The voice of steel distribution

COMPETITION LAW GUIDANCE

National Association of Steel Service Centres
1st Floor, The Citadel,
190 Corporation Street, Birmingham, B4 6QD.

www.nass.org.uk
info@nass.org.uk

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SECTION 1

COMPETITION LAW – THE BASICS

Antitrust and competition law strictly regulates amongst other things all agreements or arrangements with competitors, formal and informal, written and oral. Competition law also regulates restrictive agreements or practices (which may or may not be with competitors), abuse of market power and mergers, acquisitions and joint ventures. The purpose of competition law is to ensure and maintain effective competition in the marketplace and to protect the interests of consumers.

It does not affect dealings between companies within the same corporate group.

Horizontal agreements are agreements between **competitors or potential competitors** (i.e. companies who produce the same products but are not present in the same geographic market, and as such do not compete).

Competitors are businesses which **compete** with each other in the same market and at the same level e.g. because they sell similar products or services in the same markets.

Note: Vertical agreements are referred to under Pricing Arrangements (Page 7)

Key Message

If an agreement between competitors has an anti-competitive purpose or effect, it may **harm** competition or potential competition and is therefore very likely to breach competition/antitrust law.

Agreements, arrangements or understandings with exchanges of information among competitors, even if not made in writing, may have an anti-competitive effect and are therefore likely to be **illegal** when related to, amongst other things:

- Prices, discounts / rebates
- Allocation / monitoring of markets or customers
- Terms and conditions of sales or purchase
- Sale data or orders – including bid rigging/collusive tendering
- Costs
- Refusals to deal with customers or suppliers (boycotts), and
- Limiting capacity/investment
- Competitively sensitive information

Note: Collusion between competitors, if its objective is to restrict competition, is illegal irrespective of whether or not there is any impact on the market and is a breach of Competition/Antitrust law.

COMPETITION LAW – CONSEQUENCES OF BREACHING LEGISLATION

The consequences of breaching competition law are **severe.**

In the UK **individuals** can also be fined for non-compliance.

Employees of a company have a personal responsibility to ensure that they comply with antitrust and competition law. Failure to do so may affect their career prospects, their employment with the company and, where breaching of UK competition law, which is a criminal offence, is proved then they could even be **imprisoned** for up to 5 years.

In addition to criminal and civil penalties, **private parties** who have been harmed by anticompetitive agreements or conduct can in most jurisdictions sue the company responsible for the antitrust infringement and recover their proven damages. Such an action enables the plaintiffs to recover substantial amounts in damages.

In the case of customers, **damages** mean the amount they were overcharged compared to a hypothetical price that would have existed in a fully competitive market. In case of competitors, it usually means lost profits.

Prevailing antitrust plaintiffs in the UK are also entitled to seek to recover their legal fees, which may even exceed the plaintiffs' proven damages.

In addition to financial losses, penalties and prison terms, there are other serious consequences resulting from non-compliance with competition law, including:

1. **Disqualification**
   The authorities can order the disqualification from serving as company directors for several years. A director can be disqualified in the UK for a period up to 15 years.

2. **Unenforceability**
   Commercial agreements containing anti-competitive terms may be unenforceable.

3. **Change of Practice**
   The authorities can order the company to change its commercial practices.

4. **Cost of Litigation and Defence**
   Any investigations by the competition authorities or third-party legal actions could be costly to a company as they take up a significant amount of management time and require the involvement of external legal and economic advisers. This will lead to business interruption and additional workload.

5. **Adverse Publicity**
   The reputation of a company may be damaged if it is found to have breached competition law.

COMPETITION LAW – INTERNAL CORRESPONDENCE

The use of **careless language** in business writing can be dangerous. During an investigation, the competition authorities can examine almost every form of data and correspondence.

