

## COMPETITION COMPLIANCE GUIDELINES FOR THE EUROPEAN WIND ENERGY ASSOCIATION MEETINGS (EWEA)

### Agreements

- A. Per se violations
- B. Non Per se violations
- C. Do's and Dont's

#### **A. "Per Se" Violations - Hardcore Infringements:**

European Union Competition rules<sup>1</sup> forbid agreements/arrangements<sup>2</sup> or acts that restrict competition. If the Regulator/Court determines that the restraint is a per-se violation, a defendant cannot normally claim that the restraint was justifiable under any circumstances. The categories of per-se violations that are most common to association activities are the following:

1. **Price Fixing.** Agreements/arrangements among competitors about prices or the elements of pricing that will be charged to costumers.
2. **Bid Rigging.** Typically, bid rigging consists in sharing information with the understanding that one party will be the lowest bidder; submitting "complementary bids" at the request of a competitor with the understanding that this bid will be higher or agreeing with a competitor not to bid on a specific project. Bid Rigging reduces competition as it typically induces industry members to obtain supra-competitive prices and a higher or guaranteed share in tendering procedures.
3. **Customer Allocation.** Agreements/arrangements to divide and allocate markets among competitors, not to pursue a competitor's customers or not to pursue a category of customers.
4. **Territorial Market Allocation.** Agreements/arrangements to allocate customers on the basis of the geographic location of the customer, or agreements/arrangements among competitors not to enter markets based on geographical boundaries.
5. **Collective Boycotts.** Agreements/arrangements between competitors not to do business with or to take joint action against a competitor or a customer.

#### **B. Possible violations dependent of concrete circumstances:**

Certain categories of restrictions may or may not be illegal depending on the circumstances. The Regulator/Court must consider the restraint on competition in the relevant market in determining if such restraint is justifiable.

1. **Standard-Setting.** Standard-setting is a lawful activity that can be engaged in by an association provided that it is done in a way that provides all the interested parties with the opportunity to participate in the development and implementation of the standard. Process of identifying and agreeing upon a specific set of criteria to which a product should conform. Standard-setting can be anticompetitive if the criteria have the effect of limiting or eliminating certain products or competitors from the marketplace.

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<sup>1</sup> Article 101 of the Treaty on the Functioning of the European Union states that agreements between undertakings, decisions by associations or concerted practices that distort prevent or restrict competition are void.

<sup>2</sup> The concept of agreement is very wide. In order to be considered as an agreement under Article 101(1), the mere existence of a "concurrence of wills" is sufficient.

2. **Certification.** When an association engages in the process of certifying products or companies, such certification activities must be conducted properly to avoid discrimination. Such activities are lawful if it can be shown that granting or denying certification is based upon legitimate, objectively defined criteria and does not have the effect of limiting or restraining competition.
3. **Information Exchanges.** Information-sharing must be properly structured, in such way as not to disclose pricing strategies, customer details or other items that could create or provide means to disclose commercially sensitive information regarding the company's strategy. No meeting participant should disclose any information that would reduce the uncertainty about its present or future business conduct. Sharing confidential information, such as recent statistics, pricing information, marketing reports, raw material costs and employee compensation with fellow members, can cause competition problems.
4. **Government Relations Activities.** Acting as the liaison between the industry and regulators or legislators. Joint action by competitors to influence lawmakers is lawful. However, such activity must not constitute an opportunity for exchanges of commercially sensitive information.

**Note:** It is extremely important that association members, meeting attendees, and speakers understand that the provisions of the competition laws regulate their conduct at association meetings. A thoughtless violation of EU competition laws by one or a few members could result in high fines and litigation costs to the trade association and its members.

### **C. Do's and Don't's in a Trade Association Meeting**

#### **Don't's:**

1. Do not discuss your company's current or future pricing policy.
2. Do not discuss profit levels.
3. Do not discuss planned discounts or promotional activities.
4. Do not discuss planned product launches.
5. Do not discuss planned investments.

#### **Do's:**

1. Discuss better ways to educate and provide meaningful information to Association members about the industry.
2. Discuss economic trends, business forecasts, and materials availability, emphasizing that each company is free to use this information in the way it sees fit and should make its own commercial decisions.
3. Discuss EU and National governmental actions and develop industry-wide lobbying efforts.
4. Discuss technological advances and better ways to utilise them.
5. Discuss ways to improve the public image of the industry.

**Note:** It is important that the session chairman reminds the meeting participants of this note at the beginning of each meeting. We recommend to re-distribute this note at the beginning of each meeting. Further, it is of vital importance to keep minutes of the meetings, detailing agenda, beginning, end and stating that the competition law reminder has been issued.