

European Equestrian Business Association e.V.



Antitrust information

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Prevention of violations of antitrust law within our association work

The German and European antitrust law prohibits agreements and coordinated practices between companies as well as decisions by business associations which either target or cause a noticeable restriction of competition.

Within the association's activities, competitors from the various branches of the equestrian industry come into contact. The European Equestrian Business Association e.V. is committed to lawful practice and organises its association activities in strict compliance with German and European competition law. Observance of the following guidelines is intended to ensure, in the interest of the association and its members, that possible infringements of competition law are avoided within all association activities. These guidelines are binding for all parties becoming active in the association and serve to protect the association and its members.

Antitrust law prohibits, inter alia, agreements between companies fixing prices, terms and conditions, etc. Agreements in this sense are not limited to explicit declarations, in particular not to written declarations. An agreement can also be implied by the actions of the parties. However, antitrust law prohibits not only agreements but also coordinated actions by companies that lead to similar results.

Antitrust law is a broad and complex field that cannot be fully addressed and covered by these notes. A more comprehensive legal assessment is usually required for in-depth enquiries. The following notes do not claim to be exhaustive but are rather intended to provide a basic understanding of antitrust-compliant conduct by members.

1. Topics and organisation of association meetings

Antitrust law is fully applied to the association's work. Certain topics can be critical from an antitrust perspective if they concern competitively relevant data. Competitive relevance is given if the mutual exchange of corresponding information, its unilateral disclosure or discussions of association members about this reduces or removes uncertainty about the current or future market behaviour of competitors and thus violates so-called (protected) secret competition (e.g. in tenders). The following overview of permissible or impermissible topics applies not only to actual association meetings but also to breaks, to fringe events and to related correspondence.

1.1. Permissible topics at association meetings

- 1.1.1. Current legislative projects and their consequences for the entirety of the members
- 1.1.2. Political environment, general technical/scientific developments, regulatory measures of general interest
- 1.1.3. Current economic developments and general economic data as well as general developments in the industry (if publicly known)
- 1.1.4. In most cases, information on the business forecast for companies as a whole, for the entire product portfolio or for other business field groups that do not give any indication of the market position and developments of individual products
- 1.1.5. Discussions on lobbying activities of the association
- 1.1.6. Benchmarking activities, provided that data is freely available on the market and does not relate to individual products or the market behaviour of association members
- 1.1.7. Company-related benchmarking activities, provided (as a rule) that at least five companies are involved, a neutral third party carries out the benchmark and returns the result anonymised and aggregated to the participants; no re-individualisation is made possible within the association meeting; there is no reference to individual products and market behaviour (only, for example, to internal processes or environmental standards)
- 1.1.8. General industry analysis
- 1.1.9. General exchange of freely accessible information and data (e.g. from the European Equestrian Business Association e.V., from the internet or from already published business reports of the member companies)

- 1.1.10. Preparation of an industry overview (provided that the aggregation of data of the individual member companies is carried out via the association or another neutral third party)

1.2. Impermissible topics at association meetings

At an association meeting, members may not exchange information on matters that violate antitrust law or regulations on undisclosed competition (e.g. tenders) or that concern internal company information, data and business secrets. These include, but are not limited to:

- 1.2.1. Information or agreements on prices, price components, discounts, pricing strategies, price calculations or planned price changes
- 1.2.2. Terms of delivery or payment for contracts with third parties
- 1.2.3. Information about business strategies or market behaviour
- 1.2.4. Information on profits, profit margins, market shares or planned investments that is not publicly available, even if this does not allow conclusions to be drawn about the market position of individual products
- 1.2.5. information on internal and not publicly known research and development projects
- 1.2.6. Information that enables coordination vis-à-vis the market counterpart (customers, suppliers, competitors not organised in the association), in particular in connection with offers vis-à-vis third parties (e.g. is a participation in tendering planned at all, for which lots, strength of interest in winning the tender)
- 1.2.7. Sharing markets or sources of supply geographically and in terms of personnel, as well as explicit or tacit agreement on boycotts and supply or purchase embargoes against certain companies
- 1.2.8. Specific demands from customers or suppliers, including the company's own reaction to them or the reaction of competitors
- 1.2.9. Verification of information received from customers or suppliers
- 1.2.10.** Joint discussion and analysis of statistics admissible under item 4, in particular no resolution of aggregation

