

“THE INDUSTRY ASSOCIATION” ANTITRUST COMPLIANCE MODEL GUIDELINES

1 INTRODUCTION

The antitrust laws are intended to preserve competition by, among other things, prohibiting agreements between undertakings, decisions by trade associations and concerted practices restricting competition. As groups of competitors working together, trade associations are subject to particular antitrust scrutiny.

Unlawful behaviour can be found even without a written agreement or a "handshake". Tacit understandings, including responding to pressure, exerting pressure, or doing "what is expected", can be sufficient. **YOU CAN VIOLATE THE ANTITRUST LAWS BY AN INFORMAL VERBAL OR NON-VERBAL UNDERSTANDING; EVEN BY MERE COMMUNICATION OF INFORMATION. NO WRITTEN CONDUCT OR EXPRESS AGREEMENT IS REQUIRED.**

If you are confronted with an antitrust issue, you should consult with antitrust counsel. Please note that antitrust laws are similar, but not identical throughout the world. For any concrete question, you should always obtain the advice of local antitrust counsel. The following is therefore only general guidance.

2 GENERAL PRINCIPLES

The antitrust laws apply to trade associations just as they apply to any individual company or group of competitors. The following are most serious infringements of competition law:

- Price Fixing;
- Bid-Rigging;
- Group Boycotts; and
- Allocation of Customers or Markets.

You should also be aware that participating in certain types of association activities that, if undertaken with an improper motive or executed improperly, may give rise to antitrust liability:

- Discussions in meetings;
- Information Exchange / Data Collection;
- Working groups and projects

- Standard-Setting and Self-Regulation; and
- Membership issues.

3 CONDUCT OF MEETINGS

- Meetings shall be governed by an agenda prepared and circulated well in advance of each meeting.
- Each meeting shall be recorded by minutes and these shall be circulated to all members promptly after each meeting.
- Agendas and minutes should be reviewed by legal counsel prior to circulation.
- All participants attending the meetings are required to be fully familiar with these guidelines. Whenever new participants are present the chairman or a legal counsel will remind them of the contents of these guidelines.
- The ***Antitrust Caution Statement*** shall be the first point of each agenda. At the start of each meeting the chairman of the meeting shall read aloud *the Antitrust Caution Statement* and the minutes shall so record. A copy is attached as Annex 1 to these guidelines.
- If a meeting participant is uncertain whether a discussion or conduct raises competition law issues, the discussion on the subject should be stopped or suspended until clearance can be obtained from legal counsel.

4 PROHIBITED SUBJECTS

At meetings, the association members should never discuss or exchange information on commercially sensitive subjects. These **prohibited subjects** include, but are not limited to, the following:

- Price information: selling or purchasing prices relating not only to actual prices charged but also the elements of pricing and pricing policy including, for example, costs, discounts, promotional terms and trade terms;
- Price changes or past or future trading conditions;
- Capacity, costs or production output;
- Plans relating to past or future business, investment, product, marketing and advertising strategies;

- Purchasing or bidding plans or other commercial strategies;
- Sales volumes or values, or sales quotas;
- Market shares;
- Proprietary technical development;
- Individual dealings with customers or suppliers or buying associations including the status or content of yearly negotiations; and
- Joint market conduct regarding specific companies, including customers, suppliers and other industry participants, including boycotts and blacklists.

Conduct at social events in conjunction with trade association meetings or otherwise should follow the same standards as regular meetings.

5 COLLATION AND DISSEMINATION OF INFORMATION

- Before agreeing to share information, it must be ensured that the information exchange has a legitimate aim and is necessary to fulfil a legitimate purpose of the association.
- Members must under no circumstances receive confidential or commercially sensitive information from or about other members.
- In some cases, information to be shared could be aggregated and made anonymous by an independent third party so that individual company information is not identifiable. However, any such exchange carries risks and should be subject to prior review by legal counsel

6 WORKING GROUPS / PILOT SCHEMES /PROJECTS

Working groups, pilot schemes, projects and all other focus groups set up within the association framework remain fully subject to antitrust law. Therefore, such groups are required to follow these guidelines in the conduct of their meetings and related activities.

All working groups, pilots and projects are to be reviewed by legal counsel before they are started. No results may be circulated to members until reviewed and approved by legal counsel.

7 STANDARD-SETTING AND SELF-REGULATION ("CODES OF ETHICS")

Trade associations sometimes adopt industry "codes of ethics" or engage in standard-setting programmes. Such initiatives must not restrict competition. Any association codes or standards must be based on sound, objective justifications. They need to be set only through an open and transparent process, allowing participation by all. Any association standards should be set on a non-discriminatory basis and should be objectively necessary to achieve the aims of the association.

Standard-setting, codes of ethics and self-regulation must be subject to prior legal review.

Membership

- Participation in the association is voluntary. No one will be pressured to participate in it or penalised for not doing so;
- Participants in the association shall remain free at all times to join other initiatives;
- The association shall be open to all companies within the industry on a non-discriminatory basis;
- Participants in the association shall not be limited in any respect in the ways they decide to conduct their business. All actions of members remain voluntary. Each individual member remains free to make independent, competitive business decisions.

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Annex 1

ANTITRUST CAUTION STATEMENT

Introduction

Set out below is a proposed caution to be read at the start of each meeting. The aim of this is to serve as a reminder to all participants of the antitrust law requirements. The statement should also be recorded in the minutes as indicated below.

Antitrust caution

"The association shall not enter into any discussion, activity or conduct that may infringe, on its part or on the part of its members, any applicable competition law. By way of example, members shall not discuss, communicate or exchange, any commercially sensitive information, including information relating to prices, marketing and advertising strategy, costs and revenues, trading terms and conditions with third parties, including purchasing strategy, terms of supply, trade programs, or distribution strategy"

Message to New Members or people taking part for the first time:

"Please take note that taking part in the association is subject to having read and understood the antitrust guidelines of the association. If you have not yet done so, please do so now."

Procedure

1. Every agenda shall contain, as its first item, a statement in the terms set out above. The chairman of the meeting shall read such statement at the start of each meeting, and the minutes shall so record.
2. Full minutes of all meetings shall be taken.
3. Minutes shall be circulated to all members within [one month] after the meeting. Any comment or request for amendment shall be notified to the chairman within [one month] following receipt of the minutes.