Therefore, when writing business documents, here are a few basic rules in mind:

- Is it necessary to create the document in the first place?
- Am I using any threatening, emotional, aggressive or suggestive language?
- Could someone reading it later misinterpret it or distort the sense by placing it out of context?
- Do not use "guilty" vocabulary, such as "please destroy / delete after reading".
- Never create documents that could give the impression of any wrongdoing if it was read by any competition authority.
- Avoid "power" vocabulary, such as "we will dominate the market".
- Avoid giving the impression that any one customer is special
- Avoid keeping different versions of the same document in your files or on your computer
- Do not keep documents any longer than is strictly necessary to meet legal requirements

Original (containing dangerous words)

To:	A User @ Company.com
Subject:	Re: Monthly Sales Meeting
In reviewing my notes from yesterday's meeting, I agree with your assessment that our new marketing strategy will **destroy** Company X's initiative to increase their market. By lowering our prices and using **aggressive** marketing, we will be able to **damage** the effectiveness of their advertising campaign and signal to the marketplace that we **mean business.**	

New (containing safer words)

To:	A User @ Company.com
Subject:	Re: Monthly Sales Meeting
In reviewing my notes from yesterday's meeting, I agree with your assessment that our new marketing strategy will effectively **compete with** Company X's initiative to increase their market. By lowering our prices and using **dynamic** marketing, we will be able to **minimise** the effectiveness of their advertising campaign and signal to the marketplace that we are **committed** to our customers**.**	

Key Message

A poor choice of words can make legitimate actions appear illegal and affect a company's position in an investigation. However, beware that using **"safe words"** will not legitimise any illegal behaviour!

COMPETITION LAW – PRICING ARRANGEMENTS

What to do:

Do make decisions about pricing independently of competitors. In deciding on prices, you are of course free to make full use of publicly available market information, including the information published by competitors or made available by customers. You are also free to match or adjust your prices to those of any competitor, but this should only be done independently, not after the competitor tells you (directly or indirectly) how he is going to act.

What not to do:

DO NOT make any statements that could be considered or interpreted as an invitation for competitors to take action.

DO NOT contact competitors directly or indirectly (e.g. via customers or suppliers) before or after announcements.

DO NOT refer to the policy of competitors or the industry as a whole in any announcement or public events.

NEVER discuss pricing or surcharge announcements with competitors either formally or informally, orally or in writing.

Vertical agreements are agreements between companies operating at different levels of the supply chain, such as between:

- Manufacturers and distributors, and
- Distributors and retailers

They can be **unlawful** if they contain, for example:

- Restrictions, such as: price setting for your customers' pricing policies; market partitioning/restrictions by sales territories or customers or prohibition of passive sales outside a sales territory attributed to a trader or reseller, ("hardcore" restrictions)
- Long-term non-compete obligations (>5 years) concerning over 80% of buyers' purchases of the contract goods and services and their substitutes
- Prohibition of selling competing products imposed on a trader or seller

Such agreements generally will fall within the following categories:

- Exclusive dealing
- Resale price maintenance, and
- Restricting resale territories

SECTION 2

EXAMPLES OF INFRINGEMENTS

- In 1990, the European Community fined seven major Community producers of stainless steel flat products for organising a **market sharing and price maintenance agreement.** A multilateral agreement entitled "Agreement on a voluntary system of delivery limitations for cold rolled stainless steel flat products" was made between all the major producers of cold rolled stainless steel flat products in the Community and producers in Sweden and Finland between May 1986 and October 1988.

  The main provisions of the Agreement were:

  - A delivery quota system, establishing each company's market share and setting, on the basis of quarterly forecasts, the tonnages each company could sell in each quarter, in each of the 17 national markets covered by the agreement. Companies were fined for exceeding their quotas.

  - The setting up of a "Pricing Committee" which coordinated price rises.

  The Agreement **restricted production and shared markets.** By restricting production levels and the freedom of producers to increase their sales in the countries covered, the agreement contributed to the maintenance of higher prices than would have been the case if free competition had prevailed. The European Commission sanctioned by **imposing fines.**

- In 1994, the European Commission adopted a decision on a cartel in the steel beams sector and fined several steel companies and notably companies that today are subsidiaries of ArcelorMittal Group for participating in a cartel in steel beams in violation of European Competition Law. Between 1988 and 1991, the companies **fixed prices, allocated quotas and exchanged confidential information** in the steel beams industry covering the whole of the EU market. This decision was appealed and the process was ongoing for 11 years and was finally concluded in 2011, when the Commission's decision was upheld. Whilst the decision was not ultimately overturned, this is a good example of how long, time consuming, and costly such cases can be.

