



JBCE Competition Law Compliance Guidelines

Objective: To avoid exposure to competition law liabilities for JBCE activities

It is the policy of Japan Business Council in Europe (JBCE) to comply strictly with all applicable EU and national competition rules. Any activities of JBCE or JBCE-related actions of its staff, board of directors, committee chairpersons, committee members or members that violate competition law are detrimental to the interests of the association and damage all of its members. Such activities are therefore contrary to JBCE policy.

Members and staff shall therefore strictly observe the Guidelines set out in this document. JBCE member organisations are likely to have their own competition policies in place and you should familiarize yourselves with these. Where possible you should also discuss any questions that you may have with your own legal advisers.

EU Competition law is applicable to agreements or practices between competitors, in whatever form, that have the object or effect to reduce competition between them. There are no excuses for competition law infringements and sanctions are strict.

Participation in JBCE meetings by its very nature brings competitors together. Accordingly, it is necessary to avoid discussions of commercially sensitive topics and to avoid agreeing on recommendations with respect to such subjects.

In many cases, there is no concern as to the legality of the discussions within a trade association. However, where the exchange of information between competitors or the discussion of certain matters could potentially reduce the uncertainty between competitors as to what others will do in the market, this is likely to be a serious issue.

Such issues can arise as a result of direct discussions during meetings or through the exchange of information between JBCE members or through JBCE. Furthermore, certain joint actions by companies in the framework of an association might be construed to exclude others from a fair access to the market. This could also be anti-competitive.

In the present document, you will find a number of guidelines that may help in avoiding any competition law risks associated with meeting competitors in the framework of JBCE.

Please note that the same principles apply in the event of direct and/or informal meetings or discussions between competitors outside the scope of JBCE meetings.

Should there be any doubt as to the legality of the exchange of information or the discussions within a JBCE meeting, legal counsel must be consulted for an opinion on the legality of the exchange before going any further.

General:

- Stay alert to the competition law issues involved and seek specific advice in relation to any concerns; and
- Take particular care with use of language and avoid any wording which could suggest an agreement, uniform conduct or a recommendation by JBCE members which could violate competition law. Unclear language may raise suspicion with competition authorities.

JBCE itself shall:

- Agree and regularly review the objectives of the association;
- Appoint Secretary General and Senior Manager of JBCE Secretariat as internal compliance officers.

Meetings:

- One member of the JBCE Secretariat should participate in each meeting;
- Agree an agenda in advance of each Committee meeting and stick to it;
- Open each meeting with a compliance statement and minute it;
- Limit the “miscellaneous” discussion and minute the entire meeting;
- Attach copies of documents circulated or presentations made to the minutes;
- JBCE and Member participants shall not allow the exchange of commercially sensitive information during meetings
- Discussions should be terminated immediately if a competition concern is identified by JBCE Secretariat or members. Such interventions shall always be recorded in the minutes;
- In case of doubt, transfer a topic identified as potentially risky to the next meeting and seek advice in the meantime.
- Participants shall leave the meeting in case discussions which could be contrary to competition law continue. This shall be recorded in the minutes.

Correspondence and exchange of information:

- Arrangements for disclosing commercially sensitive information required e.g. to compile statistics must be agreed (in writing):
 - Such information must be exchanged through an intermediary, either the JBCE Secretariat or another neutral institution.
 - Correspondence providing confidential information to the JBCE Secretariat should be clearly marked “private & confidential”;
 - Correspondence with individual members concerning sensitive information must not be shared with other members;
- Any published or circulated information must be sufficiently historical, aggregated and made available in a manner which renders individual companies non-identifiable (consult with counsel).
- The JBCE Secretariat shall ensure that the market information it manages complies with legal requirements. Data relating to individual companies will be kept confidential by JBCE at all times.
- Discussions of statistics related to the JBCE members’ actual performance or market demand must be limited to the statistical preparation method alone, including the scope, items, announcement period and calculation methods of statistics, see also “Restricted Activities” below.

Permitted Activities:

- Providing a forum for discussing matters of general interest within the sector e.g. environmental, regulatory change and compliance etc;
- Lobbying governmental bodies and other organisations and passing on official information to members;
- Industry training and employment issues;
- Encouraging adoption of industry or technical non-proprietary standards;
- Promulgating codes of conduct;
- The collection, preparation and circulation of statistical information provided the requirements set out in “*Correspondence and exchange of information*” above is fulfilled;
- Developing and recommending voluntary standard trading terms to members, providing that the terms do not relate to how members compete with each other (consult with counsel in advance);
- Conducting and circulating market research and general industry studies provided the requirements set out in “*Correspondence and exchange of information*” above is fulfilled;
- Certification of members to demonstrate that objective and reasonable minimum industry standards have been met; and
- Providing a public relations function for the industry.

Restricted Activities:

Participants are not allowed to exchange information on, agree on or discuss on topics that may violate competition law during JBCE meetings.

This includes the following topics:

- Information on current or future costs, pricing, pricing components, discounts, pricing strategy and calculations or other individual terms of dealing.
- Information on company specific business plans, marketing initiatives, market share data and other commercially sensitive information;
- Collective refusal to supply or deal with suppliers;
- Collective discrimination on terms & conditions on which customers or classes of customers are supplied;
- Collective anti-competitive conditions such as tie-ins, rebates;
- Joint selling and purchase arrangements;
- Exclusionary/discriminatory membership criteria; and
- Allocation of customers, suppliers or markets, or coordination of bidding towards third parties.

In doubt, please consult legal counsel for guidance.

JBCE Compliance Statement

It is the policy of Japan Business Council in Europe (JBCE) to comply strictly with the letter and spirit of all applicable EU and national competition rules. Any activities of JBCE or JBCE-related actions of its staff, board of directors, committee chairpersons, committee members or members that violate competition law are detrimental to the interests of the association and damage all of its members. Such activities are therefore contrary to JBCE policy.

Participation in JBCE meetings by its very nature brings competitors together. Accordingly, it is necessary to avoid discussions of commercially sensitive topics and especially important to avoid recommendations with respect to such subjects.

Members and JBCE shall therefore strictly observe the Competition Law Compliance Guidelines which have been circulated by JBCE separately, or are attached hereto. JBCE member organisations are likely to have their own competition policies in place and you should familiarize yourselves with these. Where possible you should also discuss any questions that you may have with your own legal advisers.

In the event of doubt in respect of any item on the agenda or on the course the discussions are taking, please inform JBCE staff of your doubts and they will ensure that your concerns are properly recorded, that the item is removed or the discussion halted.

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