

THE INS AND OUTS OF COMPETITION LAW

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The competition compliance plan, implemented in 2007, is based on the principle of “zero tolerance” and was the first cornerstone of the Group’s compliance programme. Since 2009, it has been enriched and is continually adapting to the environment of our activities.

We need to maximise the lessons from past events to progress. Our activities must be conducted at all times in accordance with our values and our compliance programme.

I am counting on you!



Pierre-André de Chalendar
Saint-Gobain Chairman & CEO

SAINT-GOBAIN'S COMPETITION LAW PLAN WAS ESTABLISHED IN 2007

Today's facts and figures:

We can be proud of what we have accomplished together. However, despite our progress, the Group has paid more than a billion Euros in fines since 2007. We must therefore continue our efforts: competition law evolves and creates new risks.

These Ins and Outs of Competition law are intended to bring together the basics of what you need to know.

The Legal Teams are available to give you any further information. Do not hesitate to consult them.

We hope you enjoy the read!

zero

The Group's **zero tolerance** policy

23 000

people trained via the Comply e-Learning course

35 000

employees have received the Practical Guide to Competition Compliance

141

sites audited

alert

A whistleblowing line, easily accessible on: <http://portal.saint-gobain.com/fr/web/alertepro>

Over 300

training sessions organised worldwide

Compliance

Creation of an Intranet site dedicated to Compliance:
<http://portal.saint-gobain.com/fr/web/conform-action>

WHY A NEW PRACTICAL GUIDE?

THE BASICS

- The risks are real
- It concerns all Sectors, all Activities and all Delegations of the Group
- Repeat offence, a compounding factor
- Competition authorities cooperate closely with each other
- Claims for damages are on the rise

THE RISKS ARE REAL

• For Saint-Gobain:

- Fines can reach up to 10% of the Group's global turnover (3.9 billion Euros for 2015);
- Saint-Gobain is a large group and has been convicted in the past in several countries;
- Our customers, competitors and business partners can file claims for damages as a result of such convictions.

• For each of us personally:

- Fines and prison sentences;
- Extradition of nationals by certain countries;
- Prohibition from carrying out certain professional responsibilities (for example in the United Kingdom).

DID YOU KNOW?

→ In the United States, individuals can face up to 1 million dollars in fines and 10 years' imprisonment for a breach of competition law.

• A real extradition case

→ A former Italian employee of Parker MHP was arrested during a stopover in Germany and extradited to the United States for trial on charges of taking part in a marine hose cartel.

• A real imprisonment case

→ Keith Packer, a British National and executive of British Airways, spent eight months in prison in the United States following the conviction of British Airways for price fixing in the air freight sector.

2. IT CONCERNS ALL SECTORS, ALL ACTIVITIES AND ALL DELEGATIONS OF THE GROUP



€ 715 M

in fines in 2014, equivalent to over 20 years' average annual net profit of the Glass activity

REPEAT OFFENCE, A COMPOUNDING FACTOR

- The past is never forgotten. There is no time limit with repeat offences.
- There can be a repeat offence even if the new offence does not take place in the same country and/or the same activity as the former one.
- Everyone can have a major impact on the Group, even through small individual actions.

REPEAT OFFENCES ARE COSTLY

Example: the car glass case

In 2014, the General Court increased Saint-Gobain's initial fine by 155 million Euros due to an offence dating back to 1984 (i.e. 14 years prior to the offence in question).

Initial fine
€560 million



Final fine paid
€715 million

↓
100 %
*possible increase
in the fine for each
previous offence*

COMPETITION AUTHORITIES COOPERATE CLOSELY WITH EACH OTHER

- More than 100 countries have competition law rules;
- Sanctions are increasingly important in emerging countries;
- The authorities cooperate with each other to coordinate investigations and surprise inspections called “dawn-raids”.

CLAIMS FOR DAMAGES ARE ON THE RISE

- In the US, class action suits allow multiple people to file a single legal action together against a company and to request high damages.
- These types of proceedings are developing in Europe: a Directive was adopted in 2014, offering victims greater access to evidence, easier proof of damage and more time to bring their case before the courts.



How should you behave in the event of a dawn-raid by a competition authority?
See Fact Sheet 1.



→ **2011**
UNITED STATES
AIRLINE INDUSTRY

- \$1.8 billion fine and four executives sentenced to prison terms;
- Damages paid: \$1 billion;
- Class action suit filed, several million dollars claimed.



