

## Antitrust Compliance Guidelines

AMS Europe e.V. (“AMS Europe” or “Association”) represents the economic and technical interests of member companies active in the field of advanced packaging solutions and related technical applications. The member companies produce all kinds of aluminium and flexible plastic packaging, including goods such as aluminium foil, closures, containers and household foil. The various member companies of the Association are organised in three different divisions:

- Flexible Packaging Europe (“FPE”)
- European Aluminium Foil Association (“EAFA”)
- Aluminium Closures Group

AMS Europe, its divisions and all member companies and their representatives must act in accordance with the law and are bound by applicable statutory provisions and the Association’s own statutes. In particular, this requires that all Association activities must be carried out in strictest compliance with European antitrust laws. The Association and its member companies follow the “compliance is for everyone” principle, whereby both the employees of the Association, the member companies and their representatives must make every effort to ensure compliance with antitrust laws.

Although these guidelines cannot substitute the examination of antitrust issues in individual cases, they are intended to enable members and the Association to fulfil these obligations. The guidelines therefore seek to clarify certain practices and raise awareness of antitrust-related topics in general. AMS Europe ensures that its member companies receive these guidelines. The management of AMS Europe kindly requests immediate notification should any antitrust concerns arise regarding the Association’s activities in order to be able to initiate a review and clarification process.

### I. General information on the prohibition of cartels

AMS Europe’s activities are subject to European and applicable national antitrust laws. As there is no significant difference between the substantive provisions of European law and national laws from a material point of view (“level playing field”), the following guidelines focus on the applicable European antitrust laws.

According to Art. 101 (1) of the Treaty on the Functioning of the European Union (“TFEU”), European antitrust laws prohibit all agreements or concerted practices amongst companies and decisions by business associations which aim to or result in the prevention, restriction or distortion of competition.

- A cartel in this sense does not necessarily require a formal agreement to exist. The prohibition also applies to informal collusion, such as gentlemen’s agreements or exchanges of information. It is therefore irrelevant whether the infringement occurs in written, verbal or implicit form.
- Although cartel arrangements usually seek to manipulate prices, sales volumes and market shares, the prohibition of cartels forbids any collusive conduct which restricts uncertainty about competitors’ market behaviour – either by object or by effect. Thus, the exchange of strategic and commercially sensitive information can already constitute a violation of antitrust rules.
- The cartel prohibition not only applies to sales activities, but also to the purchasing of raw or other input materials. The coordination of purchasing prices or strategies is forbidden unless an official joint purchasing co-operation is concluded in accordance with the requirements of European antitrust laws.

- The applicability of antitrust rules is not contingent on the place of action. European antitrust rules apply wherever conduct influences trade between EU Member States.
- Furthermore, it is irrelevant whether a cartel agreement is implemented, whether the aim pursued by a collusion is achieved, or whether the infringement had any tangible outcome. The very attempt to restrict competition is prohibited.

An infringement of antitrust law has severe consequences for undertakings, associations and any individual person involved:

- Under European law, undertakings may be fined up to 10% of their annual group turnover generated in the last full financial year of the infringement.
- In applying EU antitrust laws, Member States can also enforce individual fines and even criminal sanctions against individuals involved in illegal activities.
- Infringements of competition regulations may also lead to damage claims by injured parties and to exclusion from public tenders.
- Finally, antitrust violations may lead to a loss of reputation for the undertakings involved as well as for the industry as a whole.

## **II. Antitrust rules for AMS Europe Activities**

### **1. Association Meetings**

#### **1.1. Prohibited and permitted topics during 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 any other adverse effect on competition between the companies involved.

Therefore, any coordination on the following topics is prohibited and must not be addressed on the occasion of AMS Europe meetings:

- Prices
  - Pricing, pricing strategies, price factors
  - Product-related effects of cost increases on pricing at product level (e.g., agreement to pass on increases in raw material or energy prices or wages)
  - Individual sales and payment terms, discounts, surcharges, bonuses etc.
- Customers/suppliers
  - Sharing of markets or reference groups
  - Protection of individual customer/supplier relationships, allocation of customers to certain suppliers (e.g., “preferred suppliers”)
  - Volume restrictions or allocation of certain supply quotas
  - Boycotts or calls for boycott
- Corporate figures
  - Individual cost items, cost accounting formulae (product-related information on purchasing costs, production, inventories, sales figures, delivery times etc.)
  - Product-related sales figures
  - Lead times, capacity utilisation, stock levels, product-level order intake
- Future market behaviour, if not yet publicly known
  - Plans for expansion or reduction in capacity which allow conclusions to be drawn at product level
  - Plans regarding research and development, investments, production, marketing or sales

In contrast, member companies may exchange information on the following topics:

- Information on past business development and expectations for the company as a whole or for entire business units on an aggregate basis, as long as it can be ensured that no conclusions can be drawn about individual products' current or future market position
- General data and information on the relevant markets or the economy as a whole which are publicly available
- Legislative or other initiatives and their effects on all member companies

Should any forbidden topics be mentioned either on or off the agenda, the meeting is to be stopped immediately and the process described in "Conducting AMS Europe meetings" shall apply.

