



Competition Compliance Policy

Trade bodies like ECA bring together businesses that are actual or potential competitors – as a concept this is at odds with one of the fundamental principles that competition law is there to prevent, namely collusive behaviour. However, trade bodies such as ECA also bring together businesses that share a number of common industry aims, as such, ECA and ECA members must be mindful of UK competition law, the main aim of which is to enable suitable competition in the marketplace.

It is ECA's policy to comply with UK and European competition laws in letter and spirit. This policy applies to anyone acting on ECA's behalf or engaging with ECA or attending its meetings and events.

Policy to enhance awareness within ECA and ensure competition issues

- What is competition compliance
- What activities must ECA be mindful of in carrying out its activities
- If in doubt, seek help and assistance

ECA needs to ensure that in carrying out its functions it does not act as a conduit for anti-competitive behaviour.

Breaches of competition law could result in huge fines, director disqualification and even criminal sanctions.

This policy therefore advises ECA staff and members about competition law and how it impacts on the way ECA operates.

Awareness of this area at all levels of ECA's group is required to minimise the risk of infringement and avoid compromising ECA's position and reputation as the leading trade body for engineering services.

1. Overview

Successful representation and other ECA activity naturally require the involvement of members. Such activity may, for example, include:

- developing voluntary industry standards, for the benefit of the industry as a whole;
- certification (e.g. quality labels) – provided they are based on reasonable and objective requirements;
- industry codes of conduct, without restrictive features;
- overall market research;
- sharing aggregated market statistics, which do not identify particular businesses;
- sharing publicly available information;

- self-regulatory initiatives, with a non-restrictive objective;
- industry lobbying;
- developing “good/best practice” guidance, as long as it is not discriminatory; and
- tabling recommended standard terms and conditions for Members and/or industry stakeholders.

During this and any other activity ECA, its members and other stakeholders, must avoid or prevent anti-competitive behaviour. Competition law issues may arise if activity increases barriers to entry to the market or discriminates against or favours particular groups of companies.

In reality, any behaviour by a trade body that reflects an intention to coordinate its members’ conduct that can have the effect of preventing, restricting or distorting competition, is prohibited by law.

2. Specific activities

A fundamental principle of competition law is that businesses should individually determine their own behaviour in the marketplace. For example, decisions and actions concerning an individual business’s prices, policies, profit margins or investment plans must be taken independently - and not in cooperation with marketplace competitors.

Competition law contains two main prohibitions, each of which applies to trade bodies, such as ECA, as well as to other undertakings, such as Members and other industry stakeholders:

- 1) collusive behaviour - agreements between undertakings, decisions by associations of undertakings, or concerted practices which may affect trade within the UK (or any part of it) or the EU and have, as their object or effect, the prevention, restriction or distortion of competition; and
- 2) abuse of a dominant position - conduct by one or more undertakings which amounts to the abuse of a dominant position in a market which might affect trade within the UK (or any part of it) or the EU.

The application of competition law – regardless of Brexit - is primarily based on the economic effects of conduct in the market-place, and the prohibitions will only apply (subject to exceptions) if the activity at issue has an “appreciable effect” on competition.

However, there are certain “hard core” infringements — such as price fixing, or market sharing, which are always likely to be deemed capable of having an appreciable effect on competition and therefore in breach of the rules.

3. Types of activities covered by competition law include:

Any activities hosted or facilitated by a trade association between commercial entities’ which involve an element of the following (with regard to individual business, and where they could have an appreciable effect on competition in the market) could lead to liability under competition law - the competition rules strictly prohibit competitors from coming to any agreement (including any so-called “gentlemen’s agreement”), or informal understandings involving:

- prices and terms (including discounts, rebates, etc.).
- clients;
- sales;
- market share;
- suppliers;
- supply or purchase terms;
- costs;
- investments; and
- commercial strategy (e.g. acquisitions, disposals, marketing strategy, market exit).

- price fixing (including prices, discounts, rebates, credit terms, cover-pricing etc.);
- sharing/allocating clients or territories;
- joint bidding/tendering;
- bid rigging;
- taking collective action against third parties, such as boycotting or blacklisting clients, suppliers or other agencies; and
- exclusive dealing with particular clients or suppliers.

These are serious violations of the law for which individuals (as well as ECA) may be personally liable. Exchanging commercially sensitive information at a single meeting is enough to constitute an infringement.

ECA committees and groups of Members and stakeholders continue to be permitted to discuss and exchange general industry data (including market surveys providing information on historical or future trends) which does not identify particular companies.

The following examples provide more guidance in this area:

- standardisation measures can be beneficial where they are aimed at improving the quality of the Members and/or industry stakeholder's products or services. However, they should not be used to raise artificial barriers to entry to the marketplace. Such measures should be non-discriminatory: all interested parties and not just Members and/or industry stakeholders should be given an opportunity to participate in the development and use of standards and the standards should not be linked to obligations regarding production, marketing or pricing;
- issuing commercial certificates or seals of approval to those Members and/or industry stakeholders whose products or services meet objective criteria is encouraged, as long as such schemes are available to all businesses in the industry meeting objective and reasonable (e.g. safety, quality) requirements; and
- standard terms and conditions for contracts may be helpful for the industry, but the use of standard terms cannot be made compulsory and should not cover terms which are likely to be relevant to a customer in choosing between competing suppliers e.g. by indirectly affecting the prices charged.

4. Conduct of meetings and events

ECA, notably where competing stakeholders and Members attend ECA meetings, must avoid or prevent behaviour that could be construed as an intention to coordinate members' conduct in a way that could prevent, restrict, or distort marketplace competition. No such discussions should take place, and ECA should not make any recommendations that could lead to such discussions or any ensuing decisions.

