

Compliance Guideline EFDS e.V.

Stand: 08.11.2023

Antitrust guidelines

for participation in the European Society of Thin Films (EFDS e.V.)

§ 1 Legal form and registered office of the research association

- (1) The European Society of Thin Films (EFDS e. V.) (hereinafter referred to as EFDS e. V.) is a registered association and operates on a non-profit basis.
- (2) The Research Society has its registered office in Dresden.

§ 2 Purpose & Tasks

- (1) The purpose of the EFDS e. V. is to promote science and research as well as education in the field of „thin film“ surface technologies with the aim of initiating research, qualifying young scientists and specialists in this field and organizing the exchange of the results of scientific research. In addition, the association may also provide non-material and financial support to other tax-privileged corporations, public or foreign corporations for the non-material and material promotion and maintenance of science, research and education.
- (2) The EFDS e. V. has set itself the following tasks and aims in the field of joint research:
 - a. to identify scientific issues in the field of „thin film“ surface technologies and their economic significance, defines priority topics and programs for research work on this basis and encourages the implementation of research projects;
 - b. informs the interested public, including consumers, about research in the field of „thin film“ surface technologies, about current scientific issues and about the results of research projects, in particular by organizing conferences and workshops, and promotes the implementation of research results in practice;
 - c. prepares, evaluates and monitors the research work of commissioned research institutions;
 - d. transferring and supporting the implementation of the research results obtained in practice;
 - e. fostering the exchange of professional knowledge and experience among members;
 - f. cooperation with professional related national and international organisations;
 - g. cooperation with government, industry and society institutions responsible for research and innovation in the interests of joint research for surface and thin-film technology in general and that of the members in particular.

§ 3 Conduct in General

- (1) The work of the EFDS e.V. depends on the committed cooperation of its members to achieve the stated objectives. Without this cooperation, successful joint industrial research would not be possible within the framework of the association's work. However, especially where companies are in competition with each other, antitrust law sets limits to cooperation that must be observed. The research association has therefore undertaken to comply with the applicable statutory and legal regulations and internal guidelines. Its actions are guided by the values of integrity and fairness as well as the principle of transparency.
- (2) Every full-time and honorary employee is obliged to comply with the rules of free competition and the applicable statutory and legal regulations and internal guidelines to a particular degree. All agreements between companies and concerted practices that have the purpose or effect of preventing, restricting or distorting competition are not permitted (Section 1 of the German Act against Restraints of Competition (GWB)).
- (3) The Executive Board and the management of the research association are entitled to impose appropriate sanctions in the event of violations, up to and including exclusion from meetings. Specific recommendations from the management for conduct in the committees that complies with antitrust law can be found in the appendix to these guidelines.

§ 4 Conduct in the context of participation in committees meeting

- (1) One of the fundamental principles of the Research Association is strict observance of and compliance with the applicable antitrust regulations at national and international level. Furthermore, conduct in violation of antitrust law contradicts the understanding of EFDS e.V. and its members of free and fair competition.
- (2) Compliance with the rules contained in this guideline is a prerequisite for participation in the research society. This applies to all activities both in the specialist committees and in the decision-making bodies such as the annual general meeting, the meetings of the scientific advisory board and the board of directors, as well as in other EFDS e.V. bodies (e.g. in project support committees and scientific events).
- (3) Antitrust law prohibits in particular all agreements with competitors that lead to a restriction of free competition. This includes, for example, agreements on prices, customers and sales territories. The exchange of current confidential business information between member companies can also constitute a violation of antitrust law. The Research Society assumes that representatives of companies have also been obliged by their company to protect data and business secrets.

§ 5 Self-commitment to behaviour that complies with antitrust law

- (1) By personally signing the attendance list of the respective committee, the participants accept the Compliance Guideline established by research society and undertake without reservation to conduct themselves in accordance with antitrust law in all activities in the committees of research society. By signing an attendance list, participants in the meeting confirm that they will treat as confidential all information that comes to their knowledge at this meeting and that is not intended to be passed on to third parties. Failure to do so may result in exclusion from the work of the research society's

committees. In particularly serious cases, a member may also be expelled from the Research association.

- (2) The agenda, which should be as detailed as possible, must be formulated in such a way that it is clear and unambiguous and does not contain any points that are questionable under antitrust law. In cases of doubt, the management of the research association is available for clarification.

§ 6 Gender clause

All formulations in these guidelines apply in both the masculine and feminine form. The masculine form has only been chosen for reasons of simplification.

Dresden, 08.11.2023



Uwe Heydenreich
Chairman of the Board



Prof. Dr. techn. Udo Klotzbach
Managing Director

Annex - Specific recommendations for behaviour in the committees that complies with antitrust law

A. Conduct prohibited under antitrust law

In order to avoid the risk of a breach of antitrust law from the outset, certain types of behaviour are prohibited in the context of the activities of the research company - even outside of official events - particularly in the case of cooperation between competing member companies:

I. "Agreements"

In principle, all agreements between competitors that have as their object or effect the restriction of free competition are in breach of antitrust law. The term "agreement" is interpreted very broadly by the antitrust authorities. It is not necessary for a legally binding agreement to be concluded between the parties. An informal agreement ("gentlemen's agreement") is sufficient. "Agreements" therefore include both formal agreements and resolutions (such as committees or working groups) as well as concerted practices that occur unspoken or on the fringes of company meetings.

