

Guide for our Association Activity

Instructions for Compliance
with Competition Law in the ZVEI



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Introduction

The companies of electrical and electronic industries in Germany are an important pacesetter for technological progress. ZVEI is the organisational pooling of this industrial sector, being the most innovative in Germany. We frame the platform for an active and manifold association work. We produce values for the benefit of our member companies and promote the overall economic development. By using our expertise we can help to give answers to topical political questions and to cope with future challenges.

We confess to the constitutional order and to the competitive economic system. This includes a forceful use of the existing options as well as compliance with competition law's requirements.

For this reason on March 7th, 2007 ZVEI's executive board adopted a set of precise, binding, and practicable rules for the association work that are summarised in this guide. This guide addresses all ZVEI's personnel as well as honorary participants including chairmen. With this guide we intend to give safety and orientation to our association members. Compliance with these rules is obligatory for everybody who participates in the association's activity and finally serves as protection for the association and its members.

1. Invitation to Association Meetings

- ZVEI's personnel's task is to issue timely and officially invitations for committees' meetings, doing so on behalf of the relevant chairman. Along with the invitation there should be added an agenda that is as detailed as possible.
- ZVEI's personnel have to ensure that the meeting's agendas, minutes, and other documents are worded clearly and unmistakably and do not contain any critical items referring to competition law.
- In cases of doubt the managements of ZVEI and its sector associations are available to effect clarification or correction.

2. Association Meetings

- Any ZVEI meeting must occur only in the presence of at least one member of ZVEI's personnel.
- ZVEI's personnel are responsible for compliance with formal and correct meetings' procedures such as agenda and taking minutes.
- At any meeting's beginning ZVEI's personnel have to instruct participants of compliance with competition law. If meetings occur periodically in the same formation of participants these instructions are not necessarily to be given each time but at reasonable intervals only.
- ZVEI's personnel and the relevant chairman jointly have to ensure that there is no deviation from the agenda. In case participants should nevertheless desire to deviate from the agenda, ZVEI's personnel have to bring about a formal decision on this deviation and to record this decision in the minutes.
- Participants are supposed to object to a new agenda item if considered as being critical referring to competition law or if a formal decision on a deviation from the agenda has been omitted. Furthermore they are supposed to demand that the deviation from the agenda and their objection will be recorded in the minutes.

3. Minutes

- ZVEI's personnel have to compile correct, complete, and precise minutes of any ZVEI meeting including the decisions taken thereby.
- Participants are supposed to object when they notice that no minutes are taken.
- Participants are allowed to take their own notes.
- ZVEI's personnel have to ensure that the minutes' wording is clear and unmistakable.
- Minutes shall be dispatched promptly to all participants.
- When the minutes have been received participants are supposed to check them for correct reporting of the meeting and the decisions taken thereby. If the minutes are not to be considered as complete or correct, particularly with regard to competition law, participants are supposed to immediately advise ZVEI thereof and to ask for correction.

4. How to Act in Association Meetings

- The relevant chairman and ZVEI's personnel jointly have to ensure that there will be no illegal decisions, arrangements, discussions, or spontaneous comments with regard to competition law during an association meeting.
- In case a participant's behaviour is not compliant with competition law, the chairman and ZVEI's personnel immediately have to advise the participant thereupon.
- The chairman is supposed to break off or adjourn the discussion or even the meeting as a whole if a legal clarification should be required.
- Participants are supposed to ask for the discussion's or the meeting's break off or adjournment if they have any objection to its legality. This asking shall be recorded in the minutes.
- Participants are supposed to leave the meeting if a discussion continues while being critical referring to competition law. A participant's leaving shall be recorded in the minutes stating his name and the exact time of leaving.

5. Market Information Systems

- Market information systems and other statistics are only permitted, if managed officially by ZVEI or another neutral institution, publishing anonymised, non-identifiable, aggregate overall data only.
- ZVEI is constantly taking care that market information systems managed by ZVEI comply with legal requirements.
- Data relating to certain companies must not be disclosed in the course of a meeting, but a disclosure is only permitted within the procedures of the market information systems.

6. Topics Allowed in Association Meetings

In the course of an association meeting, companies are allowed to exchange information about their particular topics which includes:

- information about a company's general business expectations, or information in respect of the whole range of products, or of other aggregate business units, presumed that no conclusions can be drawn to a particular product's market position,
- general cyclical economic data,
- current legislative projects and their impact on the member companies as a whole,
- discussions about ZVEI's lobby activities,
- benchmarking activities,
- generating a survey of the relevant industrial sector,
- exchange of freely accessible data (e. g. from the internet or from business reports published by member companies).

