



EC Competition Law Compliance Programme

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Overview

Trade associations perform useful, legitimate and pro-competitive functions. However, since they bring together companies that are actual or potential competitors, EC competition law concerns may arise. Trade associations are often scrutinised by competition authorities due to suspicions that they are acting as a conduit for anti-competitive behaviour between members.

Any breach of EC competition law rules may carry serious consequences. A trade association may be fined up to 10% of the sum of the total turnover of each member active on the market affected by the infringement of the association, when this infringement relates to the activities of its members. It may also have to pay damages and may suffer the financial costs of dealing with an investigation, as well as the potential loss of reputation. Moreover, in some Member States, senior executives may face criminal charges and imprisonment.

Neither negligence nor bad faith are required for EC competition law to be infringed. Ignorance of the law is not an excuse. It is therefore crucial to be aware of the main areas of EC competition law risk and to be able to identify situations where such a risk may arise.

This EC Competition Law Compliance Programme (hereafter “Compliance Programme”) addresses the main issues under EC competition law, and provides general guidance on minimising infringement risk and avoiding violations.

To the extent they impose obligations over and above those under EC competition law, the national competition laws of individual Member States are not covered by this Compliance Programme.

This Compliance Programme does not constitute and is not a substitute for legal advice on the particular facts of any specific situation.

I. EC competition law

One of the fundamental principles of EC competition law is that companies should individually determine their behaviour on the market. Decisions concerning prices, capacity, production volumes, profit margins, investment plans, etc. must be taken independently and not in co-operation with other operators. When carrying out its activities, ECR Europe must exercise a great deal of care to avoid such collusive behaviour.

Any action on the part of a trade association that reflects an intention to coordinate its members' or participants' conduct and prevents, restricts or distorts competition is prohibited. This applies not only to the decisions of a trade association, but also to its rules, regulations, recommendations, codes of conduct and other non-binding acts that may be implemented by members and/or participants. All these aspects of a trade association and its conduct must comply with EC competition law rules.

EC competition law concerns may even arise when there is no actual effect on competition: a potential effect is sufficient for a competition authority to intervene, even if that potential effect is not intended.

Activities outside the territory of the EU may also violate EC competition law. EC competition law applies whenever the agreement or practice (conduct) has an appreciable effect on trade between the EU Member States. Note that absent such an effect on inter-state trade, national competition laws may apply. Although they are outside the scope of this Compliance Programme it is important to remember their relevance.

A. Membership and participation

Membership:

Trade association membership criteria may give rise to concerns under EC competition law if the effect of excluding an undertaking from membership may be to put it at a competitive disadvantage. This may occur where association membership conveys advantages such as increased access to or knowledge about markets.

For the above reasons, ECR Europe should make sure that its rules for admission and expulsion of members are transparent, proportionate, based on objective criteria, enforced in a non-discriminatory way and subject to an appeal mechanism.

Membership criteria or membership fees, if any, are sometimes based on individual company data such as production capacity, sales volume or turnover. Whenever this is the case, the issues set out below with respect to information exchange should also be considered.

Participation:

In addition to ECR Europe members, a number of other individuals and entities participate in ECR Europe's projects and activities. ECR Europe is open to any stakeholder active at any stage of the supply chain for groceries and other consumer goods, that can contribute positively to its projects.

ECR Europe also relies on the contribution of consultants.

ECR Europe works in close co-operation with the ECR national initiatives, which are present in most European countries. ECR national initiatives are trade associations constituted according to the laws of their respective countries.

NOTE: To the extent the terms "participating companies", "participating persons" or "participants" are not clearly used to distinguish those companies from members or consultants they shall be interpreted as covering members, consultants and any other attendant or recipient, as the case may be.

B. Accountability

This Compliance Programme is intended for ECR Europe members, representatives, participating companies/persons and consultants insofar as they are engaged in ECR Europe activities.

Members and participating companies/persons are individually responsible for their compliance with the law. They should obtain their own legal advice in respect of their activities before joining any project or event organised by ECR Europe.

