

Compliance Guideline

Guideline for participation in the committees, working groups and events of F.E.E.D.M.

F.E.E.D.M., Fédération Européenne des Emballeurs et Distributeurs de Miel, is the European association of honey traders and packers. F.E.E.D.M. counts 16 national associations among its members, along with individual companies in the EU and associated members from neighbouring countries to the EU.

Its aim is the optimal representation of the interests of its members. To fulfil this task, F.E.E.D.M. sees itself above all as a service provider. Consequently, it deals with the new EU directives and national regulations for its members every day. In order to be as quick and up to date as possible it is in constant contact with the European authorities in Brussels. If problems arise, F.E.E.D.M. offers fast, convincing solutions, helps in matters of food and customs law and provides extensive information about trade policy developments.

The work of the F.E.E.D.M. lives from the committed cooperation of its members for a common goal. F.E.E.D.M informs and advises its members, provides them with a platform for sharing and for cooperating in a variety of working groups and committees, and undertakes lobbying work through cooperation in legislative procedures. The successful work of the organisation is not possible without the active cooperation of its members.

Anti-trust law sets limits to the cooperation among companies if they are in competition against each other with their products. It is essential that these limits are observed.

The work of the F.E.E.D.M. is strictly and extensively directed towards observing the limits of and compatibility with anti-trust law. To this end, the following information is designed as a guideline, which if followed should prevent any unlawful anti-trust conduct in the interests of the F.E.E.D.M. and its members.

Breaches against anti-trust law can lead to considerable fines and claims for compensation against the F.E.E.D.M. as association and its members, as well as against the persons in management positions.

These guidelines are sent to all full-time and honorary individuals active in the committees and groups of the association and are provided to all members. However, these guidelines should not and cannot comprehensively explain the complexity of anti-trust law and the large number of individual questions. For detailed questions, it may be necessary to seek further legal advice.

A. ANTI-TRUST REQUIREMENTS FOR THE ORGANISATION'S WORK

1. Principle

Agreements between companies, decisions by associations and pre-agreed conduct, which results in or causes a prevention, restriction or falsification of the competition, are prohibited. In addition, the European ban on cartels (Art. 101 AEUV) applies if trade between member states may be affected as a result.

2. Arrangements, agreements and resolutions

In general, all agreements between competitors, which lead to or cause a restriction to free competition, breach anti-trust law.

The term arrangement is interpreted very widely by the anti-trust authorities. It is not necessary for a legally binding contract to be concluded between the parties. An informal verbal or tacit arrangement (known as a "gentlemen's agreement") is sufficient. The term "Resolution" is also interpreted broadly. It also includes both resolutions that are not passed in a constitutional form.

Arrangements are therefore understood to be both formal agreements and resolutions (e.g. in committees or working groups) and agreed conduct, which arises tacitly or on the borders of association meetings.

- a) All arrangements are absolutely unlawful and invalid, which relate to:
- Prices and conditions (e.g. maximum and minimum prices, discounts, time of price changes)
 - Market allocation (e.g. territories, customers, sources, quotas)
 - Sales restrictions
 - Boycotts (e.g. arrangement regarding the refusal of claims or non-delivery/delivery of customers)
 - Forwarding costs to the customer

In a few cases and under certain conditions, competition restrictions are excluded from the ban on cartels. These include some individual cases, which are important for the joint representation of the association's interests.

- b) Accordingly, arrangements or resolutions can be permitted in exceptional cases, such as for:
- Joint defence against illegal claims ("attempted tapping up") in particular by submitting complaints to the Cartel Offices,
 - Joint proceedings against illegal sales below retail cost price, in particular by submitting complaints to the Cartel Offices,
 - Purchasing collaborations for goods and services
 - Specialisations (e.g. the mutual agreement to suspend the manufacture of specific products and respectively to purchase them from the other contractual partner),
 - Joint manufacture and sale of a product.
 - Joint research and development

It must be noted that the permissibility of corresponding arrangements or resolutions in these and other cases depends on other factors (e.g. actual form of the procedure, market share of the participants). It is therefore necessary to subject to the permissibility under anti-trust law to a legal audit.

Because of the very narrow degree between permissible bundling of interests and arrangements in breach of anti-trust law, therefore, arrangements or resolutions under competition law must generally be avoided unless legality under anti-trust law is checked in advance by a compliance officer or an external anti-trust lawyer.

3. Exchanging experience, opinions and information

The federation's work lives from an active sharing of opinions and information among members and regularly offers competitors the opportunity to discuss the market situation with each other and to exchange information. In principle this is not a concern.

However, it must be noted that exchanging information that is usually confidential may be assessed as a breach of anti-trust law.

- a) Exchanging information between competitors is unlawful, in particular, if it relates to:
- Pricing, price strategy, conditions, market behaviour, times and extent of product launched or pricing
 - Sales and turnover figures
 - Manufacturing, sales, purchasing, production or storage costs
 - Stocks, delivery periods
 - Own response to claims from customers or suppliers
 - Type and identity of own customers and suppliers

However, not every exchange of information is unlawful, as there may also be a legitimate interest in obtaining data relevant to the market. Industrial associations frequently gather, evaluate and consolidate relevant information. Information, which refers solely to the past, as well as so-called "non-identifying" market information procedures, which do not refer to individual market participants, are generally permitted. Insofar as branch-specific information is involved, this is not a concern under anti-trust law. Market information systems regularly have to be checked on a case-by-case basis.

