European Petroleum Refiners Association	INTERNAL PROCEDURE

COMPETITION LAW POLICY AND GUIDELINES

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	RESPONSIBILITIES AND APPROVAL **Approved by:** Director General Signature Date 30th September 2013

1. SUBJECT AND SCOPE

The subject of this policy is to lay down rules for the Association's directors, officers, Members, assigned staff and employees in relation to Competition Law (as defined in this policy).

2. DEFINITIONS, DETAILS AND CONTROLS

2.1 Definitions:

Competition Law:

The term "Competition Law", as used in this policy and the attached guidelines, refers to the competition laws, regulations and rules of the European Union and all other applicable competition law provisions in force within the EEA, its Member States and other competent jurisdictions. The term "Antitrust Law" refers to a similar set of laws, rules and regulations and is used in the United States. To the extent applicable to the Association and its activities, the defined term Competition Law includes Antitrust Law.

Competition Law is a set of rules designed to protect the proper functioning of markets with a view to promoting consumer welfare. Competition Law prohibits agreements and similar practices that restrict competition, as well as abuses of dominant positions.

2.2 Competition Law Policy:

The Association shall perform its activities at all times in strict compliance with Competition Law.

2.3 Policy Implementation:

- The Association will maintain an up to date set of Competition Law Guidelines (attached to this policy) and will develop and implement a Competition Law compliance program.
- The (joint) Chair(s) of all Association Committees are responsible for ensuring the compliance of the Committee activities with the Competition Law Guidelines.
- Plans for committee activities must be reviewed by the Board at least once a year to ensure compliance with the Competition Law Guidelines.
- Any suspected violation of these Competition Law Guidelines or of Competition Law must be reported immediately to the Legal Advisor or the Director General.
- Any suspected violation of these Competition Law Guidelines or of Competition Law by the Director General must be reported immediately to the President.

European Petroleum Refiners Association COMPETITION LAW GUIDELINES

Date: June 1st, 2014 (Updated 28 February 2019)

Introduction

European Petroleum Refiners Association is a non-profit association (the "Association") of oil companies that have downstream (refining, distribution and/or marketing) activities in Europe.

By their nature, associations such as European Petroleum Refiners Association bring competitors together and, for that reason, attract a high level of attention by competition authorities. It is the policy of the Association to ensure that all its activities are conducted in strict compliance with all applicable Competition Laws.

The Association has therefore developed and adheres to the following Guidelines relating to its conduct and activities. These Guidelines apply to all communications, documents and all work, projects, meetings, Management & Issue Groups and events organized by the Association, its staff and all Member Companies and third party representatives participating in such work in connection with the Association.

1. General

a. Operating Principles

Membership and associate membership in the Association is based on objective, transparent and non-discriminatory criteria as set out in the statutes of the Association.

The Association is transparent in its activities. All Member Companies have the right to be informed about the work and projects undertaken by the Association. They have free access to final drafts of agendas, minutes and other work documents. However, as Member Companies will generally be actual or, at least, potential competitors, the Association and its Members will at all times carefully consider the nature and extent of information that may legitimately be shared in Association meetings and/or made available to the Association. Such information sharing may only take place in strict compliance with the rules on information exchange set out in these Guidelines.

b. The Law in Europe on Information Exchange

The European Commission considers it a serious breach of competition law to exchange (directly or indirectly) with actual or potential competitors information which has the object or effect of:

- influencing the market conduct of competitors;
- disclosing to competitors a course of conduct a company has decided to or is contemplating adopting; or
- resulting in an artificially transparent market.

The following principles can be drawn from previous decisions of the European Commission and the European Courts:

- any exchange of information by which participants are directly or indirectly informed of the production, sales (in value or volume), selling prices, order backlog, capacity utilization rates, marketing plans, identity of individual customers and / or terms and conditions of sale of other individual competitors is strictly prohibited;

- the exchange of historic data will generally be acceptable — individual (as opposed to aggregated) data is generally considered to be historic when it has ceased to be current for 12 months;

- the exchange of aggregated statistical information through trade associations or other third party reporting agencies, even when they provide a breakdown of figures (e.g., by country or product), is generally acceptable provided that the information exchanged does not enable the identification of individual company data and thereby will not influence or disclose market conduct or artificially increase transparency; and

- participants abstain from any meetings or other contact in which the significance of the information exchanged or the possible or likely reaction of the industry or of individual producers to that information is discussed.

Care is therefore required to ensure that commercially sensitive information is not shared between actual or potential competitors participating in any activities through the Association. Commercially sensitive information includes information on prices, discounts, credit terms, margins, costs, production or sales volumes, market shares, strategies and business plans, demand estimates, utilised capacity, and / or details of customers, as further explained in sections 2 and 3.

