a source of collusion between companies of the sector. |

Example of unlawful contact solicited by a data collection company:

Could you please send us your delivery figures for Asia in the last quarter? As always, they will be available from 1 July on the XXX platform, together with those of all other brands.

What to do, practically

In view of the complexity and sensitivity of sending/receiving sensitive commercial data of the Company or competitors, any initiative must be agreed upon in advance with the Legal Department.



Public announcement and relation with the press

Communications to the public or the press may sometimes contain, even unintentionally, information or business plans that could be interpreted as **signals to competitors** or **proposals or acceptance of anti-competitive agreements**.

In these relationships, therefore, one should refrain from communicating, inter alia:

- sensitive commercial information
- indications of future price trends for the Company's products
- positions of the Company in relation to proposals made by competitors

Examples of public statements to be avoided

"Ducati believes that there is no reason to engage in a price war."

"Ducati agrees with those who believe that there is no reason to continue in this type of R&D activity."

What to do, practically:

Avoid making public statements that **may appear** to be proposals of cartels or that may appear to be responses to public proposals made by competitors.

Whenever possible **agree** with the Company's Legal department on your external communication.

Vertical restrictions of competition

Relationships with dealers (and suppliers) differ to some extent from those with competitors. With the latter there are horizontal relationships - that is, between operators in the same market - while with dealers the relationships are vertical. Ducati operates in the **upstream** market of motorbike production, while dealers operate **downstream**, in the distribution market.

Vertical restraints of competition are governed not only by the general rules mentioned above, but also by two particular sets of rules. The first is contained in EU Regulation No 330/2010, applicable to all vertical agreements and concerted practices. The second one is contained in Regulation (EU) No 461/2010, which is **specific to** agreements and concerted practices in the **automotive sector** and therefore not strictly applicable to Ducati.

Essentially, the above regulations provide for an exemption from general prohibitions, i.e. a **safe harbour**, for vertical contracts between parties that in their respective markets - upstream and downstream - do not exceed 30% market share. Moreover, in order to benefit from the safe harbour, certain **contractual conditions** have to be fulfilled, which are specifically indicated in the regulations.

The contracts that Ducati has in place with its dealers are intended to benefit from the safe harbour and therefore the conditions set out in the regulations must be **strictly** adhered to.



EU Regulation No 330/2010 remains in force until 31 May 2022. After that date, distribution and service contracts will have to be reassessed in order to bring them into line with the rules that the European Commission is currently drawing up and which will be applicable from 1 April 2022.

Relation with dealers in motorbike sales

The type of contracts between Ducati and dealers

Ducati has specific **exclusive distribution contracts** with its dealers for the sale of motorbikes.

This type of contract is legitimate from an antitrust point of view, but requires strict compliance with certain **conditions**.

In particular, Ducati:

- **can suggest** to the dealer the price to which the motorbike is sold to the end customer (resale price), but **cannot impose** it;
- may not adopt any commercial policy - for example **concessions or cancellation of discounts** - that may indirectly induce the dealer to maintain the resale price suggested by Ducati;
- may ask dealers not to promote sales outside their allocated area or to a specific customer base (**active sales**) but it may not induce or suggest to such dealers not to comply with requests for information and/or purchases from areas allocated to other dealers (**passive sales**);
- cannot require dealers **not to sell brands of particular competing suppliers**.

Examples of unlawful contacts with dealers

In an e-mail to a dealer: 'You can't debase the product with these prices! Let's be serious...'

In an e-mail to a dealer: 'Dealer X complained the other day about your incursions into his area, let's be careful and keep some order'.

In an e-mail to a dealer: "...the additional 4% discount is reserved for those who do not deviate from the list price."

Prohibition of using the dealer as a commercial information hub

In addition, multi-brand dealers are able to collect data and commercial information relating to each brand. In this way they are in a position to act as an information **hub between the different manufacturers** and as a facilitator of agreements.

