



Gesamtverband
Kunststoffverarbeitende
Industrie e.V.

GUIDELINES

ANTITRUST COMPLIANCE IN THE ASSOCIATION



Contents

1. The basic rules	3
1.1 The ban on cartels	3
1.2 Application of antitrust law to associations	4
2. Antitrust law in association work	5
2.1 Correct behavior before and during association meetings	5
2.2 Statistics and market studies	7
2.3 Association communication and recommendations	8
2.4 Sample General Terms and Conditions	9
2.5 Standards and norms, sustainability initiatives	9
2.6 Trade fair policy	11
2.7 Rejection of the admission of a member company	11

The GKV and its member associations keep an eye on antitrust law in all their activities and ensure that its requirements are complied with in the course of their work. The associations also expect this from their members, their representatives and all other persons involved in the work of the associations. Even the appearance of anti-competitive behavior should be avoided.

This guideline supplements the GKV's compliance activities in the area of antitrust law. The aim is to prevent violations of antitrust law by providing information and clarification. The guidelines are intended to make it easier to identify and avoid any antitrust law problems in the association's work. Qualified lawyers or compliance officers in the company should be consulted in the event of questions and in cases of doubt. The GKV is also happy to put members in touch with suitably qualified lawyers.

1. The basic rules

Antitrust law protects free competition between companies and generally prohibits behavior that restricts it. These guidelines are based on the basic rules of German and EU antitrust law, within whose scope the SHI usually operates. For activities that have an impact beyond this, the antitrust regulations of other countries may be relevant, although these are often similar to German and EU antitrust law. In individual cases, the advice of legal experts in the respective country may need to be consulted.

Antitrust law does not only apply to the behavior of companies that are in competition with each other, but also in the relationship between companies at different market levels and for the behavior of third parties such as associations or consultants. It prohibits restrictive practices between several companies (prohibition of cartels) and the abuse of particularly strong market power (prohibition of abuse).

These basic rules are briefly outlined here. For more detailed explanations, please contact the legal department of your company or the management or board members of the associations.

1.1 The ban on cartels

The ban on cartels prohibits agreements and concerted practices that have as their object or effect the restriction of competition. Such conduct is legally invalid and can lead to considerable sanctions for the companies and individuals involved, in particular fines and claims for damages.

Companies violate the ban on cartels if they agree on how they will behave in competition. In principle, such an agreement can relate to all areas in which companies compete, e.g. the design of

prices and non-price conditions, the allocation of customers or sales territories and the product and sales strategy.

However, the prohibition of cartels is not only violated by agreements restricting competition, but also by concerted practices that result from the exchange of confidential information about one's own and, in particular, future business activities.

competitive behavior. Competitors

Therefore, associations may not disclose information relevant to competition to each other. And an association may not steer its members towards their market behavior through a recommendation and thereby "certify" them.

Restrictive practices may be permissible in exceptional cases. This presupposes that, when viewed as a whole, positive effects for customers outweigh the restrictive effects on competition. Restrictive effects predominate and no restrictions on competition that are not necessary to achieve the positive effects. Whether these conditions are met depends heavily on the circumstances of the individual case and can therefore only be examined in the specific case.

A special case is the **boycott ban**, which prohibits companies from calling for supply freezes or procurement freezes with the intention of hindering a company's competition.

1.2 Application of antitrust law for associations

An association may neither itself act in violation of antitrust law nor participate in conduct by its member companies or third parties (e.g. other associations) that violates antitrust law. It may be sufficient for an association to provide a "forum" for cartel agreements between companies for it to be involved. Intent is not required for the association and its employees to be liable under antitrust law. Even negligent behavior can give rise to liability.

In most of its areas of activity, the GKV and its supporting associations are not themselves to be regarded as companies in the sense of antitrust law, as they do not provide services on a market. However, the members of the associations are companies and the associations would be in breach of the ban on cartels if they were to restrict competition between them.

EXAMPLE OF INADMISSIBLE RECOMMENDATION:

An association could pass a resolution or recommend to its members that they no longer provide certain services free of charge for their customers in future or that they charge certain flat rates. In doing so, the association would be in breach of the best practice between members in this respect. competition, which would be problematic under antitrust law.

