

## Compliance Programme

### Commitment

regarding participation in committees and events of the German Coffee Association

1. The fundamental principles of the German Coffee Association include strict acceptance of and compliance with the applicable antitrust regulations at national and international level. Antitrust law violations can lead to substantial fines and claims for damages from injured parties. This may affect the German Coffee Association, its member companies and the officers of the German Coffee Association as well as of the member companies. Moreover, being embroiled in antitrust law cases may jeopardise the good reputation of the German Coffee Association and its members.
2. In particular, antitrust law prohibits all agreements between competitors which lead to a limitation of free competition. This covers, for example, agreements regarding prices, customers and marketing territories. The exchange of current, confidential business information between member companies may constitute a violation of antitrust law.
3. The German Coffee Association has established a Compliance Programme, the aim of which is to ensure strict adherence to the provisions of antitrust law. One element of this Compliance Programme is the document attached to this Commitment entitled **Compliance Programme - Guidelines for Participation in Committees and Events**.
4. Adherence to the rules set out in these Guidelines is a requirement for participation in the committees and events of the German Coffee Association. Where violations of these rules occur, the management board and the board of directors of the German Coffee Association reserve the right to suspend or terminate the participation of the relevant company representative or the relevant member company in the committee / event with immediate effect.

I have read and understood the above declaration and the attached Guidelines and shall observe this Commitment and the Compliance Programme in my activities.

(place) ....., (date) .....

.....  
*Name (printed), company name/organisation, signature*

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## Compliance Programme

### - Guidelines for Participation in Committees and Events -

#### Introduction

The work of the German Coffee Association relies on the dedicated work of its members towards a common goal. Without this input, it would be impossible for the Association to work successfully. In particular, where undertakings compete with one another in marketing their products, antitrust law sets limits on the cooperation of undertakings, which absolutely must be observed.

Violations of antitrust law may result in significant fines and claims for damages against the Association and its member companies as well as persons in management roles in the Association and in the member companies. Behaviour which violates antitrust law is, moreover, contrary to the meaning of free and fair competition on the merits as understood by the German Coffee Association and its members.

The aim of these Guidelines is therefore to set out the limits on and scope for cooperation of, in particular, competitors within the committees of the German Coffee Association, as stipulated under antitrust law and to provide guidance on how to guarantee any cooperation always conforms with antitrust law.

The following representation naturally cannot cover every single individual case. The German Coffee Association has therefore created the post of *Compliance Officer* on the board of directors, and this individual will be available as a contact partner to provide clarification in cases of doubt.

*Compliance Officer:*  
*Attorney at Law Holger Preibisch, LL. M.*

These Guidelines are divided into two sections:

- **Section A** explains the antitrust law provisions for lawful association work.
- **Section B** contains advice as to how antitrust law risks may be avoided in the preparation and holding of association events.

### **Section A: Antitrust law provisions for lawful Association work**

In order to avoid the significant risk of a violation of antitrust law from the outset, the following provisions should, in particular, be observed:

#### ***Agreements and decisions***

The general rule is that all arrangements between competitors and decisions by Association committees, which have as their object or effect a limitation of free competition, are deemed to be in violation of antitrust law.

In this respect, the definition of arrangement is given a very broad interpretation. It does not require a legally binding contract to be concluded between the parties. An informal agreement ("*gentleman's agreement*") is sufficient. The form of the agreement is also immaterial. The term "decision" is also broadly defined. It also covers decisions which are not reached in the manner set out in the Association's statutes.

#### **Agreements or decisions are deemed unlawful** in particular where they relate to

- prices and conditions (e.g. rebates, entrance fees, advertising cost contributions, shelf rentals, trade discounts, bonuses),
- the timing and/or extent of price increases and decreases,
- the allocation of customers and/or sharing of regional markets,
- the passing on of specific cost factors to customers,
- the supplying or not supplying (collective boycott) of specific customers

Exceptions exist only within specific, narrow limits (so-called de minimis exceptions or exempt restrictions of competition).

In a range of individual cases, which are important for the collective representation of association interests, agreements or decisions may, however, in exceptional cases be permitted. This applies, for example, in relation to:

- the joint defence against unlawful "tapping" demands ("Anzapfversuche" - attempts to induce suppliers to grant benefits without any objective justification), in particular by filing complaints at the Federal Cartel Office (Bundeskartellamt),
- the joint action against unlawful sales below cost price, in particular by filing complaints at the Federal Cartel Office (Bundeskartellamt),
- the joint purchase of goods or services,
- specialisations (e.g. the mutual agreement to cease production of certain products and respectively purchase them from the other contracting partner),
- the joint production of a product,
- the joint research and development of and the subsequent distribution of a specific product.