## **1.2. Preparation of AMS Europe Meetings**

AMS Europe shall issue official meeting invitations including an agenda in a timely manner, where appropriate by email. When preparing the agenda, AMS Europe shall not include any items that are forbidden, questionable or misleading from an antitrust point of view.

AMS Europe and its member companies are obliged to review any meeting agenda before the start of the meeting and contact AMS Europe management if in doubt about the admissibility of a topic.

## **1.3. Conducting AMS Europe Meetings**

Each AMS Europe meeting must be attended by at least one professional AMS Europe representative. AMS Europe shall additionally ensure the presence of an independent antitrust lawyer at all market-relevant meetings. In consultation with the chair of the meeting, the AMS Europe representative shall ensure that the agenda is followed and shall take 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. However, in line with the "compliance is for everyone" principle, the member companies' representatives must also ensure continued compliance with antitrust rules.

Should a market report be conducted in the course of a meeting, the AMS Europe representative shall present AMS Europe's "Non-issues for Market Reports" prior to the market report.

The chair shall immediately stop the meeting should a topic with (potential) antitrust implications be raised (either on or off the agenda). In case of doubt, the topic will be deferred and AMS Europe management will be asked to assess its antitrust implications. A topic shall not be discussed until all antitrust implications have been clarified. Any changes to the agenda are to be recorded in the minutes. Such changes may not include any topics subject to antitrust rules. Again, in case of doubt, the topic shall first be assessed for antitrust implications and where no cause for concern is identified, it will be added to the agenda of the next regular meeting.

Every meeting participant is called upon to address all antitrust concerns immediately and openly during the meeting. If a questionable topic is not excluded from the discussion as a result of such concerns, the respective agenda item or, if necessary, the whole meeting must be suspended.

If the chair is unwilling to suspend the matter, simply abstaining from participating in the discussion does not suffice. Participants are required by law to actively distance themselves from any conduct which does not comply with antitrust law. Consequently, it is necessary to "stand up and leave" and to insist on this being noted in the minutes. A participant's concern and the time at which they leave the meeting must be recorded in the minutes by AMS Europe's representative in any case.

#### **1.4. Follow-up to AMS Europe Meetings**

Minutes containing the key points of discussion and, in particular, any resolutions made must be drafted after each AMS Europe meeting. The minutes shall be sent to all meeting participants in a timely manner. Participants shall notify AMS Europe without delay and request a corrected version of any incomplete or incorrect information contained in the minutes.

#### **2. AMS Europe Statistics**

AMS Europe and its divisions offer their members various statistics comprising turnover and sales data. Participating companies must report data to AMS Europe and/or its divisions for the preparation of such statistics. AMS Europe ensures that its statistics comply with requirements under antitrust laws and are regularly monitored by an independent antitrust counsel.

AMS Europe handles all data provided for statistics in a strictly confidential manner, both internally and externally. Input from members must only be reported using the agreed procedure, and not via or during association meetings. Any feedback on statistics in a public forum must be submitted anonymously.

AMS Europe ensures that statistics are presented solely in aggregated form, thereby not allowing any conclusions to be drawn about individual member companies. Non-anonymised data will only be published if it is already publicly available or if it does not allow conclusions to be drawn about the companies' market behaviour. AMS Europe shall adjust the respective statistic where the required anonymity can no longer be guaranteed.

#### **3. AMS Europe Communication**

AMS Europe ensures that it shall not use any wording in its position papers, press releases, or other communication which constitutes or supports any agreement, concerted practice or unlawful recommendation by AMS Europe. AMS Europe shall not issue any recommendations in relation to its member companies' market behaviour. In particular, AMS Europe shall not advise its member companies on their pricing or their handling of cost increases.

#### **4. AMS Europe Norms and Standards**

AMS Europe and its divisions may issue norms and standards. AMS Europe shall review the legal framework of its technical recommendations and ensure their compliance with antitrust law. All norms and standards shall be drafted in an open, transparent and non-discriminating procedure.

Any questions on these guidelines or other antitrust issues should be addressed to AMS Europe management. All member companies are asked to openly discuss antitrust-related issues with AMS Europe management and seek clarification.

*These guidelines were prepared on behalf of AMS Europe by Rechtsanwalt Johann Brück, [Hermanns Wagner Brück Rechtsanwälte](#), Düsseldorf, Germany. They were last reviewed in January 2021.*