



Formulate+ Circle
16 - 17 June 2025 | Leiden, The Netherlands

ANTICOMPETITIVE / ANTITRUST GUIDANCE PRINCIPLES

Attendees of The Formulate+ Circle include representatives from many different countries who may be subject to a variety of antitrust or anticompetitive legal requirements established by individual countries or regional authorities, e.g., the European Union.

While differing in details and enforcement emphasis, these individual requirements are broadly similar in their objectives and recognition of allowed and disallowed activities.

The following Anticompetitive / Antitrust Guidance Principles, developed by European Coatings, are based on these broad consistencies. Because of the potential variation in the details of individual country laws, interpretations, and enforcement emphasis, as well as individual company and national trade association policies, these Guidance Principles cannot serve as the exclusive reference for individual members.

Any Actions That Illegally Restrain Competition or Are Unfair Business Practices Are Prohibited

Anticompetitive laws universally have as their objective the prohibition of any activities that illegally restrain competition or result in unfair business practices. This applies to both intentional activity and activity which does not seek to illegally restrain trade but nonetheless does. Innocently intended acts which result in illegal trade restraints are actionable. The effects can be direct as in the case of an agreement on prices or indirect as in the case of sharing cost structures which permits accurate speculation about likely pricing.

“Illegally” is emphasized here because there are activities that may serve to enhance the competitive positions of some over others but which are nonetheless not considered to be “illegal”. For example trade associations provide benefits to its members that presumably help them in the market place, an assistance that is not available to nonmembers. Nonetheless such trade association activities are not considered illegal trade restraints so long as they maintain an open, nondiscriminatory membership policy and follow the anticompetitive requirements for trade associations. Similarly, under the principle of the right to petition one’s government, associations and individual companies can seek special legislation for their interests, such as subsidies, even though it may put certain competitors at a disadvantage.

Illegal Restraints of Competition and Unfair Business Practices: Their Variety

The most common actions prohibited are explicit agreements having an anticompetitive objective. These can vary substantially in their subject matter and individual terms, and include agreements on prices, credit terms, warranties, market shares, advertising budgets, research and development, etc. Their restrictive terms can run the gamut of the myriad ways companies and industries competitively seek to obtain and retain customers.



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Agreements, explicit or implicit, illegally restraining competition no matter how structured or executed, are prohibited. There need not be an explicit agreement with an anticompetitive objective. An unstated “understanding” will suffice. Also an industry may be so dominated by a small number of large companies, certain actions taken by them in concert, even with completely innocent objectives, may be prohibited.

The principle that an action need not have as an anticompetitive objective to be illegal is not limited to large or dominant companies. A small company which refuses to deal with another or offer similar terms for reasons wholly unrelated economics, e.g., spite, may be found to have engaged in an unfair business practice which is also regulated by anticompetitive laws.

In summary, the laws of national and regional bodies relating to anticompetitive and unfair business practices generally prohibit any illegal action that indirectly or directly results in a restraint of trade or competition or unfair business practice, even when unintended. The variety of actions, both those taken in concert and by individual companies, which can result in actionable illegal restraint of competition or unfair business practices is large and will be subject to very fact-specific inquiry by authorities. Constant vigilance is required to avoid creating circumstances that can give rise to such inquiries.

Permissible Activities

Anticompetitive laws do not prohibit all actions taken in concert by competitors. Otherwise any group activity of industry members, such as trade associations, would be outlawed.

In fact, it has long been recognized that trade association activities, if they are fairly open to all eligible participants and are conducted in a transparent and above board manner, actually enhance the efficiency of markets. Examples of this include, the exchange of legitimate management, technical, safety, and industry statistical information, improved efficiencies from joint purchasing, and even joint research and development activities in the appropriate setting.