

# Cooperating Safely with Competitors

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# Three Easy Questions

- Are there any hardcore (cartel-like) restrictions?
- What are the pro-competitive benefits (benefits to customers/consumers)?
- Are any restrictions of competition reasonably (commercially) necessary?

# Necessary Precautions

- Clear definition of scope and objectives
- Appropriate information exchange procedures
- Meeting protocols
  - Agreed agendas and minutes
  - Use of compliance reminders
  - Monitors if/when necessary
- Obtaining legal clearance in advance
  - May involve Art 101(3) assessment
- Open membership/access

# When To Call In The Lawyers

- Before you open discussions with third parties
- Internal discussions are lawful but
  - early involvement may avoid problems later; and
  - at a minimum “red flag” check advisable before investing significant time/resources/political capital

# How To Initiate Competitor Contacts

- Via a trade association with appropriate compliance procedures
- Direct contacts – having obtained legal advice as to feasibility and approach
- Avoid closed/confidential groups unless specific legal clearance obtained

# Art 101(3) Analysis In Practice

- Focus on the customer/consumer
- Use available third party data
- External legal advice
  - Individual and/or collective
- Use of economists (if necessary)
- Stakeholder involvement
- Record keeping and publicity
- Consultation with antitrust authorities
- Difficulties with “public interest” objectives



# Thank You

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