

TO ENSURE COMPLIANCE WITH EU COMPETITION LAW

COMPETITOR INTELLIGENCE

What's the big deal?

- ▶ There is a close relationship between commercially sensitive competitor intelligence (think 'business secrets') and cartel activity: no cartel can survive without the participants exchanging sensitive information
- ▶ This applies to direct "competitor to competitor" and indirect (through a third party, such as EUsalt) exchanges of information
- ▶ A single disclosure of sensitive information to a competitor may result in severe penalties
- ▶ The potential liability of trade associations and their members for a breach of competition law now runs to multiple millions of Euros



DIRECT DISCLOSURES

Don't blab...

We're thinking of increasing our prices for widgets next month. The market can take it; demand is pretty good.

Really? That's interesting. We might do the same for our widgets then. We are experiencing better than average demand too.....

Well it's up to you but with a lot of the competition going bust after our last joint pricing promotion, there's not a lot to hold us back from hiking up the price tag



STAYING IN CONTROL

When to be wary...

Meetings and social interactions

HIGH RISK	MEDIUM RISK	LOW RISK
Meeting competitors and intermediaries	Meetings with customers (beware disclosure of competitor information)	Meetings with lawyers present
Golf Course, bar, plane, party, other informal social settings where competitors present	Trade association meetings	Internal meetings (no other third parties present)
Meetings with code names for prices/products	Other industry body meetings	Conference events where wide invitation list, (e.g. attendees include customers, competitors, regulators, lawyers etc.) - but beware private / 'offline' conversations with competitors
Any meeting where a competitor's prices/competitively sensitive information is disclosed	Sales and marketing conferences	
	Roundtable discussions	
	Trade surveys and industry research exercises	

Employees due to attend formal or informal meetings with competitors should be coached in advance on topics to avoid and how to react to inappropriate disclosures

WHAT IS COMPETITIVELY SENSITIVE INFO?

Info normally kept secret ▶▶▶ Not publicly available ▶▶▶ Receipt confers competitive advantage ▶▶▶

Be alert!

INFORMATION IS COMPETITIVELY SENSITIVE AND SHOULD NOT BE DISCLOSED TO A COMPETITOR WHEN ...

- ▶ The company disclosing it would normally keep it secret
- ▶ The information is NOT publicly available or could NOT be accessed from a non confidential source (could the ordinary person on the street get hold of it?)
- ▶ The information gives the recipient an 'inside perspective', i.e. insight into its competitor's market strategy

TO ENSURE ADHERENCE
TO EUSALT'S COMMITMENT

DO'S

Feel free to discuss the following at the meetings:

- ▶ 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)

Ensure that:

- ▶ Detailed minutes of every meeting are recorded in draft and sent for approval by all who attended before being finalised
- ▶ All professional business contacts that you have with competitors at a General Assembly have a clear legitimate purpose and take place as part of the formal programme and under the supervision of the EUsalt Secretariat
- ▶ Social contacts with competitors during a General Assembly must be confined solely to social exchanges
- ▶ An agenda is circulated in advance of each meeting
- ▶ You consult with the EUsalt Secretariat and/or appropriate counsel on all questions you may have related to competition law

DON'T'S

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, bids
- ▶ Production capacities/capacity utilisation
- ▶ Detailed sales information
- ▶ Individual company costs' data (e.g. transport costs)
- ▶ General or common commercial issues (e.g. difficulties with a supplier) without first consulting the EUsalt Secretariat and/or appropriate counsel

Please note that these topics are equally prohibited outside formal meetings in the context of social exchanges with your competitors

If in doubt, please contact the EUsalt secretariat :

info@eusalt.com
www.eusalt.com

Keep in mind:

CONTEXT IS EVERYTHING!

If in doubt, ask yourself:

- ▶ Would you tell a journalist about this same information and would your board be happy to see it splashed across tomorrow's headlines? If not: keep it to yourself!
- ▶ Might these comments/statements be capable of being misunderstood?
- ▶ Once the genie is out of the bottle, you cannot put it back in - so take advice first!

COMPETITOR INTELLIGENCE & MANAGING SUSPICION

Keep your secrets close...

- ▶ Competitors are required by law to compete independently – this is seen as a good thing for consumers because it keeps prices low, increases choice/range and encourages focus on quality and innovation
- ▶ Disclosure by a business to its competitor of commercially sensitive information reduces that competitor's independence, i.e. it enables your competitors to work on your market position

Sound the bell...!

Typical topics that should ring warning bells if raised by a competitor are:

Costs	Customer lists
Terms with suppliers	Prices (future current, recent)
Pricing	Unpublished IP, know-how or proprietary technological data
Structure	Tenders
Investment spend	New business development plan
Risk assessment	Individual terms of customers relationship
Margins	Restoring market discipline
Discounts	
Sales strategy	
Orders	