



ANTI TRUST GUIDELINES

Introduction

This document summarises the EMPHA Anti Trust Guidelines following the European Antitrust Regulation.

In the context of associations, Article 81 of the EC Treaty (the cartel prohibition) is the most important provision. Article 81 prohibits all agreements between undertakings (companies), decisions by associations of undertakings (such as trade associations) and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market. According to the Treaty such anti-competitive agreements are null and void. EC competition law also includes an important provision regarding the abuse of a dominant position (Article 82 EC Treaty).

The purpose of the present guidelines is to assure that all those concerned in the EMPHA are sufficiently familiar with the essential characteristics of the legal framework so that a certain “competition law reflex” is created indicating when certain decisions or actions could possibly be problematic and/or when further legal analysis is necessary to evaluate the risks.

In general, it should be mentioned that dealing with competition law in the current state of law, is a matter of weighing risks and determining priorities. When operating within an association, there is always the risk that a competition authority (whether it is the European Commission or a national authority) will start an investigation into the practices on the market on which the association is active. It should therefore be the goal of the (members of) the association to keep within the boundaries of competition law. They should not, however, lose sight of the value and advantages of working together within an association.

Why be aware of competition law in an association?

There are two ways in which the activities of trade associations and meetings between its members can be subject to the application of the cartel prohibition.

In the case of:

I: the association itself

Implicit or explicit decisions which have as their goal or effect that competition in the market is restricted, the association itself can be sanctioned. The same applies to agreements between the association and its members.

Both the association and its members (or some of its members) can be subject of a complaint by a third party in court and/or an investigation by the Commission or a national competition authority. Whether or not the members will also individually be accused apart from the association as such, depends on the evidence that can be assembled. If the active role in the organising or implementing of anti-competitive behaviour of particular companies can be demonstrated, they might also risk a sanction.

II: the association as a meeting place

Activities of associations such as

general assemblies and meetings can be a forum for concentration between the members. Such concentration does not necessarily have to be related to the subjects that are formally on the agenda of the association. As members of the association will usually also be competitors, information concerning the meetings of the association might be considered as an indication or proof that the intention to restrict competition or restrictive practices exists amongst certain members.

Reminder

The EMPHA is committed to compliance with the antitrust rules that aim to achieve free competition and fair terms for all business transactions.

The participants in this meeting hereby acknowledge that no issue will be discussed that will violate antitrust rules and that during this congress these rules shall be respected under all circumstances.

Specifically participants acknowledge that:

they shall not exchange information anti-competitive in nature, including e.g. regarding current or future prices, price-fixing or price-stabilising agreements, discounts, cost studies or other competitive business

terms enter into anti-competitive agreements with other participants during meetings or in the context thereof (see checklist of do's and don'ts).

The most important do's and don'ts are summarised below:

**Horizontal agreements
DO NOT**

- agree in writing or in any other way on prices or pricing policy
- agree to boycott a certain customer or supplier
- exchange specific and recent information with competitors on individual purchasing prices, cost price structure, sales quantities or other trading conditions
- agree with competitors to divide territories or customers
- restrict the liberty of competitors to promote and sell products at independently determined prices and conditions
- restrict the possibilities of competitors to use a common quality label
- enter into standardisation agreements with competitors that might make entry for new commerce in the market more difficult

**Vertical agreements
DO NOT**

- fix prices other than maximum or recommended prices
- restrict import or export or the type of customers
- in case of exclusive distribution: do not restrict passive sales
- in case of selective distribution: do not restrict sales inside the system
- restrict use of spare parts that are obtained directly from the manufacturer

**When in a dominant position
DO NOT**

- discriminate between different customers
- abruptly refuse to supply
- abruptly refuse to provide services
- discriminate prices or rebates between similar customers

In all cases DO:

- avoid infringements at all times;
- be aware of suspicious circumstances in business relations;
- use careful language in business communications;
- check with legal counsel immediately when confronted with any doubt or in case of an investigation;
- be very careful in circulating documents and never circulate documents under legal privilege.