Consultants that carry out specific assignments within ECR Europe projects are also individually responsible for their compliance with EC competition law rules. ECR Europe will not accept advice from consultants, experts or other third parties which violates the EC competition law rules or puts ECR Europe at risk.

Each national ECR initiative must have its own competition law compliance programme to provide guidance and create awareness in relation to relevant national competition laws and EC competition law.

If any ECR Europe member, representative, other participant or consultant becomes aware of a situation that might have competition law implications for ECR Europe, it shall immediately notify ECR Europe, and in particular the relevant project chairman and/or Alain Galaski at the head office.

C. Legal advice and privilege

The protection of certain lawyer-client communications is an essential right of defence and serves the important function of allowing everyone to consult a lawyer and obtain independent legal advice without constraint.

As a general rule the lawyer-client relationship is confidential and privileged and disclosure of communications between lawyer and client that relate to obtaining or giving legal advice cannot be compelled.

Only communications between ECR Europe and external legal counsel entitled to practice his/her profession in an EU Member State are protected/privileged in this way.

According to the relevant case law, protected documents are those made ‘for the purposes and interests of the client’s rights of defence’, i.e., communications and documents relating to an ongoing proceeding, or those produced prior to the initiation of proceedings which ‘have a relationship to the subject-matter of that procedure’. Documents summarising the advice from such outside counsel, as well as documents prepared exclusively for the purpose of seeking legal advice and communications from ECR Europe to outside legal counsel are also privileged.

Communications between a company and its in-house lawyer are **NOT** privileged even if the in-house lawyer is a member of a professional Bar.

For the reasons set out above, when dealing with sensitive issues, ECR Europe should seek advice from outside legal counsel.

All documents that relate to the obtaining or giving legal advice from external EU counsel - whether received from or sent to outside legal counsel - should be filed separately and clearly identified (each page should be marked “Privileged & Confidential”, “Attorney Work Product” or “Client-Attorney Communication”). It is also advisable when requesting legal advice not to discuss the issue at stake on the first page of any document sent to a lawyer .

D. Substantive issues

This section highlights the principal EC competition law concerns faced by a trade association. There are certain types of activity that will always be considered cartel-like behaviour. These are explained in the “clear prohibitions” section below. Other less clear-cut restrictions which may arise within the content of legitimate activities or discussions are dealt with in the “sensitive activities” section.

Note that if it can be proved that a trade association played an independent role in an infringing practice or itself entered into an anti-competitive agreement fines may be imposed on the trade association itself, independently of and separately from any fines on its members.

1. Clear prohibitions

a) Price fixing

Price fixing is one of the most serious violations of EC competition law. The prohibition covers not only straightforward agreements on prices to be charged, but also the coordination of other pricing elements, including discounts, bonuses, surcharges, accounting procedures or profit margins. Such activities **MUST NEVER TAKE PLACE**.

Bid rigging agreements that involve the exchange of prices before or during the tendering procedure or the submission of an artificially high bid (so a competitor can win a contract) are also **FORBIDDEN**.

Resale price maintenance is also **ILLEGAL**. A supplier must not fix the prices at which its independent distributors resell its products. However, it may impose a maximum resale price and it may recommend a resale price - as long as it is a pure recommendation and no adverse consequences are suffered by distributors that choose not to follow the recommendation.

Finally, pricing policies designed to isolate national markets are **PROHIBITED** under well established European case law .

b) Market sharing

Market sharing is a serious violation of EC competition law. Any agreement or practice between market operators that allocates customers or territories among them or divides out business by product type is **PROHIBITED**. Likewise, bid rigging agreements under which tender opportunities are allocated to a particular competitor also constitute an infringement.

Furthermore, any type of restriction on parallel trade within the European Union, is **FORBIDDEN**. A producer may **NOT** impose restrictions on the territories into which, or the customers to whom, distributors may sell.

c) Output restrictions

Any arrangement that restricts the output of and/or imposes production quotas on market participants constitutes a **CARTEL**. By reducing output, the parties may maintain prices at a higher level.

