

## Guidelines for Attendance at Trade Association Meetings

Trade associations provide a valuable service for their members. For example, they may conduct market research programmes, track topical issues, engage in public relations activity and collect and distribute industry statistics.

However, you should remember that trade associations are composed of a group of competitors and therefore particular care should be taken to ensure that there can be no suggestion that the trade association engages in any form of anti-competitive behaviour and, in particular, cartel activity.

A trade association may present a number of risks:

- the topic of conversation may turn to matters which would be expected to be kept secret by competitors - for example, price levels;
- a court or regulator may use competitor meetings in the context of a trade association as evidence, together with other factors suggesting collusion, from which it may infer that there is a cartel in the industry;
- under EU competition law, a fine imposed on a trade association may be collected from any of its members unless the member can prove it was not involved in the trade association's violation (effectively reversing the burden of proof); and
- the rules of the trade association may disadvantage particular competitors.

The following guidelines should therefore be kept in mind when you are participating in AFM's work.

### 1. Matters Which Should Never be Discussed with Competitors

Do not have formal or informal discussions relating to:

- individual company or industry prices, including any matters affecting price such as discounts, rebates, surcharges, price changes, price differentials, profit margins, price mark-ups, credit or other terms of sale;
- individual company costs, including any cost components such as production or distribution costs, cost accounting formulas, methods of computing costs;
- individual company sales or production related information, including sales volumes, sales revenues, production volumes, production capacity, capacity utilisation, stock levels or supplies;
- individual company's confidential future plans, including future plans relating to sales and marketing strategy, production or technology; and/or
- matters relating to individual suppliers or customers.

### 2. Matters Which May be the Subject of Information Exchange

You may exchange information on:

- non-confidential, technical issues relevant to the industry such as standards and health and safety matters;
  - issues relating to technology in general such as the characteristics and suitability of particular equipment or technology (but not a particular company's own proposals regarding the adoption of specific equipment or technology);
  - general promotional opportunities such as possible new markets or new uses of a product (but not a particular company's promotional plans); and
  - industry public relations or lobbying initiatives.
- certain jurisdictions may specify other types of information that can be exchanged.

### 3. Industry Statistics

Data such as sales, costs, production volumes or stock levels are often collected and disseminated by trade associations (or other industry bodies) to provide industry statistics or benchmarking studies. Such activities are likely to be lawful provided that the following guidelines are observed:

- the participants submitting their data must not disclose their individual information to other participants;
- the data is disseminated in an aggregated form which does not expressly identify a particular participant and does not permit data applicable to any particular participant to be deduced;

- where benchmarking studies are undertaken, each participating company should be ranked anonymously (for example, a number for each company) in the report available to all companies and informed individually of its actual performance so that each company knows its own data but not its competitors;
- an independent third party or trade association staff unconnected with any of its members should collect and disseminate the information. The collecting entity or staff should be required to keep information strictly confidential;
- the information should be historic data. The collection and distribution of future data, such as plans about investment and future capacity, should be avoided even if it is disseminated on an aggregated basis;
- the information disseminated should not be accompanied by comment, analysis, observation or recommendation; and
- participants must not discuss the data before, after or at a trade association meeting or any other meeting.

#### 4. Trade Association Meetings

Remember, when attending trade association meetings:

- keep the legal department informed of trade association memberships, including conditions of membership;
- review agendas of meetings in advance for possible problems: seek legal department advice if necessary;
- ensure that you make or receive detailed, accurate notes of meetings;
- be vigilant as to what is discussed; and
- promptly review meeting minutes for accuracy. If you do not voice your objection quickly, it will be difficult to persuade a regulator subsequently that the minutes are inaccurate.

#### 5. Avoiding Problems

If you are in a trade association meeting or in any meeting with representatives of competing companies, whether formal or informal, and the conversation turns to improper subjects, such as pricing or anti-competitive practices, you should:

- make clear you cannot discuss such matters and ask that the subject is changed at once;
- if it is not, you should immediately leave the meeting in a way which makes it apparent to all present why you are leaving and ensure that your departure is recorded in any formal minutes or, if there are none, your own notes of the meeting; and
- report the matter to the legal department.

Just being present when illegal discussions are taking place may be sufficient to involve you and/or your company in an investigation by regulators, even if you did not participate in the discussions. If you are in any doubt about the legality of the matters discussed, ask for that agenda item or issue to be postponed until you have had an opportunity to speak to the legal department.

#### 6. Membership Rules

To comply with competition law a trade association's membership rules must not disadvantage or exclude certain competitors:

- the membership criteria are objective in nature, are laid down uniformly for all potential members and are not applied in a discriminatory manner;
- if membership is refused, there is an internal procedure for appeal within the association; and
- the association is aware of its competition law obligations and has a compliance policy or guidelines for members.

This note is sourced from Baker & McKenzie's [Global Competition Compliance Toolkit](#). The Competition and Markets Authority [released](#) details in 2015 of fines imposed on companies acting in alliance, and has produced its own [Advice for trade associations on complying with competition law](#).