2. Rules applicable to meetings

a. Procedures applicable to meetings

- A written agenda clearly describing the subject(s) of the meeting will be circulated in advance to all Member Companies having a representative in the relevant Committee.

- The agenda and any presentations and discussions at any Association meeting must only contemplate matters that may legitimately be discussed between competitors (see paragraph b below).

- Open-ended items like "Any Other Business" must be avoided.

- Any queries as to whether or not it is appropriate for an item to be included in an agenda must be carefully considered and, if needed, referred to a legal advisor.

- All agendas for Association meetings that include Member Company representatives will include an Intranet link to, or a copy of, these Competition Law Guidelines.

- All meetings at which Member Company representatives are present will include a Competition Law reminder at the start of the meeting which shall be noted in the minutes.

- A "Do's & Don'ts" summary of Competition Law requirements will be made available to all participants at all meetings that include Member Company representatives.

- Attendees at Association meetings may only discuss items on the agenda.

- All Association meetings are attended by at least one Association staff member.

- Draft minutes are developed and circulated to attendees of the relevant meeting before the next meeting, with enough time for the attendees to review and comment. The minutes will be formally approved at the latest at the next meeting by the relevant body. An approval by e-mail is possible if accepted by the group.

- All formally approved minutes are circulated and posted on the Association Intranet members' site and are available to all Member Companies.

- For all Association meetings, the Association will retain the agenda, minutes and other relevant documents in its files for 10 years.

- The Board meetings are attended by a legal advisor which can be the Legal Advisor, an outside legal advisor or a member of the Legal Issue Group established by the Association.

b. Meeting topics

May be discussed at meetings:

- Non-confidential, non-commercial technical and/or scientific issues relevant to the industry, such as legislation, product quality, health, safety and environmental issues, and matters related to corporate social responsibility and regulatory compliance.

- When discussing these topics one should be mindful of possible "spill-over" effects. Any discussion of environmental or scientific data that could be reverse engineered into commercially sensitive information should be avoided. For example: emission data that could be used to calculate the capacity of a specific unit.

- Industry institutional relations, issue management and public relations activities.

May not be discussed at meetings:

- To avoid risks of infringing Competition Law, there must be **no discussion of any commercially sensitive matter,** such as for example:

    - **Pricing information**[1] - individual company or industry prices, price differentials, margins, price changes, price mark-ups, discounts, allowances, rebates, commission rates, credit terms, price changes, terms of sale including resale prices;

    - **Costs and Production information**[3] - individual company data on costs[4], production capacity (other than nameplate capacities), inventory and sales; individual company plans concerning the design, production or marketing of particular products, including plans for proposed territories or customers; changes in industry production capacity (other than nameplate capacities), inventories or similar information; individual company data on overhead or distribution costs, cost accounting formulas, or methods of computing costs, etc.;

    - **Transportation Rates** — individual company tariffs or policies for rates, freight or zone prices;

    - **Sales and market information** — individual company bids, intentions to bid or not to bid, procedures for responding to bid invitations; matters related to actual or potential

[1] This does not preclude the Association from using official and publicly available data or reports on retail or crude prices (as for example published by the government or an international organization) as part of and in support of its advocacy activities.
[2] 'Prices' means sales prices of products, i.e. the price at which products are sold to customers.
[3] This does not preclude the Association from using official and publicly available data or reports on operating costs (as for example published by the government or an international organization) as part of and in support of its advocacy activities
[4] 'Costs' means the costs for the manufacturing of products, including cost of feedstock, energy, labour etc., as well as the purchase price of products and services.

individual suppliers or customers or to business conduct of individual companies towards them; the identity of specific customers or suppliers with whom an individual company has decided not to do business; territorial allocation or the concept of 'home markets';

- **Investments, Divestments and Future Plans** — information relating to future plans of individual companies concerning investments or divestments (e.g. refinery shutdowns, capacity closure, expected use of production capacity, expansion plans or market entry or exit)[5];
- **Technologies** – information on the current or future roll-out or use of certain technologies by individual Member Companies (e.g. information on the technologies used to meet certain air quality standards). For more detailed guidance see **Annex 1.**

- There must be no agreement or understanding, or any appearance of an agreement or understanding that decisions on any of the commercially sensitive matters referred to above will be taken collectively by the meeting participants.

Note that during breaks and post-meeting events (social settings) the same competition law sensitivity should be exercised.

3. Information Gathering - key aspects of ensuring the legality of information exchange

Competition Law prohibits the direct or indirect disclosure or exchange of commercially sensitive information between actual or potential competitors. Commercially sensitive information is any information that reduces uncertainty in the market as to the current or future behaviour of competitors. By reducing uncertainty (or artificially increasing market transparency), the disclosure or exchange of commercially sensitive information between competitors facilitates collusion or concerted behaviour. Commercially sensitive information is a broad category and includes data such as described above in section 2.