2. Sensitive activities

a) Demand-side projects

In demand-side projects, such as Consumer Value Management, Category Management, Efficient Product Introduction, JAG, etc. even though effective cooperation and a good common understanding between manufacturers and retailers is essential to the projects' success, parties should not enter into agreements that restrict the retailers' freedom:

- to set retail prices;
- to determine what products are presented on the shelf;
- to agree stocking/listing terms and conditions;
- to decide how to target specific customers.

Manufacturers may offer non-binding recommendations in relation to these issues insofar as they affect their own products. The retailer should, however, remain free to disregard such recommendations and no negative repercussions or sanctions should follow.

In case of category management, the category adviser may not enter into any agreement or understanding with the retailer to exclude competing products, apply less favourable treatment to them, or boycott a third party. Nor may the category adviser put pressure on the retailer to do so. The category adviser may only give recommendations. The retailer should make its decisions independently.

Whenever working on projects of this type, ECR Europe members, representatives, participants and consultants should follow ECR Europe demand-side guidelines (Annex 1) as well as any specific project guidelines (when available).

b) Technical standards and certification schemes

Technical standards and certification schemes generally contribute to ensuring that products and services are of high quality and safe, and therefore benefit consumers.

They may nonetheless give rise to EC competition law concerns if they potentially foreclose the market to competing suppliers. The risk of an EC competition law violation will be reduced if only a small share of the market concerned is affected by certification/standardisation and/or where the certification process is open, transparent, based on objective qualitative criteria, and access is available on fair, reasonable and non-discriminatory terms, with refusal of access being subject to an appeal mechanism.

c) Recommendations by a trade association

A recommendation by a trade association, even if not binding on its members, may constitute an agreement caught by EC competition law rules.

In particular this will be the case for recommendations that may influence the commercial behaviour of members with respect to factors that affect competition, such as prices, discounts, profit margins, etc.

If a recommendation is followed by or has an influence on the behaviour of the trade association's members, competition authorities may find that an agreement or concerted practice exists. The recommendation may also constitute a decision of an association of undertakings. As a result, both the trade association and its individual members may be liable if the recommendation gives rise to an infringement of the EC competition law rules.

This does not prevent ECR Europe from providing a forum in which members may develop common understandings, standards and models, as long as their implementation remains voluntary, is subject to a unilateral decision by each member and does not impact on sensitive areas from a competition law perspective. In case of doubt, legal advice should be sought.

d) Codes of conduct and best practice issued by trade associations

A collective code of conduct that seeks to introduce best practice into an industry will normally benefit consumers. It is unlikely to raise significant EC competition law concerns provided that the structure of the market is competitive and the code does not deal with prices or any other parameters that significantly affect competition (e.g., payment terms, warranty terms, etc.).

Nevertheless, in many cases, obtaining legal advice in light of the specific facts will be appropriate.

e) Information exchange in trade associations

Trade associations should not be used as a forum for the exchange of confidential or otherwise competitively sensitive business information between competitors.

Trade associations frequently set up arrangements that allow the regulated exchange of business information about the marketplace. Although such exchanges can contribute to improvements in efficiency, they can also produce anti-competitive effects or help to facilitate cartel-like practices.

The European Commission has condemned information exchanges in a number of cases where it concluded that the exchanges gave rise to a risk of coordination in the commercial conduct of the undertakings concerned.

Certain information which should **NEVER** be exchanged includes:

- Individualised data about production volumes, sales or capacity. It is particularly important that such data is not exchanged in relation to specific competitors (e.g., the top three producers for a particular sales segment in the last quarter).
- Pricing and price-related data. This includes planned or implemented price increases (whether or not a precise amount of the increase is included), the dates of planned price increases or announcements, mark-ups, rebates, allowances, credit terms, promotions, or any other data that would have a bearing on price (e.g., costs, production volumes, capacity, inventories, sales). The same concerns also apply to pricing data supplied as a range (e.g., between 150 and 250 Euros).
- Identities of individual customers or sales territories.
- Inventory/order backlog. As a general rule, there should be no disclosure (even in aggregated form) of the current state of order inflow and backlog, the utilisation rate of production capacity, or the production capacity of individual machines.
- Forecasts of market evolution or business strategy. This includes forecasts for product sales (by product or revenue), pricing, production, capacity utilisation, inventory levels, order-backlog or even estimates of employment evolution.
- Information about contract tenders or the corporate procedures for responding to tenders.
- Customer credit risk. Any exchange of customer lists can give rise to EC competition law concerns.

