

## **BMW Group.**

Policy “Antitrust Compliance”.

01.06.2019.

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### **1 Acting responsibly and lawfully**

#### **1.1 Commitment to antitrust compliance**

Responsible and lawful conduct is firmly entrenched throughout the BMW Group. The company's management fully supports these principles without exception and has made them an integral part of the BMW Group's corporate culture.

The BMW Group does not tolerate actions by its employees that could result in a violation of law. This applies in particular to preventing violations of antitrust law.

BMW Group employees who engage in relevant exchange activities must be familiar with applicable rules and observe them at all times. Special responsibility remains with BMW Group management.

#### **1.2 Scope**

This policy addresses practices by which market participants coordinate their market behavior in a way that restricts or eliminates competition.

It is binding for all BMW Group affiliated companies worldwide. More comprehensive local guidelines are unaffected by this policy, assuming they do not contradict its contents.

### **2 Important terms and principles**

#### **2.1 Relevant practices**

The term "activity" refers to agreements between market participants or other concerted practices.

The term anti-competitive "agreement" includes any kind of agreement ("meeting of minds") between market participants and may be in writing or verbal, binding or non-binding (so-called "gentlemen's agreement"), explicit or implied.

An agreement also does not necessarily have to be directly concluded between competing market participants; an agreement via third parties is also not permissible.

If the participating companies effectively coordinate their behavior, even without an agreement between them (so-called concerted practice), this may be sufficient to imply an antitrust violation. In exceptional cases, even a unilateral measure may be regarded as an antitrust violation, e.g. if a competitor announces in public media that it will soon be increasing prices under the assumption that others will follow.

On the other hand, autonomous parallel behavior is permissible, i.e. the behavior of a competitor based solely on internal decision-making within that company.

It is important to note that both activities between competing market participants at the same market level (so-called horizontal restraints, see section 3), or at different levels in the supply chain (so-called vertical restraints in relation to distribution partners or suppliers, see section 4) may be relevant from an antitrust perspective.

Competitors are companies that offer or purchase the same products or services on the same relevant (i.e. geographic and product) market or have sufficient resources to enter that market within a reasonable amount of time (potential competitors).

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### **2.2 Restraints on competition**

In most cases, the exchange or provision of the following sensitive information and the following behavior is prohibited for its negative effects on competition:

- Prices, price components, discounts, pricing strategies and calculations, planned price changes.
- Interest or interest rates, residual value of vehicles.
- Corporate strategies and current or future market behavior.
- Business development or forecasts (especially sales or revenue figures).
- Delivery and payment conditions and other important contractual arrangements with customers or suppliers.
- Information that could enable behavior towards a mutual (potential) customer to be coordinated, especially in connection with bids (e.g. indication that planning to participate in a bid).
- Customer or supplier demands, including any responses to such demands.
- Profit, profit margins, market shares and planned investments.
- Allocation of markets or purchasing sources on the basis of geography or persons.
- Restriction of the freedom of the parties involved to conclude research and development agreements independently or in collaboration with third parties that are not related to the planned or current agreement.
- Restriction of production or sales.

The exchange of genuinely public information (i.e. freely accessible or legally available for purchase) or information that, due to its content, is not suitable to have negative effects on competition (e.g. customer and employee satisfaction, internal communication measures, HR management, etc.) is permissible.

### **2.3 Exceptions to the prohibition on restrictive practices**

A deviation from the prohibition on restrictive practices is only permissible in exceptional cases.

The most relevant cases are laid out in sections 0 and 4. In cases of doubt, the relevant legal department must be consulted.

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### **3 Antitrust law requirements in relation to competitors (avoidance of horizontal restraints)**

#### **3.1 General exchange activities**

##### **3.1.1 Market analysis**

Market analysis is permitted if it is based on genuinely public information or information that is not suitable to restrain competition.

##### **3.1.2 Benchmarkings**

Benchmarking projects should generally be confined to genuinely public information or information that is not relevant from an antitrust perspective. Sensitive data may only be used or shared between competitors in exceptional cases.

With regard to potentially sensitive data, the following rules must be observed:

- If possible, any benchmarking should be conducted by external parties (e.g. market research institutes, management consultants, industry associations, etc.). This prevents conclusions being drawn about the market behavior of the participating companies or homogenous groups of companies.
- Obligation of confidentiality on the part of those conducting the benchmarking, with the commitment that their employees will treat the data as sensitive.
- Several participants; ideally, at least five.
- Adequate aggregation and anonymization of data.
- No breakdown of results (e.g. by regions), if this could be traced back to individual companies participating in the benchmarking.
- Voluntary participation.

The evaluation and further use of the benchmarking findings must be done separately and independently by each participating company.

