

Code of Conduct

eu.bac believes it is important that its activities are at all times carried out in accordance with the applicable law, especially competition law. eu.bac believes that business shall be conducted in an atmosphere of free competition, i.e. on the basis of price and quality. eu.bac recognises that competition law intends to stimulate free competition, something which has eu.bac's full support. eu.bac feels it is important to confirm this by adopting a Code of Conduct. This Code of Conduct shall be binding on all members as well as on other participants when taking part in activities of eu.bac. The Code of Conduct aims at providing clear rules to eu.bac's members, thus reducing the risk of improper conduct and consequently of fines being imposed.

The following rules shall at all times be respected within eu.bac:

CORE PROCEDURES

1. Meetings of a body, committee, working group or other form of cooperation within eu.bac shall only take place after the members have been invited to the meeting in writing. The notice inviting to the meeting shall also include the agenda of the meeting.
2. Minutes shall be kept of each meeting as referred to in 1., above; these shall be sent to all members of the relevant body, committee, working group or other form of cooperation. The minutes shall be kept in an organised form for a period of at least 7-10 years.
3. Consultations and discussions in a body, committee, working group or other form of cooperation on the topics on the agenda and other topics, where these are related to the market (i.e. topics that may be of interest for the position and for determining the position of the individual members in competition), shall be limited to the official meeting, of which minutes will be kept.
4. During the consultations as referred to in 3., above, it shall not be decided to discuss certain topics during the meeting subject to the condition that this will not be recorded in the minutes. If such condition is stipulated the chairman of the meeting shall refuse to proceed to discuss the topic in question.
5. Each meeting of a body, committee, working group or other form of cooperation during which market-related topics are discussed, shall be attended by at least one staff member of the association. This staff member will monitor topics that are sensitive from a competition law point of view. If there are doubts about such sensitivities, the topic shall not be discussed until the advice of an expert in the field of competition law is obtained, and this advice is to the effect that the topic may be discussed without any objection, or until the limits to be observed during the discussion are clear.

A. PROHIBITED TOPICS

The following topics are prohibited and out of bounds during meetings of bodies, committees, working groups or other forms of cooperation within eu.bac, particularly as far as information on these topics is exchanged between companies which might be considered as competitors:

- Sale prices, rates, (intended) price adjustments, recommended prices, discounts, mark-ups and other price-related topics concerning products or services of member companies;
- Division/sharing of the market, e.g. by allocating a specific geographical area, specific customers or specific groups of customers to specific members;
- Restriction of production or sales;
- Pre-consultations with respect to responses to invitations to tender of potential clients;
- Charging on offer costs of competitors in one's own offer;
- Exchanging market information by the individual members, i.e. information about production, turnover, sales, investments, divestments, R&D expenses and other information, as far as this is related to specific (categories of) products or services, that may be regarded as commercially sensitive information;
- Publishing of the average price or of the price bandwidth within the sector;
- Exclusivity for specific members to represent producers and importers;
- Boycotting specific suppliers or customers;
- Any other topic that could lead to coordination of market behaviour restricting competition;
- Pre-consultations between competitors when responding to invitations to tender (in tender procedures with both public and private purchasers);
- Agreeing that all competitors add a surcharge to their bid (which would then be used for "compensating" the bidding costs of those companies that would not win the tender).

B. TOPICS THAT MIGHT PRESENT A PROBLEM

The following topics might, under certain circumstances, present a problem from a competition law point of view, but especially in a highly concentrated, oligopolistic market (i.e. a market with only few players). This means that these topics shall at all times only be discussed within the context of eu.bac in proper consultation with an expert in the field of competition law:

- General terms and conditions of sale and delivery. If these pertain to sensitive competitive parameters (e.g. prices, rates, manner of indexation, on-charging specific costs) or if the use of the conditions is mandatory, the competition authorities may object;
- Restrictions on participating in trade fairs. As a general rule, each company should be free to participate in any trade fair it likes and companies should not be asked to boycott any trade fair. Restrictions to this freedom to participate are only allowed under specific conditions. Collective bargaining by the members of eu.bac to obtain a better price or other conditions from the trade fair organisation does not constitute a problem under competition law;
- Schemes for recognition/membership criteria. For as long as recognition or membership of eu.bac does not play a decisive part for the potential customer when choosing a product or service, there are no objections to this from a competition law point of view. As soon as the customer does find this important, however, these schemes must satisfy specific criteria;
- The secretariat of eu.bac is allowed, in principle, to collect commercial information about individual companies and to make this information available to the members in an aggregated manner. It must in any event be absolutely guaranteed that no information on individual companies can be deducted from this aggregate information. In some countries the national competition authorities will only allow such statistics systems if the collected information can be qualified as sufficiently historical, e.g. (depending on the circumstances) presenting data of at least one year before, and/or if the information is made publicly available.

C. TOPICS THAT DO NOT PRESENT A PROBLEM

The following topics constitute the core business of most of eu.bac's activities and discussions and consultations on these topics do normally not present any problem under competition law, provided that the topics mentioned under A. are not touched upon:

- General cyclical economic data and business climate, as long as discussions on these topics do not relate to any individual company's behaviour. These discussions focus on the macro level and do not affect any company's behaviour in the market;
- Lobbying activities relating to general interests in the sector and concentrating on legislation and other public issues which may affect the sector;
- Labour law and social issues. These issues are considered to be irrelevant under competition law;
- Legal issues. These issues are by definition of a general nature, as these will affect any company's business to the same extent;
- Standardisation issues, if (i) the standard-setting procedure is transparent and open for participation by any interested party, (ii) there is no obligation to comply with the standard, (iii) access to the standard is provided on fair, reasonable and non-discriminatory terms, and (iv) any discussions within the standard-setting procedure are restricted to technical aspects. Standardisation is aimed at compatibility of products and at technical progress; this will normally be to the benefit of the end user;
- Safety and health issues. eu.bac has an interest in enhancing safety and health with respect to the use of the sector's products;
- Environmental issues. eu.bac has an interest in enhancing protection of the environment with respect to the use of the sector's products.