

GIGAEurope Competition Law Compliance Policy

What are the EU competition rules and to whom do they apply?

[Art 101 TFEU](#) prevents companies from cooperating to prevent, restrict or distort competition, such as agreeing prices, sharing markets or customers, or by restricting output.¹ Competition law applies to both companies and trade associations. All businesses and industry associations active in the EU therefore bear responsibility for complying with the competition rules.²

Please note that **all GIGAEurope employees, consultants, full members, associate members, and all related representatives/officials/advisers** are under an obligation to read and follow this Competition Law Compliance Policy and to conduct all activities connected with GIGAEurope in accordance with any applicable competition legislation.

What is competitively sensitive information?

There should be no exchange of commercially sensitive information between GIGAEurope members covering any non-public strategic information about a company's commercial policy. Categories of potentially commercially sensitive information include information on prices or price elements, costs, capacity, production, quantities, market shares, sales volumes / revenues, actual or potential customers, advertising strategies, trading terms and conditions with third parties, plans to enter or exit markets, other future business plans or other confidential or important elements of a firm's commercial strategy (hereinafter "commercially sensitive information").

What are the costs of non-compliance?

Fines imposed on companies or associations that infringe EU competition rules can be very substantial, even up to 10% of a company's annual worldwide turnover, or (for an infringement by an association of undertakings) up to 10% of the sum of the total turnover of each member active on the market affected by the infringement.³ Other consequences can also result from a finding of illegal conduct, such as a negative reputational impact or follow-on damages actions.

¹ Art 101 TFEU is included in full in the Annex.

² Due to the role of a trade association in facilitating interactions between competitors, this policy focuses on Art 101 TFEU (and corresponding national and/or EEA legislation). However, all undertakings also have a responsibility to comply with [Art 102 TFEU](#) (and corresponding national and/or EEA legislation) prohibiting abusive behaviour by individually or collectively dominant companies.

³ See Art 23(2), (3) & (4) of [Regulation 1/2003](#) and see also the [EU Guidelines on the method of setting fines imposed pursuant to Art 23\(2\)\(a\) of Reg 1/2003](#).

What actions can GIGAEurope and its members take to ensure compliance?

- ✓ Ensure that membership admission criteria for the association are transparent, proportionate, non-discriminatory and based upon objective standards and that members remain free at all times to join other initiatives.
- ✓ Include competition compliance reminders on meeting-related documentation and read out the reminder at the beginning of meetings.
- ✓ Discussions should stick to the agenda and participants should be vigilant as to what is discussed, as well as remaining cautious when it comes to informal discussions in working groups, fringe meetings or in social settings. A simple discussion between competitors, at which commercially sensitive information is exchanged, may amount to an anticompetitive concerted practice, even in the absence of any formal agreement as regards the future market action of the firms involved. Mere passive presence at an anticompetitive meeting or conversation (whether formal or informal) can suffice to be held liable for a competition law infringement.
- ✓ Any written information or inputs should be shared only with the GIGAEurope office in the first instance for verification of a lack of commercially sensitive content before distribution to other members with or without adaptations as appropriate.
- ✓ Ensure that any industry standard-setting process involves non-compulsory standards set through a non-discriminatory, open (including to non-members) and transparent procedure.

What actions should GIGAEurope and its members avoid to ensure compliance?

The classic competition law rules apply at all times:

- ✗ The association shall not (explicitly or implicitly) issue any decisions or recommendations which may lead to a restriction of competition.
- ✗ Members shall not use the association as a vehicle for contact and cooperation to form anticompetitive agreements or concerted practices.
- ✗ There should be no exchange of and no discussions on commercially sensitive information in or around any association meetings or events, including in 'unofficial meetings' or at related social events. All meetings/calls should have a GIGAEurope representative present.
- ✗ The association should refrain from adopting binding standards and/or specifications aimed at favouring (or discriminating against) specific industry segments and which may limit competition and result in consumer harm.
- ✗ The association shall not encourage or facilitate in any way any type of collective boycott.
- ✗ The association shall not publish messages suggesting that lower prices mean lower quality.

What information can be discussed or shared within the GIGAEurope community?

- ✓ Categories of data that are generally not commercially sensitive include information on:
 - the general functioning or state of an industry;
 - public policy or regulatory matters (which could be used, for example, in industrywide public relations or lobbying initiatives);
 - non-confidential technical issues relevant to the industry in general, such as standards or health and safety matters;
 - general, non-proprietary technology and related issues, such as the characteristics and suitability of particular equipment (but not a particular company's plans regarding the adoption of specific equipment or technology);
 - general promotional opportunities relevant to the industry in general (but not a particular company's promotional plans);
 - non-strategic educational, technical or scientific data that results in consumer benefits;
 - non-strategic information needed to build new business partnerships between undertakings.

How to react in the event of unannounced inspections by competition authorities?

- ✓ Involve senior management and relevant competition lawyer(s) immediately.
- ✓ Request that the relevant member(s) of the senior management and competition law teams is/are present before any search activities are initiated and before any document is signed (within time limits that are acceptable to the investigating officials).
- ✓ Request the inspection decision/authorisation/warrant for the relevant competition lawyer(s) to check inter alia its scope, i.e. undertakings, premises and subject matter covered, including alleged infringements, relevant products/services, timelines, departments, geographical scope, etc.
- ✓ Respect the duty to cooperate with the relevant authorities in their inspection activities.
- ✓ Provide information (only) as authorized by the relevant member(s) of the senior management and competition law teams.
- ✗ Do not deny the relevant officials access to rooms or devices.
- ✗ Do not destroy, modify or hide documents, emails, or any other sources of documentation or files.
- ✗ Do not inform any third parties that an inspection is taking place.
- ✗ Do not tamper with or break any seal.

Annex: Background Information

Useful Resources on Competition Law Compliance for Trade Associations

- [European Commission: Guidelines on the application of Art 101 TFEU to horizontal cooperation agreements](#)
- [European Commission: Antitrust compliance](#)
- [CMA: What do trade associations need to know about competition law?](#)
- [OECD: Potential pro and anti-competitive aspects of trade associations](#)
- [CCPC: Guidance Notice on activities of trade associations and compliance with competition law](#)

Article 101 TFEU

Article 101

(ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal 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 internal 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.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.