2. Preparation and implementation of association meetings

In addition to the provisions in the Association Rules, it is stated that agendas, prior to their distribution, are to be checked by the chairperson of the meeting with regard to competition law concerns. He shall be assisted in this by the Associations office. The chairperson of the meeting, together with a full-time employee of the office or his or her representative, shall ensure that the meeting is conducted in accordance with proper procedures (agenda and minutes) and shall point out to the participants at the beginning of the meeting that they must comply with the requirements of competition law. A possible wording that should, in this or a similar way, also be included in the agenda, as well as presentations, table papers and other media that accompany an exchange of information that is permissible under cartel law:

"We draw your attention to European and national antitrust law, which prohibits discussing competition-relevant topics such as prices or discounts or exchanging other sensitive company data in the context of association meetings. It is also prohibited to agree on industry-related practices or to make corresponding resolutions or agreements. Such action can be punished with heavy fines, which the association and its members have to bear."

In the case of regular meetings with the same participants (such as in the working groups), this should be done at appropriate intervals and not at every meeting.

The chairperson of the meeting intervenes in proceedings and discussions to prevent breaches of antitrust law. Participants in a meeting should object to agenda items that they believe do not comply with antitrust law. They should request that their objections will be recorded in the minutes of the meeting. The chairperson of the meeting shall consider objections and, if necessary, reject the items in question. The meeting participants shall check the minutes upon receipt to ensure that they correctly reflect the essential course of the meeting and its contents. They shall immediately draw the attention of the Associations office to any incomplete or incorrect minutes, in particular on topics relevant to antitrust law, and request that they will be corrected.

3. Conduct in association meetings

The chairperson of the meeting shall ensure that no inadmissible decisions, agreements, discussions, spontaneous statements or inadmissible exchange or disclosure of information on antitrust relevant topics occur in the association meeting/working group meeting. The chairperson of the meeting shall immediately draw the attention of meeting participants who do not act in compliance with antitrust law to this fact and should prevent further statements by one or more meeting members that are questionable under antitrust law. A continuing violation or infringement should be recorded in the minutes. The chairperson should terminate or adjourn the discussion or, if necessary, the entire meeting if legal clarification appears necessary. The meeting participants themselves should demand the termination or adjournment of a discussion or meeting if they have concerns about its legality. This request must be recorded in the minutes. Meeting participants should leave the meeting if a discussion that raises antitrust concerns continues. The departure of a meeting participant must be recorded by name and time.

4. Market information procedures / Association statistics

Market information procedures are organised data collections that present information e.g. in the form of association statistics. Such market information procedures and other statistics are only permissible if they serve a legitimate purpose (e.g. the analysis of industry trends) and are officially managed by the association or another neutral body which publishes only anonymised and non-identifiable aggregated total data. The association shall ensure that the market information procedures it conducts comply with the legal requirements, in particular (also with regard to the respective market structure as well as the reporting frequency) do not lead to an artificially increased market transparency and (as a rule) at least five companies per reporting category are included. In the context of market information procedures, company-related data may only be transmitted to the association by the respective companies in the procedures intended for this purpose, but not in association meetings.

5. Technical norms and standards, association's quality seal

The development of technical norms and standards as well as association quality marks can in general have a positive effect on competition. This is particularly true if competition is strengthened, for example by ensuring interoperability and compatibility. Certain framework conditions must be observed in order to prevent negative effects under antitrust law:

5.1. Prohibition of cartels

Agreements or concerted practices on prices, customers, quotas or markets are prohibited - this also applies to norm and standard setting.

5.2. Legitimate objectives

Only legitimate objectives that enhance (rather than restrict) competition may be pursued.