ECR Europe may compile and circulate statistical data and/or engage in information exchange provided the following conditions are respected and advice from outside legal counsel is sought:

- Information should be gathered, aggregated and circulated by a neutral third party (e.g. a market research firm).
- Only aggregated data is circulated to participants. Individual company data must not be circulated and it must not be possible to derive individual company data from the aggregated data circulated (i.e. to disaggregate it). For this reason, all data circulated should aggregate information from at least 3 separate undertakings in each category (in certain circumstances, even greater levels of aggregation may be necessary if there is otherwise a risk that individual data may be extracted).
- Only historical data should be circulated to participants. Typically, data will become historical once it is somewhere between 6 months and 1 year old – however this depends crucially on circumstances of the particular market and the rate at which data ceases to be competitively sensitive.

- The results of the data exchange **CANNOT** be discussed among ECR Europe members, no forecasting can be done and no recommendations can be made on the basis of the data exchanged.

Circulation of statistical data/information exchange that does not meet all these conditions does not necessarily raise EC competition law concerns. However, such arrangements require an individual analysis based, *inter alia*, on the market structure and the type of information exchanged.

When determining whether the information exchanged infringes EC competition law rules or not, there is no rule of thumb, **every case and every exchange requires individual analysis**. Before establishing any such statistical scheme, legal advice should be sought from outside legal counsel. ECR Europe should **NEVER** allow its members to disclose information that could be considered confidential or commercially sensitive.

Competitors **MUST NOT** jointly develop a methodology with the intention of obtaining or sharing sensitive business information to which they would not otherwise have access.

3. DOs & DON'Ts

a) ECR Europe DOs and DON'Ts

DOs	DON'Ts
DO identify clearly the specific legitimate purpose of each ECR Europe project.	DON'T give a false impression that ECR Europe is a party to any anticompetitive agreement.
	DON'T give the impression that one or more ECR Europe participants are being singled out for special treatment.
DO ensure that EC competition law rules are respected.	DON'T serve as a conduit or a venue for illegal conduct on the part of ECR Europe participants.
DO object to any discussion, activity or conduct that may infringe EC competition law rules.	DON'T allow ECR Europe participants to engage in discussions or activities that may lead to violations of EC competition law rules.
DO stop any meeting when the participants insist on discussing matters that may lead to violations of EC competition law rules.	

DOs	DON'Ts
	DON'T exchange confidential or commercially sensitive information.
DO submit meeting agendas for legal review before circulating them.	DON'T discuss topics that are not on the agenda agreed in advance.
DO submit minutes and summaries of meetings for legal review before circulating them.	DON'T use ambiguous or misleading expressions when drafting minutes or summaries of meetings.
DO read the competition law caution at the beginning of every meeting.	

b) ECR Europe participants DO's and DON'Ts

DOs	DON'Ts
Do have an independent legal counsel.	
Do remember you are responsible for your own compliance with competition law rules.	
DO inform ECR Europe of any activities at or relating to ECR Europe meetings that might violate EC competition law rules.	DON'T use ECR Europe as a venue to engage in conduct that could be construed as intended to exclude competitors from the market or create a barrier to market entry.
	DON'T enter in agreements that restrict any party in its freedom to set prices, choose trading partners, decide product ranges or otherwise manage sales to consumers.
DO gather competitive information from legitimate sources.	<p>DON'T, in either fact or appearance, discuss or exchange comments or other information regarding:</p> <p>(a) Individual company prices, price changes, price differentials, mark-ups, rebates, allowances, credit terms, or related financial issues, data relevant to price (e.g., costs, production volumes, capacity, inventories, sales), market shares etc.</p> <p>(b) Industry pricing policies, price levels,</p>