- In 1998, The European Commission fined ten companies a total of **€92 million** for running a **secret market sharing, price fixing and bid rigging cartel** in pipes used for heating systems and for attempting to eliminate a competitor.

  The cartel had a particularly sophisticated system of bid rigging. A "favourite" was nominated to win each contract and the other cartel members put in higher prices.

- In 1999, the European Commission imposed fines totalling **€99 million** for **market sharing** when it found that eight producers of seamless steel tubes had agreed to **allocate territories** to protect their respective domestic markets.

- In 2002, following a detailed investigation during which it carried out on-the-spot inspections in 2000, the European Commission found that 8 firms took part with the aid of the Italian trade association in an agreement aimed at fixing the prices of reinforcing bars or coils in Italy. These firms accounted for around 30% of reinforcing bar produced in Italy in 1989 and more that 80% in 2000, the number of market players having fallen from some 40 to less than a dozen. The Commission's investigation demonstrated that, **for a period of ten and a half years** between 1989 and 2000, the cartel members **fixed the size extras** to be added to the base price for each product. From April/May 1992 until 2000, the cartel members also fixed the base price and, until September 1995, agreed on standard terms of payment. Lastly, between 1995 and 2000, they limited and/or monitored production and/or sales. The practices in which the firms concerned engaged constitute **extremely serious infringements** of European Competition Law and companies have been fined.

- In 2003, a Norwegian shipping company and two of its executives pleaded guilty to charges of **customer allocation, bid rigging, and price fixing.** The company, Odfjell Seachem, agreed to pay a **$42.5 million** fine for its role in the cartel, and its executives agreed to pay fines totalling **$275,000** and to serve a total of **seven months** in jail.

- In May 2005, the Japanese Fair Trade Commission (JFTC) cracked what many have described as the highest profile cartel cased in the last 30 years in Japan, involving **bid rigging** on billions of dollars of steel bridge construction projects ordered by the government. The JFTC initiated a record number of criminal prosecutions against 26 companies, as well as fourteen corporate officials, for their involvement in the cartel. In mid-June JFTC filed charges against eight of the fourteen arrested executives. In 2006, the Tokyo High Court imposed fines of **6.48 billion Japanese Yen (approximately 61 million US Dollars)** against 23 companies.

- In 2007, ThyssenKrupp and Otis were fined **€480 million** and **€225 million** respectively for their participation in a cartel to allocate tenders and other contracts for the sale, installation, maintenance and modernisation of lifts and escalators. The aim was to freeze market shares and fix prices in Belgium, Germany and Luxembourg and The Netherlands.

- On 30 June 2010, the European Commission announced that it had fined 17 producers of pre-stressing steel a total of EUR518.5 million (subsequently reduced to EUR296 million) for participation in a long-running price-fixing and market-sharing cartel. The Commission found that the pre-stressing steel producers implemented price-fixing and market-sharing agreements between January 1984 and September 2002 in all of the then EU member states, other than the UK, Ireland and Greece. The cartel also extended to cover Norway. The parties held a number of meetings, the first of which was held in Zurich (giving the cartel the name "Club Zurich"). The cartel was subsequently renamed "Club Europe". There were also two regional branches of the cartel: one in Italy (Club Italia) and one in Spain/ Portugal (Club España). The different branches were interconnected due to the overlap between the territories, multiple affiliations between the parties involved and the common goals of the discussions. The evidence of more than 550 cartel meetings was uncovered over the 18 year duration of the cartel. These meetings

were usually held on the sidelines of official trade association meetings in hotels throughout Europe. At these meetings, the companies set quotas and individual prices, allocated customers and exchanged commercially sensitive information. In addition, they enforced and monitored the agreements on prices, customers and quotas through a system of national coordinators and through bilateral contacts. The cartel ended in 2002 when DWK/ Saarstahl submitted a leniency application in which it revealed the existence of the cartel to the Commission. The Commission then conducted unannounced inspections at the premises of suspected cartel members.