→ **2012**
FRANCE
TELECOMS SECTOR

- A €117.4 million fine;
- Damages paid: €790 million.



→ **2015**
WORLD
EURO/DOLLAR FOREIGN EXCHANGE SECTOR:

- Over \$10 billion in fines levied by various authorities;
- Over \$2 billion in damages paid in the United States;
- Several million pounds in damages claimed in the United Kingdom.

WHAT I KNOW AND MUST REMEMBER

THE BASICS

• I must not talk to my competitors about strategic or business topics

• Trade associations = danger zones

• Be careful when developing standards with the profession

• Abuse of a dominant position: what is the relevant market?



Do you need a check list of what you can/cannot say to your competitors?
See Fact Sheet 2.

I MUST NOT TALK TO MY COMPETITORS ABOUT STRATEGIC OR BUSINESS TOPICS

Do not attempt to get information about your competitors other than through public sources, and always specify the source of the information. The following subjects should never be discussed with competitors:

- Any reference whatsoever to prices;
- Any reference whatsoever to production capacities;
- Sales terms;
- Responses to invitations to tender;
- Allocation of sales territories or customers between competitors; be careful of licensing agreements!
- Setting up blacklists or boycotts of customers, competitors or suppliers.



→ PRACTICAL GUIDE TO COMPETITION COMPLIANCE
Review Chapter 3.

• Train yourself!

→ **E-mail from a competitor to an Isover employee:**

« Hello, I work for the Blue company, and met you at a trade fair last month. Can we talk about our sales terms? We could maybe align ourselves with each other... »

→ **What to do:**

I shall contact my Legal Department to prepare a written response. If I were to follow up on this type of query, I would be exchanging commercially strategic information with a competitor, which is strictly prohibited.

The case studies in this brochure are the authors' invention and are therefore purely fictitious.

• Train yourself!

→ Discussion between a Point. P employee and the employee of a competitor at a trade fair:

Competitor employee: « We have decided to stop dealing with supplier Black, as it was not working for us anymore. Just between you and me, many other operators are going to be doing the same. » The next day, an e-mail arrives, saying: « Hello, following our discussion of yesterday, I'm attaching the termination letter we have just sent to supplier Black. You can use it for inspiration if you're also planning to stop doing business with them. »

→ What to do:

Here, my competitor is sending me commercially strategic information and attempting to influence my own business strategy. If I accept, there will be an agreement between competitors. I must tell him that I do not wish to receive such information.

TRADE ASSOCIATIONS = DANGER ZONES

The discussions and exchanges that take place within trade associations can lead to serious breaches of competition law.

Reduce memberships in trade associations to focus only on those necessary to the interests of the Group, such as:

- Regulatory and legislative monitoring;
- Business advocacy;
- Promotion of our professions;
- Improvement of dealing with environment legislations, research and development, health and safety.

Be careful at informal meetings: dinners, lunches, meetings in hotels, etc. Competition law also applies on these occasions!



Do you need more information on these 4 key rules (and other ones)? See Resource 1.



→ PRACTICAL GUIDE TO COMPETITION COMPLIANCE Review Chapter 4.

4 KEY RULES

TO REDUCE THE RISK INHERENT TO TRADE ASSOCIATIONS:

<p>1</p> <p>AUTHORISE:</p> <p>Anyone who attends trade association meetings must have the prior approval of the nominated senior individual within their business who is authorised to sign off this attendance.</p>	<p>2</p> <p>TRAIN:</p> <p>Prior completion of the online training on competition law and an interview with a lawyer are required.</p>
<p>3</p> <p>MONITOR:</p> <p>The entity must monitor yearly the list of trade associations to which it belongs.</p>	<p>4</p> <p>VERIFY:</p> <p>At least once a year, check with the employee and the Executive Committee that it is still necessary, useful and safe to participate in these associations.</p>

I MUST BE CAREFUL WHEN DEVELOPING STANDARDS WITH THE PROFESSION

Participating in the development of standards is useful and necessary for the consumer. However, this can lead to risky behaviours.

→ Standards and certifications:	→ Membership in collective task forces:
<ul style="list-style-type: none"> • must always be based on objective and justifiable reasons • must not lead to the exclusion of a competing operator from the market. 	<ul style="list-style-type: none"> • must be accessible to all competitors in the market • must be based on clear, neutral and objective criteria.

