

Antitrust Compliance Guidelines

AMS Europe e.V. (“AMS Europe” or “Association”) is a platform for diverse activities and represents the economic and technical interests of member companies active in the field of advanced packaging solutions as well as related technical applications. Goods produced by member companies include i.e. aluminium foil, closures, containers, household foil and all other kind of aluminium or plastic flexible packaging. 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

Based on the applicable statutory provisions as well as the Association’s own statutes, AMS Europe, its divisions and all members must act in accordance with the law. This includes, in particular, that all activities of the Association must be carried out in the strictest compliance with European antitrust laws. The Association and its members follow the principle “compliance is for everyone”, meaning that both the employees of the Association and the member companies must make every effort to ensure compliance with antitrust laws.

Although these guidelines cannot replace an examination of antitrust issues in individual cases, they are intended to enable members and the Association to follow these obligations. Therefore, the guidelines aim at clarifying certain practices and raising awareness of antitrust-related topics in general. AMS Europe ensures that its member companies receive these guidelines. Should any antitrust concerns arise regarding the Association’s activities, the management of AMS Europe welcomes it to be contacted immediately so that a review and clarification process can be initiated.

I. General information on the prohibition on cartels

The activities of AMS Europe are subject to European and applicable national antitrust laws. As there is no significant difference between the 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.

Based on Art. 101 (1) Art. 101 of the Treaty on the Functioning of the European Union (“TFEU”), European antitrust laws prohibit all agreements or concerted practices amongst companies as well as decision of business associations that aim at 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, like gentlemen’s agreements or information exchanges. Therefore, it is irrelevant whether the infringement happens in written, verbal or implicit form.
- Although the objective of cartel arrangements is mostly to manipulate prices, sales volumes or to share the markets, the prohibition on cartels forbids any collusive conduct that restricts the uncertainty about the competitors’ market behaviour – either by object or by effect. Thus, already the exchange of strategic and commercially sensitive information can lead to a violation of antitrust rules.
- The cartel prohibition does not only apply to the sale side of the market, but also when purchasing raw or other input materials. The coordination of purchasing prices or strategies is forbidden, unless

an official purchasing agreement in line with the prerequisites of European antitrust laws is concluded.

- The place of action is irrelevant regarding the applicability of antitrust rules. If the conduct influences the trade between member states of the EU, European antitrust rules apply.
- It is furthermore irrelevant whether a cartel agreement is implemented, whether the aim pursued by a collusion is achieved, or whether the infringement has any tangible outcome. Already the 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 with up to 10% of their annual group turnover achieved in the last full business year of the infringement.
- If member states apply their EU Antitrust laws, restrictions of competition can also lead to individual fines or even criminal sanctions against persons involved in illegal behaviour.
- Infringements of competition rules may also lead to damages claims by injured parties, and to the 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 allowed 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 an artificial market transparency or have any other adverse effect on competition between the companies involved.

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

- Prices
 - Pricing, pricing strategies, price parts
 - Product-related effects of cost increases on pricing at product level (e.g.: agreement to pass on increases in the 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 delivery quotas
 - Boycotts or calls for boycott
- Corporate figures
 - Individual cost items, 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, if not yet publicly known
 - 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

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

- Information on business development in the past and expectations for the company as a whole or for entire business units on an aggregate basis, as long as it is guaranteed that no conclusions can be drawn about the current or future market position of individual products
- 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

If any forbidden topics are mentioned on or off the agenda, the meeting will be stopped immediately, and the process described in “Conducting AMS Europe meetings” will apply.

1.2. Preparation of AMS Europe Meetings

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

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

1.3. Conducting AMS Europe Meetings

Each AMS Europe meeting must be attended by at least one professional AMS Europe representative. In market relevant meetings, AMS Europe additionally ensures the presence of an independent antitrust lawyer. 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. However, based on the principle “compliance is for everyone”, the representatives of the member companies must also ensure ongoing compliance with antitrust rules.

If a market report is conducted in the course of a meeting, AMS Europe’s “Non-issues for Market Reports” will be presented by the AMS Europe representative prior to the beginning of the market report.

If a topic comes up during a meeting (on- or off-agenda) which has (potential) antitrust implications, the chair will stop the meeting immediately. In case of doubt, the topic will be deferred and AMS Europe management will be asked to assess its antitrust implications. A topic will not be discussed until all antitrust implications have been clarified. Any changes to the agenda will be recorded in the minutes. Such changes may not include any antitrust-critical 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.

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 relevant agenda item or, if necessary, the whole meeting must be suspended.

If the chair is unwilling to suspend, it is not enough to abstain from taking part in the discussion. Participants are required by the law to distance themselves actively from any conduct that does not comply with antitrust law. Consequently, it is necessary to “stand up and leave” and to insist on a respective note in the minutes. The concern of a participant and the time when the person leaves the meeting must be recorded in the minutes by AMS Europe’s representative in any case.

1.4. 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 divisions offer their members various statistics containing turnover and sales data. To prepare such statistics, the participating companies must report data to AMS Europe and/or its divisions. AMS Europe ensures that its statistics comply with requirements under antitrust laws and are regularly monitored by an independent antitrust counsel.

AMS Europe handles data delivered for statistics internally and externally with strict confidentiality. Input from members must only be reported using the agreed procedure, and not via or during association meetings. Any feedback on the statistics in a public forum must be provided anonymously.

AMS Europe ensures that the statistics are presented solely in aggregated form, thereby not allowing for any conclusions to be drawn about any individual member companies. Non-anonymised data will only be published if it is already publicly available or if it allows no conclusions to be drawn about the market behaviour of the companies. If the necessary anonymity can no longer be guaranteed, AMS Europe will adjust the relevant statistic.

3. AMS Europe Communication

AMS Europe ensures that it uses no wording in its position papers, press releases, or other communication that poses or supports any agreement, concerted practice or unlawful recommendation of AMS Europe. AMS Europe will not give any recommendations in relation to the market behaviour of its member companies. In particular, AMS Europe does not advise its member companies on their pricing or on how to handle cost increases.

4. AMS Europe Norms and Standards

AMS Europe and its divisions 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 these guidelines or other antitrust issues should be addressed to AMS Europe management. All member companies are asked to discuss antitrust-related issues openly 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 2020.