

Antitrust Compliance Rules for the Participation in Activities of the Open Logistics Foundation and the Open Logistics e. V., Dortmund

A. Preamble

(1) Objective of the Open Logistics Foundation and the registered association Open Logistics e. V.

The Open Logistics Foundation serves as a platform for various companies in the logistics industry to promote digitalization in the field of logistics and supply chain management. The objective of the Open Logistics Foundation is to establish open source technology in the logistics industry and to create in-ternal structures for working with the necessary hardware and software. In particular, de facto-standards will be employed to promote standardization of logistics processes and a European open source community will be established. The Open Logistics Foundation will develop and manage open source software and hardware as the base for digitization in this domain and make it available to interested companies. Interested companies in the logistics industry can become members of the registered association Open Logistics e. V., which supports the Open Logistics Foundation regarding the practical implementation of the foundation's purpose based on a cooperation agreement.

(2) Addressees of these Antitrust Compliance Rules

Being a platform for various companies, the Open Logistics Foundation and Open Logistics e. V. must comply with European and German antitrust law. Their platform activities can be classified as a form of association activities. Therefore, the concept of association activities in these antitrust rules explicitly includes the work of the foundation or of the registered association.

Antitrust risks may arise for associations in which members and other participants are (actual or potential) competitors, in particular by facilitating contacts, coordination and information exchange among members in different work committees, by collecting and forwarding market information and by developing norms and industry standards. All of these platform activities can result in restrictions of competition between competing companies that are prohibited by antitrust law and can be subject to significant fines, including fines against the platform for aiding and abetting.

Moreover, associations have recently been convicted not only for aiding and abetting the collusion of competing companies, but also been addressed as genuine cartel offenders ("cartel facilitators") if, for example, they offered organizational services that enabled cartel infringements.

When companies and associations that are actual or potential competitors send representatives to the work committees of the foundation and the association, antitrust law

imposes mandatory limits on cooperation. These limits must be respected when cooperating within the framework of the Open Logistics Foundation and the Open Logistics e. V. .

With regard to their task and function, the board of directors, management, employees and committee members of the Open Logistics Foundation as well as the board of directors, the members and employees of Open Logistics e. V. must comply with the provisions of German and European antitrust law when they organize, support or participate in activities of the Open Logistics Foundation or Open Logistics e. V., such as meetings, working group meetings, etc.

(3) Objective of the Antitrust Compliance Rules for the participation in activities of the Foundation and the Association

The objective of these antitrust rules for the participation in activities of the association or the foundation ("Antitrust Compliance Rules") is to determine the antitrust limits for cooperation, in particular for competitors on the foundation's committees and panels. The purpose of this document is to provide committee members and employees of the foundation and the association with rules for their daily work in order to ensure strict compliance with antitrust regulations.

In order to avoid uncertainties regarding the interpretation and application of antitrust Law, the management boards of the Open Logistics Foundation and the Open Logistics e. V. have determined that the contents of these Antitrust Compliance Rules are binding for all activities in connection with the Foundation and the Association.

These Antitrust Compliance Rules attempt to provide an overview of a wide variety of situations relevant under antitrust law and therefore cannot cover every individual case. In case of questions, the management or the boards of the Open Logistics Foundation and the Open Logistics e. V. are available at any time. In addition, all members of the corporate bodies are asked to report any concerns regarding a potentially illegal conduct and any indications thereof to Mr. Thorsten Hülsmann, CFO of Open Logistics Foundation and Compliance Officer.

B. Preparing Meetings

The responsible employees and committee chairpersons are obliged to ensure that the agenda and corresponding meeting documents are formulated in detail and unambiguously. They must ensure that the documents do not contain any points of concern under antitrust law.

Immediately before the start of the meeting, the participants must confirm with their signature that they have taken note of the instructions regarding legal behaviour under antitrust law and that they will adhere to the instructions. In the case of meetings taking place "online" or in "hybrid", the acknowledgement must be confirmed digitally (e.g. via MS Teams Forms) as access requirement for entering the meeting.

