

innovation is our business.

Guidelines

for participation in activities of Business
Upper Austria – OÖ Wirtschafts-agentur
GmbH, to guarantee compliance with
antitrust law

The logo for Business Upper Austria is located in the lower right quadrant. It features the text "business upper austria" in a light grey, sans-serif font. The word "business" is at the top, "upper" is in the middle in a larger font size, and "austria" is at the bottom. The text is enclosed within a circular graphic composed of several overlapping, thin white lines that create a sense of motion or a stylized globe.

business
upper
austria

www.biz-up.at

Foreword

Business Upper Austria – OÖ Wirtschaftsagentur GmbH ('Business Upper Austria') is the business promotion agency of the province of Upper Austria. Through its portfolio of activities, Business Upper Austria aims to secure, strengthen, develop, and internationally position Upper Austria as a location for business and a workplace; create and develop an infrastructure for investments, innovation, and technology in Upper Austria; and support the transfer of innovation and technology. To that end, Business Upper Austria wishes to promote or establish viable innovation networks and platforms for precompetitive cooperation, the exchange of information between companies and technology policies, and the coordination of shared statements of position of the members (toward the public, technology policies, other platforms, etc.).

For Business Upper Austria, compliance with applicable legal statutes is a matter of course and an essential part of entrepreneurial activity. When it comes to compliance, including compliance under antitrust law, requirements have increased steadily in recent years. The primary goal of antitrust law is to maintain fair, unimpeded competition that is as versatile as possible. Breaches of antitrust law mean economic damage for the entire business location and can mean considerable sanctions (such as fines, the invalidity of forbidden agreements and decisions, damage to reputation, and potential payment of damages) for companies who violate regulations.

This compliance guideline is a clear acknowledgement by Business Upper Austria of the principle of the free markets and fair competition. It should ensure that a high standard of compliance with antitrust law regulations is guaranteed at the Events of Business Upper Austria (including knowledge exchange rounds) in which companies periodically encounter other companies with whom they compete or with whom they are connected through customer-supplier relationships.

By registering for an Event of Business Upper Austria, participants confirm their acknowledgement of these guidelines and undertake to comply with antitrust law, thus to forego any action that might establish a breach of antitrust law, including but not limited to the 'hardcore restrictions' under antitrust law, and not to pass on or exchange any information deemed sensitive under antitrust law.

ESSENTIAL CODE OF CONDUCT FOR EVENTS HELD BY BUSINESS UPPER AUSTRIA (DURING KNOWLEDGE EXCHANGE ROUNDS, FOR EXAMPLE)

I. STRICT COMPLIANCE WITH THE BAN ON CARTELS

Antitrust law should guarantee free, genuine, effective competition in the markets to the benefit of the companies (and ultimately, the consumer) and combat all types of restrictions of competition.

This means that all **agreements between companies** and **collusive behaviour** that **restrict or aim to restrict competition** (prevention, limitation, or falsification) are forbidden (**ban on cartels**).

The principle of 'freedom of competition' applies to all market levels and all manifestations of competition. This means that both competition in a horizontal relationship between market participants on the same level (**horizontal competition**) and in a vertical relationship between companies on different market levels (**vertical competition**) is protected.

The especially severe cartel restrictions (known as **hardcore restrictions** or **hardcore cartels**) include agreements or collusive behaviour, such as that regarding prices or other conditions; restrictions of production or sales; allocating market shares, customers, or territories; bid rigging, etc.

2. PERMISSIBLE/IMPERMISSIBLE EXCHANGE OF INFORMATION – ESSENTIAL CODE OF CONDUCT

Besides anticompetitive agreements and collusive behaviour, antitrust law also forbids the mere exchange or unilateral disclosure of competition-relevant data, especially if this would impair or remove the uncertainty regarding the competitors' market behaviour. The larger the market share of the companies who are exchanging information, the greater the risk that the exchange will be considered anticompetitive and therefore a violation of antitrust law. This notwithstanding, the boundaries between a permissible and a forbidden exchange of information are often nebulous, since they depend on the market conditions in the respective sector (such as the number and size of the market participants, structure of the upstream and downstream markets, speed of the developments and changes in the respective sector, and the structure and degree of individualization of the business relationships).

An EXCHANGE OF INFORMATION breaks the boundaries of what is permissible if it

- leads to an agreement of collusive behaviour that
- restricts or aims to restrict competition.

Essential principles of permissibility/impermissibility of the exchange of information in terms of the basic type of information exchanged:

PERMITTED

- **Aggregated data:** Conclusions about company-specific activities or data are difficult or impossible (the fewer participants there are in a market, the higher the requirements become).
- **Historical data:** Data that are too old to allow any conclusions to be drawn about competitive behaviour in the future. Whether or not data are considered 'historical' depends on the market conditions (how often prices are negotiated, for example).
- **Genuine public data:** all competitors have equal access and it is not more difficult for those not participating in an exchange of information to obtain those data (such as market research studies and publications by associations).

FORBIDDEN

- **Company-specific data:** The data disclose specific, competitively sensitive information about a specific company (to that end, see the case examples in the table below).
- **Current and future data:** Because it reduces the strategic uncertainty on the market, the exchange of future strategic data is especially critical.

In light of this, the exchange of the following topics and topic areas is permissible or forbidden:

PERMITTED

Exchanging information on topics not relevant for competition. This especially applies to:

- **General developments of the economy or business activity,** including those related to the industry in question (without the possibility of drawing conclusions about individual companies, unless this has already been published);
- **General technical or scientific developments;**
- **General sociopolitical topics and lobbying activities;**

The pronouns used in these guidelines refer to all genders equally.

FORBIDDEN

Exchanging information about individual, competitively sensitive company data. This especially applies to:

- **Prices of any kind** (such as purchasing, sales, and resale prices, including list prices, price components, rebates, price calculations, pricing policies, and price changes);
- **Payment terms** and other individual contractual regulations affecting customer or supplier contracts, provided the latter are relevant to competition

Each participant shall interrupt, abort, not take part in, or clearly distance themselves from any conversation in which collusive arrangements are made or information that is sensitive under antitrust law is exchanged. Even passive behaviour or listening in will be considered participation in a breach of antitrust law.

Each participant shall report any incidents that are incompatible with antitrust law compliance to the Business Upper Austria representative present at the Event.

The principles of behaviour presented here must also be complied with outside the Events themselves – during coffee breaks or while relaxing after an Event, for example.