

## **Antitrust compliance guidelines of the Federation of the German Foundry Industry (Bundesverband der Deutschen Gießerei-Industrie, BDG)**

BDG is a platform for active and varied association activities and represents the economic and technical interests of undertakings in the foundry industry. BDG is committed to lawful conduct and its activities strictly comply with German and European antitrust laws.

The purpose of these guidelines is to ensure compliance with antitrust rules within BDG. The guidelines cannot replace an examination of antitrust issues in individual cases. They are intended, in particular, to raise awareness of antitrust-related topics among BDG employees and member companies, and to define certain practices. With these guidelines we aim to provide certainty and guidance to all members of the association. Any concerns should be addressed to the BDG management, which will initiate an examination and provide clarification.

BDG ensures that its member companies receive these guidelines and make them available to all employees who are actively involved and participate in association activities of BDG.

### **I. General information on the prohibition on cartels**

The activities of BDG are subject to both German and European antitrust laws. There is practically no difference between the provisions of both laws in terms of content. More significant differences only exist with regards to procedural law. Both national and European antitrust laws prohibit all agreements, decisions or concerted practices that are aimed at or result in the prevention, restriction or distortion of competition. This prohibition on cartels is set out in Section 1 of the German Act against Restraints of Competition and Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU) as well as in many other legal systems.

The objective of cartel arrangements is mostly to fix prices and/or sales volumes. A cartel does not necessarily require an agreement to exist. The prohibition on cartels also applies to concerted practices, whether written, verbal or implied, if their aim is to restrict competition. Undertakings must not engage in any arrangements or perform

any concerted practices that restrict the uncertainty about their competitors' market behaviour. The place where such act is committed is irrelevant. If a cartel has an effect on the European or German market, the relevant antitrust law applies. It is irrelevant whether or not the cartel arrangement is actually implemented or whether the agreed aim is achieved. The arrangement itself to restrict competition is prohibited. The objection that a cartel arrangement did not have a tangible outcome or effect is therefore categorically irrelevant.

An infringement of antitrust law has severe consequences for undertakings, associations and any person involved. According to German law, a fine of up to €1 million may be imposed and any profits obtained as a result of the infringement may be disgorged. Under German and European law, undertakings may be given fines of up to 10% of their annual group turnover achieved in the previous financial year. Restriction of competition within the scope of a public tender (bid rigging) can also be a criminal offence carrying a penalty of up to 10 years' imprisonment (Sections 298, 264 of the German Criminal Code).

Such cases may also incur claims by the injured parties for damages and may lead to the exclusion from public tenders and a loss of reputation and confidence for the undertakings responsible and the industry as a whole.

## **II. Anti trust rules for BDG activities**

### **1. Association meetings**

#### **1.1 Topics that must not be discussed at BDG meetings**

Competitors are, in principle, allowed to discuss the market situation, especially on the purchasing side, and to exchange general industry information. However, this exchange must not lead to artificial market transparency or have an adverse effect on the competition between the undertakings involved. The following topics must therefore not be addressed or discussed under any circumstances at or in connection with BDG meetings:

- Product prices
  - Pricing, future pricing strategies.
  - Product-related effects of cost increases on pricing at product level (e.g.: agreement to pass on increases in the cost of raw materials, energy or wages).
  - Individual sales and payment terms, discounts, surcharges, bonuses etc.

- Customers/suppliers
  - Sharing of markets or reference groups.
  - Individual customer 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 of the undertaking, cost accounting formulas.
  - Order intake, sales figures, order backlog, stock level, lead times.
- Future market behaviour
  - Plans for expansion or reduction in capacity which allow conclusions to be drawn at product level.
  - Plans in connection with research and development, investment, production, marketing or sales.

The above topics must not be discussed at BDG meetings. BDG employees as well as the delegates of the member undertakings will review the meeting agendas and, if in doubt, contact BDG management. If the above topics are mentioned in off-agenda comments, the meeting will be suspended and the process described in “Conducting BDG meetings” will apply.

## **1.2 Preparation of BDG meetings**

The BDG sends official meeting invitations to members in a timely manner, by email where appropriate. An agenda will be prepared for each meeting, which must be as detailed as possible. When preparing the agenda, BDG members must not include any items that are questionable or misleading from an antitrust point of view. The delegates of the member undertakings must also check the agenda for items that may have antitrust implications and, if in doubt, contact the BDG management.

## **1.3 Conducting BDG meetings**

Each BDG meeting must be attended by at least one professional BDG representative. The BDG 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 full-time BDG representative are responsible for making sure that the meeting is conducted in accordance with antitrust rules as set out in the agenda. All representatives of the member undertakings must also ensure compliance with antitrust rules, following the principle “compliance is for everyone”.

BDG's "DOs and DON'Ts of antitrust law" provide guidelines on the conduct at meetings and will be available as a hand-out during meetings.

If a topic is mentioned during a meeting which has (potential) antitrust implications, for example in an off-agenda comment, the chair will suspend the meeting immediately. In case of doubt, the topic will be deferred and the BDG management will be asked to assess its antitrust implications. The topic will not be discussed until all antitrust implications have been ruled out.

Any changes to the agenda will be recorded in the minutes. Such changes may not include any antitrust-related 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.

The meeting participants undertake to address all antitrust concerns immediately and openly during the meeting. If the objectionable topics are not excluded from the discussion as a result of such concerns, the meeting will be suspended. If the chair does not suspend the meeting, it is not sufficient to abstain from the activity. The law requires participants to distance themselves from any conduct that does not comply with antitrust law. This must be referred to as "standing up and leaving" in the minutes. The objection of the meeting participant and the time when he/she leaves the meeting must therefore be recorded in the minutes.

#### **1.4 Follow-up of BDG meetings**

Following each BDG meeting, clear and accurate 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. Once they have received the minutes, the meeting participants will review them to ensure they correctly summarise the key points of the meeting and its resolutions. If the minutes contain any incomplete or incorrect information, the participants will notify the BDG without delay and request a corrected version.

## **2. BDG statistics**

BDG offers its members various statistics containing turnover and sales data. To prepare such statistics, the participating undertakings must report data to BDG. BDG treats these data with strict confidentiality and presents them in aggregate form, thereby not allowing for any conclusions to be drawn about the market behaviour of individual member undertakings. BDG ensures that its statistics comply with legal requirements. Statistical data may only be reported using the agreed procedure, and not during association meetings. Feedback must be provided anonymously. Non-

anonymised data will only be published if these are already publicly available or if they allow no conclusions to be drawn about the market behaviour of the undertakings. If such anonymity can no longer be guaranteed, for example due to a change in the structure of the reporting undertakings (e.g. a reduction in the number of reporting undertakings), BDG will adjust the statistics.

### **3. BDG communication**

BDG ensures that it uses no wording in its position papers and press releases, whether intentionally or unintentionally, that refers to any arrangements, concerted practices or recommendations of BDG. BDG must not give any recommendations in relation to the market behaviour of its member undertakings. In particular, BDG must not advise its member undertakings on how to handle cost increases.

### **4. BDG norms and standards**

BDG will produce norms and standards. BDG 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.

### **5. BDG membership**

BDG has laid down the requirements for membership in their statutes. Companies that fulfil the statutory requirements for membership are admitted as members. BDG handles exceptions to the regulations in the statutes in a non-discriminatory manner.

Any questions on this code of conduct or other antitrust issues should be addressed to the BDG management. All member undertakings are asked to discuss antitrust-related issues openly with the BDG management and seek clarification.

As of 27<sup>th</sup> May 2021