SECTION 3

COMPETITION LAW – MEMBERSHIP OF TRADE ASSOCIATIONS

Trade associations provide a venue for competitors to meet and discuss industry trends and issues, such as legislation impacting on their sector.

However, trade association meetings provide opportunities for formal and informal contacts between competitors and expose members to **risks** of inference of collusion if followed by parallel action.

Generally, participation in trade associations is legal. However, be aware that certain discussions can constitute a breach of competition law unless due care is exercised.

Trade associations can defend the commercial interests of its members and promote their economic prosperity by defending its members against new laws/regulations, which might have a negative impact on their business, by promoting the use of their members' products, or the development of the business (through e.g. school programmes, business forums).

Trade associations may also be involved in defining standard terms such as quality labels. Trade associations can also establish statistical studies. For all those activities, they have to respect antitrust rules.

Rules of engagement for trade association membership:

1. The association must have a clear mandate and written terms of reference

2. The rules of association must have been examined by legal entity for conformity to legislation

3. The membership criteria should be objective in nature, uniformly laid down and applied in a non-discriminatory manner – if membership is refused, there should be an internal procedure for appeal within the association

4. It is the responsibility of the chairmen of meetings to ensure meetings are compliant with both competition and antitrust legislation

5. Meetings should only be held at regular intervals

6. A clear written agenda should be circulated in advance

7. Minutes of meetings must be clear and unambiguous

8. The minutes of meetings can be examined from time to time to ensure compliance

9. There should be no parallel "off the record" meetings

National and Pan-European Meetings

Attendance at and involvement in trade association meetings with competitors is lawful under certain clearly defined circumstances and conditions.

1. Membership of trade associations and attendance at meetings with competitors are lawful subject to their purposes being:

   - To review general market conditions
   - To forecast trends in demand by market sector but it must be recognised that each participant is free to determine his own course of action
   - To discuss appropriate international trade and other regulatory matters
   - To discuss technical developments

   Any general discussions of forecast trends in market demand or of prices must be limited to aggregated data that cannot be easily disaggregated and that does not reveal information on sales prices or the general business strategy of any individual producer. The sales activities of particular producers must not be discussed.

   The fixing of prices or tonnage quotas, whether formally or informally, is unlawful and not permissible.

2. Prices: The setting or recommending of prices or target prices by sector or by product in any trade association committee is unlawful, as is the fixing of customer specific or co-ordinated price levels.

   It is permissible in trade association product committees for an individual producer:

   - To discuss general price trends in its national market, but discussion of specific price levels is precluded
   - To declare its unilaterally decided forward price intentions, provided implementation has already been announced to its customers. It is, however, essential to ensure that a company does not become involved in improper (i.e. collusive) price leadership; its employees must not encourage others to follow its price initiatives, whether by direct or indirect means.

   It is not lawful or permissible to enter into general or specific price agreements or coordinated market arrangements with competitors, either within or outside a trade association committee.

   Specifically, members attending meetings should:

   - NOT discuss prices, other terms of trade, customers, bids or plans or other commercially sensitive information with competitors during trade association meetings or other occasions
   - NOT gather competitive information directly from their competitors
   - NEVER engage in sidebar discussions at the trade association's meetings or social events or meals with any representative of competing companies on commercially sensitive information

Any discussion or statement on pricing by even one of the members runs the risk of being interpreted as an unlawful exchange or a concerted practice and consequently should be treated with great caution.

3. The provision and exchange of information between competitors, either directly or through trade associations, risks infringing competition rules. It is legitimate to provide information after the end of each month on deliveries to trade associations for the purpose of aggregation and dissemination to members in a form whereby individual companies cannot be identified. The entity collecting and processing such data should, however, be bound by confidentiality obligations. Thus it is acceptable for trade associations to provide recent information of this nature to its members showing the aggregated total deliveries or stock levels by all of its members. It is not acceptable for trade associations to disseminate recent information on deliveries or stock levels by individual company.

   No unpublished information about a company's commercial activities which falls outside these guidelines may be provided to trade associations, competing producers or other third parties.

What are trade associations not allowed to do?

