



*14th EU-China Competition Week:  
Pro- and anti-competitive effects of  
Trade Associations*

François Renard  
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**Trade association activities**



The vast majority of trade association activities have a positive impact on businesses

**BUT**



Antitrust authorities are concerned that legitimate cooperation between members may sometime cover illicit arrangements

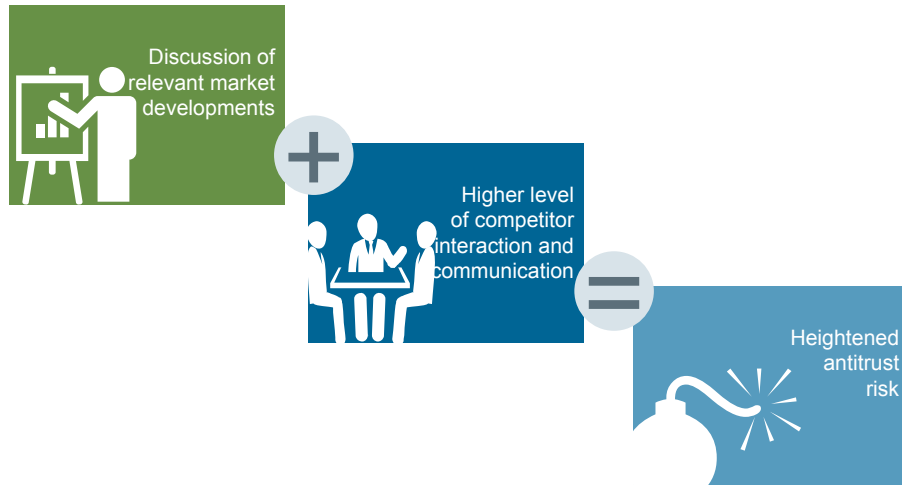
**Activity**

- Industry guidance / recommendations
- Promotional activities
- Communications
- Industry / market survey
- Standard terms and conditions / codes of conduct
- Lobbying government

**Generally acceptable provided that**

- Objective need : promoting industry or explaining complex technical areas
- Does not deal with key drivers of competition (e.g. price, contract terms)
- No commercially sensitive information exchanged
- Free to diverge (where appropriate)

## Theories of harm are the same (cartel, exchange of confidential information, etc), but trade associations increase the risk



## Expectations from authorities

<b>Genuine and legal role and terms</b>	<ul style="list-style-type: none"> <li>– Associations should be promoting the industry, improving the laws, rules and standards affecting the industry and spreading best practice</li> <li>– Associations should not be involved in issues affecting individual firm's commercial behaviour</li> </ul>
<b>Statistics</b>	<ul style="list-style-type: none"> <li>– If commercially confidential information exchanged - exchange should truly aggregate data; handling of data should be done by a third party</li> <li>– No discussion on the accuracy of the data (ideally – only the methodology)</li> </ul>
<b>Standardisation</b>	<ul style="list-style-type: none"> <li>– Standard must be based on objective criteria (e.g., technical properties of the product)</li> <li>– Process must be open, transparent and non-discriminatory</li> </ul>

## Expectations from authorities (cont'd)

### Recommendations

- should be based on objective criteria
- should not be prescriptive
- should not concern prices
- should not lead to exclusivity, joint boycotting

### Communications activities/lobbying

- Should address industry not company specific issues

## Typical suspect practices



- No clear **agendas**
- **No accurate minutes** of the trade association meetings
- Written or oral comments during trade association meetings/communications **could be misinterpreted.**
- Traces of discussions, attempts to share or seek access to competitors' commercially confidential information
- **No evidence of people leaving the trade association meeting/call if there are anti-competitive discussions**
- Press releases leading to **uniform price or conduct by members**
- **Cartel-like arrangements, or facilitation**

## Recent Member States case law – snapshot

Country	Case (in parenthesis)	Description
Belgium	FEBELCEM, CEMENET, 2016	<b>Delay of the setting of standards and certification processes</b>
Bulgaria	Petroleum and Gas Association, 2016	<b>Part of a probe</b> into a suspected cartel between petrol stations
Denmark	Association of Danish Film Distributors (FAFID) and the Association of Danish Cinemas (DB), 2016	<b>Agreements forbidding cinemas from giving discounts</b>
France	Modeling agencies and trade association, SYNAM, 2016	Collected and published models' <b>minimum salary information</b> , before distributing the information to members; ambiguous about whether the tariff list was "official"
France	INTER-NOUGAT, April 2016	<b>Declining to allow non-members to have access to shelf space</b> in "reserved" stores
Finland	Suomen Leipuriliitto ry, a trade association for bakers, 2016	<b>Recommendation of prices</b> to members over a four-year period through press releases, newsletters and magazine editorials

## Recent Member States case law – snapshot

Country	Cases	Description
Germany	Three German banking associations, BVR, DSGV and BdB, 2016	Anticompetitive agreements concerning <b>online payment conditions</b> , including restrictions on the ability of customers to use PIN codes with third party payment systems (aggravated by a media campaign "warning" of the dangers of third party payment services)
Greece	Construction firms and SATE and STEAT, two trade bodies, 2106	<b>Bid rigging practice</b> in public tenders for road construction, rail transport, metro rail and concession project tenders (cover bids, fixed bid levels, scrapped bids in exchange for financial compensation, agreements on subcontracting before submitting their bids, etc). Participation <b>through the associations</b> in the cartel
Greece	Steel producers and ENHE, their trade association, 2016	<b>Information exchange through ENHE</b> . Investigation closed as apparent "parallelism" of price could be justified with explanations other than the existence of anticompetitive agreements
Italy	Vending machine suppliers and CONFIDA, the industry trade body, 2016	<b>Coordinating bids and concluding a non-aggression pact</b> to refrain from targeting each others' clients.

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Ireland	IPOA, a national association representing approximately 5,000 providers of provided rented accommodation (landlords), 2017	<ul style="list-style-type: none"> <li>IPOA's press statement in response to Government legislation introducing rent controls in the private residential rental sector</li> <li>following a meeting of its members, property owners were considering a range of potential measures, including the introduction of a number of new charges to tenants and the withdrawal from State-sponsored rental schemes.</li> <li><b>Commitments offered:</b> a) to retract the press statement, b) to inform, in writing, members of the IPOA; c) to introduce a competition law compliance training program; and d) to not issue similar recommendations or suggestions</li> </ul>
Netherlands	SGD and KNMvD, two industry associations, 2106	Obliging cattle farmers to <b>buy de-worming drugs exclusively from veterinarians</b> (public health defense rejected for lack of evidence)

## Questions?



**François Renard**

Registered Foreign Lawyer (Belgium)  
Hong Kong  
[Francois.Renard@allenoverly.com](mailto:Francois.Renard@allenoverly.com)

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