

Antitrust Compliance Guidelines

AMS Europe e.V. (“AMS Europe”) is a platform for active and varied association activities and represents the economic and technical interests of undertakings. It represents a wide range of manufactures of advanced packaging (and alike) materials and solutions as well as technical applications. Those are foil rollers and manufactures of aluminium closures, containers, household foil and all kind of flexible packaging. The divisions are organised under three identities:

- Flexible Packaging Europe
- European Aluminium Foil Association
- Aluminium Closures Group

AMS Europe is committed to lawful conduct and its activities strictly comply with European antitrust laws. AMS Europe has included its commitment to compliance in its statutes.

The purpose of these guidelines is to ensure compliance with antitrust rules within AMS Europe. The guidelines cannot replace an examination of antitrust issues in individual cases. They are intended, in particular, to raise awareness of antitrust-related topics among AMS Europe employees, member associations and member undertakings, and to define certain practices. With these guidelines AMS Europe aims to provide certainty and guidance to all members of the association. Any concerns should be addressed to AMS Europe management, which will initiate a review and provide clarification. AMS Europe ensures that its member undertakings receive these guidelines.

I. General information on the prohibition on cartels

The activities of AMS Europe are subject to European/national antitrust laws. There is practically no difference between the provisions of European law and national laws in terms of content. More significant differences only exist with regards to procedural law. Both national and European antitrust laws prohibit all agreements, decisions or concerted practices that are aimed at or result in the prevention, restriction or distortion of competition. This prohibition on cartels is set out in Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU) as well as in national legislation of all EU-member states.

The objective of cartel arrangements is mostly to fix prices and/or sales volumes. A cartel does not necessarily require an agreement to exist. The prohibition on cartels also applies to information exchange or concerted practices, whether written, verbal or implied, if their aim is to restrict competition. Undertakings must not engage in any arrangements or perform any concerted practices that restrict the uncertainty about their competitors' market behaviour. The place where such act is committed is irrelevant. If a cartel has an effect on the European or national market, the relevant antitrust law applies. It is irrelevant whether or not the cartel arrangement is actually implemented or whether the pursued aim is achieved. The arrangement itself to restrict competition is prohibited. The objection that a cartel arrangement did not have a tangible outcome or effect is therefore categorically irrelevant.

An infringement of antitrust law has severe consequences for undertakings, associations and any person involved. Under European law, undertakings may be given fines of up to 10% of their annual group turnover achieved in the previous financial year. Restriction of competition can also lead to personal fines or even criminal sanctions imposed against persons involved in such behaviour.

Infringements of competition rules may also incur claims by the injured parties for damages and may lead to the exclusion from public tenders and a loss of reputation and confidence for the undertakings responsible and the industry as a whole.

II. Antitrust rules for AMS Europe activities

1. Association meetings

1.1. Topics that may not be discussed at AMS EUROPE meetings

Competitors are, in principle, allowed to discuss the market situation and to exchange general industry information. However, this exchange must not lead to artificial market transparency or have an adverse effect on competition between the undertakings involved. The following topics must therefore not be addressed or discussed under any circumstances at or in connection with AMS Europe meetings:

- Product prices
 - Pricing, future pricing strategies.
 - Product-related effects of cost increases on pricing at product level (e.g.: agreement to pass on increases in the cost of raw materials, energy or wages)
 - Individual sales and payment terms, discounts, surcharges, bonuses etc.
- Customers/suppliers
 - Sharing of markets or reference groups.
 - Individual customer relationships.
 - Allocation of customers to certain suppliers (e.g. “preferred suppliers”).
 - Volume restrictions or allocation of certain delivery quotas.
 - Boycotts or calls for boycott.
- Corporate figures
 - Individual cost items of the undertaking, cost accounting formulas (product-related information on purchasing costs, production, inventories, sales figures, delivery times etc.).
 - Product-related sales figures.
 - Lead times, capacity utilization, stock levels, order intake on a product basis.
- Future market behaviour
 - Plans for expansion or reduction in capacity which allow conclusions to be drawn at product level.
 - Plans in connection with research and development, investments, production, marketing or sales.

The above topics must not be discussed at AMS Europe meetings. AMS Europe employees as well as the delegates of the member undertakings will review the meeting agendas and, if in doubt, contact AMS Europe management. If the above topics are mentioned in off-agenda comments, the meeting will be suspended and the process described in “Conducting AMS Europe meetings” will apply.