Opinion of the French competition Authority of 16 November 2015

« The French competition Authority decided to review the process currently used in France for standardisation and certification in the light of competition law »

[...] An inadequate standardisation process may affect economic efficiency and restrict competition if it [...] allows the approval of a standard that is biased towards certain market operators, who may then be able to use said standard as an barrier to prevent competitors or innovators from entering the market. [...] It is for this reason that the Authority considers that a company which suggests the introduction of a new standard should be capable of explaining why it is necessary; the reasons being put forth in support of the standard should be available for

review and, where relevant, refuted by their competitors. The Authority recommends the implementation of a mandatory step in order to validate the added value expected to be brought about by the introduction of a new standard or revision of an existing one. [...] The construction and public works [BTP] sector, which has a number of distinctive features, has been the subject of particular review resulting in specific recommendations for that sector. »

Extract from the Opinion n°15-A-16 dated 16 November 2015 of the French competition Authority

• Train yourself!

→ Phone call between two PAM employees:

P : «Hi, how are you doing?»

R : «Fine, thanks. I just got back from a ductile iron manufacturers trade association meeting. We are redoubling our efforts to develop a standard for pipes used for supplying drinking water to hospitals that are 200mm in diameter.»

P : «Well done, that’s precisely the pipe diameter we all wanted! We will be selling more!»

→ What to do:

Trade associations should never be used as a cover for agreements between competitors to maintain or increase market share or exclude competitors from the market. Standards adopted by trade associations must always be objective and justified.

ABUSE OF DOMINANT POSITION: WHAT IS THE RELEVANT MARKET?

There is an abuse of dominant position only when the company is in a dominant position on the relevant market AND has abused its market power.

To determine a market share, one must identify the relevant market, which has two parts:

1 - the product market which includes the products considered as substitutable or interchangeable by customers and

2 - the geographic market, that is to say the geographic area where the competition takes place (this may be a country, a region, etc.).

/!\ This is not an easy task: this subject is closely linked to the economy, and case law is constantly evolving to adapt to consumer behaviours. **Contact your Legal Department to correctly identify the market in which you operate.**

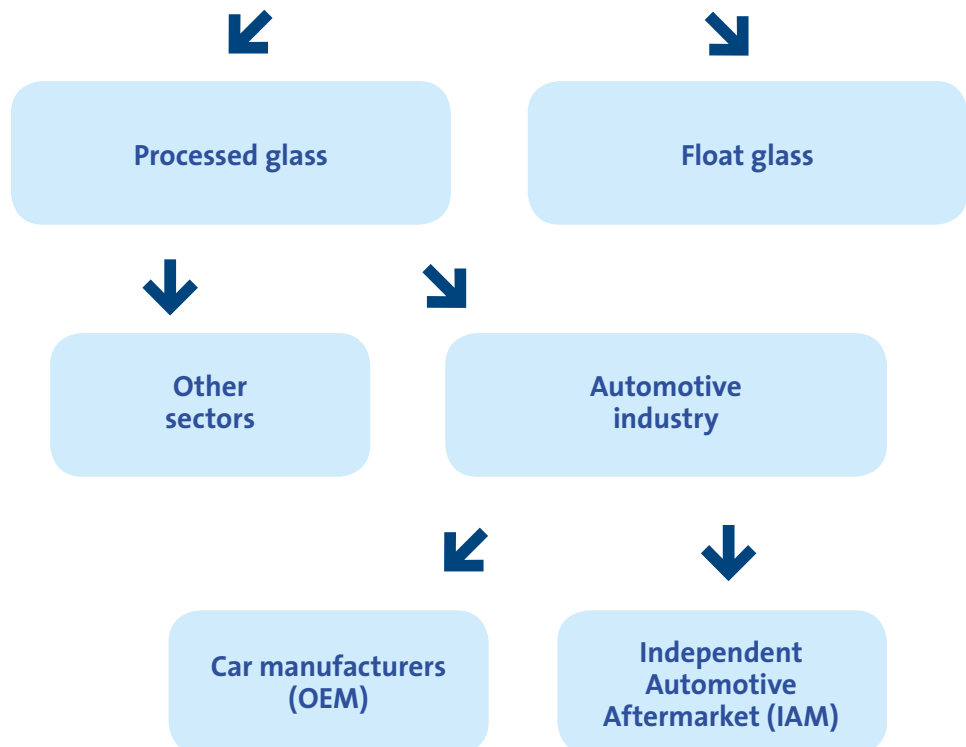


→ PRACTICAL GUIDE
TO COMPETITION
COMPLIANCE

Review Chapter 3.