They may not discuss, decide on or recommend any market behaviour (even in response to exceptional economic developments facing the industry) including but not limited to the following:

- They may not circulate directives or recommendations to its members regarding selling prices and/or indicate the date of entering into force of the new price listing and/or give indications of maximum discounts/target levels/margin levels etc. This also applies to trading terms and price component extras, for example, charges relating to delivery, processing or certification.

- They may not organise distributions of market and/or circulate sales targets, capacity utilisation and/or classify customers according to their importance or potential etc.

- They may not circulate and/or organise or facilitate the monitoring of data relating to sale transactions already made or to be made

It must be stressed that the members of a trade association may be held responsible for the actions of the association itself, to the extent they are involved in the trade association's violation, and for their own behaviour. This would include passively allowing such actions to continue. The trade association could be charged itself, in its own right, for facilitating the cartel.

SECTION 4

TEST YOUR KNOWLEDGE

Agreements/Cartels

For competition law purposes, the term **agreement** has a wide meaning and includes all kinds of collusive **arrangements.**

What kinds of arrangements could these include?

- ◉ Written
- ◉ Oral
- ◉ Legally binding
- ◉ Not legally binding
- ◉ Formal
- ◉ Unsigned
- ◉ Signed
- ◉ Informal

All of the above. As you can see, the term agreement has a particularly wide meaning.

There does **not** have to be a physical meeting of the parties for an agreement to be reached. An exchange of letters, telephone calls or e-mails is enough to constitute an "agreement or arrangement" falling within the scope of competition law, so long as the parties reach either **explicit or implicit agreement** on what action they will or will not take, which can or could have an effect on competition.

A company plays only a limited part in setting up an anti-competitive agreement. It thinks that it cannot be held responsible because it is not fully committed to its implementation and it only participates in order to avoid its competitors having an aggressive policy against it.

Is their defence valid?

- ○ Yes
- ◉ No

The answer is **No.**

Even when a company plays only a limited part in setting up the anti-competitive agreement, is not fully committed to its implementation and does not respect instructions or only participates under pressure, it is still party to the agreement. Therefore it can be held responsible and consequently sanctioned for its behaviour.

Price Fixing

When is price fixing likely to be regarded as anti-competitive and thus illegal?

When it:

- Sets a specific or a minimum price
- Fixes the components of a price
- Establishes a mandatory price range

All of the above are considered illegal price fixing.

Price fixing is an agreement between competitors that **restricts, or seeks to restrict,** price competition.

Key Message
In addition to fixing prices, competitors may also try to fix other trading conditions, such as setting standards in order to exclude and/or disadvantage competitors.

Suppose your main competitor publicly announces a 10% price increase. After due consideration, (but no other discussion with any third party) you decide to follow your competitor's lead and increase your prices by 10%.

Is your price increase legal?

- Yes
- No

The answer is **Yes.** There has been no agreement on price increases between you and your competitor as you acted independently in response to publicly available market information.

Suppose you receive a telephone call from a competitor who says they have noticed you have just reduced the price of steel.

They suggest that you both agree to charge the same price for steel or at least agree to a minimum price. After all, there is no reason for either company to undercut each other and thus risk reducing their respective margins.

Should you agree with their suggestion?

- ○ Yes
- ● No

The answer is **No.** If you agree to this arrangement, you would be engaging in **price fixing** and would be in breach of competition law.

Key Message
It is **prohibited** to agree on prices or trading conditions with competitors.

Price fixing is one of the **most serious** breaches of competition law and is illegal whatever the combined market shares of the companies involved. For this reason, it is essential to understand what conduct amounts to price fixing so that it can be avoided at all cost.

Announcement of a company's own pricing policy or surcharges, to customers and the press is not in itself unlawful.

When is a price announcement likely to be regarded as anti-competitive and thus illegal?

When it:

- ● Complements a wider cartel agreement
- ● Complements direct or indirect contacts aimed at reducing competitors' uncertainty as to the company's future conduct

Any of the above is considered an **illegal** price announcement.

Suppose you are contacted by a competitor who states that a company's current practice of competitively bidding for new contracts is damaging the whole industry. The competitor warns that the company's competitors will not tolerate this, as they have agreed to consult each other prior to any new bid.

The competitor asks you to do likewise, in return for which your company will be guaranteed its fair share of new contracts. To protect your revenues, you agree.