That said, it is also widely accepted that certain types of information exchanges, when conducted correctly, may also generate efficiency gains and thus be procompetitive.

In this context, the Association performs a legitimate function in gathering and disseminating scientific information and more generally in monitoring, reporting and influencing public policies and issues of importance to its Members. It is of the essence that any information exchange by the Association and its Members be conducted in accordance with applicable Competition Laws and that it is not used as a mechanism to facilitate illegal collusive behaviour.

For that reason, the Association and its Members shall ensure that the following principles are complied with at all times:

- There shall be a legitimate purpose for any exchange of information, that can be evidenced if required, and the exchange shall not extend beyond that which is strictly necessary to achieve such legitimate and lawful purpose;
- **Under no circumstances shall exchanges cover price information, even if the information is in the public domain[1], historic and aggregated;**
- Member Companies submitting confidential data to the Association or a consultant selected by the Association must not disclose this data to any other Member Company;

[1] Generally, the exchange of genuinely public information between competitors is unlikely to infringe Article 101 TFEU. For competition law purposes, information is genuinely public if it is equally accessible (in terms of costs of access) to all competitors and customers. Obtaining genuinely public information should not be more costly for companies unaffiliated to the exchange system than for the companies exchanging the information. For example, where publically available price information is monitored and tracked, this activity over the data means that while the information remains in the public domain, it is no longer genuinely public since the cost of processing the data may deter other market participants from doing the same with it. See paragraphs 92-94 of the European Commission Horizontal Guidelines [OJEU 14.1.2011, C11/1] and the example provided in paragraph 109.

- The Association (or the consultant selected by the Association) maintains complete

[5] This does not preclude the Association from using publicly available data on investment, divestments and future plans, as part of and in support of its advocacy activities.

confidentiality of the individual data collected. The Association (or its consultant) may of course communicate individual data to the Member to which that individual data relates;

- The Association collates and discloses data gathered by it only in aggregated form, which does not directly or indirectly identify the commercially sensitive data of any particular participant and does not permit any such data applicable to any individual participant to be deduced from the collated data (taking into account not only the data itself but also other information known to participants). Consequently:

  (i) to the extent such disclosure relates to industry statistics and benchmarking studies including data on production, sales and inventory levels, aggregated data will be disclosed to Member Companies only if it covers **a minimum of five (5) Members in any relevant statistical group, and the individual data of each participant represents less than 50% of such aggregated data.** For these purposes, several entities forming part of the same group of companies will be counted as one Member and any input by a Member representing less than 5% of the total reported in the relevant category will be disregarded for purposes of determining whether at least five Members have provided data;

  (ii) to the extent such disclosure concerns industry statistics and benchmarking studies including scientific information and more generally reports on issues relating to health, safety and the environment out of which it is not possible to deduct data referred to under (i) above, aggregated data will be disclosed to Member Companies only if it covers **a minimum of three (3) members in any relevant statistical group, and the individual data of each participant represents less than 50% of such aggregated data.** The same calculation rules apply as outlined under (i)

- All information exchanged may include only historic data. For purposes of these Guidelines, effectively aggregated data will be considered to be historic when ceased to be current for at least 6 months.

- Forecasts shall only be gathered if the purpose is to provide all-industry statistical or scientific support to an institutional or governmental relations initiative on an industry-wide basis.

- Any report of the results of an information exchange that is provided to the participants should generally reflect objective facts and not opinions. Reports may not be accompanied by recommendations as to market conduct. Each participant should independently reach conclusions from the exercise and avoid discussions of those conclusions or potential future business conduct that result from its conclusions.

- Non-commercially sensitive information supplied by the Association shall be supplied on non-discriminatory terms. Where free access is given to such information, it shall be available to all interested parties, unless there is a legitimate and objective justification for refusal. Where such information is supplied by the Association for consideration, the fees paid shall be fixed according to non-discriminatory rules, any difference in treatment in this regard requiring a legitimate and objective justification.

The above matters are general rules. What information precisely can be shared and how this may be done is case-specific. **Therefore, for any new information exchange/data gathering exercise, before the Association starts gathering confidential information from its Members, advice should be obtained from a legal advisor as to the appropriateness of the information being sought and the manner in which it will be reported.** It is recommended to periodically review existing information exchanges/data gathering exercises.

4. Development of standards, recommendations and positions

The Association will participate in the development of recommendations and positions related to public policies including, but not limited to the health, safety and environmental aspects of oil.