C. Rules during Meetings

(1) Chairing Meetings

A representative of the Open Logistics Foundation who has been trained in antitrust law shall chair all meetings. This representative shall be responsible for ensuring that meetings are conducted in an orderly manner. He shall ensure that the participants adhere to the agenda. The chairperson of the meeting shall also ensure that the proper proceedings of the meeting are recorded in the minutes.

In case that topics contrary to antitrust law are raised during the meeting, the discussion or, if necessary, the meeting must be interrupted and continued by returning to discussing legally accepted topics according to the agenda. If there is uncertainty as to whether a topic is problematic under antitrust law, the topic shall be postponed.

The course of the meeting shall be minuted. This also includes deviations from the agenda. If a participant requests that his or her objection to a discussion which they presume to be in violation of anti-trust law be recorded in the minutes, this request must be fulfilled.

After the meeting, the chairperson of the meeting shall check the minutes for completeness and correctness. The chairperson shall then send the minutes to the participants for their review. Corrections, in particular with regards to topics relevant under antitrust law, shall be made immediately.

Example:

The topic of a committee meeting is actually about interfaces in a software component. Suddenly, two members from competing companies start talking about the current shortage of containers. They also discuss how their respective companies are trying to solve this problem.

Suggested response from the chairperson: "This is a competitively sensitive topic. Please end the conversation and return to the topic of the session. I take a note in the minutes that you discussed this topic and that the conversation was stopped by me"

(2) Dos & Don'ts when choosing the topics

Below, some prohibited topics are indicated for assistance as they concern non-public competitively sensitive information. Even the mere receipt of such information between competitors (unilateral exchange) is problematic under antitrust law.

Exchange prohibited under antitrust law:

- Prices, price components, conditions (discounts, payment terms, etc.)
- Turnover
- Market shares
- Capacities
- Status of negotiations
- Customers and sales territories
- Future market behaviour



Exchange permissible under antitrust law:



- Current legislative projects and their consequences for the Open Logistics Foundation or the Open Logistics e. V. and their members.
- Preparing a general overview of the logistics sector connected to the foundation's topic
- Exchange of data that is publicly accessible or aggregated and does not allow conclusions regarding the situation of a specific company

(3) Market Information Systems

When using market information systems and producing statistics, it must be ensured that competitively sensitive data are only communicated when sufficiently anonymized or aggregated.

It must be guaranteed that the data made available to companies do not allow conclusions to be drawn about individual business transactions and individual companies. Samples must be selected in such a way that the parameters chosen do not allow conclusions to be drawn about individual companies either. In the case of historical data, the reference period has to be selected in such a way that it is not possible to draw conclusions about the current competitive situation of a company.

(4) Recommendations / Position Papers / Press Releases/ Guidelines

Association recommendations, position papers and press releases must not contain any expressions or wording that intentionally or unintentionally suggest or imply agreements, uniform behaviour or corresponding recommendations of the member companies of Open Logistics e. V. Phrases that objectively reflect the market situation and market developments are allowed.

Association recommendations may not encourage members (directly or indirectly) to violate the prohibition of boycotts under Section 21 of the German Competition Act. This would be the case, for example, if all members were called on to no longer work with a particular supplier.

Example:

Inadmissible: "We are concerned to see that Company A is offering its products for particularly low prices. This is probably only possible to the detriment of the drivers who, with the help of trickery, may not be paid minimum wage. Our members should therefore not consider Company A as a contractor until these abuses are remedied."

Allowed: "We are concerned to observe that some contractors are attempting to compensate cost pressures by illegally no longer paying drivers the statutory minimum wage. We are committed to social responsibility and support our members when ensuring fair conditions for all parties along the supply chain."

D. Special Rules regarding Research and Development activities (R&D) / Technical Standards

Technical issues of standardization are also governed by antitrust law and can lead to restriction of competition. When developing technical standards (including technical norms), the following basic rules of antitrust law must be observed:

- Be guided by objective technical requirements. Competitive implications must not play a decisive role in the drafting of the standard or norm.