In all these cases, the permissibility of the respective agreements or decisions is dependent on other factors (e.g. specific form of the action, market share of the parties involved). Due to the very narrow line between permitted bundling of interests and agreements which violate antitrust law, arrangements or decisions with competition law relevance must, therefore, in the scope of the association work, generally be avoided, unless, in exceptional cases, they have **PREVIOUSLY** been judged by the *Compliance Officer* or an external antitrust law attorney, as giving no cause for concern under antitrust law.

### ***Exchange of opinions and information***

The work of the association relies on an active exchange of opinions and information between members. It must however be taken into account, that the exchange between competitors of information which is generally confidential may be deemed a violation of antitrust law.

In the opinion of the antitrust authorities, there is normally no cause for undertakings to share sensitive data with their competitors. If they do this anyway, they create, in the opinion of the antitrust authorities, a market transparency which is undesirable from an antitrust law perspective (*invalidation of the secrecy of competition*), as this may form the basis for concerted practices by competitors in the marketplace. The exchange of normally confidential information may therefore on its own form the basis of a violation of antitrust law.

The exchange of information between competitors is not permitted in particular where such information concerns

- own sales prices and components of relevant terms and conditions (rebates, trade discounts etc.), which are calculated or granted in relation to trade,
- own purchase prices and components of terms and conditions (rebates, trade discounts etc.), which are paid to suppliers,
- timing and extent of planned price increases,
- other contractual provisions in own agreements with customers or suppliers, which may have competition law relevance (e.g. delivery periods),
- own reaction to demands from customers or suppliers
- type and identity of own customers and suppliers
- own sales or revenue figures,
- own future market behaviour, new products, timing of product launches.

However, not every exchange of information is forbidden. In many cases, the exchange of even important company data - such as for the determination of best practices - is permitted, in particular where anonymity is preserved.

The exchange of information between committee members is permitted for example insofar as the information concerns

- legal and political framework conditions (e.g. planned legislation, decision making practice of authorities, court judgments, tax issues) and the assessment thereof,
- general economic developments, also on the part of customers or suppliers (e.g. concentration developments in retail, formation of purchasing cooperatives in retail, takeover rumours, market entries/exits),
- generally known or easily accessible as well as purely historical (more than 1 year old) company information (e.g. purely historical revenue figures),
- legal violations by customers or suppliers (e.g. sales below cost price, tapping attempts), at least insofar as no specific information is disclosed regarding the own reaction to such violations.

In all cases of doubt, information regarded as sensitive in relation to antitrust law, which appears important for the association work, must be assessed **BEFOREHAND** by the Compliance Officer or an external antitrust law attorney, as to whether it is a cause for concern under antitrust law.

## **Section B: Guidelines for the work of the Association**

In light of the above, the following guidelines for the day-to-day work of the association, in particular committee work, have been produced:

### ***Before the meeting***

Read through the agenda thoroughly. Are there any agenda items where adherence to antitrust law provisions may in particular, have to be taken into account? This is, for example, always the case where dealing with customers or suppliers is to be discussed. If you have concerns in relation to individual agenda items, report your misgivings to the person chairing the meeting. If this does not result in your concerns being allayed, inform the *Compliance Officer* or a member of the board of directors of the Association in good time prior to the meeting.

Do not bring any documents containing confidential information on your undertaking into the meeting with you.

### ***During the meeting***

Do not share any confidential information on your undertaking. This includes, in particular, information on prices, components of prices, sales and revenue figures, timing of price increases or product launches, new products, business strategies, reactions of your undertaking to demands from customers or suppliers.

Take care to ensure that your own written notes on the meeting do not contain any misleading wording.

Where, in your opinion, factors which potentially have an antitrust law relevance, are discussed in the meeting, communicate your concerns immediately. In the event of doubt, request that the discussion be postponed to a later meeting or interrupted briefly in order to seek legal advice (first contact partner in this respect is the *Compliance Officer*).

If your concerns are not allayed, you should leave the meeting and immediately inform the *Compliance Officer* or a member of the board of directors of the Association. Insist that your leaving the meeting and the reason for it is recorded in the minutes.

***After the meeting***

Take care to ensure that the minutes accurately and completely convey the points discussed and conclusions reached in the meeting. Where you believe certain wording could raise concerns under antitrust law, please inform the person chairing the meeting. If your concerns are not resolved, please inform the *Compliance Officer* or a member of the board of directors of the Association.

Review whether your own notes contain misleading wording.

***Informal conversations around the meeting***

Please be aware that the principles of antitrust law presented above also apply, of course, to all conversations around the meeting.