

COMPETITION COMPLIANCE POLICY

“BESA’s management is committed to complying with competition laws, and all members of Executive Council, staff and SIG Chairs should be aware that any infringements of the procedures or guidelines in this policy will be viewed very seriously. You should take the time to read this policy carefully. If you have any queries or are uncertain whether competition laws may apply to our specific activities, you should contact me or Julia Garvey as necessary.

Compliance with competition law is in all our interests.”

Caroline Wright
Director General

1. Introduction

Competition laws promote fair trading and protect consumers from anti-competitive practices. Competition law regulates:

- The behaviour of companies in their interactions with competitors, suppliers and customers through rules governing potentially anti-competitive agreements, decisions and practices; and
- The behaviour of companies who enjoy a dominant market position on any relevant market. This is not considered further in this policy and reference should be made to the competition law guideline [Abuse of a dominant position \(OFT402\)](#).

We must all take personal responsibility to understand our competition law obligations and regulate our behaviour accordingly. Failure to do so may result in very serious consequences for BESA and its members, including:

- **Fines** of up to **10% of group global turnover**. Financial penalties could be imposed on BESA itself, its members or both;
- Contracts and agreements may be declared **void and unenforceable**;
- Serious **reputational damage**;
- Significant **costs and loss of management time** in dealing with investigations into suspected breaches;
- **Lawsuits** from anyone who has suffered harm as a result of the infringement;
- **Criminal sanctions** against individuals, including personal fines and the possibility of imprisonment;

- **Directors face disqualification** for up to 15 years not only for personal conduct, but also for failing to take reasonable steps to prevent, uncover or bring to an end any infringement they knew about or ought to have known about; and
- **Disciplinary action** against employees.

BESA employees and officers (including Council Members as directors of BESA) are expected to comply with all applicable laws and regulations. Any BESA employee or officer that breaches the law will be held strictly accountable and subject to appropriate action, up to and including in the case of employees of BESA dismissal.

2. What this policy covers

This policy is intended to help our employees and officers identify and avoid inappropriate and illegal activity. It applies to all BESA employees and officers.

The policy focusses on UK and European competition laws that apply to BESA's UK and European trade association activities. Advice in relation to BESA's activities outside of these jurisdictions may differ. Please contact Julia Garvey if you have any concerns in relation to BESA's international activities.

This policy identifies the most important 'Do's' and 'Don'ts' which should be adhered to at all times. A 60-second summary outlining the main 'Do's' and 'Don'ts' is also attached at Annex I.

The following topics are covered below:

- Section 3: [Additional competition policy documents](#)
- Section 4: [Cartels and anti-competitive agreements](#)
- Section 5: [Commercially sensitive information](#)
- Section 6: [Managing the risks – conduct in BESA meetings](#)
- Section 7: [Advertising](#)
- Section 8: [Technical standards and standard terms](#)
- Section 9: [Terms of membership](#)
- Section 10: [What to do if you have concerns](#)

3. Additional competition policy documents

This policy supplements the following policy documents:

- Executive Council governance pack
- BESA Code of Practice

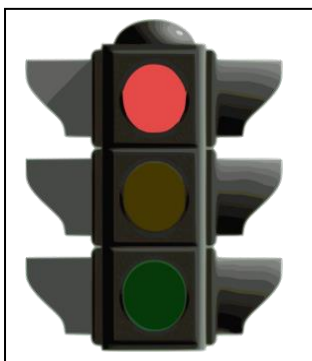
4. Cartels and anti-competitive agreements

UK and European competition laws prohibit any agreements, decisions or practices which may prevent, restrict or distort competition. ‘Decision’ has a wide meaning in relation to trade associations and includes the following:

- The constitution or rules of the association
- Any co-ordination of the members' conduct via its constitution or rules
- Recommendations of the association
- Resolutions of its management committee
- Resolutions of the full membership in a general meeting
- Binding decisions of the executive committee
- Rulings of the chief executive (in BESA’s case the Director General)

The following are the most serious restrictions of competition law which will be illegal in all circumstances and may give rise to personal criminal liability as well as the risk of fines and damages actions.