It is therefore important to avoid asking dealers for technical or commercial data related to competing manufacturers and, in the case you do become aware of such data, it is necessary to inform the dealer that you do not wish to receive this type of information.



What to do, practically

Do not try to induce the dealer to sell the bikes at a certain price, for example with promises of discounts or bonuses or threats of cancellation of bonuses or discounts, or any other means. Ducati may suggest a price, but the dealer must be genuinely free to discount or increase it.

Do not try to induce the dealer not to comply with requests for information and/or purchase from certain areas of the network (passive sales).

Do not ask a common dealer for commercially or technically sensitive information about competitors' motorbikes and products (e.g., prices, deliveries, business plans, etc.) because this is a means of obtaining information that may influence the Company's choices;

In any case, if you have any doubt about the lawfulness of your conduct, please contact the Company's Legal Department.

Relations with dealers and services in after-sale sector.

In principle, the same obligations and conditions applicable to dealers for the sale of motorbikes apply mutatis mutandis.

Ducati

- may suggest, but **may not impose the price of services on the authorized dealer/service;**
- cannot adopt any commercial policy - for example **concessions or cancellation of discounts** - that may indirectly induce the service to maintain the price suggested by Ducati;
- may not induce or suggest to authorized dealers/services that they do not meet the service requirements of customers from outside the assigned area (**passive sales**);
- cannot require dealers/servicers **not to carry out services for particular competitors' brands.**

The following restrictions are also prohibited in the **after-sale** sector:

- the restriction of sales of spare parts to independent repairers who use these parts for the repair and maintenance of motorbikes;
- a restriction, agreed between a supplier of spare parts, repair or diagnostic equipment or other equipment and the Company, on the supplier's ability to sell such goods to independent distributors or end customers;

What to do, practically.



Not to impose - including by promises of discounts and bonuses or cancellations of discounts and bonuses - on dealers/services the price of their after-sale services/products.

Not to impose - including through promises of discounts and bonuses or cancellations of discounts and bonuses - on dealers/ services to refuse after-sales services/products to customers in certain areas of the service network or not to market/sell their after-sales services/products in certain areas of the service network.

Do not impose or suggest to dealers that they do not sell spare parts to independent repairers who use them for the repair or maintenance of Ducati motorbikes.

Do not ask or suggest to the supplier of spare parts or repair or diagnostic equipment not to sell such goods to authorized or independent *dealers or* repairers or to end customers.

Further information on the proper provision of repair and maintenance services can be found in the **Repair and Maintenance Information (RMI)** established by Regulation No. (EC) 715/2007 and its implementing Regulations (EC) No. 692/2008 and No. 566/2011.

If you have any doubt, seek advice from the Company's Legal Department.

Furthermore, in some cases Ducati could have a dominant position vis-à-vis smaller suppliers. In these cases further caution is required, therefore the intervention of the Legal Department is strictly necessary.

Guarantees

Antitrust rules prohibit two types of restrictions that may be connected with the provision of the guarantee, whether legal or commercial.

Prohibition of restrictions on warranty service

The Ducati warranty must not be conditional on the customer having the repair and maintenance work **not** covered by the warranty carried out by a service/dealer belonging to the Ducati network.

In practical terms, when a customer requests a reparation or maintenance service covered by the warranty, Ducati cannot subordinate the granting of the warranty to the fact that the customer also uses an authorized service for any repair/service not covered by the warranty.

Prohibition of restrictions on spare parts

The warranty conditions must not impose the use of spare parts with the Ducati brand or a specific brand identified by Ducati for replacements **not** covered by the warranty.



Sub-contracting agreements

Sub-contracting agreements are contracts in which called 'the contractor' (for instance Ducati) entrusts to another, called 'the subcontractor', the manufacture of goods, the supply of services or the performance of work under the Ducati's instructions, to be provided to the contractor or performed on his behalf.

