

# FINAT ANTITRUST GUIDELINES

## Introduction

This document summarises the FINAT Antitrust Guidelines. They are designed to ensure FINAT meetings' compliance with the legal framework as set out in article 101 of the Treaty on the Functioning of the European Union ("TFEU"). This cartel provision prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between EU member states and which have as their object or effect the prevention, restriction or distortion of competition within the EU.

The purpose of the present guidelines is to assure that all those concerned in FINAT are sufficiently familiar with the essential characteristics of the cartel provision of Article 101 TFEU and to create an awareness of which decisions or actions could be problematic under EU competition law and/or when further competition law analysis is necessary to evaluate the risks.

In general, dealing with competition law is often a matter of weighing risks and determining priorities. When operating within a trade association, there is always the risk that a competition authority (whether it is the European Commission or a national authority) may start an investigation into the practices on the market on which the trade association is active. It should be the goal of the (members of) the trade association to keep within the boundaries of competition law. They should not, however, lose sight of the value and advantages of legitimate cooperation within a trade association.

## Why be aware of competition law in a trade association?

Both the association and its members can be liable for large fines and damages claims for breaches of EU competition law (in addition, in certain EU member states employees can be sanctioned). There are two ways in which the activities of trade associations and meetings between its members can be subject to the application of the cartel prohibition.

### 1. The association itself:

The association itself can be sanctioned for implicit or explicit decisions which restrict competition in the market. The same applies to agreements between the association and its members.

Both the association and its members (or some of its members) can be subject of a complaint by a third party in court and/or an investigation by the European Commission or a national competition authority. Whether or not members will also individually be accused in addition to the association as such, depends on whether they played an active role in the organising or implementing of anti-competitive behaviour.

### 2. The association as a meeting place for its members:

Members can be sanctioned if they use activities of trade associations such as general assemblies and meetings as a forum for anti-competitive concertation with other members, irrespective of whether such concertation is related to the subjects that are formally on the agenda of the association. The association can in such case be sanctioned if it facilitates the anti-competitive concertation in question. As members of the association will usually also be competitors, information concerning the meetings of the association might be considered as an indication or evidence of the intention to restrict competition or restrictive practices amongst certain members.

## Reminder

FINAT is committed to compliance with the antitrust rules that aim to achieve free competition and fair terms for all business transactions.

The participants in FINAT meetings/events hereby acknowledge that no issue will be discussed which will violate EU competition rules and that during FINAT meetings/events or in the context thereof the EU competition rules shall be respected under all circumstances.

## In particular participants acknowledge that they shall not:

- exchange information anti-competitive in nature, e.g. on current or future prices, price-fixing or price-stabilising agreements, discounts, cost studies or other competitive business terms
- enter into (formal or informal) anti-competitive agreements with other participants during meetings/events or in the context thereof (see checklist of do's and don'ts).

The most important do's and don'ts are summarised below:

### **DO NOT**

hold formal or informal discussions, exchange information or enter into agreements on matters such as (but not limited to):

#### **PRICES, in particular:**

- Pricing, price differentials and pricing strategies
- Individual sales and payment terms (including individual discounts, credit notes and credit conditions).

#### **PRODUCTION, in particular:**

- Individual manufacturing or sales costs, cost accounting formulas, methods of cost calculation, figures related to products or product groups, procurement costs, production, inventories, sales, etc.
- Production volumes and quota
- Production changes (e.g. due to maintenance work), or the limitation of the market supply of a product.

#### **OTHER MARKET BEHAVIOUR, in particular:**

- Sales quotas
- Allocation of markets (or sources of supply), whether by product, by territory or by customer.
- Relationships with individual suppliers or customers
- Boycotts of customers, competitors, or suppliers
- Proposed technology, investment, design, production, distribution, or marketing activities of individual companies concerning specific products.
- Restrictions for competitors to use a common label.
- Standardisation agreements with competitors that might make entry for new commerce in the market more difficult.

**DO**

avoid at all times antitrust infringements in connection with a FINAT meeting, in particular by observing the following points.

**PREPARING FOR THE MEETING**

- Agenda items and meeting documents may not contain any topics which might implicate competition law.

**DURING A MEETING**

- Restrict discussion to the agenda items set beforehand
- Have the session fully minuted
- In case of spontaneous statements by another participant which may violate antitrust law, react immediately and actively dissociate yourself from the violation:
  - Point out to participants that this issue may not be discussed
  - If necessary, postpone the discussion until you have received relevant legal clarification
  - If the discussion continues, note your objection in the minutes, suspend the meeting or leave the meeting premises (also to be recorded in the meeting minutes)
  - Report the matter to the President of the FINAT Board and your company.

**AFTER THE MEETING**

- The minutes of the meeting should be concise and straightforward.

**IN GENERAL**

- Use careful language in business communications
- Be very careful in circulating documents amongst competitors and do not circulate documents which are under legal privilege
- Check with legal counsel of your company immediately when confronted with any doubt about compatibility with competition law (or in case of an investigation). Further please always follow your company's internal antitrust and competition policies.

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