- b) In principle, the exchange of information between committee members is permitted, if it relates to:
- Legal and political general conditions (e.g. draft legislation, administrative practice of authorities, court rulings, tax matters) and their evaluation,
 - General economic developments, also about customers or suppliers, insofar as public knowledge (e.g. concentration developments in retail, formation of purchasing cooperations in retail, market entries and exits),
 - Generally known or easily accessible and purely historic (older than one year) individual company data (e.g. purely historic sales data).
 - Breaches of the law by customers or suppliers, insofar as no information about one's own reaction to these is provided.

The principle here is that that information deemed to be sensitive under anti-trust law, which appears important for the federation's work, should be checked in advance in respect of its legal harmlessness.

4. Federation information and recommendations

The federation is frequently active unilaterally when it makes recommendations to its members via (internal) circulars, public statements by its representatives or employees, or otherwise. These unilateral measures by the federation can also be problematic.

Recommendations are problematic if they advise members to act in a way that restricts competition, which would be a breach of the ban on cartels - if it were the object of a direct agreement between members or companies.

By contrast, recommendations limited to transmitting facts and sending the resulting conclusions to members are not critical under anti-trust law.

5. Ban on boycotts

The person affected by an economic boycott is fully or partly excluded from normal business and consequently their existence is threatened. It is therefore unlawful in principle to request companies or associations to refuse deliveries to or purchases from specific companies. It is irrelevant in this case as to whether the addressee of the request also fulfils it and in what form the call for a boycott is made.

B. GUIDELINES FOR ASSOCIATION WORK

1. Invitation to meetings

The respective responsible, full-time employees invite members to meetings of working groups and events promptly and officially. Participants receive an informative agenda timely before the meeting. This is worded clearly and unmistakably.

Items of concern under anti-trust law cannot be included in an agenda. This also applies meeting documents.

If in doubt, the employee(s) of the executive management are available for clarification or correction. In any case, an audit of the legal harmlessness is performed in advance.

2. Before the meeting

Each participant in the meeting should carefully read the agenda and check whether there are agenda items, which may possibly have to be considered in particular in relation to compliance with anti-trust regulations. This is the case for the unlawful items listed above or if, for example, the treatment of customers or suppliers is to be discussed.

If there are concerns regarding individual items of the agenda, each participant in the meeting should inform the chair of their concerns. If this does not lead to the concerns being eased, the chair of the federation must be informed of this timely before the meeting.

Each participant in the meeting must ensure that they do not take any documents to the meeting, which contain confidential information about a company.

3. During the meeting

At least one full-time employee is present at every meeting. Minutes of the federation's meetings are taken by the chair or the full-time employee, which record in particular the attendees, the main content of the meetings and the resolutions passed. The prescribed agenda should not be deviated from.

At the start of the meeting, the chair or a full-time employee present at the meeting instructs the attendees in the key points of this compliance guideline and the requirement on all attendees to act in accordance with anti-trust legislation, and is available to answer questions. For regularly held meetings with the same participants, it is sufficient if this information is provided at reasonable intervals.

The chair or the full-time employee has to take appropriate measures to ensure that no unlawful resolutions, arrangements, discussions or spontaneous statements are made regarding topics relevant to anti-trust legislation within the framework of federation meetings.

Each attendee has to ensure that they do not disclose any confidential information about their company. This includes, in particular, information about prices, price components, turnover and sales figures, times of price increased or product launches, new products, business strategies, reactions by the company to legal claims from customers or suppliers. Attendees, who do not comply with anti-trust legislation, must immediately be advised of this by the chair or the full-time employee. The chair will interrupt or postpone the actual discussion or even the entire meeting if a detailed legal clarification appears to be required.

Each attendee should demand the interruption or postponement of a concrete discussion or if applicable of the entire meeting, if there are concerns regarding legality. This demand must be recorded in the minutes by the chair or the full-time employee.

If this demand is not met, the attendees shall leave the meeting if the discussion subject to anti-trust concerns continues. If an attendee leaves the meeting, must be recorded in the minutes by the chair or the full-time employee, stating the name and time. In cases of doubt, the meeting can also be postponed and legal advice sought in the meantime.

4. Work after meetings

Each attendee must ensure that the minutes correctly and fully record the discussion points discussed and the results. Insofar as the individual wording appears of a concern under anti-trust legislation to the attendees, the chair must be informed. If the concern is not lifted, the board of the federation must be informed.

Each attendee should check their own notes as to whether they contain ambiguous wording.

5. In the margins of meetings

Each attendee must note that the above points and principles of anti-trust legislation naturally apply to all conversations in the margins of the meeting as well. Participation in informal meetings in the margin of federation events and meetings should be avoided if in doubt.

C. REGULAR EVALUATION AND UPDATING

In view of the importance of these guidelines, they are evaluated at regular intervals, not more than every two years, by the General Secretary, and if applicable are modified in relation to current requirements.

Hamburg, 11 March 2015