

Euromines

ANTITRUST POLICY

Introduction

It is the policy of Euromines and its members to comply strictly with all laws applicable to the Euromines activities as well as their respective business activities. It is important to emphasise the on-going commitment of Euromines and its members to full compliance with national, European and international antitrust laws.

This policy statement is distributed at Euromines meetings as a reminder of that commitment and as a general guidance for our activities and meetings.

Responsibility for Antitrust Compliance

The Euromines structure has been laid out and its program is carried out in conformance with antitrust laws. An equal responsibility for antitrust compliance – which includes avoidance of even an appearance of improper activity – is the responsibility of EACH AND EVERY MEMBER. Your corporate employer and the Association depend on your good judgement to avoid all discussions and activities, which may involve an improper subject matter or improper procedures. Euromines staff members work conscientiously to avoid any subject matter or discussion which may have unintended implications, and the Euromines Legal Counsel will provide guidance with regard to these matters. It is important for you to realise, however, that the anti-competitive aspect of a particular conduct or communication will in most cases be most evident to you, because of your direct involvement in the industry.

Antitrust guidelines

In general, the antitrust laws seek to preserve a free competitive economy and trade in Europe and with foreign countries. Competitors may not restrain competition among themselves **with reference to the price, the quality or the distribution of their products, and they may not act in concert to restrict the competitive capabilities or opportunities of their competitors, their suppliers or their customers. In summary: price fixing and market sharing are the two cardinal sins.**

Anti-competitive behaviour and associated behaviour by the Association or its members that is not permitted under antitrust laws includes:

- (a) controlling or influencing current or future prices for purchase or sale of services and goods, controlling, influencing price increases or decreases, or artificial stabilisation or standardisation of prices;
- (b) limiting capacity;
- (c) boycotting, blacklisting, or refusing to deal with certain persons or companies so as to create unfair competitive advantages;
- (d) allocating or dividing of markets, customers or territories;
- (e) exchanging current and specific information about prices, capacity, costs, customers, markets and other commercially sensitive information;
- (f) all activities seeking to distort fair competition;
- (g) creating the impression (by statements or otherwise) that the Association or its members are involved in such activities.

It is of the utmost importance to know that unlawful behaviour can comprise of, amongst others, an informal or a formal verbal or non-verbal understanding.

Under EU and/or national laws, penalties for violating the antitrust laws are severe: corporations are subject to heavy fines and injunctive decrees, and may have to pay substantial damages to competitors, suppliers or customers. Individuals are subject to criminal prosecution in several countries and may be punished by fines and imprisonment.

Since EACH OF YOU have an important responsibility in ensuring antitrust compliance within the frame of the Euromines activities, you should read and pay careful attention to the following guidelines:

The establishment of committees within Euromines dealing with economic and market issues of a specific product is allowed. The EU competition authorities consider the work of such product committees as part of the normal and legitimate activity of professional and trade associations.

However, the following rules have to be respected:

- 1. Discussion and exchange of views on the present market situation of a product and estimation of future market developments based on objective criteria ONLY based on public data or aggregated data provided by the Secretariat such as demand of customers, stock situation, third country imports ... are allowed.**
- 2. Trade associations are allowed to collect any kind of data which their members are ready to provide. This means that data collected by trade associations can be more exhaustive than public statistics. This applies to product definition as well as periodicity. While there are no restrictions for data collection, disclosure, however, is submitted to the following rules:**

- Disclosure can only be made in aggregated form.
- With regard to deliveries, aggregation applies to market of destination (national markets).
- Exchange of aggregated data is not allowed when the sum of aggregated data is built up by figures for less than three companies.

3. DOs & DON'Ts:

- (a) **Don't** discuss any of the following with other members:
- your own or competitors' prices or price elements (including discounts, rebates, surcharges, allowances, concessions, price mark-ups, and the like), or anything that might affect prices such as costs, terms or sale, or profit margins;
 - terms and conditions on which you supply services to your customers;
 - information relating to individual customers, suppliers, or competitors;
 - allocation of services, customers, markets, territories, or sales;
 - bids, bidding terms, tactics, strategies or practices;
 - refusals to purchase from, or modification of purchase arrangements with, suppliers;
 - strategic plans, business plans, intentions, promotional activities and marketing strategies or investment plans;
 - any other confidential or competitively sensitive information.
- (b) **Don't** make public announcements or statements about your own prices or those of competitors in any meeting of Euromines.
- (c) **Don't** stay at a meeting where any such price talks occur.
- (d) **Don't** talk about what individual competing companies plan to do in particular geographic or product markets or with particular customers.
- (e) **Don't** disclose any competitively sensitive information at meetings or otherwise. Competitive sensitive information includes, but is not limited to, the following information:
- non-public financial information;
 - details of any current or proposed commercial relationships and agreements;
 - information on sales volumes or values, unless publicly available;
 - information on market shares, unless publicly available; and
 - information on existing, recent or future business strategies.
- (f) **Do** conduct all Euromines business meetings in accordance with Association rules. These rules require that a Euromines staff member is present, the agenda is followed and that minutes are properly recorded. These minutes shall accurately reflect the content of the meeting. The Association will circulate the minutes to the representatives of the participants for review.
- (g) **Do** always insist that that you receive an agenda prior to a meeting, event or presentation and review it prior to attendance to make sure that no item on the agenda raises antitrust concerns that are in your view not sufficiently addressed.
- (h) **Do** confer with the Euromines Legal Counsel before bringing up any topic or making any statement with anti-competitive ramifications and before discussing potentially sensitive competition issues.
- (i) **Do** feel free to immediately raise any concerns that may arise during a meeting and leave any meeting if your concern is not immediately acknowledged and addressed by the chair or the Euromines Secretariat.

- (j) **Do** seek legal advice if you are concerned that the activities of the Association or any of its members could raise antitrust concerns and inform the Euromines Secretariat immediately.
- (k) **Do** send all Euromines-related correspondence to the Euromines Secretariat.
- (l) **Do** inform the Euromines staff of any inaccuracies in proposed statements to be made by Euromines on behalf of the mining industry, particularly statements to government officials.
- (m) **Do** be cautious in the presence of competitors even in informal or social situations. Even informal discussions or throw-away comments can lead to problems if, for example, there is subsequent significant uniformity in action by competitors afterwards.
- (n) **Do** allow for an open dialogue between members in Association meetings and do not exclude a specific member or group of members from particular meetings.
- (o) **Do** remember that meetings with government officials may not provide a shield against antitrust liability.

Conclusion

Compliance with the guidelines contained in this Antitrust Policy involves not only avoidance of antitrust violations, but avoidance of any behaviour that might lead to it. Bear in mind, however, that the anti-trust laws are stated in general terms, and that this policy statement is not a summary of applicable laws. It is intended only to highlight and emphasise the principal antitrust rules, which are relevant to Euromines programs. You must, therefore, seek the advice of either the Euromines Legal Counsel or your own corporate legal counsel if and when antitrust questions arise.

Rolf Kuby,

Director General Euromines