In doing so, the Association will ensure that:

- Its work in these areas is conducted and applied in a non-discriminatory way;
- Positions and recommendations have a reasonable objective and an additional value in comparison to legal requirements, and the means used are proportionate to the objectives.
- It does not commit to a particular course or action to be taken by Members vis-à-vis policy makers or other third parties, unless the Members concerned have expressly given their agreement (see point 5 below).

While the establishment of recommendations and positions should not generally result in competition law compliance risk, provided that there is no agreement or understanding between competitors as to future market conduct, the establishment of standards can raise compliance concerns. Accordingly, it will generally be appropriate for any process for establishing standards and the results of such work to be reviewed by a legal advisor.

5. Commitments by the Association and/or Members

In principle, Members **must not commit** to **align their market behavior**. For example, commitments to

- phase out or replace certain fuel grades;
- use or stop using specific technologies;
- comply with certain standards;
- start using certain technologies or complying with certain standards only as of a specific point in time;
- to pass or not to pass certain costs on to customers

restrict competition and are, in principle, prohibited.

Commitments that do not affect directly the market behavior of Members such as high level commitments to develop more environmentally friendly products or to reduce greenhouse gas emissions do not raise competition law concerns but should receive prior legal review

The Association can make commitments vis-à-vis policy makers or other third parties on behalf of Member Companies only after the Members concerned have expressly given their agreement through a clearly-defined Power of Attorney that is limited in time and scope.

PRIOR to entering into (discussion on) any joint commitments that could result in the alignment of Members' market behavior, you must obtain advice from a legal advisor.

ANY QUERIES OR DOUBTS ABOUT THESE GUIDELINES OR ABOUT WHETHER A PARTICULAR COURSE OF ACTION MIGHT INFRINGE COMPETITION LAW SHOULD BE REFERRED TO THE DIRECTOR GENERAL WHO WILL CONSULT WITHOUT ANY DELAY, IF NEEDED, WITH THE APPROPRIATE LEGAL ADVISOR(S) BEFORE SUCH ACTION IS TAKEN.

Annex 1

Discussions or agreements on technology issues

Recent investigations by the European Commission have illustrated that also discussions or agreements between competitors on technology and/or environmental standards or competition issues can raise competition law concerns. For instance:

- In the EU truck cartel case (2016/2017), the conduct by certain truck manufacturers which resulted in total fines in excess of EUR 3.8 billion included coordinating (i) the timing for the introduction of emission technologies to comply with the increasingly strict European emissions standards; and (ii) the passing on to customers of the costs for these emissions technologies.

- The Commission is currently investigating allegations that certain German car manufacturers may have colluded to limit the development and roll-out of selective catalytic reduction systems and "Otto" particular filters.

The technologies used by a company may affect both its costs (and thus possibly its prices) and the quality of its products (which is equally an important parameter of competition). Moreover, the Commission has stated that companies should also compete on the environmental performance of their products. Discussions and agreements on the technologies that **individual Member Companies** are **developing, using or intending to use** therefore can restrict competition and may constitute a **serious violation of competition law, unless this information is already in the public domain**[2].

By contrast, it is perfectly **legal** for Member Companies to engage in "generic" discussions on the characteristics, the potential, the risks or the advantages and disadvantages of certain technologies, **provided** they do not disclose information (that is not in the public domain) on

- Whether they are developing certain technologies;
- Whether they are using or intending to use certain technologies;
- In which way/for which purposes they are using or intending to use certain technologies;
- As of what point in time they will roll out and use certain technologies; or
- As of what point in time they will stop using certain technologies;
- How technologies will affect their prices or price strategies.

Very exceptionally there may be situations where discussions and/or agreements on individual Member Companies' (intended) use of certain technologies are necessary to achieve important policy objectives that are in the public interest. Whether this allows Members to engage in such discussions requires careful legal analysis. You must therefore obtain **advice from a legal advisor before** entering into such discussions.

IF IN DOUBT PLEASE CONSULT THE ASSOCIATION'S LEGAL ADVISOR OR THE DIRECTOR GENERAL PRIOR TO ENGAGING INTO DISCUSSIONS THAT COULD RAISE CONCERNS.

[2]Generally, the exchange of genuinely public information between competitors is unlikely to infringe Article 101 TFEU. For competition law purposes, information is genuinely public if it is equally accessible (in terms of costs of access) to all competitors and customers. Obtaining genuinely public information should not be more costly for companies unaffiliated to the exchange system than for the companies exchanging the information. For example, where publically available price information is monitored and tracked, this activity over the data means that while the information remains in the public domain, it is no longer genuinely public since the cost of processing the data may deter other market participants from doing the same with it. See paragraphs 92-94 of the European Commission Horizontal Guidelines [OJEU 14.1.2011, C11/1] and the example provided in paragraph 109.