Was this the correct decision?

○ Yes ● No

The answer is **No.** This is **bid rigging**, which is illegal.

You are speaking to a colleague who works for a competing firm. During your conversation, you exchange concrete information on the vastly different wholesale prices that a specific supplier charges your two companies. Where would antitrust issues apply to your discussion?

- ● At a trade association meeting
- ● During merger talks between the two companies
- ● At a business lunch
- ● During a golf tournament organised by your company
- ● At a private dinner

What type of agreements on diesel surcharges are you allowed to make with other competing companies?

Select whether or not the agreements are permitted

Permitted	*Not Permitted*	
○	●	You agree to pass on the surcharges in full to customers
○	●	You agree that the surcharges will be passed onto the customer in part or in full if they exceed a certain amount
○	●	You agree to raise prices as a way of passing on part of the surcharges to the customer. Each company can raise its prices as it deems fit.
●	○	You agree to jointly launch a political initiative to reduce fuel taxes

Which of these agreements with a competitor is prohibited under antitrust law?

Select whether or not the agreements are permitted

Permitted	*Not Permitted*	
○	●	The exchange of information on the amount of surcharges and how much of these costs shall be passed on to the customer
○	●	Agreements to coordinate activities on the participation in bids
○	●	An agreement to use a certain pricing system in relation to a fee to be charged to the customer

You meet an employee of one of your competitors who brings up the subject of surcharges to be charged for metal cutting services and wants to hear what you have to say on the matter.

Which of the situations below constitutes a violation of antitrust law?

Select the answer(s) which are not permitted under antitrust law

- [ ] You discuss what would be a reasonable surcharge for your two companies to impose. However, you and the competitor set different surcharges independent of each other
- [ ] You sign a written agreement which binds both companies to a defined surcharge for metal cutting services
- [ ] You do not put the agreement to paper but seal it with a handshake
- [ ] You agree to a uniform surcharge during a teleconference with another company
- [ ] You tell your colleague what you think is a reasonable amount for the surcharge. He will get the hint that his company should also set its surcharge to the same amount

When can two companies legally submit a joint bid for a contract?

- [ ] They agree to joint participation in bids on a regular basis and always alternate in providing the required service
- [ ] They are seeking to avoid competing directly against each other
- [ ] They are unable to provide the service alone
- [ ] An individual bid is clearly not economically viable

You are looking to prepare a bid or quote. How can you obtain information on your competitors' prices without violating antitrust law?

- You look for the current prices of the companies on their websites
- You obtain information on the prices from two competing bids that a customer sent you (one who is seeking to get you to lower your bid)
- When speaking to a colleague from a competing firm in private, you ask him whether his company plans to raise or lower its prices in the near future
- At a casual meeting of the regional trade association, a colleague from one of your competitors shows you a list of price increases that his company has planned for the future

Agreements between competitors are fundamentally prohibited from:

- Setting minimum prices
- Establishing common discount scales
- Setting common dates for prices changes
- Exchanging information on valid prices and price components
- Giving warranties
- Fixing or passing on surcharges

Market Sharing

Suppose you meet a competitor at a trade show. While discussing general economic or political issues affecting the business, you both agree not to compete against each other or your respective market territories in order to resolve some of the difficulties you are both facing.

You both believe that this will also benefit the customers, as you will both be able to apply your resources to a smaller area.

Is this acceptable behaviour?

◯ Yes ● No

The answer is **No.** This is **market sharing**, which is illegal. Even an informal meeting with a competitor to discuss such market behaviour would be considered a competition law infringement and therefore is punishable and can lead to fines.

Suppose you are approached by a (or more) competitor(s) who state(s) that there is overcapacity in the steel UK service centre sector and ask(s) you to consider entering into an arrangement with him (them) to set quotas and to notify the others of any proposed investment projects.

No prices were mentioned during your discussions.

Should you agree to this?

◯ Yes ● No

The answer is **No.** This agreement between competitors to limit use of capacity and investment would be illegal, even if there were no agreement to fix prices because it **fixes sales, use of capacity and investment**. Even an informal meeting with a competitor to discuss such issues may lead to fines.