DOs	DON'Ts
	<p>price changes, differentials, and the like.</p> <p>(c) Changes in industry production volumes, capacity or inventories.</p> <p>(d) Bids on contracts for particular products and procedures for responding to tender invitations.</p> <p>(e) Individual company plans concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.</p> <p>(f) Matters relating to individual suppliers or customers that might have the effect either of excluding them from any market or of influencing the business conduct of firms towards such suppliers or customers.</p>
	<p>DON'T, even in jest, discuss or exchange information regarding the above matters during social gatherings incidental to ECR Europe meetings.</p>
	<p>DON'T exchange confidential or commercially sensitive information. You are in the best position to judge what is, and what is not, commercially sensitive or confidential and so responsibility lies with you in the first place.</p>
	<p>DON'T use a common category adviser to exchange sensitive information or to receive coordinated pricing or listing recommendations.</p>
<p>DO object to any discussions or meeting activities which appear to violate EC competition law rules.</p>	<p>DON'T remain silent when issues that raise EC competition law concerns are discussed.</p>
<p>DO leave any meeting at which you feel matters discussed raise EC competition law concerns and request that your leaving be recorded in the minutes.</p>	

II. Procedure

A. Membership and participation

Membership requirements shall comply with the following rules:

- Membership is voluntary. Companies should not be compelled to join in order to be able to enter the market or trade with ECR Europe members.
- Membership of ECR Europe shall be open to any interested party in the industry.
- There shall be a body authorised to hear and determine appeals from any decision to refuse membership or admission.
- Rules of admission shall be transparent, proportionate and based on objective criteria.

Participation in ECR Europe projects shall comply with the following rules:

- Participation in ECR Europe's projects is open to any company that fulfils the objective criteria in the call for participation and is able to make a valid contribution to the specific project.
- By the Spring 2009 Executive Board meeting at the latest, national ECR initiatives need to have their own competition law compliance programmes in place that should cover both national competition law rules and EC competition law.

B. Communication with members and participants

- Be precise and do not leave room for misinterpretation in any communication with members and/or participants.
- Agendas should be circulated several days prior to the relevant meeting, but only after review and clearance by outside legal counsel.

C. Procedure for meetings

Trade association meetings are opportunities for competitors to meet on a face-to-face basis. It is important, therefore, that all ECR Europe meetings are managed in such a way as to ensure that the risks of inappropriate discussion taking place are minimised.

As a practical matter, therefore, ECR Europe will undertake the following:

- ECR Europe will send this Compliance Programme to the Executive Board members, to the Operating Board members and all the project chairmen.

- ECR Europe will post this Compliance Programme on its website (www.ecrnet.com) so that members and participants to have access to it.
- ECR Europe will circulate the EC Competition Law Guidelines for ECR Europe meetings (Annex 2) together with the agenda prior to the respective meeting.
- At the beginning of each project, ECR Europe will make sure that all participants are aware of ECR Europe's EC competition law compliance policy, its implementation and the fact that all ECR Europe meetings will comply with it.
- Written agendas for each ECR Europe meeting must be drafted and circulated prior to the meeting and after having been approved and cleared by outside legal counsel.
- Every agenda will contain, as its first item, a competition law caution in the terms set in Annex 3 (Note for meeting chairmen). The chairman of the meeting will read this competition law caution at the beginning of each meeting, and this will be recorded in the minutes of the meeting.
- Comprehensive minutes of each meeting will be drafted and will be submitted to legal review prior to circulation to all meeting participants.
- Any comment or request for amendment will be notified to the meeting chairman and to ECR Europe as soon as possible following receipt of the minutes.
- A list of participants in each meeting will be circulated during the meeting and signed by all participants. The list will be annexed to the meeting minutes.
- ECR Europe will keep agendas, minutes and attendance lists of every meeting classified by group and chronologically.
- ECR Europe will give meeting participants access to agendas and minutes of the meetings they have attended on request.
- If during the course of a meeting anyone suspects that an anti-competitive discussion is taking place and objects to it, this will be noted in the minutes and the discussion will be terminated immediately. The chairman of the board, committee, project, etc. should inform outside legal counsel about the discussion and request advice as soon as possible after the meeting.