5.3. Fairness & Transparency

The process for developing norms and standards must be (result-)open, transparent and non-discriminatory.

5.4. Limits & Efficiency

Established criteria must be measured against the legitimate objectives of their establishment and must not go beyond what is necessary to achieve the legitimate objective.

5.5. Communication

The criteria established must themselves also be communicated in an open, transparent and non-discriminatory manner.

5.6. Voluntariness

The procedure and the criteria established must always remain voluntary. Market participants must not be obliged to apply the established criteria. They must continue to have the freedom of choice to produce or offer services and products according to criteria other than those established.

5.7. Equal standard for revision

A review of the established criteria (revision) must meet the same procedural requirements as the initial establishment of criteria.

5.8. No other violations of the law

Abuse, boycott or other damage to reputation must be avoided as part of the procedure.

6. Position papers and press releases

The Association shall ensure that its position papers and press releases do not contain any wordings that intentionally or unintentionally suggest collusion, uniform behaviour or corresponding recommendations of the Association. Permissible are wordings that objectively reflect the market situation and market development and present all reasonably possible reaction options without unilaterally favouring a certain reaction option.

7. Trade fairs & events

The association may promote certain trade fairs or events as leading trade fairs for certain sectors. In addition, the association may provide general information on the concept of the favoured trade fairs and explain their particular advantages. The organizer of a trade fair may be supported by the association in maintaining or developing the favoured trade fair as a leading trade fair, as long as the association does not commit itself to the exclusive promotion of an individual event. Support by the association may not be used to openly or covertly call for a boycott against comparable trade fairs or events or to support such a boycott. In the context of association meetings, surveys may be conducted on the satisfaction of members with a particular trade fair concept. In doing so, the association must ensure that no agreements or recommendations are made for members not to exhibit or no longer to exhibit at a particular trade fair or to exhibit only at a particular trade fair in the future.

8. Association recommendations

The association develops association recommendations in special working groups, including technical and quality standards. The association reviews the legal framework of its recommendations. The conditions, norms and standards are developed in an open, transparent and non-discriminatory procedure. The association makes these recommendations available to its member companies on a non-binding basis for voluntary application. The association explicitly does not issue any recommendations, either directly or indirectly, for a specific market behaviour of its member companies.

9. Self-commitment declarations

The European Equestrian Business Association e.V. is allowed to develop self-commitment declarations of the members in certain areas if

- this serves the achievement of a recognizable goal (e.g., in environmental and consumer protection);
- the consumers have a substantial share in the profits/improvements to be expected from it;
- the declaration of voluntary commitment is the most economically advantageous way to achieve the objective;
- the declaration is open to third parties
- the freedom of action of the parties involved is not unreasonably restricted;
- the market access of potential competitors is not impeded; and
- no appreciable restriction of competition is caused by concerted practice.

10. Admission and rejection of new members

The European Equestrian Business Association e.V. is basically free in its decision on the admission of new members. The association has described the requirements for membership in detail in its statutes. The association may refuse admission to the association if the statutory admission criteria are not met or if there are reasons that lie in the individual characteristics of the applicant and stand in the way of admission. Such a justification would be given, for example, if the admission of a certain member would damage the reputation of the European Equestrian Business Association e.V.. It would also be conceivable that this would lead to considerable discord among the other members of the association. In this context, however, it is not sufficient if the admission of the new member is merely disagreeable to the existing members. Rather, it is necessary that the activities of the association are de facto blocked because, for example, in view of the new member, admissible information previously communicated is withheld or the participation in association meetings is becoming unattractive. Also, if a large number of companies threaten to leave, a justification could be assumed in individual cases. However, this decision must be made in a non-discriminatory manner. The prohibition of discrimination under antitrust law stipulates that

trade associations may not refuse to admit a company if the refusal would constitute unequal treatment that is not objectively justified and would lead to an unfair competitive disadvantage for the company or association. A refusal is therefore only permissible if there is an objective justification for it.