



Bundeskartellamt

Bundeskartellamt • Kaiser-Friedrich-Str. 16 • 53113 Bonn

To the
Verband der Automobilindustrie e.V.
Attn. Dr Ralf Scheibach
Behrensstraße 35
10117 Berlin

4th Decision Division
The Chair

Phone: +49 228 9499-526

Fax: +49 228 9499-154

E-Mail: eberhard.temme@bundeskartellamt.bund.de

Only informal contacts are possible via personal email addresses.
Legally binding statements cannot be made to these email addresses.

For further information on electronic communication with the
Bundeskartellamt please visit www.bundeskartellamt.de.

File number: **B 4 – 55/20**

9 June 2020

**COVID-19 pandemic: Joint crisis management in the automotive industry
– Framework conditions and restructuring¹**

Dear Dr Scheibach,

In the email sent to the Bundeskartellamt on 23 April 2020, the German Association of the Automotive Industry (*Verband der Automobilindustrie e.V.*, VDA) presented measures for overcoming the crisis caused by the COVID-19 pandemic in the automotive industry; they were drawn up by a project group established at the VDA. These measures are intended to ensure framework conditions for the restart of automotive production and to set up a process which is to serve individual suppliers as a model for restructuring (“Corona restructuring process”). The documents are designated as follows:

- “Crisis Management in the Automotive Industry due to the Corona Pandemic – Ensuring Safe Framework Conditions” dated 22 April 2020 and
- “Crisis Management in the Automotive Industry due to the Corona Pandemic – Case Study” dated 22 April 2020.

The VDA asked the Bundeskartellamt to inform the European Commission about the measures presented and to comment on these measures in a letter from the chair. Any questions the

¹ The following letter is a courtesy translation of the letter from the chair. Only the German language version is authentic.

Bundeskartellamt had regarding the documents mentioned were discussed in detail with members of the VDA's project group ("Corona project group"). Based on the information available, the Bundeskartellamt decided, within its scope of discretion, to refrain, for the time being, from examining the presented measures in more detail under competition law. In this regard, the Bundeskartellamt particularly took into account the circumstances caused by the COVID-19 pandemic and described by the VDA, which still continue to exist.

According to the information provided by the VDA, numerous companies in the automotive industry have been plunged into an economic crisis or could be thrown into a crisis in the near future due to the COVID-19 pandemic. In many cases, state aid measures alone are in their current form not sufficient to prevent companies from "dying". In the VDA's view, the market conditions in the automotive industry pose special challenges:

- The (international) supply chains form a complex network. These supply chains have to be maintained across international borders.
- The international supply chains are affected not only by the different state measures, but also by the different closing times and the individual measures taken by suppliers (e.g. delivery volumes) and manufacturers.
- Manufacturers and suppliers often depend on the same sub-suppliers.
- Downtimes at individual sub-suppliers can impede the restart of production at many suppliers and manufacturers and in this way cause even more economic harm to the entire supply chain.

Against this background, the VDA's Corona project group presented measures for ensuring framework conditions for the restart of automotive production and a process for the speedy restructuring of suppliers in crisis in order to keep the supply chain stable.

For the purpose of ensuring framework conditions for the restart of automotive production, the VDA intends to publish information important to all market participants on its website, such as the reopening times of car manufacturers and tier 1 suppliers. In addition, the VDA would like to prepare a best practice guide suggesting measures to avoid a misallocation of resources.

The Corona restructuring process concerns the simultaneous formation of stakeholder groups, involving owners, employees, customers, creditors and the state. Within the respective stakeholder groups and between these groups, information is to be exchanged with the aim of combining, as quickly as possible, the stakeholders' individual contributions to the restructuring in a framework agreement.

The Bundeskartellamt's decision to refrain, for the time being, from examining the measures presented in more detail within its scope of discretion takes into account the special circumstances existing in the automotive industry during the COVID-19 pandemic. Against this background, the Bundeskartellamt discussed and assessed whether the intended practice is likely to meet the standards under competition law (Section 1 GWB/Article 101 TFEU). In the Bundeskartellamt's view, in particular the following supporting measures presented by the VDA's Corona project group are necessary:

Ensuring framework conditions for the restart of automotive production

- The relevant manufacturers and suppliers in the automotive industry remain free to choose when and in what way they would like to restart their activities and whether they would like to publicly announce this restart. In particular, they are not required to restart their production at a specified point in time.
- The announced VDA best practice guide will not contain any company-specific information relating, for example, to amounts of goods or contracts of individual companies and its implementation is not compulsory for manufacturers and suppliers. It will not affect any existing contractual obligations manufacturers and suppliers may have and any contractual changes. In particular, suppliers are not required to meet specific delivery volumes.

