

ASI Antitrust Compliance Policy – what you need to know

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February 2018

Why are we having competition law training?



GLOBAL FORUM
ON RESPONSIBLE
BUSINESS CONDUCT

Competition Law and
Responsible Business Conduct

18-19 JUNE 2015
OECD CONFERENCE CENTRE
PARIS, FRANCE



Industry associations,
competition and consumers



**Top German Automakers
Sued in U.S. Over Two-
Decade 'Cartel'**

By **Ryan Beene** and **Kartikay Mehrotra**
July 29, 2017, 9:34 AM GMT+10 Updated on July 29, 2017, 11:58 AM GMT+10

**EU Hits Truck Makers With Record €2.9B
Cartel Fine**

**Goldman, JP Morgan Have Now Become A Commodity Cartel As They
Slowly Recreate De Beers' Diamond Monopoly**

What is antitrust/competition law?

- The purpose of antitrust / competition law is to **ensure that markets are free and fair** by prohibiting distortions of competition.
 - The precise scope of competition law depends on the relevant country or jurisdiction.
- In general, competition laws strictly prohibit cartels whereby competing enterprises collude together on commercially sensitive matters.
- Typical “hard-core” restrictions between enterprises that are prohibited by competition laws include:
 - price fixing
 - production limitation
 - market sharing (by customer or territory).
- These restrictions are prohibited **irrespective of their actual effect** upon the market.

Why does competition law matter to ASI?

- **Many ASI members** are subject to competition law due to their commercial activities.
 - Members must take precautions when meeting competing enterprises in organisations such as trade associations or standardisation bodies like ASI.
- Competition law also applies to associations of enterprises such as trade associations and **industry standardisation bodies** – even when the decision of the association relates to responsible business conduct.
 - ASI own certification and standardisation activities are also subject to competition law.
 - ASI Board Directors have a very important responsibility in this area.
- Compliance is very important as **competition rules are strictly enforced** worldwide.
 - Competition authorities have wide-ranging powers of investigation and can seize any documents relevant to their investigation.

Consequences of breaches ...

- **Are very serious.**
- A breach can result in severe consequences for the enterprises and persons concerned including:
 - Significant fines (e.g. up to 10% of worldwide group annual turnover in the EU)
 - Custodial sentences (notably in the USA but also in some EU countries);
 - Illegal agreements being declared void and unenforceable
 - Director disqualification
 - Damages being awarded by the courts (in particular in the USA and EU) to those harmed by the illegal conduct.

ASI's antitrust compliance policy

- First published 2015 and updated in September 2017.
- **Expresses ASI's commitment to strictly comply with all competition/antitrust laws.**
 - A robust competition policy is essential to ASI's success: there is no room for complacency when it comes to competition law compliance.
 - It is not meant to discourage membership or participation in ASI.
 - It ensures that members are comfortable attending meetings and sharing legitimate information when involved in ASI initiatives.
- Relevant to **every person involved in the activities of ASI** including employees from both ASI and its members.
 - It is the obligation of all such persons – irrespective of whether that person is working for a company, civil society or association member of ASI – to be familiar with the policy and to abide by it at all times.

'Golden rules' ...

1. **Members should always make their own unilateral educated decisions:**
 - whether on the basis of information provided by ASI
 - or on the basis of information from other sources.

2. **It is strictly prohibited to discuss any of the following commercially sensitive matters at an ASI meeting or event:**
 - previous, current or future prices;
 - capacity and production information or forecasts;
 - previous, current or future sales information;
 - purchasing prices or trading terms with suppliers;
 - previous, current or future negotiations with individual customers including bidding strategies for public or private contracts.

'Golden rules' ...

3. It is strictly prohibited to discuss individual costs of compliance with ASI Standards, (e.g. labour costs, raw materials, environmental compliance costs etc.)
4. It is strictly prohibited to discuss passing on the cost of compliance with ASI Standards to customers (e.g. through a premium for ASI certified products).
 3. For example, the EU imposed significant fines totalling EUR 2.9 billion upon truck manufacturers for, amongst other matters, agreeing to pass on to customers the costs of new emissions technologies.
5. It is strictly prohibited to discuss any boycott or limitation on the purchase of any raw materials, semi-finished products, equipment, services or other supplies from any supplier that does not meet ASI Standards.

Conduct of ASI meetings

- Written agenda
- Includes antitrust notice
- Accurate and comprehensive minutes
- ASI Secretariat must be present
- ASI Secretariat has the right to react to inappropriate discussions:
 - Provide guidance
 - End any potentially illegal discussions
 - Postpone further discussion pending external legal advice
 - End the meeting if necessary
 - Record these actions in the minutes of the meeting.

Statistics

- Competition laws acknowledge that the collection and distribution of certain statistical data by trade associations is legitimate and useful, provided there are strict safeguards in place.
- ASI's safeguards:
 - Prohibited for ASI members to exchange commercially confidential information.
 - Current data that is relevant for the ASI statistics shall only be disclosed in aggregated form so market participants are not identifiable.
 - Aggregation of data shall be prepared by an independent external party or by the ASI Secretariat according to ASI Confidentiality and IT Policies.
 - Exchange of historical data or publicly available data is not usually problematic but antitrust legal advice may be necessary.
 - No other information exchange is allowed within ASI in the absence of legal advice.

Standards and Certification programs

- Standards aim to define technical or quality requirements with which products, production processes, services or methods may comply.
- In general, competition authorities recognise that standardisation agreements produce significant positive effects for consumers by lowering costs, ensuring compatibility and promoting economic interpenetration.
- However, standardisation agreements can give rise to competition concerns, notably where there is:
 - restriction in price competition; or
 - foreclosure of innovative technologies; or
 - exclusion of, or discrimination against, certain companies by prevention of effective access to the standard.

ASI's Certification program

- To avoid such competition issues, ASI adheres to the following best practices with respect to the development of ASI Standards:
 - Participation in standard-setting is unrestricted
 - Audits undertaken by an independent organisation
 - Due process in the determination of the standard and transparent procedure for adopting the standard
 - Not intended to limit any company's freedom or discretion to make its own business decisions, to prevent the manufacture or sale of any product not conforming to such a specified standard, or to have the effect of restraining competition.
 - No obligation to comply with the standard: ASI membership, and hence compliance with ASI Standards, is voluntary.
 - Access to ASI standards on fair, reasonable and non-discriminatory (FRAND) terms: they are publicly available in a range of languages.
 - ASI's Standards are regularly reviewed, at least every 5 years or more frequently as required.

Social / side meetings

- Social gatherings attended by competitors also present a risk under competition law.
- For antitrust enforcement agencies, it is irrelevant that the illegal agreement was reached at an informal setting rather than in a formal meeting.
- Crucial that ASI members and staff respect competition law and avoid commercially sensitive subjects during social gatherings just like at formal meetings.
- View the ASI 2017 AGM antitrust training video for some practical tips! It will only take you a few minutes ...
 - <http://sho.co/18MK1>

Thank you