

THE EUROPEAN BATHROOM FORUM – EU COMPETITION LAW GUIDELINES

The European Bathroom Forum and all its members are fully committed to compliance with the laws applicable to the activities of the cooperation. Non-compliance with competition law in particular may result in serious consequences for the EBF itself, its stakeholders and you personally. Heavy fines may be imposed by competition authorities. The EBF and its members may also be held liable for damages by third parties. It is therefore the responsibility of every person involved in the cooperation to act within the boundaries of the law. This paper is intended to provide you with guidance on how to comply with EU competition law.

Please familiarise yourself with the content of these guidelines. You will be asked to confirm your commitment to comply with competition rules before each meeting of the EBF by signing the “EBF Competition Law Commitment”. In case you are unsure about how to act in accordance with competition law, you should always seek further guidance from your legal department^o/legal advisor.

This paper has been drafted in relation to the current purpose of the EBF, i.e. the establishment and promotion of the Forum itself and the development and marketing of the Water Label. Should the purpose of the collaboration be extended, these guidelines should be revised accordingly.

GENERAL INFORMATION ON COMPETITION LAW

During EBF meetings and other occasions such as e-mails, phone calls, trade fairs, customers, lunch/dinner and other instances, you will get in contact with competitors. European competition law prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market (Art. 101 of the Treaty of the Functioning of the European Union). This means that competition law prohibits all practices which have as their aim or their effect that uncertainty about future market behaviour of competitors is removed or reduced.

Please note that this prohibition does not only include agreements, but also the coordination of market behaviour, gentlemen’s agreements, exchange of information and tacit parallel conduct. It does not make a difference if such contact or coordination happens in writing or orally.

The term “competitor” has a broad meaning and includes any undertaking that offers or demands the same or similar products or services. It includes not only present but also potential competitors (i.e. undertakings which may offer the same or similar product in the foreseeable future). Undertakings on different levels of the supply chain may also be considered competitors (for instance, if bathroom products are distributed by a manufacturer both directly and via dealers).

Please note that any restriction of competition is also prohibited in “vertical” relationships (for instance, in an agreement between a manufacturer and its supplier).

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EXCHANGE OF INFORMATION

During meetings of the EBF, any information that could be considered sensitive is off-limits. As a general rule, you should always remain focused on the topics of the meeting. Please note that not only active communication, but also mere reception of sensitive information is considered an illegal exchange of information.

Sensitive information which you are **not allowed** to discuss includes

- pricing, other conditions of sale, purchase conditions
- terms and conditions of agreements between a member and its customers or suppliers
- sales numbers, profits and margins, costs of production
- any information about business development or business expectations that has not yet been published lawfully
- current or future strategy of your undertaking, including research and development in relation to products your company may introduce and
- any other commercially sensitive matter.

In addition, you are **not allowed** to

- discuss the allocation of territory, customers or suppliers to one or more undertakings
- discuss a boycott of suppliers or customers or
- mutually verify information about your competitor that you received from your customers or suppliers.

You are **allowed** to discuss

- information on technical/scientific development (as long as discussions do not concern business strategy or commercial implications of developments)
- legislative initiatives and their general consequences for the industry
- lobbying activities of the EBF (for example, vis-à-vis the European Commission)
- goals, organisation, financing and marketing of the EBF
- development and marketing of the Water Label and development of testing procedures
- current economic matters which are publicly available (such as economic trends) and
- any other information that is publicly available.

If needed for statistical analysis (benchmarking) within the EBF, sensitive information may be exchanged **only if**

- benchmarking is carried out by an independent third party
- it includes at least five undertakings and
- results are provided to the undertakings only in an anonymised and aggregated form that does not allow any conclusions on the undertakings and products involved.

HOW TO COMPLY WITH COMPETITION LAW IN AN EBF MEETING

Before the meeting:

- Make sure that you receive an official invitation to each EBF meeting and that you are provided with a detailed agenda in writing beforehand.
- Read the agenda carefully and consult with your legal department^o/legal advisor in case you are uncertain about compliance of the topics with competition rules.
- Be wary of items added to the agenda before the start of or during a meeting. In any case, make sure any deviation from the agenda is noted in the meeting minutes.

During the meeting:

- Sign the “EBF Competition Law Commitment” at the start of every meeting.
- Make sure minutes are taken including the items discussed (as set in the agenda), the decisions made and the persons attending by a designated person.
- Pay attention that nobody starts a conversation on sensitive information. If you notice any such conversation, stop it immediately and make sure your intervention is recorded in the meeting minutes. If the conversation carries on despite your intervention, leave the meeting immediately and make sure your leaving as well as the reasons for it and the time are recorded in the meetings minutes. Report the incident to your legal department^o/_o legal advisor and the EBF Board.
- Preserve copies of any document exchanged during meetings.

After the meeting:

- Make sure you receive a copy of the meeting minutes. Check them for correctness.

OPENNESS OF PARTICIPATION AND NON-DISCRIMINATION

Any bathroom industry stakeholder that may become a member of the EBF according to its statutes should be accepted. The conditions of becoming a member should be non-discriminatory (for instance, they should not favour companies based on their product portfolio, their origin or their size).

Each member of the EBF must have a fair chance to influence the development of the Water Label. Voting rates must be objective and non-discriminatory (for instance, small suppliers must not be excluded from voting on testing procedures).

Interested parties must have access to the Water Label on non-discriminatory terms, i.e. the terms should be applied consistently for any such party.

FREEDOM NOT TO REGISTER PRODUCTS FOR THE LABEL

While the EBF and its members may of course promote the Water Label, this should not include pressure. Any member must remain free to not register a product. For instance, should a supplier decide not to register one of its products for the label, the supplier must not be threatened with cancellation of its membership or with termination of business relationships.

KEEPING UP WITH INNOVATION

Competition law requires that the Water Label does not prevent or significantly delay the introduction of new technology. Not every minor improvement regarding water efficiency means that the conditions for using the Water Label have to be changed. However, the label should always reflect the current standard of water saving technology and be adapted accordingly.

- *Effective October 2017* -

19.10.2017