
FEBIS COMPETITION LAW COMPLIANCE GUIDELINES

DOS & DON'TS

Introduction

As an association FEBIS looks after the common interest of its members by providing information as well as monitoring new legislations. The work of FEBIS strives from the active interaction of its members for a common target and it gives its members a platform for the sharing of knowledge. Without the active participation of its members a successful work for the association would be impossible.

During the course of this meeting, FEBIS asks all Members to be mindful to respect competition/antitrust law by following the guidelines below. These guidelines should be respected at all times, whether during the course of formal meetings or at sideline events/dinner, etc., and apply regardless of your role at your company.

Procedure during meetings

- DO ensure that every meeting has a written agenda that has been approved by legal counsel and circulated to participants prior to the meeting.
- DO strictly adhere to the items envisaged in meeting agendas.
- DO leave any meeting immediately where anticompetitive conduct takes place and insist that your exit is noted in the minutes. DO report the incident to legal counsel without delay.
- DO insist that minutes are taken of all meetings and that they are circulated afterwards, with details of all attendees and topics discussed.
- DO ensure not to take documents containing confidential information of your company to the meeting.

Exchange of experiences, opinions, and information

The work of the association strives from active exchange of opinions and information amongst the members and gives competitors a regular opportunity to discuss the market and to exchange information. Basically, there is no objection against this.

But it has to be taken into account that the exchange of information, which is generally confidential, may be taken as a violation against the competition/antitrust law.

Legitimate topics of discussion

- DO feel free to discuss with competitors' general issues relevant to the industry such as regulatory developments, joint lobbying, PR or research initiatives, or general trends and risks for the industry, so long as the purpose is not to encourage coordinated action regarding future commercial strategy.

- DO ensure that any information shared with FEBIS for the purposes of industry statistics or benchmarking exercises is not commercially sensitive, meaning that it is:
 - ✓ of a general nature
 - ✓ publicly available
 - ✓ historic (i.e., not future plans), and
 - ✓ aggregated to hide identification of individual organization.

Topics of discussion to avoid

- DO NOT discuss pricing, pricing plans, terms of sale, costs, profits, etc. with competitors (e.g., “Downward sales fee price trends are killing us. We are planning on holding the line.”). Future prices are the most sensitive topic, but all pricing discussions are fraught with significant risk.
- DO NOT discuss allocating supply or markets with competitors (e.g., “If you back down in France, we will let you take Spain.”).
- DO NOT discuss competitive pressures with competitors (e.g., “We just can’t compete with your technological set-up, but maybe there’s a creative solution here.”).
- DO NOT discuss or exchange commercially sensitive information with a competitor. The law prohibits not only exchanges of such information but also transmission or mere reception of commercially sensitive information.

As a rule of thumb, ask yourself:

would a competitor knowing this information reduce the uncertainty for the competitor as to your company’s future strategy and conduct? If so, do not share the information. If someone shares information with you that falls into the categories above or which makes you uncomfortable, immediately inform that person that you do not want to receive such information and contact your legal counsel.

However, the exchange of information is authorized where there is a legitimate interest in data relevant to the market. Associations of the industry often receive relevant information which are analyzed and consolidated, and which are solely revering to the past, as well as “non-identifying information” which do not give a reverence to individual members. If the shared information is referring to such branch specific market statistics, the competition/antitrust law is no issue. In case the information is referring to other market information, it has to be assessed case by case

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