D. Informal contacts/gatherings/events

Social gatherings, sometimes at the fringes of regular trade association meetings, must be conducted with caution. Given the nature of these unmanaged occasions, inappropriate discussions about commercially sensitive information may be more likely to occur than at formal meetings.

Even if the discussions are not recorded in the meeting minutes, they may subsequently be referred to in an email or a participant may decide to report them to the relevant authorities as part of an application for amnesty or fine reduction. The same care that is taken at trade association meetings with regard to inappropriate discussions should, therefore, be applied in social gatherings.

E. Information exchange

As set out above, ECR Europe may compile and circulate statistical data and/or an information exchange provided certain guidelines are respected and advice from outside legal counsel is sought. In the that event ECR Europe is considering organising an information exchange, ECR Europe will obtain specific EC competition law advice from outside legal counsel.

ANNEXES

Annex 1: ECR Europe demand side guidelines

Annex 2: EC Competition Law Guidelines for ECR Europe meetings

Annex 3: Note for meeting chairmen. EC Competition Law Compliance



ECR EUROPE: DEMAND SIDE PROJECTS EC COMPETITION LAW GUIDELINES

These guidelines offer only general guidance and are not a substitute for legal advice on specific situations. Companies are individually responsible for their compliance with the law and are therefore urged to obtain legal advice of their own before committing themselves to any demand side or other ECR project. For the avoidance of doubt, no liability can be accepted in connection with the use of these guidelines.

In demand side projects such as Consumer Value Management, Category Management, Efficient Product Introduction, JAG, etc, close co-operation and confidence between retailer and manufacturer is key to the project's success. However, it is also essential that all ECR projects are planned and implemented without violating EC competition law rules. The EC competition law rules apply to all businesses in all circumstances, inside or outside the ECR context. Below, we wish to explain the most important application of these rules to ECR demand side projects. The EC competition law rules are however also applicable to supply side projects.

The following basic rules should always be applied. Failure to do so would mean running a serious risk of violating the law. In order to avoid any misunderstandings in their day-to-day practice, trading partners could adopt point 1 of these rules as part of their agreement to co-operate in ECR demand side projects.

1. The respective role of manufacturer and retailer

According to the established practice of the European Commission, any agreements or understandings between a supplier and a retailer restricting the retailer's freedom to determine his resale prices are a violation of Article 81 EC Treaty (resale price maintenance is prohibited). A supplier may only give non-binding "recommendations" on resale prices - without any contractual commitment on the part of the retailer to implement such recommendations (and without any pressure or economic incentive by the supplier on the retailer to implement the recommended prices).

Similarly, a retailer must not enter into any agreement or understanding with a manufacturer on what products (notably of competitors) should be present on the shelf or what the terms and conditions for stocking any products should be. The manufacturer can of course agree with the retailer which of that manufacturer's own products are to be listed.

Therefore, it is essential that the manufacturer only gives non-binding recommendations to the retailer on how to target specific consumer groups, how to improve the category, what products should be included (removed, retained or added) in the category, what recommended retail price ranges to apply (for example "premium", "discount" range), or how to make a newly launched product more successful on the shelf.

The retailer remains free to follow or not to follow the manufacturer's recommendation. The retailer should not enter into any agreement or understanding with the manufacturer concerning the setting of retail prices in the category, the selection of products for a category, or stocking/listing terms and conditions.

A category adviser may not seek to further its own interest by attempting to persuade the retailer to exclude or apply less favourable treatment to competing products.

Nor should there be any agreement to boycott any third party.

