








Guidelines for competition law compliance within PCEP

As a trade association, PCEP (“the Association”) provides valuable services by enabling its members to engage in public relations activities, to foster dialogue and collaboration between companies, and to collect, aggregate and distribute information, market research and industry statistics. In view of those services and the risk of both intentional and inadvertent competition law infringements that they pose, PCEP members should take particular care to ban any form of anti-competitive behavior from their participation and activities in the Association. In this regard, the following instructions are relevant guidelines to assist PCEP members in complying with EU and national competition laws (“the competition laws”).



1. Competition risks in trade associations

PCEP members should always take into account that trade associations may be exposed to certain anti-trust and competition risks including – but not limited to – the following considerations:




-  One single verbal or non-verbal exchange of commercially sensitive information (e.g. related to price levels) can violate the competitions laws;
-  Conversations between members at both formal and informal (including social) meetings may turn to commercially sensitive information;
-  A court or regulator may use competitor meetings in the context of a trade association, together with other factors suggesting collusion, as evidence that there is a cartel in the industry;
-  Rules of a trade association on e.g. standard setting may be deemed to restrict competition¹; and
-  EU competition law provides that fines imposed on a trade association may be collected from any of its members unless that member can prove that it was not involved in the trade association’s infringement (effectively reversing the burden of proof).

2. Information exchanges to avoid

PCEP members should not have formal or informal discussions, in particular with other members who are or may become competitors, relating – but not limited to – the following prohibited subjects constituting commercially sensitive information:








-  Current or future individual company or industry pricing or matters affecting price such as competitive strengths and weaknesses, price changes, profit margins, discounts, rebates, surcharges, credit lines offered or other terms of sale;
-  Individual company cost information including any cost components such as production or distribution costs, cost accounting formulas and cost computing methods;

¹ See [Guidelines](#) on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ 2011 C 11/1).

-  Individual company sales or production information including sales volumes, sales revenues, market share, production volumes, production capacity, capacity utilisation, stock levels and supplies, bid amounts and terms, and any limits on sales; Current and future company plans and business strategy relating – but not limited – to bidding, investment, marketing and advertising, production, purchasing, sales or technology;
-  Any matters relating to individual customers, distributors or suppliers such as, for example, boycotting or blacklisting; and
-  Salaries and wages, or limitations on hiring a competitor's employees.

3. Information exchanges to promote



PCEP members may have formal or informal discussions, and should encourage the exchange of information, on the following subjects:

-  Public policy and regulatory matters of general interest;
-  Non-confidential current or historical information that is in the public domain;
-  Non-confidential technical issues relevant to the industry in general such as standards or health and safety matters;
-  General, non-proprietary technology and related issues such as the characteristics and suitability of particular equipment (but not a particular company's proposals regarding the adoption of specific equipment or technology);
-  General promotional opportunities such as possible new markets for, or new uses of, a product (but not a particular company's promotional plans);
-  Non-strategic educational, technical or scientific data that results in consumer benefits; and
-  Industry public relations or lobbying initiatives.





In addition, certain jurisdictions may specify other types of information that can be exchanged.

4. Appropriate conduct at Association meetings

As a general matter, it should be highlighted that just being present when illegal discussions are taking place may be sufficient to involve a company and/or its representative(s) in an investigation by regulators, even if that company and/or its representative(s) did not participate in those discussions. PCEP members should therefore, when attending Association meetings, always:





-  be fully familiar with the contents of these guidelines for competition law compliance within the Association;
-  keep the Secretary General / legal counsel of the Association informed of any membership(s) of other trade

associations and the conditions of such membership(s);

-  review the agenda and purpose of meeting in advance for possible problems under the competition laws and seek advice from the legal department of the Association if necessary;
-  insist on legal counsel being present at meetings where there is a possibility that commercially sensitive information may be discussed;
-  be vigilant that discussions at meetings stick to the agenda items and object if they do not; and
-  ensure that they make or promptly receive detailed, accurate minutes of meetings and immediately voice any objections as it will otherwise be difficult to later persuade a regulator that the minutes are inaccurate.

5. How to address problems

If present at a formal or informal meeting of the Association or with representatives of competitors and the conversation turns to prohibited subjects, PCEP members should:

-  immediately and expressly state that they cannot be party to discussions on the subject at issue due to competition law concerns and ask that the subject be changed at once;
-  if their objection and request is ignored, immediately leave the meeting in a manner that makes the reason for their departure apparent to all present;
-  ensure that their departure be recorded in any formal minutes or, if there are no such minutes, record that departure in their own notes of the meeting; and
-  promptly report the matter to the legal department of the Association and ensure that a note is made thereof for the file.

In addition, PCEP members should, if they become aware of an infringement or are uncertain whether particular conduct within the Association is allowed under the competition laws, immediately inform both their company counsel and the relevant contact person(s) within the Association (legal counsel, secretary general) and ensure that a record is kept of their disagreement.

Last, PCEP members should always keep in mind that a failure to take the above actions promptly will make it difficult to later convince a court or regulator of their opposition to an infringement.