EXAMPLE OF INADMISSIBLE FORUM:

Members of a committee could ask the association to offer an unrecorded meeting after the official end of a meeting in which they can discuss the behavior of important customers and agree on a common line on this. This behavior of the members would be a violation of antitrust law, for which the association would also be held responsible, as it provides a forum for this.

2. Antitrust law in association work

The rules for coordinated behavior and the disclosure of information relevant to competition play a particularly important role in the association's work, for example at association meetings (see 2.1) and for the preparation of market statistics (see 2.2). In its communication, the association must also ensure that it does not steer its members' competitive behavior through its own statements, z. e.g. through association recommendations (under 2.3) or model general terms and conditions that are too far-reaching (under 2.4). Within the framework of norms, standards and joint sustainability initiatives, associations and their members also observe the ban on cartels (under 2.5).

The ban on boycotts plays an important role in the context of trade fair policy, among other things (under 2.6). Finally, each association (in a special form of the prohibition of abuse) is subject to a stricter standard for the admission and rejection of new members (under 2.7).

2.1 Correct behavior before and during association meetings

2.1.1 No agreements or resolutions relating to competition

The associations offer their members a forum for the exchange of opinions and experiences within the framework permitted by cartel law. This presupposes that the members do not enter into any agreements or pass any resolutions restricting their competitive behavior. Such agreements could be entered into, for example:

- Design of price and non-price conditions
- Product range
- Customers and markets
- Sales strategies

EXAMPLE OF INADMISSIBLE AGREEMENT:

At a committee meeting, members agree to charge a jointly agreed minimum fee for the use of a quality mark for certain packaging in future. However, they only reach this agreement verbally, not as a formal resolution, and not everyone present agrees.

An antitrust authority would regard this behavior as an unlawful agreement restricting competition and thus as a violation of antitrust law, regardless of whether it is made orally or in writing and regardless of whether all participants in the meeting agree. Coordination of competitive behavior without a firm agreement, in particular by disclosing or receiving non-public information about current or future competitive behavior, is also not permitted under antitrust law.

EXAMPLE OF INADMISSIBLE VOTING:

At the meeting, one participant reported that his company would be charging a new minimum price for certain packaging in future, citing the rise in raw material prices as the reason. In addition, a certain flat-rate energy charge will be introduced. The other participants take note of this, but do not comment themselves.

An antitrust authority would probably regard this disclosure of confidential information relevant to competition as impermissible coordination of behavior. It enables the other participants to adapt their behavior to the reporting company. It does not matter whether they actually change their previous behavior as a result and - if they do - whether they demand exactly the same prices and flat rates. It is sufficient for the infringement of antitrust law that they now know how their competitor is behaving in this respect when they decide on their behavior.

2.1.2 Exchange between members

The exchange of competitively relevant information between competitors will be

This is viewed particularly critically under antitrust law, as it can easily lead to coordinated competitive behavior. The exchange of information can enable companies to adapt their market behavior to each other and thus reduce competitive pressure.

To avoid this, the following rules are followed in the GKV and its sponsoring associations:

Rules of procedure

All members, board members, managing directors and association employees ensure that ...:

- agenda items and meeting documents as well as documents circulated by the associations do not contain any topics relevant to antitrust law and are worded unambiguously.
- the discussion at meetings and other association events is restricted to the agenda items sent out in advance or the agenda is supplemented accordingly at the beginning.
- all meetings are minuted completely, truthfully, concisely and unambiguously.
- member companies do not disclose any information about their company at meetings or events of the association that would allow conclusions to be drawn about the company's current or future market behavior.

