



FERTILIZER CANADA

FERTILISANTS CANADA

## **Competition Law Guidelines for Fertilizer Canada Meetings**

While some activities among competitors are both legal and beneficial to the industry, certain group activities of competitors can raise issues under competition law. For example, agreements or combinations between or among competitors need not be formal to raise questions under competition law. Illegal agreements among competitors can include any kind of understanding, formal or informal, secret or public, under which participants can reasonably expect that other participants will follow a particular course of action. Competition law authorities typically focus on criminal price fixing, market allocation and production allocation agreements which in Canada are illegal *per se*, regardless of the number or size of the competitors participating in the agreement, and are subject to significant penalties. Under Canadian competition law all agreements or arrangements among competitors that substantially lessen competition, even if not all firms in an industry are involved, including agreements on capital investment and export policies, can be subject to enforcement action. Further, smaller firms that participate in such agreements are as much subject to penalties and remedial action as are larger firms.

Each person is responsible to see that topics, which could give an appearance of an agreement that could violate competition law, are not discussed at any Fertilizer Canada meetings. It is the responsibility of each participant in the first instance to avoid raising improper subjects for discussion. This reminder has been prepared to assure that participants in meetings are aware of this obligation.

The Do's and Don't's presented below highlight only the most basic principles in relation to illegal agreements and arrangements among competitors. There are many other important competition law provisions which are not addressed in these guidelines, such as those dealing with resale price maintenance.

The Fertilizer Canada encourages all members to be familiar with all relevant competition law provisions. Each participant at a meeting should be thoroughly familiar with their individual responsibilities in ensuring compliance with all competition law requirements.

### **DON'T**

Do not, in fact or appearance, discuss or exchange information which is not public regarding:

1. Individual company prices, price changes, pricing policies, price differentials, mark-ups, discounts, allowances, and credit terms, or business data that bear on price, e.g. costs, production capacity, inventories, and sales.
2. Industry pricing policies, price levels, price changes, and differentials unless the information is otherwise publicly available.

3. Changes in industry production, capacity or inventories unless the information is otherwise publicly available.
4. Bids or planned bids on contracts for particular products, or procedures for responding, or not responding, to bid invitations.
5. Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers, unless the information is otherwise publicly available.
6. Matters relating to actual or potential individual customers or suppliers that might have the effect of excluding them from any market or of influencing the business conduct of firms toward such suppliers or customers.
7. Capital asset plans, such as plant expansions, facility openings or closings, or distribution or retail infrastructure changes.
8. Supply chain arrangements particularly those that may entail resale price arrangements, restrictions on markets or customers served, exclusive conditions or incentives, or refusal to supply (other than in accordance with the provisions of individual firm or industry safety, security, and environmental policies).

Do not discuss or exchange information regarding the above matters during social gatherings incidental to meetings, even in jest.

These guidelines should not preclude discussions on publicly available information, including published price, industry capacity, and industry production information, or discussions concerning industry, government, or customer demand activities and trends.

### **DO**

1. Prepare an agenda and adhere to it for all meetings.
2. Have minutes taken and object if they do not accurately reflect the discussion and actions taken.
3. Consult with Fertilizer Canada's legal counsel or your own company's counsel if you are concerned that a potential information exchange or activity might have an anti-competitive effect.
4. Protest against any discussion or meeting activities which appear to be inconsistent with these guidelines, or which might have an anti-competitive effect. If necessary, expressly disassociate yourself from any such discussions or activities, request that your position be recorded in the minutes of the meeting, and leave any meeting in which they continue.