##### **3.1.3 Cooperation on standard settings**

To ensure standardizations do not have a restrictive effect on competition, it is essential that the following conditions are fulfilled:

- Invitation to all relevant groups to participate, preferably by an external party.
- Open, transparent, and non-discriminatory access to standardization information.
- Open competition within the standard, i.e. no market foreclosure by offering licenses at unacceptable terms, the so-called FRAND commitment ('fair, reasonable and non-discriminatory terms').

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### **3.1.4 Activity in industry associations**

Within industry associations, the following activities are permitted between competitors:

- Discussions on current legislative bills and political developments and decision to join an interest group outside of the association ('coalition building').
- Joint PR for an industry sector or location marketing.
- Joint press initiatives as long as there is no link to the company's business policy.

However, the following are prohibited within the framework of association activities:

- Coordination of business policy between companies in response to new legislation or decisions, i.e. specifically, there must be no coordination of the concrete business conclusions individual members draw from the legal and regulatory framework.
- Association recommendations, which are intended or could lead to a coordination of market behavior.
- Spill-over effects from permitted political initiatives, e.g. price agreements in connection with voluntary commitments.
- Discussion of individual members' pricing or contractual terms and conditions.

Further information on "Do's and Don'ts" at association meetings may be found on the Compliance Homepage.

### **3.1.5 Discussing experience with mutual business partners**

General exchange of experience with regard to mutual business partners is permitted. However, particular caution must be exercised where critical statements are concerned. Any exchange on the following topics as well as the following behavior is prohibited:

- Statements governed by non-disclosure agreements with third parties.
- Statements relating to possible (amount and type of) claims for damages against business partners, etc.
- Boycott agreements (e.g. agreements not to use a certain supplier).
- Dissemination of false information that could, among other things, cause credit problems for the business partner.

## **3.2 Specific exchange activities in the areas automobiles, motorcycles**

BMW Group company branches ("Niederlassungen") are competitors (at a horizontal level) of other dealers in the BMW Group sales and service network. The same applies for other direct sales activities of BMW Group companies, e.g. online sales, key account business, etc.

Due to this competitive situation, relevant BMW Group employees must observe the same standards when dealing with employees of the BMW Group sales and service network as with other OEMs ('Original Equipment Manufacturer'), i.e. they may not exchange sensitive information on e.g. prices, volumes, residual value of vehicles, etc. (see for more detail, section 2.2).

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### **3.3 Specific exchange activities in the areas purchasing, research and development, and production**

#### **3.3.1 Purchasing cooperations**

Purchasing cooperations with other competitors may unduly increase the cost pressure on suppliers.

In order to ensure adherence to applicable antitrust law, all purchasing cooperations must therefore be reviewed beforehand by the responsible legal department.

#### **3.3.2 Research and development cooperation**

Research and development cooperations (R&D cooperation) with competitors may also have restrictive effects on competitions. When such R&D cooperations promote technical and economic progress, however, they may be exempt from antitrust I.

In order to ensure adherence to applicable exemptions requirements, BMW Group departments must consult the relevant legal department prior to engaging in R&D cooperations with competitors.

For all other R&D cooperations, departments must base the cooperations on standard agreements provided by the responsible legal departments. Only in case of deviations, the relevant legal department must be consulted.

### **3.4 Information exchange between BMW Group entities**

#### **3.4.1 Financial Services**

Special caution must be observed when exchanging information between the sales department and financial services. In cases of doubt, the exchange of information shall be reviewed by the relevant legal department.

#### **3.4.2 Alphabet**

Alphabet is a full-service leasing company. It offers its customers products not only from the BMW Group but also other OEMs. Thus, Alphabet may possess competitively sensitive information on competitors of BMW AG or its national sales companies (e.g. on vehicle prices, the residual value of vehicles, etc.). Therefore, it must be ensured that there is no such exchange of information between employees of the relevant BMW Group companies (so-called "Chinese wall").

Similarly, adequate efforts should be undertaken to ensure that

- suppliers or manufacturers of other brands or
- service providers which manage the fleet or advise customers of Alphabet and therefore possess sensitive information on Alphabet's leasing contracts

do not forward sensible information relating to Alphabet to leasing companies within their group.

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### **4 Antitrust requirements in relation to next market levels (avoidance of vertical restraints)**

#### **4.1 Sales**

##### **4.1.1 Price recommendations**

The recommended retail price ('RRP') is the price the BMW Group recommends to its sales and service network as the resale price to customers.

Price recommendations are usually permissible as long as they are genuinely non-binding, with no pressure or incentives applied to effectively turn them into a fixed or minimum price (e.g. through the threat of suspending or delaying deliveries or cutting discounts).

##### **4.1.2 Restrictions on pricing, sales areas, customer groups**

It is generally not permitted to restrain sales partners in the following areas:

- Specifying or fixing sales prices, including exerting influence on discounts and allowances.
- Restriction of the territory in which contractual goods may be sold.
- Exclusive customer allocation, i.e. restricting the groups to which sales partners may sell contractual goods.

