

## Trade Associations: Caution & Best Practices

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### Caution for Trade Associations

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Trade associations are likely to play a major role to harness and pursue the common objectives of member businesses in overcoming the difficult economic situation created by the COVID19 pandemic. Trade Associations provide a common platform for business to share and to voice out their concerns, and also to communicate with consumers.

However, businesses and trade associations are reminded of the prohibitions against cartels and abuse of monopoly situations which raises price and limit choice of consumers under the Competition Act 2007. Trade associations and their members must be aware that the exceptional circumstances surrounding COVID19 do not release them from their obligation to comply with competition rules. In that respect, businesses and trade associations should operate by the rules of competition.

The Competition Commission will be rigorous in its enforcement activities against anti-competitive practices by business or through trade associations the more so that that such anti-competitive behavior can impede the economic recovery of the Mauritian and the well-being of consumers post COVID 19.

#### **Competition Law Flash Guides on Recommended Practices Trade for Associations**

Trade Associations and members are strongly advised to the Competition Law Flash Guides on Recommended Practices Trade for Associations which is available on our website - <https://competitioncommission.mu/wp-content/uploads/2019/10/Flash-Guides-Recommended-Practices-for-Trade-Associations.pdf>

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### Best Practices in current Covid19 situation for Trade Associations

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**The Competition Commission believes that trade/business associations may have an important role in helping members to tackle business issues in the aftermath of COVID19. In that respect the Competition Commission sets out some basic recommendations for trade associations, the aim of which is to ensure that cooperation between association members do not go beyond legitimate purposes and to prevent course of action which inadvertently stray into the prohibition on collusive agreement (cartels).**

The present COVID19 specific publication by the Competition Commission is in addition to the existing 'Competition Law Flash Guide: Recommended Practices for Trade Associations' which equally applies in the current Covid19 circumstances. The following recommendations may be implemented as best practices:

#### ▪ **Competition Compliance**

Make sure that the association has established a competition compliance policy, that members, including new members, are familiar with it, and that it is being implemented and followed by members. The following recommendations may be incorporated in the compliance policy.

**▪ Prevent and avoid exchange of commercially sensitive information**

The prohibition on cartels (collusive agreements) captures exchanges of commercially sensitive information between competitors either directly or indirectly. Thus, special attention should be paid to processes where information is gathered and distributed among members, especially if competitively sensitive information. Generally, all commercial information of an enterprise that is not public would be regarded as competitively sensitive information. However, in light of section 41 and 42 of the Competition Act 2007, the following should be treated with utmost caution; information that refers to marketing strategies, pricing, discounts, sales margins, costs structures, the identity of customers and suppliers, territory supplied, tenders, and distribution and marketing plans of future products and services.

**▪ Assess the information and the purpose before disclosing**

As such before any exchange of information between members or through the trade association must be assessed in light of the above before disclosing. Similarly, the purpose for which information is exchanged must be assessed. In the context of a collaboration arrangement, sensitive commercial information should only be exchanged insofar as that information is strictly necessary to achieve the ends sought by the collaboration. If the purpose is not collusive in nature, then extent of the information exchange must not go beyond serving that purpose.

**▪ Safeguards when collecting information from members**

Put in place safeguards to prevent dissemination of business sensitive information collected from members for purposes that are compatible with the Competition Act. Dissemination between members may only be allowed if the information gathered has been anonymised, aggregated, summarised in a way where the enterprises which provided the information cannot be identified by others.

**▪ Meetings and discussion**

For each meeting always prepare an agenda before any face-to-face or ad-hoc meetings among association members so that the nature of the discussions can be assessed. Set the agenda for the make clear that disclosure or discussion of competitively sensitive information among individual association members is strictly forbidden

**▪ Seek prior legal advice on any collaboration**

It is advisable to seek legal advice on proposed collaborations between competitors. The gathering, distribution and discussion of information related to prices or other commercial terms, customers, production or marketing plans should be avoided without prior legal advice.

**Document all discussions especially efficiencies which are sought by the collaboration**

It is imperative to clearly document the discussions and purposes thereof, and especially the intended efficiencies and consumer benefits that will be gained through the collaboration.

**Use unambiguous and clear language for communications and recordings**

The association should pay particular attention and importance of taking care with language and wording used when drafting formal (minutes, bulletins, press releases, etc.) and informal communications (emails, WhatsApp, chats, etc.) to avoid misunderstandings and questionable interpretations.

**Review decisions or recommendations of the Association to members in light of the Competition Act**

Associations should not neglect their compliance with competition rules during the COVID-19 crisis and they should not make recommendations to their members or be involved in arrangements that are forbidden by those rules. Any recommendation or guidance, whether formal or otherwise, that might influence how members as individual businesses act in terms of prices may be anti-competitive. Likewise, recommendations regarding the passing on of costs to customers or on production or sales planning might also infringe competition rules the more so if those recommendations are not essential.

**Regularly review the Rules of the Association or any other practice documents**

Internal rules and regulations must not prevent members from applying discounts and, in general, competing independently with other members. Associations should not encourage or be involved in commercial boycotts – such as imposing sanctions – aimed at forcing members to display a specific commercial conduct.

**To report a potential infringement:**

- Tel: 211 2005 / Email: [info@competitioncommission.mu](mailto:info@competitioncommission.mu)
- <https://competitioncommission.mu/how-to-lodge-a-complaint/>

**To apply for leniency or any information on leniency**

- Tel: 211 2005 / Email: [leniency@competitioncommission.mu](mailto:leniency@competitioncommission.mu)
- Consult our Leniency Flyer for a quick understanding on what is leniency and how to apply - <https://competitioncommission.mu/wp-content/uploads/2020/06/Leniency-flyer-immunity-counter-V3-June-2020-digital.pdf>