1. Agreements between competitors are inadmissible, in particular regarding

- Prices and conditions (rebates, entry fees, advertising subsidies, shelf rental, discounts, bonuses),
- The timing and scope if price increases,
- Cooperation or non-cooperation with third parties (companies outside EFDS e.V.),
- The supply or non-delivery to certain customers and
- The rejection of legitimate customer claims.

2. Exceptions only exist within certain narrow limits (so-called de minimis cases or exempted restrictions of competition). In a number of important individual cases, however, agreements between competitors may also be permissible by way of exception. This applies, for example, to:

- The joint purchasing of goods or services,
- Specializations (e. g. the mutual agreement to cease the manufacture of certain products and to purchase them from the other contracting party),
- The joint manufacture of a product and
- Joint research and development and the subsequent distribution of a specific product.

In all of these cases, however, it must first be checked whether the agreement is unobjectionable under antitrust law, as the admissibility of these agreements depends on a number of other factors (including the market share of the parties involved).

II. „Exchange of opinions and information “

The work of the company depends on a lively exchange of opinions and information between its members. However, it must be noted that the exchange of usually confidential information between competitors can be considered a violation of antitrust law. In the opinion of the antitrust authorities, there is normally no reason for companies to disclose sensitive data to their competitors.

If they do so anyway, in the opinion of the antitrust authorities, they create a market transparency that is not desired from an antitrust law perspective (elimination of secret competition), as it can provide the basis for coordinated behaviour of competing companies in the market. The mere exchange of usually confidential information can therefore already constitute a violation of antitrust law.

1. The exchange of information between competitors is not permitted about:

- Own sales prices and condition components (rebates, discounts, etc.) that are charged or granted to retailers,
- Own purchase prices and condition components (rebates, discounts, etc.) paid to suppliers,
- The timing and scope of planned price increases,
- Other contractual provisions in the company's own agreement with customers (retailers) or suppliers that may be relevant to competition (e. g. delivery deadlines, fulfilment of take-back obligations),
- The company's own response to legitimate claims by customers or suppliers,
- Type and identity of own customers and suppliers; own sales and turnover figures (exceptions see above),
- Own future market behaviour, new products, timing of product launches and
- Specifically quantified, legitimate claims from customers.

2. The exchange of company data is permitted

- Between committee members on legal and political framework conditions (e.g. proposed legislation, administrative practice of authorities, court rulings, tax issues) and their assessment,
- About general economic developments, including on the customer and supplier side, insofar as publicly known (e.g. concentration in the retail sector, formation of purchasing cooperatives in the retail sector, market entries and exits),
- Publicly known facts from the economy and
- Individual company information such as purely historical sales figures.

In all cases of doubt, information that is considered sensitive under antitrust law and that appears important for the company's work must first be checked for harmlessness.

III. „Call for a boycott“

Under German antitrust law, it is generally prohibited for companies and associations to call on other companies to stop supplying certain third-party companies or to stop purchasing from these third-party companies, Section 21 GWB.

An unauthorised call for a boycott can be made in any form (e.g. also through corresponding statements in committee meetings).

B. Recommendations for behaviour

The above gives rise to the following guidelines for the day-to-day work of the company and its committees in particular:

I. Before committee meetings

Read the agenda carefully. Are there any items on the agenda where special attention may need to be paid to compliance with antitrust regulations? This is always the case, for example, when dealing with customers or suppliers is to be discussed. If you have concerns about individual items on the agenda, point them out to the chairman. If this does not resolve your concerns, inform the management of the research company in good time before the meeting. Do not take any documents containing confidential information about your company to the meetings!

II. For committee meetings involving competitors

Do not share any confidential information about your company. This includes, in particular, information on prices, price components, turnover and sales figures, dates of price increases or product launches, new products, business strategies, reactions of your company to legitimate claims by customers or suppliers. Make sure that your own written records of the meeting do not contain any ambiguous wording.

If, in your opinion, aspects that may be relevant under antitrust law are discussed at the meeting, report your concerns immediately. If in doubt, ask for the discussion to be postponed to a later meeting or briefly interrupted so that legal advice can be obtained in the meantime. If your concerns are not resolved, you should leave the meeting and inform the management of the EFDS Research Association immediately. Insist that your leaving the meeting is recorded in the minutes.

III. After committee meetings

Ensure that the minutes correctly reflect the discussion points and results. If individual formulations appear to you to be questionable under antitrust law, please inform the chair of the meeting.

IV. On the fringes of committee meetings

Please note that the principles of antitrust law naturally also apply to all discussions in the margins of committee meetings.