



GF-LI Antitrust Practice Group

Antitrust guidance note

Trade associations, professional associations and other industry gatherings

Power and productivity
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ABB's Code of Conduct requires you to:

Compete fairly

Be mindful of the antitrust risks presented by trade and professional association meetings. As an ABB employee you are required to:

- Attend only meetings of legitimate trade and professional associations held for proper business, scientific, or professional purposes.
- Discuss any questionable agenda items with your supervisor or with a member of ABB's legal and integrity function (Group Function – Legal & Integrity) before you attend the meeting.
- Leave the meeting and promptly advise your supervisor or Group Function – Legal & Integrity, if you observe any activity at an association meeting that appears to be illegal or suspicious.

The Golden Rules

Every ABB employee has the responsibility to pro-actively distance ABB from inappropriate conduct.

If a [competitor](#), its employees or representatives (verbally or in writing), directly or indirectly through a third party (e.g., Trade Association) raises an inappropriate topic and/or provides you with Commercially Sensitive Information:

1. Immediately [stop](#) the conversation (do not accept any documentation);
2. Point out that it is ABB's policy to comply with antitrust law;
3. If the discussion persists, immediately leave the meeting, where possible ensuring your objection and departure have been minuted;
4. Do not disseminate any Commercially Sensitive Information internally;
5. Immediately inform your supervisor and Country Integrity Officer of the incident and your actions in writing; [and](#)
6. Determine with the help of your Country Integrity Officer what additional steps need to be taken.

Trade Associations

Introduction

Participating in trade and professional association meetings and industry gatherings can be useful and legitimate.

In this note, trade associations, professional associations and other industry gatherings (excluding labor unions) are collectively referred to as “Trade Associations”.

It is irrelevant whether a Trade Association is incorporated or not. It is also irrelevant how a Trade Association is named.

Antitrust agencies closely scrutinize Trade Associations because of the number of industry participants attending such meetings and the fact that in many industries – including those in which ABB is active – Trade Associations have in the past been used to enable or hide anticompetitive conduct.

This Antitrust Guidance Note intends to give further guidance on how to comply with antitrust law when attending these types of meetings.

If you have any questions regarding compliance with antitrust laws, contact a member of the Group Function – Legal & Integrity (GF-LI) in your country.

The Do's and Don'ts when attending a Trade Association meeting

Which Trade Associations does ABB want to be a member of?

Specifically in the area of antitrust, the Trade Association must have a [written](#) commitment to comply with antitrust law (e.g., a Code of Conduct or equivalent guidelines).

In addition, procedures must be in place to ensure that this commitment is put to practice, by for example:

- Having the Trade Association appoint its own lawyer to review the agenda prior to each meeting and attend the meeting to ensure compliance with antitrust law;
- Having participants agree at the beginning of the meeting to comply with antitrust law; or
- Relying on prior experience of ABB employees with the Trade Association that meetings are held in compliance with antitrust law and the Trade Association's internal rules (Code of Conduct or equivalent guidelines).

The Do's and Don'ts when attending a Trade Association meeting

Which ABB employees can attend a Trade Association meeting?

An ABB employee may only attend a Trade Association meeting after having sought and received approval from his/her LBU Manager, or – in the case of a Group Function employee – from the Country Integrity Officer. Where a LBU Manager, Country Integrity Officer or LD Manager wants to attend a Trade Association meeting, the Country Manager must give approval.

When deciding on the approval, the LBU Manager / Country Integrity Officer / Country Manager should take the following into account:

1. Has the Business Unit, Division or Group Function identified the Trade Association as one ABB wants to be a member of?
2. Has the ABB employee become familiar with the content of this Antitrust Guidance Note prior to attending the Trade Association meeting?

Approval should only be granted if both questions are answered “YES”.

One approval may cover all meetings of the same Trade Association for that year.

Any ABB employee attending a Trade Association meeting also has an own responsibility to familiarize himself/herself with this and other relevant Antitrust Guidance Notes prior to attending the Trade Association meeting.

The Do's and Don'ts when attending a Trade Association meeting

Preparing for attending a Trade Association meeting:

- Only participate in Trade Association meetings based on a detailed agenda.
- Every ABB employee has the responsibility to obtain the final agenda and to discuss any questionable agenda items with a member of the GF-LI in his/her country prior to attending a Trade Association meeting.
- If the agenda contains an “Any Other Business” or “AOB” agenda point, the ABB employee must be vigilant and determined to leave the Trade Association meeting if inappropriate topics are raised and/or there is a risk that Commercially Sensitive Information (see definitions section) will be discussed.

The Do's and Don'ts when attending a Trade Association meeting

Procedure and record taking when attending a Trade Association meeting:

- Ensure you comply with the Golden Rule also during the social events such as lunch, drinks at the bar or dinner.

Even the passive presence of an ABB employee in inappropriate discussions must be avoided because agreements made by, or Commercially Sensitive Information exchanged among, other parties can otherwise be attributed to ABB.

- Ensure that the discussions at the meeting are limited to those points set out in the agenda or otherwise permissible under “AOB”.
- Ensure that the meeting is minuted and that you receive detailed, accurate minutes of the meeting.
- Promptly review minutes for accuracy especially the content relating to you and/or ABB. If the minutes are not accurate, voice your objection immediately and in writing. Ensure that the correction is incorporated. If the correction is refused, insist that your objection be recorded.

