

What do trade associations need to know about Competition Ordinance?

- Trade associations play an important role in furthering their members' interests.
- Trade associations facilitate interaction between members and must themselves also be aware of their obligations under the Competition Ordinance.
- Contraventions of the Competition Ordinance can lead to serious financial and reputational consequences for trade associations and their members.

Do

1. Continue to help members understand developments relevant to their industry and promote their industry's interests to government and customers.
2. Educate members on the Competition Ordinance and promote a pro-competitive compliance culture.
3. Establish a Competition Ordinance compliance policy for the association; appoint or nominate an officer to oversee the compliance efforts of the association.
4. Exercise care when collecting information from members. Information should be handled by the staff of the association or a third party, independently from members.
5. Require members to leave any meetings with competitors where **competitively sensitive information** is discussed.
6. Ensure that membership of the association is based on clear, objective and qualitative criteria; set up an appeal procedure for refusal to grant or suspension of a membership.
7. If your association certifies or awards quality labels to members to recognise that they have met certain industry standards, ensure that such certifications are based on objective and reasonable quality requirements and available to all that meet those requirements.
8. If your association is involved in setting standard industry terms relating to the supply of products or services, ensure that any standard-setting process is open and that the terms do not affect the price charged to customers. The standard terms should also be non-binding and effectively accessible to members and non-members.

Don'ts

1. Don't recommend or require that members set particular prices for their products or particular fees for their services.
2. Don't impose restrictions on members with regard to the other terms and conditions on which they sell their products (for example, by fixing credit terms of sale).
3. Don't help members divide up their sales territories, including by geographic areas, types of customers or types of products.
4. Don't set or recommend production targets for members.
5. Don't coordinate or facilitate collusive tendering by members.
6. Don't require members to provide the association with competitively sensitive information, such as information about pricing and/or output intentions.
7. Don't let the association be a channel for, or otherwise facilitate, the sharing of competitively sensitive information, between members.
8. Don't allow members to discuss competitively sensitive information in or around association events, including in 'unofficial meetings' or at social events.
9. Don't organise or encourage a boycott by members against targeted individuals / businesses.
10. Don't develop association rules or practices that restrict members from advertising their prices or discounts, soliciting for business or otherwise competing with other members.
11. Don't have rules or codes restricting or reducing competition among members, for example, imposing terms that members should not solicit employees from competitors, or rules limiting members' discount/promotional activities.
12. Don't use arbitrary rules to admit and/or expel members.
13. Don't prevent members from developing alternative standards or providing products that do not comply with the association's standards.

What is Competition Ordinance?

Competition Ordinance promotes competition and economic growth by prohibiting anti-competitive conduct by businesses. Anti-competitive conduct includes agreements between competitors that harm competition.

What is competitively sensitive information?

Competitively sensitive information covers any non-public strategic information (*e.g.: future pricing and quantities of members' output on products or services. etc*) that a business normally doesn't want its competitors to know.

Information which is historic and disseminated in an aggregated, anonymised format is less likely to be competitively sensitive, particularly if individual businesses' commercial activities cannot be identified.

For more information on how the **Competition Commission** interprets and enforces the Competition Ordinance, please consult the guidance materials available on: www.compcomm.hk

These materials do not constitute legal advice and should not be relied