Product market

1 - The market for the production and the sale of float glass for the European Commission*:

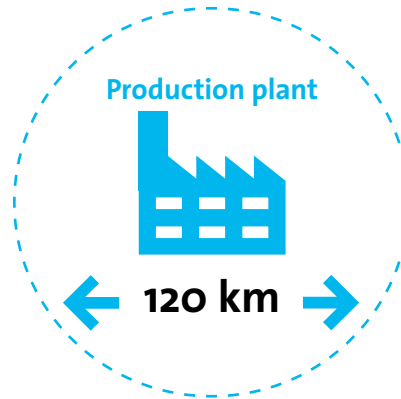


* Existing market definition at the date of the publication of the document

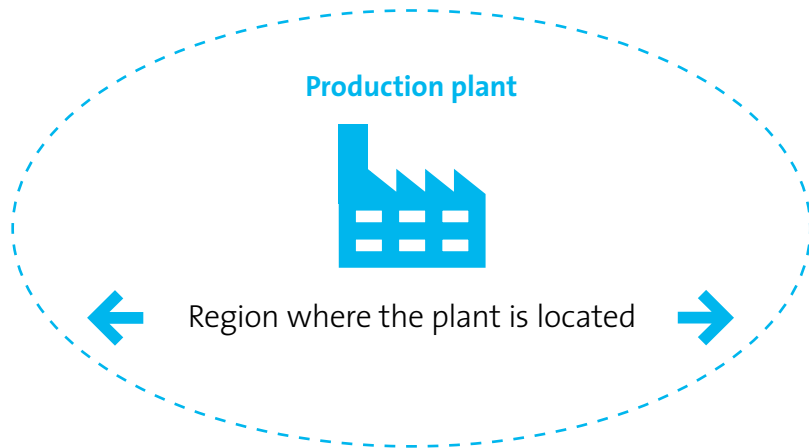
Geographic market

2 - The competition authorities' definition of a geographic market, example of the market for the production of mortar.

Relevant geographic market for the European Commission*:



But according to the Brazilian competition authority*:



* Existing market definition at the date of the publication of the document

• Train yourself!

→ **Question from a Sekurit line manager:**

«Hello, can I offer a discount to one of my customers if they purchase acoustic glass (clearly our star product) and hydrophobic glass? It would be a good idea to promote hydrophobic glass, which we are having trouble to sell.»

→ **What to do:**

We must first determine whether Sekurit is a dominant player in the market for the star product (over 40% market share). If they are, we must be careful, because tying the sale of two products can be regarded as an abuse of a dominant position. Consult your Legal Department before taking any action.

WHAT IS NEW AND WHAT I SHOULD KNOW

THE BASICS

- Public announcements of price increases or “price signalling”

- Use of information about my competitors regularly provided to me (“hub and spoke”)

The rule is the prohibition to exchange any commercially sensitive information between competitors.

Never attempt to circumvent this rule: such exchanges are systematically condemned, however creative the mechanism put in place may be.

PUBLIC ANNOUNCEMENTS OF PRICE INCREASES OR “PRICE SIGNALLING”

This means informing competitors about upcoming business strategy **without contacting them directly**, but rather through public communications or via generic price increase letters sent to customers.

→ **This is a tricky practice, since it is linked to daily and perfectly lawful business activities.**

What should I do?

- Make sure that communicating price increase announcements in advance is really necessary;
- In the case of mailings: use personalised letters (with the customer name and address, the list of products sold to the customer over the previous year), containing confidential and targeted information for each customer (new proposed per-unit price for products they may be interested in, information on any change that may affect the final price);
- Ensure that the lead time between the price increase announcement and its effective date is as short as possible and justified (e.g. one month).



Do you need a template of price increase announcement letter?

You will find one in Resource 4.

Maritime transport

« The European Commission has opened formal antitrust proceedings against several container liner shipping companies to investigate whether they engaged in concerted practices, in breach of EU antitrust rules. [...]

