



The International
Bromine Council

ANTI-TRUST & COMPETITION COMPLIANCE POLICY GUIDANCE

The International Bromine Council
Bsef aisbl - Av. E. Van Nieuwenhuyse 4
1160 Brussels - Belgium

www.bsef.org

 BSEF  @Bromineinfo



Contents

1		
1.	BSEF's competition compliance commitment.....	2
2.	Who is concerned by our competition compliance policy?	2
3.	What are the competition compliance risks?.....	3
	a) Information exchange.....	3
	b) Cartel risk.....	4
	c) Standards	5
	d) Social gatherings.....	5
	e) Membership policy	5
4.	Good practices.....	6
	Annex I: Competition law compliance checklist.....	8

1. BSEF's competition compliance commitment

The Bromine Science Environmental Forum ("**BSEF**") is an international bromine production organisation. Since 1997, BSEF have been working to foster knowledge on the uses and benefits of bromine-based solutions. BSEF strongly believe in science and innovation. Through investments in research and development, BSEF members create robust bromine-based technologies meeting the needs of society. Our vision is to be the reference source for information and science on bromine and bromine technologies globally.

BSEF pursues the following objectives:

- Promoting the benefits of bromine and bromine technologies for society and economy;
- Commissioning and disseminating science on bromine and bromine technologies;
- Supporting BSEF members and market organizations in their engagement with policy makers and regulatory authorities; and
- Representing the bromine technology sector globally.

BSEF is committed to complying with all applicable laws that relate to its and its members' conduct, in particular EU and national EU member States' competition laws. This manual aims to set out the basic competition law principles with which BSEF members and BSEF staff are required to comply in order to ensure that BSEF's activities remain legitimate and that its members can feel comfortable attending meetings and other events organised by BSEF.

This manual covers EU competition law. As national competition laws may differ, members should seek local competition law advice for any specific compliance-related legal issue. This manual is not a substitute for legal advice.

2. Who is concerned by our competition compliance policy?

EU competition law applies to BSEF and its members. This policy applies to all BSEF staff, as well as all participants in BSEF activities. BSEF requires every person involved in BSEF activities to be familiar with this manual and abide to it at all times.

These Guidelines have been endorsed and adopted by the BSEF Board on 8th December 2016. They are explicitly and unconditionally accepted by every member and staff of BSEF. It is the responsibility of each BSEF member to comply with competition law relying on their own legal advice - it is not the responsibility of BSEF or its staff to ensure that members comply with competition law in their own activities. Failure to comply with competition law or with this manual is a serious matter and any member's conduct contributing to non-compliance which comes to BSEF's attention may result in a member's expulsion.

3. What are the competition compliance risks?

Competitors are required by law to compete independently. Caution is therefore needed at any meeting or event where competing companies are present. A competition law compliance risk therefore arises in the context of BSEF activities because its members are representatives of competing companies.

Decisions taken by BSEF will be treated as decisions of an association of undertakings within the meaning of Article 101(1) of the Treaty on the Functioning of the European Union. Accordingly, if such decisions restrict competition and affect trade between EU member States, they are likely to be prohibited by EU competition law. Activities outside the territory of the EU may also violate EU competition law if the activity has an appreciable effect on trade between the EU member States.

Competition regulators, such as the European Commission and national Member States' competition authorities, are imposing increasingly large fines on companies that breach competition law, and those companies also face actions for damages by customers or any other person who suffered damage as a result of the breach of competition law. The potential liability of trade associations and their members for a serious breach of competition law (in particular cartel involvement) now runs to multiple millions of Euros. In addition, directors face disqualification and, where there is a particularly serious cartel, any employee can face prosecution and imprisonment.

- a) Information exchange

Trade associations may organise the gathering and sharing of information, subject to the competition law requirement that competitors compete independently. A company in possession of competitively sensitive information belonging to a competitor is treated as no longer competing independently. The information reduces the company's uncertainty regarding its competitor's conduct in the market and enables the company to adjust its competitive strategy to take account of its competitor's proposals. A single disclosure of commercially sensitive information to a competitor may result in an infringement of both EU and national competition laws. This applies to direct "competitor to competitor" and indirect (through a third party such as BSEF) exchanges of information.

Competitively sensitive information is individual company-level information regarding current or future market strategy (i) that a business would normally keep confidential; (ii) is not publicly available or could not be accessed from a non-confidential source; and (iii) that reduces strategic uncertainty for its competitor.