Inadmissible topics

- Participants in association events are prohibited from discussing or exchanging information between competing companies, either formally or informally, directly or specifically via third parties or agreements that enter into the following points:
- Prices, in particular: their design, price differences, strategies, sales and payment conditions, discounts, credit notes and credit conditions, price components

- Production, in particular: individual manufacturing or sales costs, cost accounting formulas, methods of cost calculation, product or product group-related figures on procurement costs, inventories, sales, capacities, etc., planned production changes, such as maintenance shutdowns or planned capacity reductions
- Future or current market behavior, in particular: Division of markets or sources of supply (whether geographically or by customer), relationships with - or activities of - individual suppliers, customers or competitors, specific offers and ongoing negotiations, "blacklists" or boycotts of customers, planned projects of individual companies with regard to technology, investments, design, production and sales or marketing for specific products
- The range of services offered by the associations also includes working groups with a strong focus on technology, whether as an exchange of experience or as part of research projects, etc. Such working groups are also subject to antitrust law. Research projects, investments, know-how and the company's own IP pipeline as well as planned innovations must generally be kept secret outside of permissible (verified) research cooperations. Companies may not harmonize their product characteristics or coordinate the introduction of innovations outside of permissible (tested) norms and standards.
- For example, it must not be discussed that only certain technologies are used or only certain developments are driven forward, nor whether certain innovations are delayed or only introduced to the market in a standardized version.

Permitted topics

In principle, all topics may be discussed and information disclosed that has no tangible relevance to the competition. In information may also be disclosed if it is already publicly known.

The following topics, for example, can be discussed without any problems:

- General economic conditions, z. e.g. the economic development
- Business expectations of companies in general, i.e. insofar as they do not allow any conclusions to be drawn about the company's market position in individual product areas or its current or future market behavior
- Legislative projects and the reactions to them in the political arena
- Joint advertising measures, e.g. with the aim of communicating sustainability to consumers
- Publicly available statistics (e.g. from the Federal Statistical Office), but not the specific conclusions that are drawn from them for your own company
- Industry initiatives without any noticeable competitive relevance, e.g. in the area of employee training or qualification

How to react correctly to careless or inadmissible statements?

In the event of **spontaneous statements** with content relevant to antitrust law, all other participants react immediately and actively distance themselves from any behavior that may violate antitrust law:

- The participant is informed that the point raised by him may not be discussed and is considered questionable under antitrust law.
- If necessary, the discussion on this point will be postponed until it has been clarified that it is unobjectionable under antitrust law.
- If no agreement can be reached between the participants, those who have reservations should state their objection for the record, interrupt the meeting or leave the meeting room, which must also be recorded in the minutes.
- Such events must be reported to the management and the board of the respective association.

2.2 Statistics and market studies

When the associations compile statistics, commission studies or pass on information, they ensure that this does not lead to an exchange of information between the participants that could give rise to antitrust concerns. In principle, statistics, studies or information that allow conclusions to be drawn about individual business transactions or the behavior of individual companies are not permitted. This is particularly the case if they relate to specific business opportunities, suggest future planned market behavior or contain information about the customer and supplier base or the price structure of individual companies.

The associations pay particular attention to the fact that this is aggregated and anonymized data for the past, which does not allow any conclusions to be drawn about how individual companies behave on the market.

The following basic rules apply to appropriate aggregation:

- Number of participants of not less than 5 independent companies with a statistically relevant share of the notifications
- only historical data that is not younger than 3 months
- No forecasts
- Maximum ¼-yearly reporting frequency
- No too deep classification by products and areas

If the statistics do not comply with these basic rules, they should be examined on a case-by-case basis by an antitrust expert and, in case of doubt, be coarsened.

The data must be collected by a neutral third party (e.g. the association) that can preserve the anonymity of the individual reports. The individual participants must not be hidden or recognizable. New registrants and departures are "sneaked in and out" so that the individual company details remain hidden.

2.3 Association communication and -recommendations

The associations can clarify objective facts in relation to market-relevant issues, compile information and pass it on to the member companies. However, they may not attempt to control the market behavior of members. The associations will therefore not communicate any evaluations or statements to the member companies that relate to the market behavior of the member companies.
market behavior of the members.

For example, alternative responses to a challenge or market development may be presented objectively, but the associations must not unilaterally recommend or suggest only one course of action. They must not give the impression that they have agreed on a specific course of action.

EXAMPLE OF ASSOCIATION INFORMATION ON LEGISLATION:

A new regulation that is important for plastic products comes into force, but the specifications leave room for interpretation. The associations:
(1) inform their members about the new law.
(2) show various possible interpretations and truthfully describe what they would mean for members in practice. The associations make it clear that the members have to decide for themselves how to apply the rules apply.
(3) recommend that members follow a certain alternative course of action, which means that they would all behave similarly in competition.