Possible contractual clauses are those under which:

- the technical data or equipment coming from Ducati cannot be used for purposes other than the execution of the contract,
- the technical data or equipment coming from Ducati cannot be made available to third parties,
- the products, services or works realised using these data and equipment may be supplied only to Ducati or performed on their behalf,

if and to the extent that such data and materials are necessary to enable the subcontractor, under reasonable conditions, to manufacture the products, provide the services or perform the works according to Ducati's directives.

The mentioned clauses are lawful under antitrust law if:

Ducati allows the use by the subcontractor:

- of industrial property rights of the contractor or at his disposal, in the form of patents, utility models, designs protected by copyright, registered designs or other rights, or
- of secret knowledge or manufacturing processes (know-how) of the contractor or at his disposal, or
- of studies, plans or documents accompanying the information given which have been prepared by or for the contractor, or
- of dies, patterns or tools, and accessory equipment that are distinctively the contractor's, which, even though not covered by industrial property rights nor containing any element of secrecy, permit the manufacture of goods which differ in form, function or composition from other goods manufactured or supplied on the market.

The mentioned clauses are not lawful under antitrust law if:

- Ducati provides general information intended solely for the description of the order.
- The subcontractor already has or can obtain on reasonable terms the necessary knowledge and equipment to manufacture the products itself.



In case of unannounced inspection in Company premises.

The antitrust authorities - the Commission and the AGCM - have the power to carry out unannounced inspections at the premises of companies, to collect any evidence of an infringement.

Officials from the authorities are accompanied by plain-clothes officers from the specialized unit of the Guardia di Finanza.

Inspection powers

Under current legislation, authorities may:

- (a) access to all premises, land and means of transport of undertakings and associations of undertakings;
- (b) check the books and any other documents related to the company, on any form of medium;
- (c) to make or obtain in any form copies of or extracts from such books or documents;
- (d) to seal all premises and company books or documents for the duration of the inspection and to the extent necessary for its completion;
- (e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject matter and purpose of the inspection and to record the answers.
- (f) to enter other premises and means of transport if there are reasonable grounds for suspecting that books or other records related to the business and the subject matter of the investigation are kept there, **including the whereabouts of directors, managers and other members of staff of the undertakings or associations of undertakings concerned.**

Rights and duties of the company if subject to inspection

| Right of the Company | Duties of the Company |
|--|---|
| <p>The company is entitled to use an external lawyer assist with the inspection.</p> <p>The company may ask to verify the inspection warrant (which must be in writing). A copy of this warrant should be made.</p> <p>The warrant shall specify the subject matter and purpose of the inspection. The inspection shall not cover any documents, books, premises, information, etc. which do not relate to that subject matter and purpose</p> | <p>The Company is obliged to submit to the inspections and must therefore maintain a cooperative attitude with the officials.</p> |
| | |



| | |
|--|---|
| <p>Staff:</p> <ul style="list-style-type: none">- should not sign any minutes without first consulting an external lawyer.- must always make at least one copy of documents retained by officials;- must keep a written record of the type of searches made on computers and the keywords used to do so. | <p>Staff must:</p> <ul style="list-style-type: none">- allow access to the premises and other spaces indicated by the officials;- assisting officials with any photocopying documents;- allow officials access to computers, but searches desired by officials should be carried out by the staff themselves or by a company IT expert. |
| <p>The Company has the right not to self-incriminate. Therefore, staff must answer questions from officials in a non-reticent manner, but are not obliged to admit to an offence.</p> <p>For this type of testimony, the external lawyer should be present.</p> | <p>Staff shall not attempt to conceal or destroy any document or other information on whatever medium it is installed.</p> |
| <p>Correspondence between an outside lawyer and the Company is normally covered by professional secrecy, and therefore should not be accessible to officials.</p> <p>If you request access to such correspondence, please note that it is <i>legal privilege</i> documentation.</p> | |

What to do, practically.

In case of surprise inspections, it is imperative to inform the Legal Department **immediately**.