Any information exchanged between Members or stakeholders should avoid sharing information about prices, terms of trade and any other commercially confidential information, unless it is aggregated.

The chair or secretariat at any ECA meeting (or any gathering facilitated by ECA before or after the main meeting) should review meeting documentation and prevent any discussion that might lead to an infringement of competition law and if in doubt, seek further advice from ECA's Business Policy & Practice team.

Any concerns can be raised by email to ECASecretary@eca.co.uk where a contact log will be recorded, the concerns will be assessed and mitigation measures can be appropriately implemented to maintain compliance.

This guidance and the ECA Competition Law Policy is necessarily general in nature and cannot anticipate every legal issue or fact pattern that might be faced by ECA, its members, or its staff. Therefore, it is important that individuals consult the relevant Chair or Vice Chair, who shall in appropriate cases seek legal advice, when questions arise as to the application of this policy.

Trade associations, such as ECA, are legitimate, important bodies, which advance issues of common interest to the industry. As ECA includes members who are competitors, we must be vigilant to ensure that participation in ECA complies with competition law at all times.

Competition law violations can lead to significant fines and damages actions for ECA and/or members concerned, and fines, imprisonment and/or director disqualification for individuals. Competition proceedings and litigation are expensive and burdensome even when ultimately successfully defended. Moreover, mere allegations of wrong-doing can harm both ECA and concerned members' reputations.

The following guidance is provided to ECA members and staff to help ensure that meetings and activities of ECA members do not lead to breaches of UK and European competition laws and in particular no competitively sensitive information is exchanged. This guidance together with the ECA Competition Law Policy applies before, during and after formal meetings, informal meetings, events, and presentations ("ECA Interactions").

Please raise any concerns by email to ECASecretary@eca.co.uk where a contact log will be recorded, the concerns will be assessed and mitigation measures can be appropriately implemented to maintain compliance.

ECA may be implicated if its Members or stakeholders indulge in anti-competitive conduct, for example, if any discussions which lead to that conduct take place at ECA meetings or even if the particular idea can be traced to an ECA recommendation.

ECA meetings in which competing Members and/or stakeholders may participate should add the following competition compliance statement at the outset of the meeting, to the meeting papers and ensure that all meetings, including those of committees, regions, branches and groups have a specific written agenda clearly describing the topics of the meeting:

ECA is fully committed to complying with the requirements of UK competition law and ECA Members, and others, when engaging with any ECA activity, agree to comply with the ECA Rules, ECA Competition Law Policy and ECA guidance on competition law compliance at meetings and events.

Members and industry stakeholders in attendance therefore acknowledge their legal obligations under applicable competition law and agree not to enter into any discussion, activity or conduct that may infringe competition law.

DOs	DON'Ts
You should: • Ensure a member of ECA staff is present. • Fully describe the purpose, structure and mandate of the group and appoint a Chair who will facilitate the meetings. • Sign-post each attendee to a copy of the ECA Competition Law Policy and this guidance. • Ensure that agendas, minutes, and other important documents (such as presentations made by Members or external participants) are screened in advance of distribution by knowledgeable staff. • Ensure that the agenda items are in line with the purpose and mandate of the group. • Always review agendas for meetings prior to attendance to ensure that no items on the agenda raise competition law concerns. • Be cautious in the presence of competitors even in informal or social situations. Even informal discussions or throw-away comments can lead to problems if, for example, there is subsequent significant uniformity in action by competitors afterwards.	You should not: • Discuss let alone agree with any other competitor or potential competitor (whether before, during or after ECA Interactions) on any of the following: • Price or price elements (including discounts, rebates, surcharges, allowances, concessions, price mark-ups, and the like). • Terms and conditions on which you supply services to your customers. • Information relating to individual customers, suppliers, or competitors. • Allocation of services, customers, markets, territories, or sales. • Bids, bidding terms, tactics, strategies, or practices. • Refusals to purchase from, or modification of purchase arrangements with, suppliers. • Profits, margins, and costs. • Strategic plans, business plans, intentions, promotional activities and marketing strategies or investment plans. • Items which do not feature on the agenda. This should also be helpful to avoid potential

• Allow open and equal participation of members in ECA meetings and do not exclude a specific member or group of members from particular meetings. • Ensure that you receive and carefully review the minutes and presentations of all meetings. If the minutes are inaccurate or incomplete or raise any questions, insist on rectification. • Consider taking summary written notes of all discussions and presentations relating to ECA. Assume that any notes you take will be discoverable in the event of any investigation. • Keep in mind that activities relating to standard setting, lobbying activities, benchmarking, and statistics dissemination can bring along competition law risks, especially when presented as a collective decision of ECA to which members should not deviate. • If ever in doubt you should seek advice from ECA, log your concerns and leave the meeting immediately if you are concerned that the activities of ECA raise competition law concerns. • Record any steps you take to ensure compliance with competition rules.	situations that could give rise to anti-competition concerns. • Any other confidential or competitively sensitive information.
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ECA meetings should seek to ensure that accurate minutes are kept of the meeting which are then distributed to all participants and avoid any discussions, both during and outside the meeting, in so far as they relate to individual Members rather than broad industry trends, about any matters concerning pricing, discounts, profit margins, distribution practices, cost structures, tenders, or the identity of clients or suppliers.

Remember that codes of conduct do not justify any anticompetitive conduct or agreement. Furthermore, remember that just being present when illegal discussions are taking place may be sufficient to implicate you and your organisation in a competition law infringement, even if you do not actively participate in the discussions.



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