However, it may be permissible, e.g. under selective distribution systems, to prevent sales partners from selling contractual goods to resellers other than those authorized by BMW. Furthermore, it may also be permitted to prevent the sales partner from selling contractual goods (actively, in particular) outside of a specified contract territory.

#### **4.2 Purchasing**

In a supplier relationship, restrictive stipulations may be permitted in exceptional cases. In assessing purchasing processes, compliance with market share thresholds is often relevant. The relevant departments are responsible for reviewing the applicable market shares (geographic and product) for the products, services or technology offered or received.

##### **4.2.1 Directed buy**

The term "directed buy" refers to a purchasing process involving at least three companies who regularly belong to different stages of production. In this case, the buyer (BMW Group) negotiates with a Tier 2 supplier for them to offer certain terms and conditions to Tier 1 suppliers chosen by the buyer (BMW Group). The Tier 1 suppliers are then mandated to accept the terms and conditions offered by Tier 2.

This purchasing process is permitted as long as the following conditions are fulfilled:

- Price control only concerns the purchasing or sales prices of suppliers, i.e. "upstream".
- Compliance with relevant market share thresholds (e.g., in the EEA the threshold is 30% for all relevant sales and purchase markets).

If suppliers are competitors, it is not permitted for the BMW Group to reveal sales prices of the Tier 2 to the Tier 1.



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### **4.2.2 Most-favored customer clauses**

Most-favored customer clauses oblige suppliers not to offer other buyers better purchasing terms and conditions than the BMW Group ('real most-favored customer clause') or to subsequently guarantee the BMW Group the same (more favorable) purchasing conditions offered by the supplier to another business partner ('non-real most-favored customer clause').

The use of most-favored customer clauses are permitted if the relevant market share thresholds are not surpassed (e.g. in the EEA, 30% for the sales market and the purchasing market).

### **4.2.3 Exclusivity agreements**

Agreements of this kind are permitted under the conditions outlined in section 4.2.2. In some instances, such agreements may not exceed a specific duration (in the EEA, e.g. five years).

## **5 Preventive Measures**

### **5.1 Documentation of exchange activities**

In order to prevent antitrust violations, all BMW Group departments must use the Compliance IT-system TRUST for documentation and approval of relevant activities.

On a **horizontal level**, the following activities with competitors are **relevant**:

- Plant visit
- Working group (within or outside of association structure),
- Lobbying,
- Exchange activity relating to joint supplier,
- Other exchange activity (personal meeting),
- Other exchange activity (video-/telephone conference),
- Benchmark and market analysis (directly with competitors),
- Benchmark and market analysis (with competitors but indirectly via service provider),
- Standard setting cooperation,
- Other cooperation (before cooperation agreement),
- Other cooperation (after cooperation agreement).

The attendance of **fairs or conferences** must only be documented if required by the respective BMW Group Compliance Responsible in writing for the department. Otherwise, the documentation is **optional**.

On a **vertical level**, the following activities with **sales and service partners** are relevant

- Dealer-/importeur conference
- Benchmark and market analysis (directly with dealers/importers)
- Benchmark and market analysis (with dealers/importers but indirectly through service provider)

Other meetings with dealers or importers must only be documented if required in writing for the department. Otherwise, the documentation is optional.

Bilateral activities with **suppliers** are not relevant and must therefore **not be documented** in the Compliance IT-System TRUST.

Further information on TRUST may be found on the intranet.

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### **5.2 Trainings**

The online training "BMW Group Compliance Training Antitrust Law" is mandatory for the following target groups:

- all executives (G9 and higher),
- local "First Line" functions,
- employees with functions or tasks that may expose them to antitrust risks,
- all groups of employees for which the relevant BMW Group Compliance Responsible has required participation.

The training certificate is valid for two years.

Classroom trainings are mandatory (if offered locally) for all executives (G9 and higher), "First Line" functions as well as employees with functions or tasks that may expose them to antitrust risks.

### **5.3 Advice and information**

All BMW Group employees must inform themselves about antitrust requirements for their area of operation.

General information on the topic of antitrust compliance can be found on the BMW Group Compliance homepage.

The BMW Group Compliance Contact is also available to support BMW Group employees.

Additionally, BMW Group employees may contact their respective manager, legal department, or the local compliance function or antitrust coordinator (where applicable) with any questions relating to antitrust compliance.

## **6 Information about possible violations, consequences**

### **6.1 Information about possible violations**

BMW Group employees who wish to raise concerns about potential antitrust violations should contact their respective manager, the BMW Group Compliance, or the relevant legal department. Moreover, the BMW Group SpeakUP Line enables information to be submitted on an anonymous basis.

### **6.2 Consequences for violations**

The BMW Group Compliance regularly reviews adherence to the requirements set out in this "Antitrust Compliance" policy as well as their underlying legal principles. Violations of the law may lead to sanctions under applicable criminal law and may result in the termination of an employee's contract of employment.