



**EUROGAS GUIDELINES
ON COMPLIANCE WITH
COMPETITION LAW**

▶ Operation within national and European laws

General

As sector organisation of the European natural gas industry Eurogas serves a legitimate and useful purpose according to its statutes and may legally engage in a wide variety of activities for the industry as long as these do not violate the competition law rules of the EU or the countries in which its members have their home offices and operate business. Considerations of the various competition laws require in particular that Eurogas refrains from any activity which might be construed as unlawfully limiting competition among its members and other stakeholders.

The following guidelines are issued in order that no member of Eurogas staff or individuals representing a Eurogas member knowingly or wilfully enter into any activity under the umbrella of the organisation which might violate competition law.

Members are urged to avoid not only actual violations of the law, but also any situation which could be considered as a violation which might invite suspicion or investigation on the part of the enforcement authorities. A reasonable amount of common sense and good judgement must be used by those who are part of the different committees of Eurogas, for that no risk would be taken of violating competition law. To protect the organisation, its members and non-members who co-operate in certain activities, Eurogas has adopted and observes the following basic policies:

1. The organisation has well-defined, lawful and constructive objectives, statutes and activities. Our programmes are designed to promote the overall understanding and interests of the natural gas industry in a continuous dialogue with public and private stakeholders.
2. Our organisational structure consists primarily of functional committees, groups and task forces.
3. Any activities in relation with pricing and marketing are scrupulously avoided.
4. The Secretary General, if needed with the assistance of legal counsel, helps to ensure full observation of all Eurogas policies by its members and to provide guidance and advice as to the strict compliance by Eurogas with the relevant rules and regulations, including but not limited to competition law.

Competition law in general

Competition law is not intended to prohibit legitimate business activity and to impede legitimate activities by Industry Associations. This legitimacy has been fully recognised by the European Commission, but also by Antitrust Authorities of a wider economic areas in the world. Fundamentally, Eurogas like any other Industry Association, assists individual companies to develop a better understanding of the legal, regulatory and economic environment whilst offering a structure for joint advocacy. The objective of competition law in different countries is to help to encourage competition in the market. Artificial restraints on competition are prohibited. Competition laws were enacted because the general public felt that trusts, cartels and other combinations were threatening to control the market to the detriment of customers.

Although there are many different enforcement procedures and potential penalties involved, the basic principles underlying competition law in the EU and the United States are the same. The main EU provision affecting industry associations like Eurogas is Paragraph 1 of Article 81 of the EC Treaty which reads as follows:

“The following shall be prohibited as incompatible with the common market: 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 common market, and in particular those which:

- a. *directly or indirectly fix purchase or selling prices or any other trading conditions;*
- b. *limit or control production, markets, technical development or investment;*
- c. *share markets or sources of supply;*
- d. *apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- e. *make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.”*

In accordance with this paragraph and a number of key decisions by the European Court of Justice, two basic points should be borne in mind. First, regardless of the good intentions of the participants, if the effect of the industry association's activity is found to prevent, restrict or distort competition, the activity will be considered illegal. Secondly, to violate Article 81 it is not necessary for the parties involved to enter into a real agreement; under the concept of concerted practices such agreements may be implied by the actions of the parties. It should be kept in mind that acting through an industry association does not provide participants with any special protection under competition law. An industry association offers, however, an open framework for developing a number of legitimate joint activities. Companies cannot do anything through an industry association that they could not do with each other individually.

Activities to be avoided

To avoid possible problems, the following rules should be borne in mind by all when participating in Eurogas activities:

1. Companies or other stakeholders should **not** agree with competitors or other parties:
 - a. to fix the prices of products or conditions of sale,
 - b. to limit production, fix production quotas, or otherwise limit the supply of any product reaching the market,
 - c. to divide the market or sources of supply, either geographically or by class of customer,
 - d. to blacklist or boycott customers, competitors or suppliers,
 - e. to limit or control investments or technical development.
2. They should **not** discuss or exchange information which might infringe competition rules with competitors related to:
 - a. individual company prices, price changes, terms of sales, etc.,
 - b. industry pricing policies, price levels, price changes, etc.,
 - c. price differentials, price mark-ups, discounts, allowances, credit terms,
 - d. costs of production or distribution, cost accounting formulas, methods of computing costs,
 - e. individual company figures on sources of supply costs, production, inventories, sales, etc.,
 - f. information as to future plans of individual companies concerning technology, investments, or the design, production, distribution or marketing of particular products including proposed territories or customers,
 - g. matters relating to individual suppliers or customers, particularly in respect of any action that might have the effect of excluding them from the market.

The comments above are intended as guidelines only and not as rules. Every individual should use his own judgement. If ever there is a doubt regarding the legality of an activity or an action – if there is a risk or doubt of violation of competition law – then the matter should be checked by the company's legal counsel or discussed with the Eurogas Secretary General before proceeding. Eurogas has the obligation to ensure that its various activities are conducted in a legal manner.

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