

# UK EMISSIONS TRADING GROUP (UK ETG) COMPETITION LAW GUIDELINES

The UK ETG is a business-led group that works closely with the UK Government on the development and implementation of emissions trading schemes. It is committed to comply with European Union and national antitrust laws.

The UK ETG's activities must on no account lead towards a restriction of competition between members, nor must meetings of members organized or supported by the UK ETG be used by members to discuss or coordinate future market behaviour resulting in a restriction of competition.

These Guidelines are addressed to all persons involved in the activities of the UK ETG. These guidelines seek to provide an outline of the practices that should be observed for participation in the UK ETG. These guidelines do not serve as an exhaustive guide to every aspect of competition law. Thus if questions arise concerning the UK ETG or any of its activities, members should seek advice from their own legal advisor, and notify the UK ETG Secretariat.

## 1. MEMBERSHIP

The UK ETG shall ensure that any membership criteria are objective and are not applied in a discriminatory manner.

## 2. AVOID INFORMAL GATHERINGS

Most problems (or allegations of wrongdoing) occur in the context of informal or "side meetings" outside UK ETG organised meetings and activities. These should be avoided.

## 3. MEETING AGENDAS

- An agenda should be prepared in advance and must only cover legitimate discussion topics (see below).
- The agenda should not include open-ended items such as "Miscellaneous" or "AOB"
- The draft agenda must be approved at the beginning of each meeting, and any agreed amendments to the draft meeting agenda noted. Participants should follow the agenda during the meeting.

## 4. MEETING MINUTES

Minutes shall be taken of all meetings and distributed to all participants. All meeting attendees must be listed.

## 5. AVOID INAPPROPRIATE TOPICS

During UK ETG meetings, participants must be sensitive to how their remarks may be interpreted. They should avoid discussions which might be misconstrued as price fixing, customer or market allocation, attempts to limit production/output or boycott suppliers and/or customers. This is particularly relevant should meeting participants be from the same industry or trade sector.

## 6 INFORMATION THAT MUST NOT BE EXCHANGED OR DISCUSSED

Exchange of certain types of commercial information may allow competitors to reach a common understanding on the terms of coordination of their competitive behaviour, even without any explicit agreement on coordination.

For this reason, during discussions that take place at UK ETG meetings where competitors are present, participants **MUST NOT** include any information that could be regarded as competitively sensitive market data, without first seeking advice from their own legal advisor, and notifying the UK ETG Secretariat.

Other than publicly available information, competitively sensitive information includes:

- prices, pricing methods or policies, price changes, discounts, rebates, surcharges, dealer commissions or any other price related terms on which products/services are supplied, e.g. credit terms or terms of guarantees;
- profit margins or individual significant company costs, including production, distribution or raw material costs;
- details of individual company's markets, territories, customers or suppliers;
- individual companies' sales volumes, production capacities or utilisation, stock levels, etc.; or
- individual companies' marketing strategies, future investment plans, changes in levels of production etc.

Even a single exchange of sensitive information between competitors at a single meeting can be enough to constitute collusive behaviour. E.g. ECJ Case C-8/08 *T-Mobile Netherlands 2009*.

## 7. INFORMATION THAT MAY BE EXCHANGED OR DISCUSSED

It is permissible to exchange non-sensitive information e.g. gathering and circulating data on health and safety, codes of conduct, technical standards or lobbying initiatives.

## 8. INAPPROPRIATE BEHAVIOUR:

If inappropriate subjects are discussed at any meeting the Chairperson, UK ETG Secretariat official(s) and/or participants must object. The inappropriate conversation must be discontinued or those involved invited to leave. Legal advice must be sought if the conversation is to continue and in any event following the meeting. Such an action is to be recorded in the minutes of the meeting. If the conversation continues, the Chairperson must suspend the meeting. Participants can have their objections and/or departure recorded in the minutes. The incident must be reported to the participant's own legal advisor.