Since 2009, these companies have been making regular public announcements of price increase intentions through press releases on their websites and in the specialised trade press. These announcements are made several times a year and contain the amount of increase and the date of

implementation, which is generally similar for all announcing companies. The announcements are usually made by the companies successively a few weeks before the announced implementation date. The Commission has concerns that this practice may allow the companies to signal future price intentions to each other and may harm competition and customers by raising prices on the market [...]. »

Excerpt from the European Commission's press release of 22 November 2013

• Train yourself!

→ **E-mail from an Adfors employee to a colleague:**

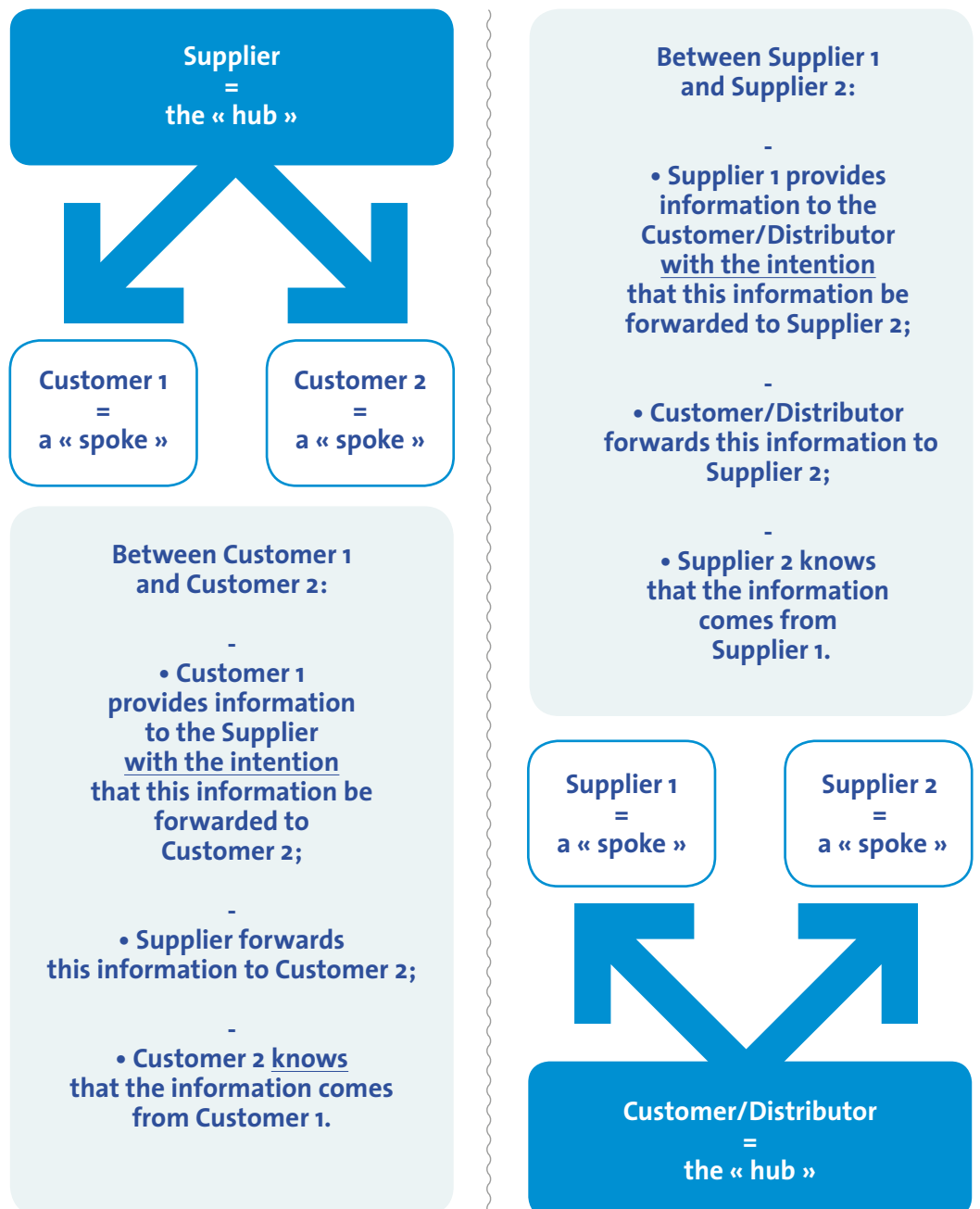
«For information, we will be sending a circular to all of our customers, announcing a price increase planned two months from now. This should give our competitors time to hear of this price increase and follow it.»

