

VDA Guide

Competition law guidelines

A manual for our Association work



Berlin, October 2015

Introduction

The German automotive industry association Verband der Automobilindustrie e.V. (VDA) brings together around 600 companies in the country which together seek to ensure safe and clean mobility for the future. In partnership with its members consisting of vehicle, trailer, body and bus manufacturers and automotive suppliers, the VDA works at a national and international level for the best possible automotive mobility. Our goals are safety, quality and sustainability with state-of-the-art technology.

The VDA is committed to ensuring lawful practice, and organises its activities in strict compliance with German and EU competition law. These Guidelines provide competition law information for VDA bodies, members and staff. Adherence to the Guidelines should ensure, in the interests both of the VDA and of its members, that any potential breaches of competition law are avoided in all Association activities.

These guidelines are designed to provide the members and staff of the VDA with clarification and a reliable point of reference. They include regulations on the topics permitted at Association meetings, on market information systems, on Association recommendations and on the conduct of Association meetings. These rules are binding for all those involved in VDA association work and serve to protect both the Association and its members.

1. General ban on restrictive practices

Competition law is designed to combat all forms of restrictive practice by businesses. In Germany, anticompetitive practices are prohibited under Section 1 of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB). This section prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention,

restriction or distortion of competition. Additionally, the EU ban on restrictive practices applies in cases where the practices listed in Section 1 GWB could affect trade between Member States (Art. 101 (1) Treaty on the Functioning of the European Union (TFEU)).

Competition law prohibits agreements which fix prices, terms and conditions, etc.; agreements in this sense are not limited to express, and in particular not to written declarations. An agreement may also be implied by the actions of the parties. Competition law prohibits not only agreements but also concerted practices by businesses which lead to similar results. Even the mere exchange or the unilateral disclosure of competitively sensitive data is prohibited, in particular when this allows coordinated action vis-à-vis players on the other side of the market or removes uncertainty regarding future market behaviour.

Competition law is a wide and complex field which these guidelines cannot address in full. A more comprehensive legal assessment will usually be required for in-depth queries.

2. Topics and conduct of Association meetings

Association meetings are primarily held to discuss political topics; nonetheless, competition law applies to all aspects of Association work. Certain topics may be critical from a competition law perspective if they relate to competitively sensitive data. This is the case if the exchange of information, its unilateral disclosure or discussions concerning that information by members of the Association could reduce or remove uncertainty on the current or future market behaviour of competitors and thus affect hidden competition (for example in calls for tenders). The term “competitor” is to be understood in a broad sense.

- Companies compete both in sales and in purchasing. A competitor is any party that offers or requires the same or similar products or services.
- A party offering differing products to the same customer or purchasing different goods from the same supplier may also constitute a competitor.
- A party that has not yet but is likely to offer the same or a similar product in the relatively near future also constitutes a (potential) competitor. The term “near future” may cover a period of significantly more than a year (or even several years).
- Companies from different stages in the distribution chain can also be in competition, for example if a manufacturer distributes its goods both directly and through retailers.
- Companies that are not currently competing in a given product area can be considered (potential) competitors if they would be easily and relatively rapidly able to enter into competition.

The following summary of topics permitted and not permitted applies not just to Association meetings themselves, but also to discussions at breaks, associated events and correspondence.

a) Topics permitted at Association meetings

At Association meetings, competitors may in principle exchange information on the subject area of the meeting. This includes:

- currently planned legislation and its implications for the membership as a whole;

- the political environment, general technical/ scientific developments and regulatory measures of general interest;
- current economic developments and general developments in the industry (provided these are in the public domain);
- discussions on VDA lobbying activities;
- benchmarking activities provided these involve (as a rule) at least five companies, a neutral third party conducts the benchmarking, anonymises and aggregates the findings before being disclosed to the said companies, no disaggregation is possible at the Association meeting, and there is no reference to products or market behaviour (only to internal processes or environmental standards, for example);
- general sector analysis (provided data is aggregated by the VDA or another neutral third party);
- the exchange of general, freely available information (for example general economic data from the KBA, from the Internet or from member company annual reports which have already been published);
- the review of general business developments, provided the information relates to the company as a whole, the entire product range or other aggregated business areas and has already been lawfully published by the companies in question.

b) Topics not permitted at Association meetings

Information which companies must not exchange at Association meetings includes but is not limited to:

- information or agreements on prices, price components, discounts, pricing strategies or price calculations or planned price changes;
- terms of delivery or payment and any other contractual provisions in contracts with customers/suppliers provided they have competitive implications;
- information on business strategies or on current or future market behaviour (“signalling”);
- information not yet lawfully published concerning current business;
- developments or business expectations (in particular sales/turnover figures), even if such information provides no indication of the market position of individual products;
- information on profits, profit margins, market shares or planned investments which is not in the public domain;
- information on internal research and development projects;
- information allowing coordinated action vis-à-vis players on the other side of the market (customers or suppliers), in particular relating to offers to third parties (for example, if parties respond to a call for tenders: which lot to tender for; degree of interest in winning the contract);
- the division of geographic or labour markets or sources and express or implied agreements on supply, purchase or other boycotts of specific companies.
- demands from customers or suppliers including the company’s own response to these or the response of competitors;

- verification of information received from a customer or supplier;
- the joint discussion and analysis of statistics permitted pursuant to item a) above, in particular the disaggregation of aggregated data.

c) Preparation and conduct of Association meetings

In consultation with the meeting's chair, VDA staff send out official invitations for all meetings in good time. As detailed as possible an agenda is to be enclosed with the invitation. VDA staff assist the meeting's chair in ensuring that the agenda and other documents for the meeting are clearly and understandably worded and do not raise any competition concerns.