1.2. Topics that may be discussed at AMS Europe meetings

Undertakings may, in principle, exchange information on topics relevant to them. These include:

- Information on business expectations for the undertaking as a whole or for entire business units on an aggregate basis, which does not allow any conclusions to be drawn about the market position of individual products.
- General economic data.
- Current legislative initiatives and their effects on all member undertakings.
- General exchange of data which are publicly available.

1.3. Preparation of AMS Europe meetings

AMS EUROPE sends official meeting invitations to members in a timely manner, by email where appropriate. An agenda will be prepared for each meeting. When preparing the agenda, AMS EUROPE members must not include any items that are questionable or misleading from an antitrust point of view. The delegates of the member undertakings must also check the agenda for items that may have antitrust implications and, if in doubt, contact AMS EUROPE management.

1.4. Conducting AMS Europe meetings

Each AMS Europe meeting must be attended by at least one professional AMS Europe representative. In marked relevant meetings, AMS Europe ensures the regular presence of an independent antitrust counsel. The AMS Europe representative, in consultation with the chair of the meeting, must ensure that the agenda is followed and prepare the minutes of the meeting. The chair of the meeting and the AMS Europe representative are responsible for making sure that the meeting is conducted in accordance with antitrust rules as set out in the agenda. All representatives of the member undertakings must also ensure compliance with antitrust rules, following the principle “compliance is for everyone”. AMS Europe’s “Non-issues for Market reports” are presented by the AMS Europe representative prior to all market reports given in AMS Europe meetings.

If a topic is mentioned during a meeting which has (potential) antitrust implications, for example in an off-agenda comment, the chair will suspend the meeting immediately. In case of doubt, the topic will be deferred and AMS Europe management will be asked to assess its antitrust implications. The topic will not be discussed until all antitrust implications have been ruled out.

Any changes to the agenda will be recorded in the minutes. Such changes may not include any antitrust-related topics. Here, too, the principle applies that, in case of doubt, the topic will first be assessed for its antitrust implications and – if no cause for concern is found – it will be added to the agenda of the next regular meeting.

The meeting participants undertake to address all antitrust concerns immediately and openly during the meeting. If the objectionable topics are not excluded from the discussion as a result of such concerns, the meeting will be suspended. If the chair does not suspend the meeting, it is not sufficient to abstain from the activity. The law requires participants to distance themselves from any conduct that does not comply with antitrust law. This must be referred to as “standing up and leaving” in the minutes. The objection of the meeting participant and the time when he/she leaves the meeting must therefore be recorded in the minutes.

1.5. Follow-up of AMS Europe meetings

Following each AMS Europe meeting, minutes must be prepared containing the key points and, in particular, any resolutions made. The minutes will be sent to all meeting participants in a timely manner. If the minutes contain any incomplete or incorrect information, the participants will notify AMS Europe without delay and request a corrected version.

2. AMS Europe statistics

AMS Europe and its member associations offer their members various statistics containing turnover and sales data. To prepare such statistics, the participating undertakings must report data to AMS Europe and/or its member associations. AMS Europe treats these data with strict confidentiality and presents them in aggregate form, thereby not allowing for any conclusions to be drawn about the market behaviour of individual member undertakings. AMS Europe ensures that its statistics comply with legal requirements. Input from members into AMS Europe statistics must only be reported using the agreed procedure, and not during association meetings. Feedback must be provided anonymously. Non-anonymised data will only be published if these are already publicly available or if they allow no conclusions to be drawn about the market behaviour of the undertakings. If such anonymity can no longer be guaranteed, for example due to a change in the structure of the reporting undertakings (e.g. a reduction in the number of reporting undertakings), AMS Europe will adjust the statistics. AMS Europe statistics are regularly monitored by an independent antitrust counsel.

3. AMS Europe communication

AMS Europe ensures that it uses no wording in its position papers and press releases, whether intentionally or unintentionally, that refers to any arrangements, concerted practices or recommendations of AMS Europe. AMS Europe must not give any recommendations in relation to the market behaviour of its member undertakings. In particular, AMS Europe must not advise its member undertakings on how to handle cost increases.

4. AMS Europe norms and standards

AMS Europe and its member associations may produce norms and standards. AMS Europe will review the legal framework of its technical recommendations and ensure their compliance with antitrust law. All norms and standards will be produced in an open, transparent and non-discriminating procedure.

Any questions on this code of conduct or other antitrust issues should be addressed to AMS Europe management. All member undertakings are asked to discuss antitrust-related issues openly with AMS Europe management and seek clarification.

This Code of Conduct was prepared on behalf of AMS Europe by Rechtsanwalt (Solicitor) Johann Brück, Hermanns Wagner Brück Rechtsanwälte, Düsseldorf, Germany as of February 13, 2014, and last checked January 9, 2019.