Example: The joint development of a control platform for AdBlue dosing for vehicles as such is legal under antitrust law.

Reason: The actual use of the control platform depends on the specific vehicle model. Each manufacturer individually fine-tunes the platform to the specific requirements of his model. In addition, it is not apparent that the joint development of the control platform as such will restrict the effectiveness of the emission cleaning technology.

- Under antitrust law, it is only allowed to specify the minimum quality standards or minimum requirements for a technical solution. Members and other users must be free to go above and beyond these requirements.

Example: Engineers violated antitrust law when agreeing on the maximum size of the Ad-Blue tank for cleaning exhaust emissions.

Reason: Emission cleaning technology represents an important factor in the purchase decision. The agreement unlawfully limited consumer choices and thus competition, as no vehicle model can offer a better result for cleaning emissions.

- All members of the association and other parties involved must be free to choose, develop or use a different technical solution.

Example: The decision of a research cooperation to focus their efforts on liquid emissions cleaning systems is legal under antitrust law.

Reason: The companies involved remain free to develop and market other technologies.

- The standardization of interfaces must generate efficiency gains and cost savings. There must be no pressure to use a particular technical solution. The same applies when the Open Logistics Foundation or the Open Logistics e. V. supports a declaration of voluntary self-commitment by the member companies and/or other companies regarding a certain standard.

Example: It is allowed under antitrust law to agree on the standardization of the AdBlue filler neck.

Reason: The standardization of the filler neck enables the use of uniform refill bottles and pumps and thus leads to efficiency increases and cost savings, since the consumer can select any commercially available bottle or pump to refill. For a declaration of voluntary self-commitment to comply with antitrust law, the following conditions must be fulfilled:

- The voluntary self-commitment pursues a legitimate purpose (e.g. environmental or consumer protection),
- Consumers have a significant share in the benefits resulting from the voluntary self-commitment
- The voluntary self-commitment is the most economically advantageous way of achieving the legitimate objective,

- Even in the context of research and development, the exchange of information must be limited to what is necessary in order to guarantee compatibility, interoperability and safety.

Example: Discussion of competitors regarding the build-up of an appropriate infrastructure for AdBlue supply legal under antitrust law.

Reason: Solutions for refilling AdBlue are required in order to be able to introduce the AdBlue technology to the market. The data required for determining the expected demand was only shared in anonymised and aggregated form.

- The procedure for the development and adoption of standards or a norm has to be open, transparent and non-discriminatory. The choice of a standard must not lead to impeding companies in their economic freedom or to restricting the access to certain market levels.
- Once the open source project is successful, it can be presumed that the Open Logistics Foundation will have a dominant position regarding the developed technology. Access to the results of the project, the implemented standards or norms have to be granted to all interested parties, not just members, on reasonable and non-discriminatory terms. Fees for access must not be charged in such that they constitute a de facto-barrier.

E. Admission and Rejection of new Members

The Open Logistics e. V. is generally free to determine in its statutes according to which criteria a company may be accepted as a member or for collaboration. However, the admission criteria have to be specified and interpreted in an objectively comprehensible manner. When interpreting the criteria later on or subsequently amending the criteria, the requirements have to be objectively comprehensible as well.

F. Contacts

These Antitrust Compliance Rules cannot cover all conceivable constellations in everyday work. Their addressees can and should therefore contact Thorsten Hülsmann, Managing Director, thorsten.huelsmann@openlogisticsfoundation.org. The management of the Open Logistics Foundation or the Open Logistics e. V. can be contacted in case of doubts and questions regarding a potentially problematic situation under antitrust law.

Also available as external antitrust advisors are Dr. Christian H. Müller and Dr. Monika Volkers from Aderhold Rechtsanwaltsgesellschaft mbH, Dortmund (+49(0)231-42 777-333, c.mueller@aderhold-legal.de).

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