The Do's and Don'ts when attending a Trade Association meeting

Legitimate topics for discussion:

It is ok to discuss and/or develop common industry approaches to, for example:

- Legislative initiatives at local, state, national or supra-national levels;
- Technology in general, such as characteristics and suitability of a particular technology (but not a particular company's adoption of specific technology solutions);
- Non-confidential technical issues relevant to the industry such as health and safety standards;
- Industry public relations or lobbying initiatives (e.g., product concerns, industry image, etc);
- Institutional advertising (i.e., advertising the merits of the industry's products as a whole);
- Representation of the trade association as participant or observer at other trade association meetings and activities; or
- Displays of the trade association at trade fairs and shows.

Topics to exercise caution with:

It is only ok to:

- Exchange Industry Statistics or other Competitive Intelligence within the framework set out in the [Antitrust Guidance Note for Competitive Intelligence gathering versus Commercially Sensitive Information exchanges](#).
- Conduct benchmarking exercises within the framework set out in the [Antitrust Guidance Note for Benchmarking](#).
- Participate in standard setting activities or develop standard terms for agreements within the framework set out in the [Antitrust Guidance Note for Standard Setting](#).

The Do's and Don'ts when attending a Trade Association meeting

Topics to distance yourself from:

Do not agree, or even discuss, with a competitor:

- To fix prices, both the final price or any element thereof (e.g., discounts, rebates, cost);
- To allocate customers to each other (e.g., agree not to compete with each other for projects from particular customers or in particular sectors);
- To allocate markets, territories, projects (bid-rigging) or products to each other (e.g., agree not to bid for projects in particular territories or for particular customers or for particular products or not enter a specific market);
- To submit a “complementary bid” (i.e., a bid that will be a higher bid than that of the competitor or that does not fulfill the technical requirements of the customer, that includes terms and conditions, such as longer delivery times, which are disadvantageous to those offered by the competitor etc.);
- To restrict or increase production, including levels of production, manufacturing processes and/or the supply of services;
- Technological solutions for specific projects;
- Whether ABB will submit an offer to a particular invitation or the terms on which ABB will offer;
- Either party's purchasing/sales strategy, including whether to purchase/sell products or systems from a particular supplier/to a particular customer, or at which conditions;
- To impose a collective boycott of a supplier or customer (it is possible to share non-commercially sensitive information about a customer or supplier, such as its credit rating or health & safety record, but ABB must unilaterally decide whether to deal with such a customer/supplier);
- Future competitive behavior (e.g. price increases; development of new technologies).

The Do's and Don'ts when attending a Trade Association meeting

Topics to distance yourself from:

Do not exchange information on [individualized intentions concerning future conduct](#) regarding price or quantity (e.g., intended future sales, market shares, territories, sales to particular groups of customers...).

Do not discuss or exchange any other Commercially Sensitive Information with a competitor.

Do not engage in any vote which has, as its purpose or effect, the exclusion without a legitimate reason of any member of the industry from participation in the association (including charging higher fees).

If at any time you are not sure whether certain conduct is appropriate, contact a member of the GF-LI in your country.

Definitions

What is “ABB”?

In this guidance note the word “ABB” includes all companies belonging to the ABB group of companies.

What is a competitor?

A company or group of companies which offers (or is capable of offering within a reasonable period of up to 3 years) the same or similar products or services to those which ABB offers must be regarded as a competitor of ABB. For example:

- When we purchase from, or sell to, from a vertically integrated company, such as Siemens, Alstom T&D, Mitsubishi, or Hyundai Heavy, we must treat our counterparts as part of a competitor given that other divisions of the same group compete with ABB;
- An EPC that does not manufacture products (e.g., ETA, Al-Fanar) will nevertheless compete with ABB on a systems level;
- A company in which ABB holds an interest (incl. a joint venture), which offers the same or similar products or services to those which ABB offers, is a competitor unless otherwise indicated by the head of the Antitrust Practice Group (GF-LI).

Definitions

What is Commercially Sensitive Information?

Commercially Sensitive Information is information that could influence a commercial decision or strategy of ABB or a competitor, such as information about past, current or future:

- Prices and pricing elements (e.g., actual prices, discounts, rebates, calculation methods), pricing strategy, planned price changes (increases or reductions), etc.;
- Sales revenue, sales volumes (incl. market shares), sales territories, order position, marketing and distribution strategies, market entry, customer lists, sales to specific customers, the content of sales agreements, terms of sales, etc.;
- Offers, bids planned or made (including technical specifications and Terms & Conditions), including whether or not ABB (or conversely a competitor) will submit or has submitted a bid, etc.;
- Purchases from specific suppliers, purchase volumes, purchase prices, the content of purchase agreements, etc.;
- Cost structures (R&D, production & distribution), profit margins, production capacity, capacity utilization, output, or investments in production capacity, etc.;
- R&D plans & their results, other investments, etc.

Information is not considered to be commercially sensitive if:

- It does not relate to parameters of competition;
- It is in the public domain;
- It is historic (Information must be older than one year, but may need to be older – use common sense!); or
- It is sufficiently aggregated to lose its sensitivity.

Contact us

If you have any questions regarding compliance with antitrust laws, contact your Country Integrity Officer or a member of the Antitrust Practice Group (GF-LI)

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