



# Trade Associations and the Competition Act



## TRADE ASSOCIATIONS AND THEIR MEMBERS

This pamphlet provides practical tips that trade associations and their members can use to minimize the risk of violating the *Competition Act*. The Act governs many elements of business conduct in Canada and contains criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace.

Violations of the Act can have serious consequences for associations and their members. Everyone involved in an association has a responsibility to stay informed and ensure compliance with the Act.

## IMMUNITY & LENIENCY PROGRAMS

If you have been involved in activities that may violate the criminal provisions of the Act, you could be eligible for immunity from prosecution if you are first to report the offence to the Bureau. Others who self-report may qualify for lenient treatment. For further information on our Immunity and Leniency Programs, visit our website.

## TRADE ASSOCIATION DOS AND DON'TS

The following “Dos and Don’ts” can help minimize the risk of issues arising under the Act.

### Dos

- ✓ Do establish an effective compliance program and, where practicable, appoint a compliance officer;
- ✓ Do exercise care when collecting and sharing competitively sensitive information within the association. Use a third party to collect the information and have it disseminated in aggregated form so that it cannot be attributed to any competitor;
- ✓ Do ensure that measures are in place to prevent the disclosure of competitively sensitive information to or between individual association members;
- ✓ Do ensure that association meetings have agendas and that minutes accurately reflect attendance and discussions;
- ✓ Do ensure that attendees use caution during association meetings. If improper discussions arise, attendees should leave the meeting and have their departure noted in the minutes. The incident should be reported to association executives and/or legal counsel and appropriate action should be taken;
- ✓ Do allow all members to attend annual and other general meetings so as not to exclude a specific firm or category of the association’s membership;
- ✓ Do find alternatives to recommended fee guidelines to provide information to the public or association members on prices;
- ✓ Do ensure that the exercise of standard-setting and other statutorily granted self-regulatory powers is appropriately related to the regulatory mandate established by legislation;
- ✓ Do ensure that rules, codes of conduct or standards (rules) include a clear statement of objectives, expectations and responsibilities, as well as a transparent dispute resolution mechanism; and
- ✓ Do ensure open consultations in the development of any rules.

### Don'ts

- ✗ Don't engage in communications at association meetings or social events about competitively sensitive information. Private meetings between competitors under the pretext of association meetings should be discouraged;
- ✗ Don't use unreasonable disciplinary measures to coerce members to provide information or data for information sharing purposes;
- ✗ Don't establish arbitrary criteria for membership that will exclude a competitor or category of competitors from membership in the association;
- ✗ Don't impose sanctions or discriminate against members that do not adhere to rules with respect to competitively important considerations;
- ✗ Don't create a false impression that lower prices or fees are indicators of lower quality services;
- ✗ Don't use rules to establish prices, mandate levels or types of services, restrict advertising, or exclude viable competitors from the market;
- ✗ Don't use standard-setting to artificially provide some competitors with a competitive advantage over others, including firms with the potential to enter the market; and
- ✗ Don't make materially false or misleading representations to the public promoting the business interests of the association's members.

The Competition Bureau, as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

Headed by the Commissioner of Competition, the Bureau is responsible for the administration and enforcement of the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Textile Labelling Act* and the *Precious Metals Marking Act*.

### Legal Actions

We have the ability to refer criminal matters to the Director of Public Prosecutions, who then decides whether to prosecute before the courts. We also have the power to bring civil matters before the Competition Tribunal or the courts, depending on the conduct in question and applicable legal provisions.

### Written Opinions

The Commissioner has the discretion to provide a binding written opinion to businesses seeking to comply with the *Competition Act*. Any person may request written opinions on whether proposed business plans and practices could raise concerns under the Act.

### Questions or Complaints

If you believe any of the laws under the Bureau's jurisdiction have been breached, please fill out our online form, call, fax or write.

We are required by law to conduct our investigations in private. We keep the identity of the source and the information provided confidential, subject to certain exceptions.

### This publication is also available online in HTML at:

[www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03691.html](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03691.html)

### Aussi offert en français sous le titre :

Les associations commerciales et la Loi sur la concurrence

### For More Information:



[www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)



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This publication is intended to provide basic information only. To learn more, please refer to the full text of the Acts or contact the Competition Bureau.

The Bureau has published a variety of publications that can assist trade associations and their members in understanding how to ensure compliance of the Act. The publications are available on the Bureau's website.