Examples of competitively sensitive information include:

- Non-public financial information:
 - existing and future pricing strategy, including any price-related item, such as discounts, commissions and profit margins and the timing and level of any price increases,
 - existing, recent or future costs data,
 - existing or recent sales and customers data,
 - existing, recent or future profit margins, and

- existing, recent or future strategic financial plans, including investment spend;
- Confidential business arrangements between a company and third parties, including terms and conditions of business, sales volumes, innovations, investments, target markets and dealings with suppliers, customers and even other competitors;
- Details of any current or proposed commercial relationships and agreements, for example:
 - existing customer- or supplier-specific contracts,
 - information on supplier discounts and quotes from suppliers, and
 - prior or current customer negotiations;
- Information on existing, recent or future business strategies, including existing, recent and future sales and marketing plans.

Competitively sensitive information does **not** include information that cannot have an impact on competition, for example:

- Exchanges of views on general industry issues of a technological or regulatory nature, such as the general effect on the industry of legislative proposals – as long as you do not discuss the individual commercial strategy you might adopt in response to the proposals;
- Technical issues, such as technical standards or working to solve an industry-wide technical issue that the participants are unable to resolve individually.
- b) Cartel risk

Trade associations, such as BSEF, are not legally responsible for the infringements committed by their members when the association is not involved in the anticompetitive conduct. However, a trade association may be liable by virtue of its role as a "facilitator" of an infringement where it has facilitated the implementation of a cartel and was aware that its actions would facilitate the implementation of the cartel.

There are, broadly, two types of cartel risks in the context of a trade association.

First, where contacts take place among the members individually as a result of trade association meetings. Discussions between competitors could involve an infringement of competition law if they go further and result in an anti-competitive agreement (this can be formal or informal, oral or in writing) between the parties in relation to issues such as pricing, sharing markets or customers, or restricting output. BSEF will never support, assist or get involved in any such conduct by members and will seek to ensure that no meetings or supported by BSEF are used by members to discuss or coordinate future market behavior resulting in a restriction of competition.

Second, where the recommendations and decisions of trade associations are treated as an agreement among its members. BSEF may issue recommendations to its members on topics that are not competitively sensitive but will avoid making any recommendation on competitively sensitive topics (for example, recommendations relating to pricing could infringe competition law).

- c) Standards

Trade associations such as BSEF may be engaged in the development and promotion of industry standards, codes of practice or standard terms and conditions for sale or purchase agreements. Such standards are, in principle, allowed, save where they are used to restrict competition. An example would be where a trade association does not allow a new entrant access to its standards terms, the use of which is vital to ensure entry to the market. As long as participation in the actual establishment of standard terms is unrestricted for the competitors in the relevant market (either by participation in the trade association or directly), and the established standard terms are non-binding and effectively accessible for anyone, such agreements are not likely to give rise to restrictive effects on competition.

BSEF is committed not to adopt any decisions, “recommendations” or disguised inferences on competitively sensitive topics. BSEF urges its members always to make their own unilateral educated decisions, whether on the basis of information provided by BSEF or on the basis of information from other sources. In particular, BSEF is committed to ensuring that:

- Standards relate to specified legitimate objectives, and no more detailed or restrictive than reasonably necessary;
- Standards are not used to raise barriers to entry to the market or to exclude non-member competitors;
- Specifications for standards are made publicly accessible to non-members;
- Compliance with standards is voluntary (unless required by law);
- Standards do not prohibit the use of competing technologies;
- The award of certificates or seals of approval is allowed as long as criteria are objective and legitimate (for instance, based on verifiable quality levels), and applied on a non-discriminatory basis; and
- The use of standard agreements is not to be made compulsory, and standard terms and conditions do not attempt to harmonise “price-related” clauses.

- d) Social gatherings

Social gatherings (coffee breaks, over lunch, social events, etc.) attended by representatives of competing businesses present a risk under competition law. It is therefore essential that BSEF members and staff respect competition law during social gatherings as much as at formal meetings.

This manual must be complied with at all social events organised by BSEF. For social events not organised by BSEF, the responsibility to respect competition law lies with the companies and individuals concerned.

- e) Membership policy

BSEF has adopted membership criteria that are compliant with EU competition law. Membership criteria may give rise to competition law concerns if, as a result of the exclusion from membership to a trade association, a business is placed at a competitive disadvantage as compared to the competing members of the trade

association. EU competition law requires the membership criteria of a trade association to be open, clear, precise, legitimate, objective and sufficiently determinate so as to enable the criteria to be applied uniformly in a non-discriminatory manner to all potential members and subject to an appeal mechanism.