Company A and Company B agree that the Northern UK steel market will be supplied by Company A and the rest of the UK will be supplied by Company B.

Under EU competition law, is such a market sharing arrangement legal?

- ○ Yes
- ● No

The answer is **No.** In general, antitrust law applies if the relevant agreement or arrangement may have an effect in the market in which this law is applicable.

You meet a colleague who works for a competing firm. Which of these subjects should you avoid discussing (insofar as the information is not already public knowledge)?

- ● You plan to expand your product line
- ● You intend to expand into a new market
- ○ Your two companies plan to cooperate in the area of R&D
- ● Market sharing by region
- ● Agreement not to “poach” certain customers from the competitor

During a break at a meeting, you chat with a representative from a competing firm. Which of the following statements could you make without violating the antitrust firm?

Select whether or not the statements are permitted under antitrust law

Permitted	*Not Permitted*	
○	●	"In the future we plan to only sell flat steel products in this region. We don't earn enough with the other products"
●	○	"I read somewhere that you intend to sell flat steel products. Well, as we all know, competition is good for business"
○	●	"You could focus our sales activities on building contractors, while we target the construction companies"
○	●	"I heard that you quoted the customer a price 10% lower than ours. Is that true? You couldn't possibly make a profit at that price?"
○	●	"Did you really have to snatch the order out from under my nose? We should refrain from poaching each other's best customers"

Benchmarking

Antitrust risks depend on factors such as:

- The characteristics of information exchanged
- The purpose of the exchange
- The structure of the market, the identity and the positions of the participants (in case of few important players, an exchange leads to greater transparency than when there are a great number of smaller players)
- The procedures used for gathering and disseminating the information (the key rule being that it should be impossible to identify the participants)

In which of the following statements is benchmarking illegal?

- Exchanges of data, even if the data are aggregated, if we can discover what company is behind a figure
- Exchanges of information in the context of a broader cartel agreement
- Exchanges of individual information on current of future prices, terms of sales, capacity, costs (especially if they represent over 20% of product price), bids, strategies

All of the above.

Trade Association

Suppose you attend a trade association meeting at which members are asked to agree to share information on prices, dates of price changes, etc.

You only agree to do so if the information is purely historical, aggregated and disseminated by an independent body. You believe you may still be able to deduce some useful price information from the statistics.

Were you right to agree to the request?

◯ **Yes** ● **No**

The answer is **No.** Although you were right to insist that such information should be purely historical, aggregated and disseminated by an independent body.

Key Message
In any event, you should make sure that you and/or your competitors are not able to deduce from the information any useful price data which could influence your behaviour on the market.

Suppose you represent your company at a trade association meeting, together with a colleague. The participants start discussing anti-competitive arrangements.

You decide to stay and participate in the discussion. After all, you may be able to increase your company's profitability. However, your colleague objects to the discussion and leaves the room.

Should you have done the same?

● Yes ◯ No

The answer is **Yes**. It is important to dissociate oneself publicly from this type of exchange. Therefore, you should also record the fact that anti-competitive agreements were being discussed and that you left before the discussions began.

Be aware that the mere fact of **listening** to the anti-competitive proposal, even if you do not actively accept or participate, can also make you liable. This is the reason why it is very important to dissociate oneself publicly.

Suppose a trade association, of which you and your competitors are members, publishes a black list of suppliers. The association alleges that the blacklisted suppliers have compromised quality and standards.

Do you think this is legal?

- ◯ Yes
- ● No

The answer is **No.** This is likely to be **anti-competitive,** as it excludes some companies from the market and restricts competition.

Key Message
Generally, participation in trade associations is **legal** but certain types of discussion can constitute a breach of competition law.

The agenda of an upcoming trade association meeting contains an item that may violate antitrust law and you have written to request a change. It is now the day before the meeting and you have still not received an updated agenda.
What would you do in this situation?

Click the answer(s) that do not represent a breach of antitrust law

- ◯ I go to the meeting. After all, I don't have to take part in the discussion involving the item in question
- ● I go to the meeting. When the item in question comes up, I put my protest on record. If the item is still discussed, I leave the room and also have this entered in the minutes
- ● I call to say I will not be attending the meeting