NEVER:



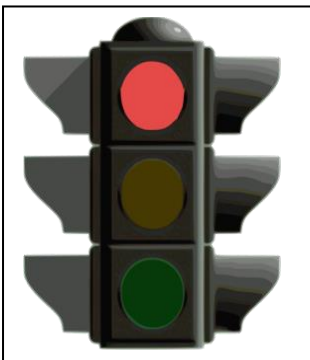
- Issue formal or informal pricing, including discount and allowance, recommendations to members
- Issue formal or informal production/output or sales recommendations to members
- Let BESA be a channel for, or otherwise facilitate, the fixing of prices or co-ordination of key trading terms between members
- Let BESA be a channel for, or otherwise facilitate, the sharing or division of markets or customers (by geographical region, customer focus, or via bid rigging or advertising/marketing arrangements) between members

- Let BESA be a channel for, or otherwise facilitate, the sharing of competitively sensitive information between members

5. Commercially sensitive information

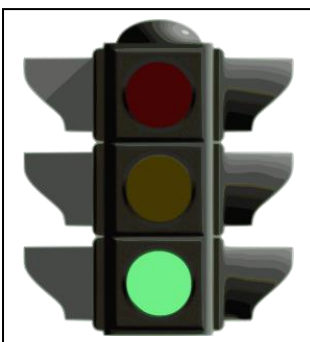
The exchange of information between BESA’s members could be problematic if it removes or reduces the strategic uncertainty of competitors, as that would diminish their incentives to compete against one another.

NEVER allow or facilitate the sharing of the following commercially sensitive information between members:



- Prices (including discounts and rebates) and costs
- Profits and margins
- Production/output and sales
- Market shares and sales territories
- Investment, marketing and promotional plans
- Bidding intentions (including plans to refrain from bidding)
- Conditions of sale
- Selection, rejection or termination of customers and suppliers

The following types of information will generally raise fewer concerns, but do exercise your commercial judgment in deciding whether information could be potentially commercially sensitive:



- Public information
- Historic information (generally more than 12 months old) that does not relate to future plans
- Data that is aggregated and made anonymous (i.e. not provided on an individual basis)
- Generic market information and intelligence

It is also possible for BESA to collect and disseminate industry statistics and benchmarking studies. The sharing and the manner of how this information is treated and communicated is however to be treated with caution. BESA (via C3 Education) must collect the data from the members, so that the members are not sharing the information directly between themselves. This must be historical information only and be communicated back to the members in aggregation, anonymously and in a manner that ensures that information cannot be attributed to a particular member through its context.

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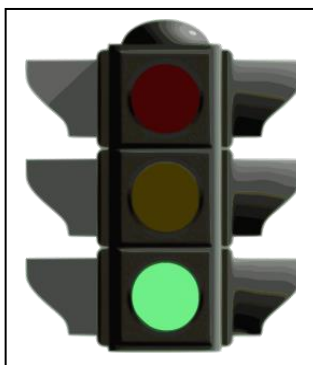
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6. Managing the risks – conduct in BESA meetings

Be aware of the risks when holding meetings or social events/gatherings.

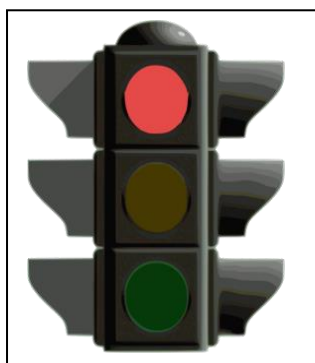
Meetings can be a useful forum for discussing genuine industry issues but the exchange of commercially sensitive information increases the risk of anti-competitive co-ordinated behaviour in the market.