In the event of any doubt, the VDA management will provide clarification or amendments. At least one member of VDA staff should be present at each VDA meeting to assist the chair. The chair ensures that the meeting is conducted in accordance with due and proper procedure (agenda and minutes).

At the beginning of the meeting, the chair instructs those attending on compliance with competition law. The chair shall intervene in proceedings to prevent any breach or potential breach of competition law.

The VDA staff assist the chair in ensuring that the agenda is followed as concerns topics with competition law implications. Should participants wish to deviate from the agenda, the chair shall hold a formal vote on the change and record the resolution in the minutes. Participants at a meeting should object to new items on the agenda which they feel are not in compliance with competition law, or which have not been passed in a formal resolution. They should demand that the deviation from the agenda and their objections be recorded in the minutes. The chair shall examine the objections and if necessary reject the items in question.

d) Minutes of Association meetings

The VDA staff assist the meeting's chair in ensuring that correct, complete and accurate minutes are taken of Association meetings and of all resolutions passed. Participants should object if they realise that minutes are not being taken.

The VDA staff shall help ensure that the wording of the minutes is clear and comprehensible. Association meeting minutes are sent out to all participants as soon after the meeting as possible.

Participants then check whether the minutes correctly record the main proceedings and the resolutions passed at the meeting. They should inform the VDA immediately of any omissions or mistakes in the minutes, in particular on matters relating to competition law, and request corrections.

e) Conduct at Association meetings

With the assistance of the VDA staff, the meeting's chair ensures that there are no resolutions, agreements, discussions or spontaneous comments with competition law implications and that there is no unlawful exchange or disclosure of information as defined in competition law.

The chair shall immediately notify any party who fails to comply with competition law requirements. The chair should end or postpone the discussion or if necessary the entire meeting if legal aspects need to be clarified.

Participants at a meeting should request that a discussion or the meeting be ended or postponed if they have concerns as to its legality. Such requests must be recorded in the minutes.

Participants should leave if a discussion with competition law implications is pursued. The departure must be recorded in the minutes together with the participants' name and the time.

3. Market information systems / Association statistics

Market information systems are databases providing information, for example Association statistics on vehicle registration figures. Market information systems and other statistics are only lawful if they serve a legitimate purpose (e.g. the analysis of industry trends) and are officially managed by the Association or by another neutral body which only publishes anonymised, non-identifiable, aggregated overall data.

The VDA ensures that the market information systems which it manages comply with statutory requirements, and in particular (not least as regards the market structure and reporting cycle) do not artificially increase market transparency, and that (as a rule) at least five companies are covered per reporting category. Company data assessed in market information systems may only be used in the relevant processes, and may not be communicated separately in Association meetings.

4. VDA position papers and press releases

The VDA shall ensure that the wording of its position papers and press releases does not, either intentionally or unintentionally, suggest anticompetitive agreements, concerted practices or VDA endorsement of any such measures. The following is permitted:

- the objective presentation of the market environment and market developments;
- the presentation of all useful possible responses, without advocating a particular one.

5. Association recommendations

In specialist committees, the VDA draws up Association recommendations on a number of issues including technical standards (e.g. in accordance with DIN).

The VDA assesses the statutory framework for its recommendations. Terms and conditions and standards are drawn up in an open, transparent and non-discriminatory process.

VDA recommendations are provided to its member companies on a non-binding basis. The VDA does not issue any recommendations to its members, either direct or indirect, as regards specific market behaviour.

6. Voluntary commitments

The VDA is free to develop voluntary commitments of its member companies as far as:

- this serves a stated or statutory objective (such as environmental or consumer protection);
- the advantages provided by such commitments primarily benefit the consumer;
- the voluntary commitment is the most efficient way to achieve the objective in question;
- the commitment is available to third parties;
- the commitment does not unreasonably restrict the freedom of action of those involved;
- the commitment does not restrict access to the market for potential competitors;
- the commitment does not result in any significant restriction of competition through concerted action.

7. Acceptance and refusal of new members

The VDA is fundamentally free to decide on whether to accept or refuse new members. Detailed regulations governing the prerequisites for membership are defined in the Association statutes.

The VDA shall respect the membership right under competition law of a company which wishes to join the Association. The VDA is entitled to reject the membership applications of companies which do not meet the membership criteria defined in the statutes.

Rejection may not, however, be discriminatory; companies may, for example, not be refused membership if other comparable companies have already been accepted despite failure to meet the membership criteria.

8. For further information / if in doubt: contact the VDA legal department

All staff and members of VDA bodies may contact the VDA legal department with any questions relating to these guidelines. The legal department should also be consulted in the event of any doubt as to the legality of a procedure or matter raised before ordering an Association meeting, and informed of any breaches established or suspected.

Weblinks

[VDA website](#) →

[VDA Competition law guidelines](#) →

[Legal & Compliance Department](#) →

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