2. No agreements or exchanges of confidential information between competitors

It is a fundamental rule of EC competition law that there must be no exchange between competitors of commercially sensitive information, such as prices, sales volumes, terms of supply, etc and certainly no agreement or understanding on these issues. This is not just limited to direct exchange between competitors but also exchanges facilitated by third parties (for example manufacturers must not pass any retailer confidential information, including information on pricing, to another retailer and retailers must not pass any manufacturer confidential information to another manufacturer).

There must therefore be no discussion, agreement or understanding between competitors on their shares in the product assortment, composition of the assortment, prices or promotions. A manufacturer may, to the extent necessary for his category management mission, receive information from the retailer on a competitor, but limited to product sales volumes and current retail prices of specific brands. The category management team at the manufacturer must keep all such information confidential and must ensure that the information goes no wider than the specific category management team concerned (i.e. the information is not passed to other teams within the manufacturer, whether dealing with the retailer on other projects or not). A manufacturer must never exchange information with a competitor on his prices, promotions, or other sensitive business information.

Competitors must not jointly develop a methodology with the intention to give them access to sensitive information on their competitors, which they would not have had without the jointly developed methodology, or to collude with competitors. For example, competing retailers should not use a common category adviser to exchange sensitive information with other retailers or to receive co-ordinated pricing or listing recommendations. Also, manufacturers should not use their category adviser position with a view to co-ordinating their conduct with their competitors, for example by conferring or agreeing on category shares, promotions or prices.

Category management should always be a relationship between only one retailer and one manufacturer. The decision to appoint or become a category adviser must be taken on a one-to-one basis (one manufacturer and one retailer) and there must be no communication between competitors on this matter.



ANNEX 2

BRIEF EC COMPETITION LAW COMPLIANCE GUIDELINES FOR ECR EUROPE MEETINGS

The successful work of ECR Europe requires that ECR Europe and its participants regularly meet in person or via telephone conference in order to exchange their views on projects.

These guidelines are not comprehensive and are designed to serve as a reminder only. They apply to all ECR Europe meetings, including those of ad hoc working groups, committees, boards and projects as well as to all informal discussions before, during and after ECR Europe meetings. It is the responsibility of each participant to take its own advice on attendance at ECR Europe meetings and what can and cannot legitimately be discussed. ECR Europe and its participants should read and abide by the EC competition law rules. The Compliance Programme will be available to download from the ECR Europe's website and copies of these Brief EC Competition Law Compliance Guidelines will be distributed

before the meetings, together with the agenda.

ECR Europe is a joint trade association and industry body, with the aim of making the grocery sector as a whole more responsive to consumer demand.

Participants in ECR Europe shall not engage in any activity or communications, such as discussions of pricing, allocations of markets, unfair competition, or limitations of supply or bidding procedures, which could constitute violations of applicable laws or regulations.

It is of utmost importance that ECR Europe, its members and participants rigorously adhere to this rule. Any meeting, conference or other contact in the framework of ECR Europe must therefore be conducted in accordance with the relevant competition laws. Failure to comply with the applicable competition laws may bring with it serious consequences for you as individuals, your companies and ECR Europe. Such consequences include heavy fines and in certain cases the imposition of criminal penalties and sentences.

You are therefore requested to review and comply with the attached Dos and Don'ts.

“DOs”

DO identify clearly the specific legitimate purpose of each ECR Europe project.

DO ensure that ECR Europe EC competition law rules are respected.

DO stop any meeting when the participants insist on discussing matters that may lead to violations of EC competition law rules.

DO submit meeting agendas for legal review before circulating them.

DO submit minutes and summaries of meetings for legal review before they are circulated.

DO read the competition law caution at the beginning of every meeting.

DO inform ECR Europe of any activities at or relating to ECR Europe meetings that might violate EC competition law rules.

DO gather competitive information from legitimate sources.

DO object to any discussions or meeting activities which appear to violate EC competition law rules.

DO leave any meeting at which you feel that matters discussed continue to raise EC competition law concerns and request that your leaving be recorded in the minutes.

