



**EAPA COMPETITION LAW
COMPLIANCE GUIDELINE**

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EAPA'S COMPETITION LAW COMPLIANCE GUIDELINE

**AS ADOPTED BY THE EAPA GENERAL COUNCIL ASSEMBLY
ON 31 MAY 2016**

1. INTRODUCTION

The competition laws are intended to preserve competition by prohibiting concerted practices that restrict competition, including agreements between undertakings and decisions by trade associations.

Trade associations can provide great benefits to the marketplace and to consumers, but because they may involve groups of competitors working together on common industry issues, trade associations are subject to particular antitrust scrutiny.

It is the policy of the European Asphalt Pavement Association (EAPA) to comply with all applicable legal requirements, including all antitrust or other competition-related laws.

This guideline sets forth the basic competition law principles that the EAPA staff and members and associate members of EAPA will comply with, when preparing, organising and attending meetings as well as in any other EAPA activities.

This Guideline is mandated by the EAPA Statutes and has been endorsed and adopted by the EAPA General Council Assembly. Every EAPA member and associate EAPA member and staff of EAPA shall explicitly and unconditionally accept it.

This document sets out guidelines for EAPA and for the conduct of members within the context of EAPA activities. It is the responsibility of each EAPA (associate) member to comply with competition law relying on their own legal advice; it is not the responsibility of EAPA or its staff to ensure that its members comply with competition law in their own activities. Since competition laws are not identical throughout Europe and the world, the members of EAPA should always obtain the advice of local antitrust counsel for any specific antitrust issue.

2. GENERAL PRINCIPLES

The antitrust laws apply to trade associations just as they apply to any individual company or group of competitors. The following are the most serious infringements of competition law:

- Price Fixing, including agreeing discount or rebate levels, or resale price maintenance;
- Bid-Rigging;
- Group Boycotts;
- and Allocation of Customers or Markets.

You should also be aware that participating in certain types of association activities, if undertaken with an anticompetitive motive, may give rise to antitrust liability:

- Discussions in meetings
- Information Exchange / Data Collection
- Working groups and projects
- Standard-Setting and Self-Regulation
- Membership issues

It is important to remember that unlawful behaviour can be found even without a written agreement or a "handshake". Unspoken understandings, including responding to pressure, exerting pressure, or doing

“what is expected”, can be sufficient. You can violate the antitrust laws by an informal verbal or non-verbal understanding, even by mere communication of information. No written conduct or express agreement is required.

3. CONDUCT OF MEETINGS

Every meeting shall have a specific, demonstrable purpose. An agenda will be circulated to all members before the meeting. The agenda shall be reviewed or written by the EAPA Secretariat. It shall be closely followed during the meeting.

Each meeting shall be recorded accurately by minutes, and these shall be circulated to all members after each meeting. Minutes of each meeting shall be reviewed by the EAPA Secretariat prior to circulation. They will be retained permanently by the Association for its records.

EAPA Secretariat Staff shall be present during all meetings to monitor compliance with applicable competition laws. If the agenda of other EAPA meetings makes it advisable, a competition law specialist may be invited to attend in order to ensure compliance with applicable competition laws.

All participants attending the meetings are required to be fully familiar with the Antitrust Compliance Guidelines. Whenever new participants are present, the chairman will remind them of the contents of these guidelines.

The “Antitrust Caution” shall be the first point of each agenda. At the start of each meeting the chairman of the meeting shall read aloud the “Antitrust Caution” and the minutes shall so record. A copy is attached as Appendix 1 to this guideline.

If a meeting participant is uncertain whether a discussion or conduct raises competition law issues, the discussion on the subject should be stopped or suspended until clearance can be obtained, and that fact shall be recorded in the minutes.

4. PROHIBITED SUBJECTS

EAPA members should never discuss or exchange information on commercially sensitive subjects. “Commercially sensitive information” is defined as company-specific information, which, if exchanged, could influence competitors’ future conduct.

It refers to, but is not limited to the following prohibited subjects:

Price information: selling or purchasing prices, including not only actual prices charged but also the elements of pricing and pricing policy, for example, costs, discounts, promotional terms and trade terms;

- Price changes or present or future trading conditions;
- Capacity, costs or production output;
- Plans relating to future business, investment, product, marketing and advertising strategies;
- Purchasing or bidding plans or other commercial strategies;
- Sales volumes or values, or sales quotas;
- Market shares;
- Proprietary technical development;
- Individual dealings with customers or suppliers or buying associations including the status or

- Content of yearly negotiations; and
- Proposals for joint market conduct regarding specific companies, including customers, suppliers and other industry participants, including boycotts and blacklists.

