



PIF Antitrust Guidelines 2019

PREPAIDFORUM.ORG

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DISCLAIMER

The information provided in these guidelines should not be construed as legal or any other professional advice. No responsibility will be accepted by the Prepaid International Forum ("PIF") for any loss incurred by any individual or organisation due to acting or not acting as a result of any content in these guidelines. On any specific matter reference should be made to an appropriate advisor.

Introduction

PIF is a not-for-profit trade association representing the prepaid financial services sector.

Our association brings together businesses from the prepaid and fintech sectors to discuss issues of industry-wide importance. As our members may compete directly with each other we must ensure that we fully comply with national and EU competition law and any other equivalent provisions.

Article 101 TFEU* 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."

In particular, EU antitrust rules prohibit unlawful practices such as price rigging or any other agreement concerning the terms of sales between competitors. Any form of collusion in terms of the amount of production, the latest technical developments, the allocation of customers, markets or suppliers as well as the discrimination of third parties are also inherently unlawful and shall be automatically void.

Infringement of national and EU competition law can lead to fines, civil liberty damages and in some countries criminal liability. It is therefore for the responsibility of PIF and each PIF member individually to ensure compliance with the law.

Liability under competition laws can be very strict - a trade association member may be liable for infringement by the rest of the association.

The following guidelines apply to PIF, any working group or committee, individual PIF members and any sub-group within our association.

*<http://ec.europa.eu/competition/antitrust/legislation/articles.html>

Overview

In order to avoid any kind of potential violation of competition rules, and to ensure the legitimacy and correctness of PIF meetings, these meetings will always be accurately prepared and recorded.

PIF members must not discuss or be involved in any of the following activities under any circumstances:

- Price-fixing, including the coordination of price ranges, discounts or any other element of pricing including discussing pricing without actively fixing them
- The exchange of confidential or competitively sensitive information such as business plans, marketing plans and future business plans
- Market partitioning such as the allocation of customer groups or territories between competitors, or bid rigging
- Agreements on investment levels or production quotas
- Joint negotiations, joint selling or (except after legal review) joint buying
- Any agreement restricting competition, such as collective boycott, any arrangement to avoid direct competition, or joint action to exclude competitors or new entrants

To be prohibited by competition law, an agreement need not be written down or binding. The same is true of a decision of an association of undertakings. A verbal information exchange or an informal agreement can be an infringement.

Specific rules for PIF

There are specific rules for PIF as a trade association. These rules cover our membership rules, the industry-wide standards we may set, and information exchanged at our meetings.

MEMBERSHIP RULES

We must not use access to membership in order to reserve unfair competitive advantage to our members.

- Criteria for membership must be concise, objective and reasonably necessary for the purpose and efficient governance of PIF. We must apply them in a non-discriminatory manner and never base a decision on grounds of competition
- Any proposed rejection of a membership application or expulsion of a member must be based on objective criteria
- Membership or access to information must not be conditional upon a promise not to participate in competing associations
- Restrictions on members or rules for discipline must be objective and reasonably necessary for the purpose and good governance of our association

INDUSTRY STANDARDS & CODES OF PRACTICE

PIF may develop and promote industry standards and codes of best practice. These standards are allowed where they aim to improve the quality of our members' products and services. However, we are not allowed to use them to restrict competition.

- Standards and codes of practice must be related to specified legitimate objectives, and no more detailed or restrictive than necessary

PIF ANTITRUST GUIDELINES

- Standards must not be used to raise barriers to entry to market or to exclude competitors
- Standards must be publicly accessible, including by non-members
- A 'best practice' code must not be compulsory and must not limit the way in which participants are able to compete
- Compliance should be voluntary (unless required by law)
- The award of certificates or seals of approval is allowed as long as the criteria is objective and legitimate and applied on a non-discriminatory basis

INFORMATION EXCHANGE

Members must never exchange competitively sensitive information on their own or their competitors' commercial strategy, or anything that would be considered a business secret. We must take particular care in discussions with fellow members who are or who may become competitors both at formal PIF meetings and at any informal meeting or gathering, even in a social event where this takes place under the auspices of PIF.

- Benchmarking is allowed, as long as the entity collecting and processing the data is bound by confidentiality and the data are not and cannot be linked to specific competitors
- Market surveys are allowed as long as the results are presented in statistical form and that competitively sensitive information remains anonymous
- It is acceptable to discuss generally acknowledged industry trends, regulatory matters of general interest, publicly available information and historical information that have no impact on future business
- Members may discuss or present new or existing products but not discuss non-public R&D or production plans

What to do if you suspect a breach of these guidelines

EVEN BEING PRESENT AT A MEETING WHERE ANTI-COMPETITIVE CONDUCT IS DISCUSSED CAN BE ENOUGH TO INFRINGE COMPETITION RULES

Therefore, members must always check the agenda for a PIF meeting, express their explicit objection to impermissible items and not participate in the meeting. As soon as you become aware of an infringement you should contact your company legal counsel, express your disagreement and ensure that a record is kept of your disagreement.

If you miss a meeting, you should check the minutes upon receipt and warn your legal counsel if these suggest an infringement.

If you are uncertain whether a particular agreement, discussion or information exchange between competitors is allowed, immediately contact your legal counsel who will take the appropriate steps.

Dos and don'ts for PIF members

Do

- Do make sure you have read and understood these guidelines
- Do inform PIF if you disagree with any of its decisions and keep a copy on file of any such correspondence
- Do return any commercially sensitive information you receive, without keeping any copies in any format, and explain in writing why you do not wish to obtain such information
- Do inform your company legal counsel and PIF of any approaches seeking to exchange non-public information or co-ordinate conduct on the market
- Do ask PIF to have legal counsel present at PIF meetings if you or your company have any doubts

Don't

- Do not reach understandings or agreements or even hold discussions (especially with a competitor) on anything relating to a commercially sensitive topic such as prices, credit terms and billing practices, production, sales, costs, future business plans, bids or matters relating to individual suppliers or customers
- Do not attend any PIF meeting without a written agenda or a clear indication of the purpose
- Do not attend unscheduled gatherings that are held under the auspices of PIF unless you know that they are for a bona fide purpose or purely social in nature
- Do not accept written, non-public information or agree to the exchange of oral non-public information with members who market competing products
- Do not participate in information exchanges, market surveys or benchmarking exercises that allow access to individualised competitive information
- Do not engage in joint negotiations, joint sales or joint buying without legal advice
- Do not exclude competitors or engage in collective boycotts

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