The first two measures do not restrict competition between members and are therefore permissible under antitrust law. The third measure, on the other hand, goes beyond objective information by encouraging members to engage in certain competitive behavior. This can be problematic under antitrust law and should be avoided.

Recommendations from the associations are therefore not binding for members. All recommendations and association communications provide information on objective facts in a neutral, non-discriminatory manner. Recommendations or samples are inadmissible for the aforementioned reasons if their purpose or effect is to circumvent the ban on cartels, i.e. if they suggest to companies that they should not agree or coordinate with each other.

EXAMPLE OF INADMISSIBLE RECOMMENDATION:

The associations could make recommendations to their member companies on the negotiation of surcharges for certain additional services, plastics or hazardous substances, e.g. with regard to certain flat rates or price escalation clauses.
This would inadmissibly coordinate the behavior of the member companies in competition.

The associations therefore take care not to make recommendations or provide samples that would have an undue influence on the market behavior of their member companies. Against this backdrop, the associations ensure that press releases, position papers, guidelines and informational letters do not contain information about developments on the respective market.

is described in an objectively accurate manner, but does not call for specific economic responses.

EXAMPLE OF WARNINGS:

A warning against the use of certain products, entering into business relationships or the use of certain services may constitute a call for a boycott if it is not limited to objective, neutral and verifiable information. However, the forwarding of official warnings is unproblematic.
The sending of other "warnings" must be agreed with the managing director of the respective association.

2.4 Sample General Terms and Conditions

Model T&Cs may only be recommended by an association and may not be binding. In addition, such model T&Cs must not standardize the competitively relevant parts of a contract (e.g. prices, pricing, key product features, important liability issues), which are normally negotiated with customers and have a significant influence on the value and commercial value of the service. Otherwise, if the model clauses intervene too extensively in the negotiation, the recommendation and its implementation could lead to unlawful concerted practice through uniform use by the member companies.

EXAMPLE FOR GENERAL TERMS AND CONDITIONS RECOMMENDATIONS

The GKV regularly publishes General Terms and Conditions of Business and Delivery, which can be used by the member companies of its sponsoring associations.

With regard to the currently published terms and conditions, which have been reviewed by external legal experts, it can be assumed that these are neutral in terms of competition law and can be used by member companies without hesitation, but must naturally be adapted to individual cases.

A large number of different constellations are often conceivable, particularly with regard to warranty, liability and payment modalities. It is therefore necessary to check which clauses can be used at all and, if necessary, with which modifications, on the basis of the specific contract and the underlying facts of the individual case. This should also be made clear again and again as part of the recommendation or publication of the templates.

2.5 Standards and norms, sustainability initiatives

Standards and norms are developed in a fair and transparent process in which other market participants can take part. They must not be intended or suitable for hindering or restricting competition.

If a standard or norm impedes or restricts competition, the association will before they are implemented, have suitable legal experts examine whether and under what conditions justification can be considered in individual cases.

The creation of norms and the agreement of standards should be ensured:

- All affected companies can take part in the discussion on shading norms and standards and present their interests there.
- The voting process is transparent and publicly accessible.
- Compliance with the norm or standard is not mandatory and participation in or use of other (competing or alternative) standardization bodies or standards is not excluded.
- All companies have access to the standard and can use it under fair, reasonable and non-discriminatory conditions.

Standardization providers established in the market, such as

z. e.g. DIN and RAL, ISO, generally ensure compliance with these requirements. It is therefore often advisable to secure industry-wide standards via such neutral organizations. If these basic rules are not adhered to, the project should be examined on a case-by-case basis by an antitrust expert. Further restrictions, e.g. by excluding certain products, content categories or other alternatives, are only permissible in exceptional cases if they are absolutely necessary (indispensable) to achieve a demonstrable benefit for the general public. Regulation of prices and price components as well as production volumes and capacities is generally not possible.

EXAMPLE OF THE SPECIFICATION OF CERTAIN MATERIALS TO INCREASE PRODUCT SAFETY:

The agreement between companies to use a new material in the interests of product safety is a contractual restriction that the material previously used will no longer be purchased.