→ **What to do:**

Saint-Gobain must never inform its competitors of its future prices by any means whatsoever. Letters announcing future price increases must always be necessary, personalised, confidential, and targeted to each customer, and the lead time between the announcement and the effective date should be as short as possible.

USE OF INFORMATION HABITUALLY PROVIDED TO ME ABOUT MY COMPETITORS (“HUB AND SPOKE”)

Here we are referring to the frequent and unjustified exchange of commercially sensitive information between competitors, not directly but through a third party which may be a customer or a supplier.



• WHAT YOU NEED TO REMEMBER

In the course of a specific business negotiation, I spontaneously receive commercially sensitive information from my customer (prices, margins, sales terms, production capacities, strategy, etc.) about my competitors.



Outside of business negotiations, I systematically receive commercially sensitive information from my customer about my competitors.



In the course of a specific business negotiation, I occasionally give my supplier commercially sensitive information about its competitors, to bring prices down.



I have become a mailbox for exchanging commercially sensitive information between suppliers or between customers/distributors.



You must always specify the source, date and context of information you receive.

Belgium 2015

Condemnation of 18 companies for hub and spoke activities

« The Belgian Competition Authority has sanctioned 18 companies for participating in coordinated selling price increases on health, beauty and accessories in Belgium from 2002 to 2007 [...]. [...] The total amount of the settlement reached Euros 174 million. The 18 companies involved are major large-scale retailers in Belgium (Carrefour, Colruyt, Cora, Delhaize, Intermarché, Makro and Mestdagh) and health, beauty and accessories suppliers (Beiersdorf, Bolton, Belgium Retail Trading, Colgate - Palmolive, DE HBC Belgium, GSK, Henkel, L’Oreal, Procter & Gamble, Reckitt

Benckiser (Belgium) and Unilever). [...]

The offence consisted in the repeated organisation of coordinated price increases on health, beauty and accessories by large-scale retailers throughout Belgium. The aim of this practice was to increase prices in all the retail stores involved and stabilise them at similar levels, in collusion with suppliers. «The offence was at the level of the large-scale retail sector, the providers acting as intermediaries and facilitators», said the prosecutor. »

Free translation of an article in La Libre.be dated 22 June 2015.

• Train yourself!

→ **E-mail from a customer to a Weber employee:**

« Thank you for your business proposal. However, your competitor, Red, just offered me a product identical to your Weber.col pro for 5% less. He is selling it to me at €7.50 per 25kg bag. What can you offer me? »

→ **What to do:**

Receiving this type of information is part of the game. Your customer is pitting the competition against one another in order to negotiate a lower price.

→ **Phone call from a distributor to a Saint-Gobain Abrasives employee:**

« Hello, how are you? I would need to know your price increases soon. For information, your competitor Yellow is raising its prices by 3.75%. It would help me if you could do the same... That way I could standardise my own price list for my customers. And then we will negotiate... »

→ **What to do:**

I let him know my business policy and tell him that Saint-Gobain determines its prices independently and does not coordinate with its competitors or its customers. Otherwise, my customer would serve as a «hub» for an exchange of information between Saint-Gobain Abrasives and its competitor.



FACT SHEETS
AND RESOURCES

Fact Sheet 1

WHAT TO DO IN THE EVENT OF A SURPRISE VISIT (DAWN-RAID) OF A COMPETITION AUTHORITY

1

Immediately contact your Legal Team and make sure that a law firm has been contacted.

2

Read the search warrant and check its scope and the period covered by the investigation.

3

Ask investigators if they can wait in a room (no more than 30 minutes) until the lawyers arrive. Do not insist if they refuse.

10

Consult a lawyer if you have any questions about your rights and responsibilities.



4

Do not obstruct the investigation. You must cooperate throughout its duration.

9

Keep copies of all of the documents seized by investigators.

5

Do not destroy any documents and do not warn any third parties about the investigation. Make sure that everyone is aware of these rules.

8

Stay with each investigator constantly.