Conduct at social events in conjunction with EAPA meetings or otherwise should follow the same standards as regular meetings. Communications between members using the EAPA forums like the *LinkedIn Group*, *Facebook* or *Twitter* are also subjected to these guidelines.

5. GATHERING AND DISSEMINATION OF INFORMATION

In some strictly defined cases, information may be collected and aggregated and then shared anonymously by the EAPA Secretariat in such a way that individual company information is not identifiable.

Members must under no circumstances share confidential or commercially sensitive information from or about other members.

Members of the secretariat gathering the information must be independent from the member companies and the information must be stored confidentially (locked from member's access). Aggregated information may create a transparency in the market even though individual company information is not identifiable. It must be ensured that the aggregated information do not create an anti-competitive transparency.

The aggregated information sent to the member cannot include a recommendation to a specific market behavior.

6. EAPA COMMITTEES AND WORKING GROUPS

Committees and working groups, projects and all other focus groups set up within EAPA remain fully subject to antitrust law. Therefore, such groups are required to follow these guidelines in the conduct of their meetings and related activities.

All working groups, pilots and projects are to be approved by the EAPA Secretariat before they are started.

No results may be circulated to members until reviewed and approved by EAPA Secretariat.

7. STANDARD-SETTING AND SELF-REGULATION ("CODE OF ETHICS")

Trade associations sometimes adopt industry "codes of ethics" or engage in standard-setting programmes that have legitimate purposes and benefit the marketplace and consumers. Such initiatives must not, however, unduly restrict competition. Any association codes or standards must be based on sound, objective justifications. They must be based on an open and transparent process, allowing participation by all. Any EAPA standards should be set on a non-discriminatory basis and should be objectively necessary to achieve the aims of EAPA. Standard-setting, codes of ethics and self-regulation must be subject to prior legal review.

8. MEMBERSHIP

- Participation at EAPA is voluntary. No one should be pressured to participate in it or penalised for not doing so;
- Membership of EAPA shall be open to all companies within the industry on a non-discriminatory basis as set forth in the EAPA statutes;
- EAPA members shall not be restricted in any respect in the ways they decide to conduct their businesses. All actions of members remain voluntary. Each individual member remains free to make independent, competitive business decisions.

9. EAPA SECRETARIAT

The Secretary General and the Director and Staff of EAPA will be given regular specific training on compliance with competition law. The EAPA employment contracts require the Secretary staff to comply with competition law in general and these guidelines in particular.

10. SANCTIONS

Any member or representative of a member who does not conform with any competition law provision and, in particular, with any of the principles set forth in the present guidelines may be asked by any other member(s) to leave the meeting where the infringement occurs. Any such member or representative may be temporarily or definitively excluded from participating in the meetings.

There is a risk that the declared procedure does not live up to the criteria for dissociation from an anti-competition statement at a meeting and thereby not becoming part of an anti-competitive agreement. Generally, each participant must dissociate themselves from the statement and state that they do not wish to be part of. These individual statements must be recorded in the minutes. Additionally, if the meeting cannot continue without participation in the anti-competitive practice, the participants shall.

Any staff member who does not conform to any competition law provision and, in particular, with any of the principles set forth in the present guidelines may be liable to be dismissed in accordance with EAPA employment contracts and procedures.

APPENDIX 1 ANTITRUST CAUTION

INTRODUCTION

The following caution shall be included in all EAPA agendas and to be read at the start of each EAPA meeting. The aim of this is to serve as a reminder to all participants of the antitrust law requirements. The statement should also be recorded in the minutes as indicated below.

THE EAPA-ANTITRUST CAUTION

“EAPA meetings shall not enter into any discussion, activity or conduct that may infringe, on its part or on the part of its members, any applicable competition law. By way of example, members shall not discuss, communicate or exchange any commercially sensitive information, including information relating to prices, marketing and advertising strategy, costs and revenues, trading terms and conditions with third parties, including purchasing strategy, terms of supply, trade programmes, or distribution strategy.”

Message to new members or people talking part for the first time:

“Please take note that taking part in EAPA meetings is subject to having read and understood EAPA’s competition guidelines. If you have not yet done so, please do so now.”

PROCEDURE

1. Every agenda shall contain, as its first item, a statement in the terms set out above. The chairman of the meeting shall read such statement at the start of each meeting, and the minutes shall so record.
2. Full minutes of all meetings shall be taken.
3. Minutes shall be circulated to all members after the meeting. Any comment or request for amendment shall be notified to the chairman without delay.



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