BSEF is committed to ensuring that its membership policy is applied accordingly. In particular:

- Membership of BSEF is voluntary.
- Membership of BSEF is open to all businesses within the industry on a non-discriminatory basis.
- Members of BSEF remain free at all times to join other associations and initiatives.
- Members of BSEF are not be restricted in any way in how they decide to run their businesses. All actions of members remain voluntary. Each member remains free to take independent, competitive business decisions.

4. Good practices

BSEF is committed to taking all reasonable measures to ensure compliance with competition law at all BSEF events and meetings.

- **Agendas:** BSEF will prepare a draft agenda in advance of meetings, mark it as a draft and have this agenda reviewed by counsel for possible competition issues before it is circulated to its members.
- **Information exchange:** information collated or prepared for its members will be reviewed by counsel in advance.
- **Competition compliance reminder:** at the start of each meeting involving competing members, BSEF staff will circulate the "Do's and Don'ts" guidelines attached in Annex I and will read a competition compliance statement reminding all participants of their obligation to comply with competition law and that discussions at meetings should:
 - a. focus strictly on the agenda; and
 - b. avoid any disclosure by either party of competitively sensitive information, including current and immediate past prices and costs, customers and future market strategies. If anyone present considers that any issue raised may involve a discussion of competitively sensitive information, that person should immediately voice his/her concerns.
- **Attendance lists:** for each meeting, a list of participants will be circulated during the meeting and signed by all participants. The list will be appropriately filed by the BSEF and included in the meeting minutes.
- **Minutes of meetings:** BSEF will ensure that comprehensive minutes of the meetings are taken, accurately reflecting what was said during the meeting. BSEF will circulate draft minutes to be agreed and signed off by the representatives of the participants.



- **Record-keeping:** BSEF will keep agendas, minutes and attendance lists of every meeting.
- **External legal advice:** external counsel will be invited to attend meetings if there are topics that may involve sensitive areas for the members of BSEF.

If any questions arise in connection with this manual, please contact Dr. Kevin Bradley or Julian Ellison of Mayer Brown.

Annex I: Competition law compliance checklist

Attendance at, and/or participation in any BSEF meeting or function requires adherence by BSEF members to BSEF's commitment to ensure compliance at all times with EU competition law. The purpose of this checklist is to ensure that BSEF members are aware of the key competition law requirements that apply during BSEF meetings and other events.

"DOS"

- **Do** ensure that all business contacts that you have with competitors at a BSEF-sponsored event have a clear legitimate purpose and take place under the supervision of the BSEF Secretariat.
- **Do** react if discussions leave the agenda and/or are potentially anti-competitive. Change the subject or leave the meeting and send a contemporaneous minute of the incident to BSEF staff. Accidents do happen – if commercially sensitive information is disclosed, immediately object and excuse yourself, talk immediately to counsel to determine the way forward.
- **Do** ensure that:
 - ✓ You have read the agenda before the meeting;
 - ✓ The discussions follow the agenda;
 - ✓ You receive detailed minutes of any meeting for approval; and
 - ✓ You retain the minutes as the record of what took place during the meeting.
- **Do** ensure that social contacts with competitors are confined solely to social exchanges. Before and after the meeting, or otherwise, be especially vigilant at social gatherings with competitors. Remain vigilant – competition law still applies!
- **Do** feel free to discuss the following at the meeting:
 - ✓ General publicly available information;
 - ✓ General industry issues of a technological or regulatory nature;
 - ✓ Health and safety issues;
 - ✓ Technical standards;
 - ✓ Past work/work projects and their outcomes, in general terms (no detailed sales information).

"DON'TS"

- **Do not** discuss your company's future, current or recent commercial strategy with competitors in particular:
 - ✗ Pricing strategies (including discounts and rebates);
 - ✗ Marketing campaigns;
 - ✗ Target markets, actual or potential customers and bids;
 - ✗ Production capacities/capacity utilisation;
 - ✗ Detailed sales information;
 - ✗ Costs data (e.g. transport costs).
- **Do not** disseminate any of the following data at a BSEF meeting, save with the prior written consent of the BSEF Secretariat:
 - ✗ Is forward-looking;
 - ✗ Is recent;
 - ✗ Concerns achieved market prices;
 - ✗ Concerns a "general" or "common" economic issue (e.g. difficulties with a supplier);
 - ✗ Would enable competitors to work out market positions of individual companies.
- **Do not** use BSEF premises for any business activities outside of the official BSEF programme, unless subject to the BSEF Secretariat's supervision;
- **Do not** exclude competitors from discussions or engage in collective boycotts.