REMEMBER to:



- Prepare, check and circulate an agenda in advance of a meeting
- Ensure the agenda is adhered to
- Circulate the 'Do's' and 'Don'ts' guidelines attached in Annex II to all members attending the meeting
- Take minutes of all meetings
- Keep a full record of reasons where admission of new members is considered and applications accepted or declined
- Interrupt and object to any potentially anti-competitive discussion and ensure public distancing
- Check minutes accurately record BESA's views, including any concerns BESA may have raised on competition issues
- Consult external competition specialists if in doubt

Remember that silence is not enough – BESA's presence at meetings where anti-competitive discussions take place can be sufficient. **NEVER:**

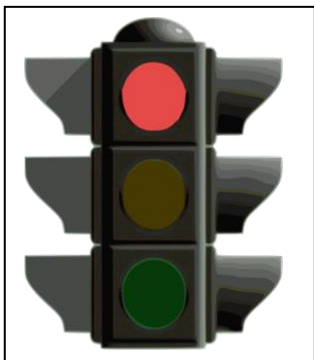


- Agree, discuss, recommend a course of action – or exchange information – on commercially sensitive matters such as pricing, production/output levels and collective boycotts
- Require members to provide BESA with competitively sensitive information
- Destroy documents – always speak to Julia Garvey first
- Continue with a meeting if you believe anti-competitive issues are being discussed and/or commercially sensitive information is being exchanged

7. Advertising

Restrictions on advertising, whether relating to the amount, nature or form of advertising, have the potential to infringe UK and European competition laws.

NEVER:



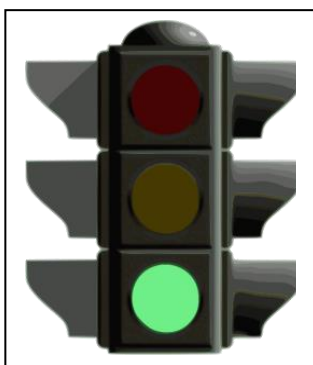
- Prohibit members from soliciting for business
- Restrict members from competing with other members
- Prohibit members from advertising prices, or prices below a minimum or recommended level
- Adopt rules or practices that restrict members' advertising and promotional business practices, beyond ensuring such practices are legal, truthful and not misleading

8. Technical standards and standard terms

BESA may play a role in the negotiation and promulgation of technical standards in the industry.

BESA may also be involved in the formulation of standard terms and conditions to be applied by members. This may be no more than a useful simplification of what otherwise might be complex and, to the customer, potentially confusing conditions.

BESA is committed to ensuring that:



- Standards only relate to specified legitimate objectives, and are 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)
- The use of any BESA developed standard terms and conditions are not made compulsory

9. Terms of membership

BESA is committed to ensuring that its membership criteria are transparent, proportionate, non-discriminatory and based on objective standards.

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Similarly, BESA is committed to ensuring that its procedures for expelling members are based on reasonable and objective standards and there is a proper appeals procedure in the event of refusal of membership or expulsion.

10. What to do if you have concerns

If you are in any doubt, either in respect of your own activities or regarding the behaviour of others (e.g. members, suppliers or colleagues), you should immediately talk to Julia Garvey.

Any compliance concerns can be reported directly to: Julia Garvey

It is important you discuss any concerns as soon as possible with [insert contact] who may need to involve external specialist lawyers, as necessary. If you cannot reach the compliance representative, then contact:

- Andrew Maxwell, Head of Competition, Freeths LLP (+44 (0)7921 603226/Andrew.Maxwell@freeths.co.uk)
- Leonia Chesterfield, Managing Associate, Freeths LLP (+44 (0)7970 430995/Leonia.Chesterfield@freeths.co.uk)
- Asfand Gulzar, Associate, Freeths LLP (+44 (0)2074 405 170/Asfand.Gulzar@freeths.co.uk)

Do not destroy any documents, whether in paper or electronic form.

Remember: all industries **must** adhere to competition law requirements and ours is no exception.

Annex I

60-second summary

Dos and don'ts for trade associations



What do trade associations need to know about competition law?

Trade associations play an important role in promoting their members' interests. However, if a trade association is used as a means to create or encourage an infringement of competition law, then both the association and its members can face serious consequences.

