



**Compliance-Directive “Antitrust Law”**  
**of**  
**Herstellerverband Raumlufotechnische Geräte e. V.**

The Herstellerverband Raumlufotechnische Geräte e. V. is an association of leading manufacturers in Germany and neighbouring countries. The common goal: Air Handling Units to highest technical standards. Through its certification system and the energy efficiency labels A+, A and B, the manufacturers’ association and its industry established a solution, which provides planners, investors and customers with the highest level of safety and transparency in relation to the energy efficiency of AHU devices.

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## **Commitment of Herstellerverband Raumluftechnische Geräte e. V. to Engage in Undistorted Competition**

Our market economy depends on companies competing with each other in respect of their products, prices and services for customers (and suppliers). Competitive pressure forces companies to make their prices as reasonable as possible and to provide their products and services as well as possible. Herstellerverband Raumluftechnische Geräte e. V. therefore commits to free and undistorted competition and strictly disapproves of any distortion of competition contrary to antitrust laws by companies and industry associations.

### **Purpose and Objectives of the Compliance Directive**

This compliance directive is intended to prevent cartel infringements by Herstellerverband Raumluftechnische Geräte e. V. It is aimed at the employees and bodies of Herstellerverband Raumluftechnische Geräte e. V. Its objective is to inform about the most important prohibitions under antitrust law and to provide clear conduct requirements, in order to prevent breaches.

This compliance directive can, however, not provide a full overview of the varied problems of antitrust law. It rather focuses on the essential prohibitions, that are of importance for the day-to-day association work.

For further questions, please seek respective legal advice.

## **A. Prohibited Conduct und Antitrust Law**

### **I. Prohibited Conduct of Companies**

#### **1. Prohibited Agreements on “Taboo Topics”/Boycotts**

Antitrust law prohibits that companies, especially if they are in competition with each other, coordinate their market conduct or coordinate their business otherwise. An industry association, such as Herstellerverband Raumluftechnische Geräte e. V., is not a “company” itself, but its members are companies, typically competitors within an industry, who may come into close contact with each other in bodies and working groups of the association. An industry association must therefore avoid that its members are provided with a forum for prohibited agreements that restrict competition.

Companies, in particular competitors, must generally not agree among each other their competitive conduct and they must not call for a boycott. This applies in particular to the following topics, which are hereinafter referred to as

**“Taboo Topics”:**

- **Prices and Price Components:** It shall in particular be prohibited to coordinate end customer prices, minimum prices, price ranges, purchase prices, the timing of price increases, but also to coordinate individual price components, the basis of calculation, the passing on of increased preliminary costs, or the granting of discounts.
- **Terms:** In particular prohibited shall be agreements on the scope of warranties and guarantees, delivery terms and payment terms, or on the performance of associated services.
- **Customers:** It shall in particular be prohibited to agree upon, which customers or groups of customers are supplied by the one and the other competitor; the mutual respecting of “regular customers” shall also be prohibited.
- **Distribution Areas:** It shall in particular be prohibited to agree upon the division of distribution areas, for example in such a way that each competitor “reserves” a distribution area, in which the other competitor will not be active.
- **Quotas and Capacities:** It shall in particular be prohibited to agree upon production reductions or limitations, production quotas or capacity tightening or slowed down capacity extensions.
- Also prohibited shall be the **coordinated participation in public tenders**, where competitors participate with agreed prices and terms in such tenders (it may, however, be permissible, to submit joint bids, if one bidder should not be able to handle the project by itself).
- Further prohibited shall be **coordinated market exits**, where one competitor withdraws from the market after agreement with the other competitor or does not enter a market in the first place.
- **Agreements on planned innovations**, for example where two competitors agree to delay the launch of a product innovation, shall also be prohibited.
- Agreements between non-competitors on a coordinated market conduct are partially prohibited, but occur less frequently. It is to be emphasized that, as a matter of principle, **manufacturers are not allowed to dictate their merchants end customer prices** and they may, as a matter of principle, not dictate that they are not to deliver to certain areas or to certain customers (exceptions are, however, possible in this case).
- **Prohibition of Boycott:** In addition to the prohibition of agreements restricting competition, unilateral actions by companies shall also be prohibited.

In this respect, the prohibition of boycott is to be emphasized. Accordingly, it shall be prohibited, if a company calls upon another company not to cooperate with certain third-party companies, in particular not to supply to or buy from them.

## **II. Prohibited Conduct of Associations**

Antitrust law does not only prohibit companies from making competition restricting agreements and to coordinate their conduct and to call for boycotts, it also directly places associations under obligation: Prohibited are so-called „resolutions of company associations”, which have the purpose of or effect the prevention, restriction or distortion of competition. Calls for boycotts by associations are also prohibited.

Reason for this prohibition directed at associations is, that companies could easily circumvent the prohibition of competition restricting agreements, if they delegate the coordination of their conduct to an association. Imagine two petrol stations, which do not directly coordinate their prices, but establish a common association, which is granted the right under its articles, to determine prices for its members with a binding effect.

Specifically, the following actions in relation to the above mentioned “taboo topics” are prohibited to industry associations:

- Binding resolutions by bodies established under articles of association by which a uniform market conduct by the members is required,
- Binding resolutions, recommendations, statements, declarations, position papers, press releases, internal communications, but also (internal) talks and trainings,
  - that have the purpose or are suitable to be used by member companies as guidance for their market conduct,
  - that contain sensitive information, which is not publicly accessible in this form.
- Boycott: Calls directed at certain companies not to cooperate with certain third-party companies, in particular not to supply to or buy from them.

Examples of inadmissible conduct in this respect are:

- An industry association recommends in a circular to its members not to grant customers a warranty of more than 12 months.

- The association of the manufacturers of X-products announces in a press release that it expects the prices for X-products to increase in the next few weeks by approx. 3,5% to 5% due to increased steel prices.
- Boycott: The industry association of dairy cattle farmers calls upon its members not to make deliveries to certain dairies. It does this to achieve a minimum price for milk.

## **B. Implications for Association Work**

The presented prohibitions, which are directed at the companies as well as directly at industry associations, have implications for the association work. Aim is to prevent, right from the outset, any risk of a cartel infringement.

### **I. No Toleration of Inadmissible Agreements and Disclosure of Information**

During all events organized by Herstellerverband Raumlufotechnische Geräte e. V., i. e. working groups, within the bodies, during board and member meetings of the association, at association meetings, the above mentioned “taboo topics” really have to be taboo.

- II.** Herstellerverband Raumlufotechnische Geräte e. V. does not support any activities by which companies make inadmissible agreements or by which they coordinate their conduct or exchange information in an inadmissible manner or by which they call for a boycott. Herstellerverband Raumlufotechnische Geräte e. V. shall not convey any information, communications or notices from a (member) company to another (member) company.

Bietigheim-Bissingen, 1<sup>st</sup> July 2015,  
updated (Herstellerverband Raumlufotechnische Geräte e. V.)

Board and Management