“DON'Ts”

DON'T give a false impression that ECR Europe is a party to any anti-competitive agreement.

DON'T give the impression that one or more ECR Europe participants are being singled out for special treatment.

DON'T serve as a conduit or a venue for illegal conduct on the part of ECR Europe participants.

DON'T allow ECR Europe participants to engage in discussions or activities that may lead to violations of EC competition law rules.

DON'T discuss topics that are not on the agenda agreed in advance.

DON'T use ambiguous or misleading expressions when drafting minutes or summaries of meetings.

DON'T use ECR Europe as a venue to engage in conduct that could be construed as intended to

exclude competitors from the market or create a barrier to market entry.

DON'T enter into agreements that restrict any party in its freedom to set prices, choose trading partners, decide product ranges or otherwise manage sales to consumers.

DON'T, in either fact or appearance, discuss or exchange comments or other information regarding:

- a) Individual company prices, price changes, price differentials, mark-ups, rebates, allowances, credit terms, or related financial issues, data relevant to price (e.g., costs, production volumes, capacity, inventories, sales), market shares etc.
- b) Industry pricing policies, price levels, price changes, differentials, and the like.
- c) Changes in industry production volumes, capacity or inventories.
- d) Bids on contracts for particular products and procedures for responding to tender invitations.
- e) Individual company plans concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.
- f) Matters relating to individual suppliers or customers that might have the effect either of excluding them from any market or of influencing the business conduct of firms towards such suppliers or customers.

DON'T, even in jest, discuss or exchange information regarding the above matters during social gatherings incidental to ECR Europe meetings.

DON'T exchange confidential or commercially sensitive information. You are in the best position to judge what is, and what is not, commercially sensitive or confidential and so responsibility lies with you in the first place

DON'T use a common category adviser to exchange sensitive information or to receive coordinated pricing or listing recommendations

DON'T remain silent when issues that raise EC competition law concerns are discussed.



**Note for meeting chairmen:
EC Competition Law Compliance**

Introduction:

Set out below is a competition law 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 EC competition law requirements. The competition law caution should also be recorded in the meeting summaries as indicated below.

Competition Law Caution:

ECR Europe will not enter into any discussion, activity or conduct that may infringe, on its part or on the part of its members and participants, any applicable competition laws. By way of example, members and participants shall not discuss, communicate or exchange any commercially sensitive information, including non-public information relating to prices, marketing and advertisement strategy, costs and revenues, trading terms and conditions and conditions with third parties, including purchasing strategy, terms of supply, trade programmes or distribution strategy. This applies not only to discussion in formal meetings but also to informal discussions before, during or after meetings.

Message to new members, participants and/or people taking part for the first time: Please note that taking part in ECR Europe's activities is subject to having read and understood ECR Europe's EC Competition Law Compliance Programme. If you have not done so, please do so now.

Procedure:

1. At the beginning of each project, ECR Europe will make sure that all participants are aware of ECR Europe's EC Competition Law Compliance policy and implementation, as well as the fact that all ECR Europe meetings will also be compliant.
2. ECR Europe will have the agenda approved by outside legal counsel prior to the circulation to the members and participants.
3. Written agendas for each ECR Europe meeting will be drafted and circulated prior to the meeting after having been approved and cleared by outside legal counsel.

4. Every agenda will contain, as its first item, a competition law caution in the terms set out above. The chairman of the meeting will read such competition law caution at the beginning of each meeting, and the summary will so record.
5. A comprehensive summary of the meeting will be taken and will be submitted to outside legal counsel for review prior to circulation to the meeting participants.
6. The meeting summary will be circulated to all members of the relevant committee or project as soon as possible after the meeting. Any comment or request for amendment shall be notified to the chairman and ECR Europe as soon as possible following receipt of the meeting summary.
7. The above is the joint responsibility of the chairman and of ECR Europe. If a meeting is held without the participation of ECR Europe's staff, it is the responsibility of the chairman of the relevant committee or project to ensure compliance with this procedure and with this Compliance Programme.