7

Investigators have limited powers: only provide the requested documents and strictly answer the questions.

6

Do not refuse to provide information, documents or answer questions without the advice of a lawyer.

Fact Sheet 3

MY E-MAILS AND ME

• The golden rule:

Do not write while in an emotional state and avoid saying anything that could be misinterpreted. Recall the context.

• General effort: streamline the flow of information!

We send a lot of (too many) e-mails on a daily basis, we write them (too) quickly and often copy (too) many people. We must make an effort to streamline our e-mails, because everything we write down could be used as evidence someday.

• Writing:

Be factual, accurate, always write down the date and the source of information. Never exaggerate and stick to what is absolutely necessary.

• Train yourself!

→ E-mail between a Placoplatre line manager and a colleague:

« Did you see the new hit product? It's fantastic! We're going to be able to crush our competitors with it and keep the foreigners out! In addition, it is going to consolidate our position of market super-leader! »

→ What to do:

I need to be careful how I write my e-mails. Avoid ambiguity, exaggeration and poor turns of phrase that could be used against me and against Saint-Gobain. My e-mail should instead focus on the product quality that allows Saint-Gobain to stand out in the market.

Resource 1

GROUP POLICY ON MEMBERSHIP OF TRADE ASSOCIATIONS

The procedure described below should be adapted by each Sector/Activity based on its own requirements.

1. / AUTHORISE:

- Employees may only participate in trade associations with the express written authorisation of the nominated senior individual within their business who is authorised to sign off this attendance.

2. / TRAIN:

- Before participating, employees must complete the online training on competition law and meet with a lawyer.
- If local laws allow, the employee signs a statement of compliance and returns it to the nominated senior individual within the business who is authorised to sign off this attendance (a template statement of compliance is provided in Resource 2).
- It is strongly recommended that the employee have a second e-mail address, created by the trade association, intended only for communications to, from and about the association.

3. / MONITOR:

- Each year, the entity shall draw up a list of trade associations to which it adheres (a template is provided in Resource 3).
- The Sector shall consolidate the list.
- A lawyer should attend the trade association meetings.
- A meeting agenda and minutes are prepared.

4. / VERIFY

- Participation in trade associations is discussed at least once a year, at the entity's Executive Committee meeting and/or with the participants individually at their annual interview:
 - Why do we go?
 - Who should go?
 - To what end?
 - Is it still necessary?
 - Are there any indications of risky activities? Etc.

Resource 2

TEMPLATE OF STATEMENT OF COMPLIANCE

The [Company Name] company (the “Company”) has approved my membership in [Name of the Trade Association] (“the Association”) as of [date] and my participation, in the name and on behalf of the Company, in meetings held by the Association.

In view of this, I the undersigned [Full Name], [Job Title] of the Company:

- Acknowledge that I have read and understood the Association’s charter and/or rules of procedure;
- Acknowledge that I have been trained in the risks associated with my participation in the Association’s meetings by undergoing the online training on competition law and by meeting with a lawyer;
- Undertake to comply with the principles of competition law and to act only within the framework of the law and the purpose of the Association;
- Undertake not to use my membership in the Association for any purpose other than the interests of the Saint-Gobain Group.

Date:

Name:

Job Title:

Signature:

Resource 3

TEMPLATE OF TABLE RELATING TRADE ASSOCIATIONS' MEETINGS

TRADE ASSOCIATION PARTICIPATION TRACKING SHEET

Employee name	Company	Manager name	Trade association

Resource 4

TEMPLATE OF A PRICE ANNOUNCEMENT LETTER

[Location, Date]

[Customer Address]

CONFIDENTIAL - NOT FOR DISTRIBUTION

Subject: New prices.

Dear [Customer name]

Here is our new price list. We have prepared this list based on the products you have bought from us over the past six (6) months.

Our new prices will be applicable as of [effective date of the price change].

Product

[Product Name]

etc.

Unit price

[Price]

etc.

We understand the current difficult market conditions and assure you that we have fully taken them into account in taking this decision. Our sales managers will be contacting you soon to discuss these changes.

We have also made changes to the prices of other products in our catalogue, and can notify you of our new prices upon request. We thank you in advance for your understanding and your continued confidence.

Sincerely,

[Name and signature]

WHO SHOULD I CONTACT IF I HAVE ANY QUESTIONS?

GROUP AND SECTORS

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