7. Topics Not Allowed in Association Meetings

- In the course of an association meeting, companies are not allowed to exchange information about topics that violate the competition law and the secrecy in competition, as far as being a matter of companies' in-house information or data. This includes:
 - information or arrangements about prices, price components, rebates, pricing strategy and calculation, and intended change in prices,
 - terms and conditions for supply and payment, relating to contracts with third parties,
 - information about business strategies and future market conduct,
 - detailed information about profits, profit margin, market shares, and intended investments, as far as this information is not publicly available,
 - as a general rule, information about research and development projects.
- Co-ordination of bidding towards third parties, regional or personal division of markets or sources, express or tacit agreement about boycotting certain companies or cutting-off the supply or purchase against a certain company.
- Before formulating technical standards or new markings, ZVEI's legal department shall be consulted.

8. Position Papers and Press Releases

- ZVEI ensures that no position paper or press release contains a wording that, intentionally or unintentionally, could suggest an arrangement, an uniform conduct or a recommendation by ZVEI or by member companies that indicates thereupon.
- Allowed wording is:
 - Objective reporting about the market's situation and development,
 - Presenting alternative solutions without preferring a certain one.

9. Recommendation of Terms and Conditions

- In special committees ZVEI generates General Conditions as model forms (e. g. for supply contracts).
- ZVEI currently controls the legal framework.
- ZVEI makes these General Conditions available to its member companies for voluntary applying.
- ZVEI ensures that beyond these special committees there will be no agreement or recommendation of General Conditions (e. g. clauses about warranty or price adjustment) to be applied uniformly.

10. Trade Fairs

- ZVEI and its divisions are allowed to promote a certain trade fair as the leading fair for particular sectors.
- ZVEI is allowed to support the relevant exhibition corporation in maintaining or establishing the favoured fair as the leading fair, as far as there is no commitment to support this leading fair exclusively.
- ZVEI is allowed to give general information about the favoured fair's concept and to spotlight its specific assets.
- By promoting a certain trade fair as the leading fair ZVEI shall not, avowedly or covertly, evoke or support a boycott against a comparable competitive fair. For that reason ZVEI shall not publish any pointed or unfair comments on competitive fairs.
- ZVEI ensures that in the course of an association meeting there will be no agreement or recommendation about the member companies' not attending (any more) a trade fair or henceforth attending a certain fair only.
- ZVEI is allowed to make an enquiry among the member companies in the course of an association meeting about their satisfaction with a certain fair's concept.

11. New Members' Admission and Rejection

- Basically ZVEI is free to decide whether or not to admit new member companies.
- However, ZVEI shall respect a company's right to admission that maybe arise from competition law.
- The requirements a company has to comply with to become a member are explicitly regulated by ZVEI's statutes.
- ZVEI is allowed to deny a company's admission to ZVEI and its divisions if this company does not comply with the statutory requirements for membership. However, the denial shall not be discriminatory, e. g. other comparable companies have already been admitted as members although not complying with the requirements for membership.
- In exceptional cases ZVEI is allowed to deny a company's admission to ZVEI and its divisions if the admission
 - would affect ZVEI's reputation,
 - would lead to severe disturbance within ZVEI or one of its divisions, or
 - would lead to the imminent rescission of a large number of members from ZVEI.
- The mere fact that a company's admission would be disagreeable for the other members does not allow ZVEI to deny this company's admission.

12. Voluntary Commitments

ZVEI is allowed to generate collective voluntary commitments of its members in particular sectors, as far as they

- are useful to achieve an acceptable purpose (e. g. for ecological or consumer protection),
- include that consumers will receive a significant share in the profits expected herefrom,
- are the economically best way to achieve the purpose,
- are open to third parties,
- do not restrict too intensely the participants' freedom of action,
- do not hinder potential competitors' market access,
- do not perceptibly limit competition by coordinated conduct.

Questions?

ZVEI's legal department is available for any question of ZVEI's personnel or honorary associates relating to this guide. Furthermore the legal department should be consulted in all cases of doubt on a procedure's or topic's legitimacy that arise before or during an association meeting. The legal department should be informed about any infringement detected or assumed.

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