Do

- remember that the association itself can be liable for breaches of competition law, and that a breach can have both financial and reputational consequences for the association
- establish a competition compliance policy for the association, and make sure members are familiar with it
- forbid members from discussing competitively sensitive information
- require members to leave, and to report to the association or the CMA, any meetings with competitors where competitively sensitive information is discussed
- ensure that any standard contract terms and conditions developed by the association are clear, easily understood, in plain language and fair to consumers
- ensure that rules and admission criteria for the association are transparent, proportionate, non-discriminatory and based upon objective standards
- ensure that the requirements for any quality certification schemes the association operates are fair, reasonable and are available to all businesses that meet them.

Don't

- have rules that prevent the members from taking independent commercial decisions
- let the association be a channel for, or otherwise facilitate, the sharing of competitively sensitive information between members about pricing, customers or output plans
- allow members to discuss competitively sensitive information in or around association events, including in 'unofficial meetings' or at social events
- issue formal or informal pricing or output recommendations to members
- develop association rules or practices that restrict members from advertising their prices or discounts, soliciting for business or otherwise competing with other members
- require members to provide the association with competitively sensitive information, such as information about pricing and/or output intentions
- publish messages suggesting that lower prices means lower quality
- establish irrelevant or arbitrary rules for the admission of new members
- adopt rules that restrict members' advertising and promotional business practices, beyond ensuring such practices are legal, truthful and not misleading
- prevent members from using different contractual conditions from any association-developed standard conditions, if they wish to do so.



What is competitively sensitive information?

Competitively sensitive information covers any non-public strategic information about a business's commercial policy. It includes, but is not limited to, future pricing and output plans. Historical commercial information is far less likely to be competitively sensitive, particularly if individual businesses' commercial activities cannot be identified.

Report a cartel
T: Cartels hotline
020 3738 6888
E: cartelshotline
@cma.gsi.gov.uk

For more information on compliance and leniency:
www.gov.uk/cma

These materials do not constitute legal advice and should not be relied upon as such.

60-second summary

September 2014

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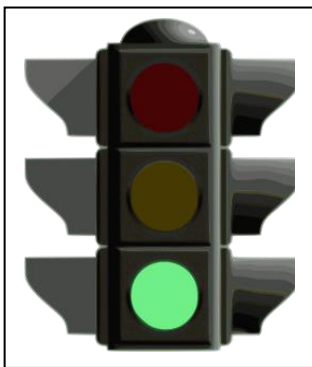
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Annex II

Attendance at, and/or participation in any BESA meeting or function requires adherence by BESA members to BESA's commitment to ensuring compliance with UK and European competition laws.

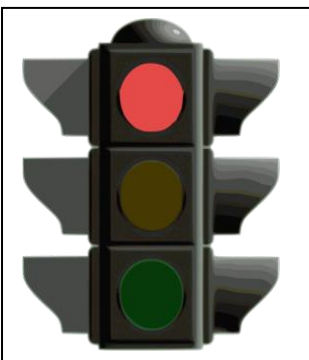
The purpose of this checklist is to ensure that BESA members are aware of the key competition law requirements that apply during BESA meetings and other social events/gatherings.

DO:



- Remember that any business found to have infringed UK and European competition laws can be fined up to 10% of its annual worldwide group turnover
- Take independent legal advice before joining a meeting or before participating further
- Ensure that written agendas are circulated in advance and adhered to
- Check minutes accurately record your views, including any concerns you may have raised on competition issues
- Object if you are concerned that discussions are straying into commercially sensitive areas, leave the meeting, and ensure your objection and departure are recorded in the minutes and report the incident to BESA's compliance representative

DON'T:



- Agree with a competitor to fix prices or otherwise co-ordinate key trading terms (e.g. discounts, margins, etc.)
- Agree to fixed or minimum margins (this is resale price maintenance)
- Agree to share or divide up markets or customers (by geographical region, customer focus, or via bid rigging or advertising/marketing arrangements)
- Agree to limit production/output or sales (e.g. production limits and boycotts)
- Agree to exclusive distribution arrangements with suppliers or customers that ban exports between other authorised dealers or between countries within the European Union and/or the European Economic Area
- Share commercially sensitive information with or about competitors (whether directly or via an intermediary)