

## ECCA Competition Compliance Guidelines

### I. Principles

ECCA, the European Coil Coating Association, is an international trade association that can trace its origins back to 1967 and is the voice of the coil coating (prepainting metals) industry in Europe, with over 100 member companies. ECCA seeks to promote prepainted metals as high quality, economically sustainable, safe and environmentally friendly products.

ECCA pursues legitimate objectives, including representing its members' common interests before governments, administrative bodies and the public, conducting research, promoting the coil coating process and products and acting as an expert in its field. It collects, distributes and publishes useful statistical data relating to the prepainted metal industry from and to its members.

It is in the nature of associations' work for representatives of competing companies to meet and exchange general information and discuss market developments. In principle, this is permitted and even encouraged, as long as this does not relate to competition-sensitive issues.

ECCA is committed to respect all applicable laws that relate to its and its members' conduct. It must in particular strictly comply with European Union (EU) and national competition laws. The activities of ECCA must not lead to a restriction of competition between the member companies or to the detriment of their customers or suppliers. ECCA is fully committed to ensuring that the meetings and other gatherings organised by it are not used for any of these purposes, and that, in particular, there are no opportunities to discuss or encourage discussion on competitively sensitive issues. Therefore, at all association events, all participants must observe the provisions of competition rules. Anti-competitive practices shall be prohibited by all available means. Member companies shall support ECCA in this endeavour.

These Guidelines aim to ensure that nothing done by ECCA and/or its members raises concerns under competition law. They are relevant to every person involved in the activities of ECCA. It is the obligation of all such persons – all ECCA members and all ECCA staff – to be familiar with these guidelines and abide by them at all times; they apply to all ECCA's events, committee or project meetings and other activities of the association. They also apply to the association's cooperation with other national or international institutions.

### II. Duties and behaviour of association employees, meeting participants and chairpersons

Each association employee, all participants in committee meetings and other gatherings, and in particular the chairpersons, must ensure that no competition regulations are violated within the framework and on the occasion of the association's work.

The association will issue written invitations to meetings, provide a detailed agenda, draw up and circulate minutes which shall reflect the key points discussed during the meeting.

At the beginning of each meeting, the chair shall refer to compliance with competition rules and all participants will sign an attendance list that includes a reminder of such rules.

If the chairperson or any other participant considers that competition rules have been violated in the meeting, he/she shall advise the participants that it is inadequate and bring the potentially illegal behaviour immediately to an end. If in doubt as to legitimacy of a discussion, it must be stopped until its lawfulness can be confirmed.

At the request of a member of the meeting, the association will, upon examination of the facts, provide for an external lawyer specialising in competition law to participate in the following meeting. In all statements, whether written or verbal, care must be taken to ensure that they cannot be misunderstood and that illegitimate competition issues do not appear to be being discussed.

### **III. Overview of competition regulations**

For the association and its member companies, EU competition regulations - Article 101 (1) of the Treaty on the Functioning of the European Union (TFEU)) - and all individual national regulations apply.

### **IV. Actions which are incompatible with competition law**

Competition laws can be violated in several ways.

In addition to explicit contracts, agreements or formal decisions, competition actions also often appear in the form of concerted practices. The European Court of Justice defines the concept of a concerted practice as: *“Co-ordination between undertakings which, without having reached the stage of concluding a formal agreement, have knowingly substituted practical co-operation for the risks of competition.”*

An exchange of information can also be considered as a concerted practice, when companies exchange strategic information or sensitive data. For the assumption of a violation through concerted practice, it does not matter whether several companies have exchanged sensitive information or one company has disclosed its intended market behaviour. This also applies to situations that come to light through committee meetings or informal gatherings. The threshold between (permitted) autonomous and (forbidden) coordinated parallel behaviour can sometimes be very low.

Below are (non-exhaustive) examples of behaviours, strategic information or sensitive data that are incompatible with competition law:

#### **1. By associations:**

- Decisions taken by associations which unfairly restrict their members in their competitive behaviour;
- Unilateral acts of an association (e.g. press releases) in areas of competition relevance that may be interpreted as a decision of the association;
- Association recommendations which are likely to influence the competitive behaviour of its members;
- Organisation of market information systems and statistics which allow conclusions to be drawn about the market behaviour of individual market participants;
- Transmission of recent / current sensitive, i.e. company-specific, data (including information on prices, price components, quantities, capacity, stocks and inventory coverages, sales figures, turnover, lists of customers/suppliers) to member companies, to third parties or to the general public; Transmission of historic company information (older than 1 year) regarding sales figures / market shares can be permitted if it has no influence on the current activity and market behaviours of ECCA members. In any cases, no information exchanges on prices, price components, customers/suppliers lists including older than 1 year cannot be envisaged given to their sensitivity

from a competition law point of view.

- Creation of calculation models or individual calculation elements if they can lead to the standardisation of competition parameters;
- Supplier evaluations which could lead to a uniform demand profile of members;
- Call for boycott measures to not trade with certain suppliers or customers;
- Organising self-commitments of industry, unless these commitments are justified on a case-by-case basis to promote a higher purpose objective (e.g. environmental protection, technical or economic progress);
- Exchange of information between members which leads or is capable of leading to uniform market behaviour;
- Participation in, or facilitation or coordination of any competition violations by companies, in particular those listed in point 2 below.

## 2. Among companies:

- Agreements or votes on prices (list prices, market prices, minimum prices, bid prices, price increases or price reductions, including price components, price calculations, costs and transit costs) and other price-relevant factors, such as price increases, discounts, rebates or other contractual terms, e.g. terms of payment, terms of delivery, conditions of transport, warranty and guarantees;
- Information exchange about individual market data, insofar as it relates to data which are usually kept secret, such as, in particular, capacity utilisation, supply quantities, offers, prices, price-relevant factors, costs, stocks, inventory coverages, sales figures and sales, customers, market shares, and if the information exchange is done promptly or is able to influence future market behaviour;
- Benchmarking, where such comparisons of competitors make it possible to draw conclusions about recent/current prices or other recent/current competitive parameters (e.g. production quantity, product quality, product diversity and innovation) allowing to influence current or future market behaviour;
- Definition of market shares or quotas for production or supplies;
- Market sharing / Breakdown of markets (by region or product);
- Allocation or agreement with customers or customer groups;
- Agreements on capacity, investment or decommissioning;
- Coordination of manufacturing programmes (specialisation);
- Agreements on restrictions of production or delivery;
- Submission agreements (submission of coordinated tenders in a Request for Quotation);
- Agreements restricting competition (illegitimate prohibition of *continued research* into certain areas being done independently).

## V. Consequences of competition violations

In addition to enforcement by the European Commission, European competition law is also applied locally by the competition authorities of the Member States. There may also be parallel responsibilities between the authorities of several Member States where a cartel affects several Member States. The procedure applied by the Member States in enforcing European competition law is governed by national law. The authorities of the Member States may also impose sanctions under their own law. The European Commission may also impose fines in the event of infringements by associations of up to 10% of the total turnover of a member of the market involved in an infringement. In the event of insolvency of the association, its members are liable for payment of the fine imposed on the association.

## **VI. Questions**

Associations fulfil an important role in the economic, political and public spheres. The border between illegal and legitimate cooperation between companies in associations is not always easy to recognise. In any case, where doubts arise as to whether or not you are permitted to act within the framework of competition laws, you should consult the Managing Director or the Board of Directors of ECCA.