Corona restructuring process

- The proposed Corona restructuring process concerns companies which in their own assessment are undergoing an economic crisis due to the COVID-19 pandemic and would like to resort to the restructuring process. This covers companies domiciled in Germany and companies outside Germany whose subsidiaries or establishments located in Germany are in crisis.

- The Corona restructuring process is limited in time. It is available to companies which set the date for the first stakeholder meeting to take place before 31 December 2020, at the latest, and send out invitations to this meeting before the end of the year. The restructuring negotiations are to be concluded by the end of 2021, at the latest.
- The scope of the data exchanged between stakeholders and between stakeholders and the company that is to be restructured is limited to data which are necessary for restructuring.
- The data will be received by “clean teams”. These include persons who are subject to confidentiality obligations, such as auditors, employees of the companies’ controlling departments or professional restructuring experts. If persons from a customer’s purchasing division participate in the restructuring negotiations as members of the customer group, these persons are prohibited from conducting purchasing negotiations with the relevant sub-suppliers while participating in the restructuring negotiations and for a period of one year following the end of their participation. Any confidential information obtained in these negotiations may not be used for future purchases from other companies.
- During the Corona restructuring process, the company that is to be restructured and the stakeholders or the stakeholder groups exchange the data necessary for restructuring (e.g. the contributions made by the individual stakeholders) in aggregate form. The terms and conditions of the contracts concluded between the relevant stakeholders and the company that is to be restructured may be passed on to the respective stakeholder group in aggregate form only. This particularly applies to passing on parts prices and quantities to the group of customers or passing on interest rates and factoring costs to the group of creditors. Stakeholders may receive only consolidated data, which they can use to calculate their own share; they may not receive company-specific data relating to their competitors. A neutral third party will aggregate and pass on the data (e.g. auditor or lawyer). If no neutral third party is involved, the company that is to be restructured may pass on the data in aggregate form itself.

- The confidential data necessary for restructuring may not be passed on to third parties (“Chinese walls”). Third parties are persons who are not involved in the restructuring negotiations and who are not part of a clean team. Any reporting necessary within the company hierarchy for the decision-making practice of the respective stakeholder remains unaffected.
- The employees of the companies belonging to the clean team taking part in the restructuring negotiations and those of the company that is to be restructured will be obligated in writing to sign a confidentiality agreement meeting the requirements mentioned and including significant sanctions to be imposed in the event of breaches.
- Customers may make various contributions (e.g. providing additional staff, relocating production, waiving the right to terminate a contract or agreeing minimum purchase quantities). If parts price increases are necessary, they are to apply for a limited time only. The period during which parts prices are to be increased is not supposed to continue after the other contractually agreed restructuring measures have been implemented.
- The Corona restructuring process will end upon conclusion of a framework agreement describing the stakeholders’ contributions in a general way. The individual services relating to each contractual partner are agreed exclusively on a bilateral basis between the supplier and the relevant stakeholder.
- Each stakeholder is free to choose not to participate in the restructuring negotiations or to reject the result of the negotiations (“principle of free choice”). The parties to the framework agreement may not agree to disadvantage stakeholders that are not a party to the agreement.
- The implementation of the framework agreement will be monitored by a neutral third party (e.g. auditor or lawyer). If no neutral third party is involved, the company that is to be restructured can report on the implementation of the framework agreement.

The companies participating in the Corona restructuring process and their legal advisers are required to observe compliance with competition law provisions.

For the purpose of clarity, the Bundeskartellamt would like to point out that the individual restructuring plans and framework agreements drawn up on the basis of the restructuring negotiations are not covered by this letter.

The Bundeskartellamt's approach and its evaluation under competition law are not binding in other jurisdictions.

The Bundeskartellamt assumes that the VDA will inform the authority of the preparation of the best practice guide and the implementation of the Corona restructuring process and expressly reserves the right to an in-depth examination in the event of complaints or other new findings.

The Bundeskartellamt also assumes that the VDA will notify the authority if state measures are taken that affect the Corona restructuring process.

The Bundeskartellamt informed the European Commission about and discussed the content of this letter from the chair.

Yours sincerely,

Temme