

ACTIVITIES OF ASSOCIATIONS: HOW TO AVOID COMPETITION LAW INFRINGEMENTS



Activities of associations are important for businesses due to the promotion of interests of companies acting in a particular sector. Representatives of undertakings may be subject to regular meetings in order to discuss the ongoing processes and relevant problems in the market, exchange knowledge, experience and specific information. Information provided by associations and their members can also help the lawmakers and other public institutions to adopt certain sector-specific decisions.

Nevertheless, membership in the association neither excludes, nor restricts the application of competition rules. An association and its members might suffer from serious consequences if an association adopts decisions which restrict competition, or if it becomes a platform for the companies to enter into anti-competitive agreements.

Bear in mind that members of the association should not take joint decisions related to the activities of the companies and discuss or exchange commercially sensitive information! **Such actions might be treated as an infringement of Article 5 of the Law on Competition, and may result in a fine of up to 10 percent of the gross annual income.** Besides, if it is found that an association and/or managers of its members contributed to the anti-competitive agreement, they may be disqualified from occupying any managerial position for a period of three to five years, and additionally receive a fine.

Examples of the decisions which associations should not adopt:



- **set (fix)** prices of products/services and (or) other conditions of sale;
- **share the product market** on a territorial basis or according to the groups of buyers or suppliers;
- **restrict the production or sales volume**, as well as technical development or investment;
- **impose a boycott** on certain customers, suppliers;
- **disclose** commercially sensitive information.

Membership in the association obliges its members to take an interest in the association's activities and its adopted decisions. Liability for the decisions adopted by the association may be incurred even if you have not expressed opinion on an issue in question. Even if you have not participated in the adoption or implementation of a decision, and have not expressed your disagreement with the decision and have not clearly disassociated from it (in public or in relation to the competitors participating in the agreement), it is considered that you have contributed to the agreement. In the absence of a clear expression of disagreement, other members of the agreement might expect that all members of the association would act in a way with that has been agreed upon.

IMPORTANT:

Liability for the adoption of the aforementioned decisions might be incurred even if, according to the companies, the association sought lawful objectives or if its members did not subjectively aim to restrict competition.

Exchange of information in the association may also be considered a form of anti-competitive agreement of concerted practices, thus the association and its members should avoid any exchange of commercially sensitive information. Examples of information which should not be discussed in the association:



- pricing: prices of purchase or sale, discounts, margins, expenditures;
- conditions of purchase or sale;
- production capacities, volumes, expenditures;
- company business, investment, sales, promotion, trade activities and other future plans;
- sales volumes of certain companies;
- market shares;
- company customers, suppliers, conditions applied;
- company's future behavior in the market.

Participation in the meeting, during which the aforementioned or similar issues are discussed, might incur liability even if you have not actively participated in the discussions, no decisions have been adopted during the meeting, you have disagreed with the issues in question, but have not expressed such disagreement in a clear manner or have not disassociated yourself from the adopted decisions.

How to avoid competition law infringements?

- Try to be acquainted with all documents of the association: statutes, procedures, decisions, and evaluate if any risks of competition law infringement might arise.
- Evaluate information provided in the association's publications, newsletters, on the website, etc. and see if there are any grounds to suspect an infringement of the Law on Competition.
- Be careful when exchanging information in the meetings, pay attention to information which shall not be shared with the meeting participants. Any discussions on future pricing plans, market sharing, restriction of production, sales or investment, discrimination of other undertakings (boycott), etc. shall be strictly avoided.
- Take care of competition advocacy in the association. The risks of competition law infringements might be reduced through education of the association and its members, training on competition law and its importance in the association for company managers and staff.
- If you suspect that certain actions or decisions of the association might cause negative effects on competition, refer to external legal advice.



If you participate in the meeting of the association, during which its participants are encouraged to jointly agree on the unlawful actions or exchange commercially sensitive information, you should:

- immediately explain the meeting participants that you cannot discuss such information, and ask to terminate the discussion;
- should the discussion continue, express **clear disagreement** with the issues in question, ask to note this fact in the meeting minutes and immediately leave the meeting;
- inform the competition authority about the situation.

Where can you get more information?

For more information please visit the Lithuanian competition authority's website www.kt.gov.lt (section "Anti-competitive agreements") or contact us by phone +370 5 260 8879.

The guidelines shall not be considered a binding normative legal act.