This voluntary commitment restricts the ability of companies to choose their own materials and thus define the characteristics of their products accordingly. If the new material is used uniformly, consumer choice is restricted.

From the perspective of the antitrust authorities, the objective of product safety in this example does not necessarily outweigh the reduction in choice and technological competition associated with the introduction of the new material. The advantages for safety would have to be substantiated and quantified and the disadvantages for competition would have to be as low as possible (unavoidable).

If a material is specified, a new supplier of another material would have no chance of entering the relevant market, as its product would not be accepted due to the voluntary commitment.

A less restrictive alternative would be to use a quality seal so that the use of other raw materials is also possible without the seal, thus maintaining technological competition.

If a certain input material is demonstrably harmful or dangerous and there are demonstrable benefits for the general public if it is dispensed with, dispensing with this material may be justifiable - but not the specification of a certain other material to the exclusion of other alternatives.

These rules are particularly important with regard to the use of (new) technologies. Restricting the use of certain technologies or applications and processes restricts (specially protected) innovation competition. This is generally not permitted under antitrust law, i.e. alternative technologies and processes should not be ruled out.

These basic rules also apply in particular to sustainability initiatives, e.g. for environmental and climate protection (previously more common as voluntary commitments by industry).

EXAMPLE OF A SUSTAINABILITY INITIATIVE:

A working group discusses the use of recycled plastic. The members agree on a specific label and define measurement and testing procedures. They make it possible for different products with the same properties to receive the label (technology-neutral), do not make the label mandatory and do not make any regulations to the sales prices and conditions. The label is also open to companies outside the association. All of this would be permissible.

It would not be permissible for the members of the initiative to agree that products made from recycled plastics, for example, may not be offered at a lower price than those made from virgin plastics. It would be permissible to formulate a minimum target for the use of environmentally friendly materials for this labeling (e.g. 50% in 2025). However, it would be inadmissible to agree that no one may be more "ambitious" and that exceeding the targets may not be used as an argument in competition ("We are more environmentally friendly than the others").

2.6 Trade fair policy

When dealing with trade fair providers, associations have a considerable influence on the success of trade fairs and must therefore avoid unequal treatment without an objective justification (discrimination). A negative statement must also not lead to a call for a boycott.

The associations will therefore inform their members objectively about the range of certain trade fairs without controlling the selection of members. Positive support for a particular trade fair must not lead to an inadmissible call for a boycott with regard to competitive trade fairs or be understood as such.

For a boycott to be assumed, it is sufficient for the member companies to recognize that participation in a particular trade fair is discouraged or that targeted criticism is being expressed. However, critical or negative facts regarding a supplier may still be communicated if they relate to true and objectively verifiable facts. However, any additional negative evaluation or expression of opinion should be refrained from.

For these reasons, the associations may not commit themselves to a trade fair company to exclusively promote only this trade fair. Nor may the members of the associations agree to exhibit at only one specific trade fair in the future.

At association meetings, no votes should be taken or questions asked as to who intends to take part in certain trade fairs and who does not. However, it is possible to conduct an anonymized survey to obtain a picture of the extent to which member companies are satisfied with a particular trade fair concept.

2.7 Rejection of the admission of a member company

Membership of the associations can be of considerable practical importance for companies. The associations are aware of this and therefore ensure that they do not reject the admission of a company if the rejection cannot be objectively justified. The same applies accordingly to the exclusion of members.

Reasons for rejection and exclusion of members may include, in particular The company does not (or no longer) meet the statutory criteria for membership, e.g. affiliation to the economic sector or level or the company's registered office; the company has demonstrably behaved in a manner detrimental to the association; the company has not paid its dues even after a reminder.

The specific reasons in individual cases will be communicated to the company concerned in writing.

Berlin, February 2024



Gesamtverband
Kunststoffverarbeitende
Industrie e.V.

The SHI provider associations



Gesamtverband Kunststoffverarbeitende Industrie e. V. (GKV)
Gertraudenstraße 20 | 10178 Berlin

Phone +49 (0) 30 3971 2230
E-mail: info@gkv.de | www.gkv.de