



COMPETITION LAW GUIDANCE – Updated October 2018 v.4

The following practical guidelines are designed to ensure that neither BIVDA staff nor BIVDA members enter into any activity which might violate the competition laws of the UK and the European Union as a result of their activities within BIVDA, and with particular emphasis on conduct at BIVDA meetings.

I. APPLICATION OF COMPETITION LAW

Competition law prohibits *agreements* between companies and *decisions by associations of companies* which have as their object or effect the restriction or distortion of competition within the UK or the European Union. The concepts of “agreement” and “decision” are very broad, and will include tacit agreements and passive acceptance of anti-competitive conduct.

If these rules are not complied with, whether at formal BIVDA meetings or at more informal gatherings, your company may be at risk from significant fines – up to 10% of total world-wide annual sales. Breaches of UK competition law can also lead to orders for the disqualification of company directors and potential criminal sanctions.

Members should seek individual legal advice on competition law and its application to their activities. The following points are given as examples and are not an exhaustive list.

II. BASIC DOS AND DON'TS

The following activities are illegal and must be avoided at all times:

Do not agree with your competitors or anyone else:

1. To fix the prices of your products or conditions of sale.
2. To limit your production, agree production quotas, or otherwise limit the supply of any product reaching the market.
3. To divide up the market or sources of supply, either geographically or by class of customer.
4. To blacklist or boycott customers, competitors or suppliers.
5. To limit or control your investments or technical developments in the market.
6. To bid or not to bid for a contract, or the terms of any such bid.

Do not discuss or exchange information with your competitors on any subject relating to the issues mentioned above. In other words, ***do not*** have formal or informal discussions on the following:

1. Individual company prices, price changes, terms of sales, etc.
2. Industry pricing policies, price levels, price changes, etc.
3. Price differentials, price mark-ups, discounts, allowances, credit terms.

4. Costs of production or distribution, cost accounting formulas, methods of computing costs.
5. Individual company figures on sources of supply, costs, production, inventories, sales, etc.
6. Information as to future plans of individual companies concerning technology, investments, or the design, production, distribution or marketing of particular products including proposed territories or customers.
7. Matters relating to individual suppliers or customers, particularly in respect of any action that might have the effect of excluding them from the market.
8. Matters which would otherwise be regarded as currently confidential to your company.

CONDUCT AT BIVDA MEETINGS is particularly important. Trade associations activities tend to attract the attention of the competition authorities as this is a format for both formal and informal discussion between competitors. Individual decisions taken at BIVDA meetings, however informally, will generally be taken to constitute agreements between all of the Members.

1. BIVDA seeks to ensure that draft agendas are checked on issues which could raise EU competition law concerns and that written agendas will be circulated in advance of meetings. BIVDA members should not hesitate, however, to seek legal advice on any given topic and contact BIVDA in advance if an agenda item causes concern.
2. If during a BIVDA meeting, a discussion is held which is thought to have strayed on to a sensitive area for competition law, individual members should request that the Chairman suspend and postpone the discussion for as long as it takes to obtain legal advice on the matter.
3. Members may alternatively feel free to refrain from participating in discussions on the particular agenda point.
4. The individual member should make sure that his/her objection and departure from the meeting are recorded in the minutes.
5. Individual members should react in the same way if attempts are made to debate clearly improper topics such as price-fixing or market-sharing.
6. Members should not in general discuss matters which go beyond the scope of the agenda and should be wary of the content of any discussion which take place in a social context prior to or after a meeting.
7. Written minutes of each meeting will be circulated amongst the Members.

Specific legal advice will be taken on the content of any joint action which could potentially raise competition law issues, such as: proposed industry standards, codes of conduct, recommendations or information exchanges.

Please note that our shared reputation depends on the behaviour of each individual. Members should therefore not hesitate to bring improper discussions to the appropriate senior officer/attorneys within his/her organisation and within BIVDA to ensure that the appropriate steps are taken to comply with the law.

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