



Competition Law – the Facts

Competition law* prohibits actions that prevent, restrict or distort competition. Breaches of the law attract a financial penalty of up to 10% of a company's worldwide turnover as well as making it liable to actions for damages from parties having suffered loss as a result of its unlawful acts.

In terms of anti-competitive agreements and concerted practices, CBA is subject to competition law in exactly the same way as its member companies.

In addition, it has a legal duty to ensure that its day-to-day operations, the resolutions of its Council or Executive, the decisions of its Annual General Meeting, or rulings of its Director do not represent decisions that influence, or co-ordinate its members' conduct, or restrict their commercial freedom.

CBA must ensure that its role as a trade association is not compromised, in terms of anti-competitive agreements or concerted practices, by its member companies when they meet under its auspices.

Anti-competitive agreements can include decisions which have the object or effect of: fixing prices or trading conditions; sharing information; sharing markets; exchanging price (or non-price) information; or collusive tendering (bid-rigging).

Concerted practices are anti-competitive agreements that exist where there is informal co-operation without a formal agreement or decision. Relevant factors in considering whether a concerted practice exists include: the size and structure of the market; the nature of the product; whether the parties knowingly entering into practical co-operation; and, whether normal market behaviour was influenced by contact between the parties.

Discussion of any of these topics or any other behaviour which, either in fact or in appearance, could be considered contrary to letter or spirit of competition law is prohibited at any CBA meeting.

* Articles 81 and 82 of the EC Treaty establishing the European Community and Chapters I and II of the Competition Act 1998.

Good practice

These guidelines aim to establish rules of good practice for CBA members in order to avoid breaches of competition law.

- Each CBA meeting should have a responsible member of staff present;
- An agenda should be prepared in advance of the meeting which will be reviewed by the CBA Director;
- Discussions at the meeting should be limited to agenda items only;
- Following the meeting, minutes will be prepared and will be reviewed by the CBA Director;
- In the case of Standing or Technical Committees, terms of reference will be prepared and approved by CBA Council;
- The Chairman of the meeting will be responsible for its conduct and compliance with competition law.
- In the event of circumstances arising which leads a member company to believe that competition law has been or may be infringed at a meeting, that member should immediately:
 - o Call on the Chairman to stop the discussion;
 - o Request that his or her complaint is minuted; and,
 - o Leave the meeting.
- Following a complaint of this kind, three members of CBA Council will enquire into the circumstances and report their findings to the next meeting of CBA Council which will decide the action to be taken (if any) against the member companies concerned.

1st September 2006