



representing the plant science industry
représentant de l'industrie de la phytologie

Canadian Competition Law Compliance Do's and Don'ts for meetings of staff/members of CropLife Canada Last revised January 27, 2010

It is the responsibility of all meeting participants to be familiar with their responsibilities under Canada's competition law and to consult legal counsel in all cases involving specific situations, interpretations or advice. This document provides only a non-exhaustive summary list of do's and don'ts for Canadian competition law compliance. For full guidelines, please refer to the [Canadian Competition Law Compliance Guidelines for meetings of staff/members of CropLife Canada.](#)¹

Do's

1. **Record Keeping, Agendas and Minutes:** Do insist on appropriate record keeping for Meetings. Prepare and distribute before the Meeting a written agenda that is clear and specific and adhere to it during the Meeting. Ensure that all discussions with competitors are confined to the immediate subject for which the Meeting was convened. Ensure that comprehensive minutes are taken and object if they do not accurately reflect the discussion and actions taken. Ensure that minutes are reviewed and mistakes corrected.
2. **Document Retention:** Do have a document retention program which clearly sets out which records are kept and for what period of time in order to protect participants by keeping a history of previous Meetings that have been held.
3. **Voluntary Participation:** Do ensure that participation in Meetings and membership in any related committees is voluntary and based on clear and transparent criteria.
4. **Appropriate Oversight:** Do ensure that all Meetings have appropriate oversight and supervision. Consult with legal counsel on all competition law compliance questions that may arise at Meetings.
5. **Competitive Regulatory Framework:** Do ensure that the primary objective of any regulatory framework the Meeting develops is to promote open and effective competitive markets. The regulatory framework should neither favour nor constrain the ability of particular market participants to compete in the market but may require compliance with stewardship programs and standards for safety and environmental protection (whether voluntary or imposed by law).
6. **Inappropriate Subjects of Discussion:** Do be vigilant. Any Meeting participant who becomes concerned that a discussion is straying into competitively sensitive areas should ask the chair of the Meeting to halt the discussion pending clarification. Protest against any discussions or Meeting activities, which appear to violate competition law and record your objection. Disassociate from any such discussions or activities and leave any Meeting should they continue.

¹ Which are based on the Bureau's [Intellectual Property Enforcement Guidelines](#) dated September 2000, the [Draft Information Bulletin on Trade Associations](#) dated September 8, 2008, the [Final Information Bulletin on Corporate Compliance Programs](#) dated September 10, 2008 and the [Competitor Collaboration Guidelines](#) dated December 23, 2009. Click on title to view full document.

7. **Competitively Sensitive Information:** To minimize the exchange of competitively sensitive information, do (a) use publicly available information and aggregated (as opposed to company-specific) information to the greatest extent possible, (b) focus on historical rather than current or future information, (c) only disseminate information in an aggregate form, (d) use an independent data collection agency, and (e) ensure participants provide data voluntarily (i.e., without being coerced).
8. **Legal Counsel:** Do have legal counsel present at any Meetings where competitive sensitivities are at issue (because of the subject to be discussed or the personnel (e.g., marketing or senior management) to be present. When in doubt, seek legal advice.

Don'ts

1. **Competitively Sensitive Information:** Don't, in fact or appearance, discuss or exchange any competitively sensitive information such as:
 - (a) price-related information (whether past, present or future), including individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit terms and freight terms;
 - (b) data bearing on price, including that related to individual company cost structure, profit margin, allowances, production levels, capacity, inventories and sales;
 - (c) information relating to individual company statistical reporting, standardization, certification, research and lobbying;
 - (d) industry pricing policies, including price levels, price changes and differentials;
 - (e) allocation of geographic or functional markets, suppliers or customers;
 - (f) non-public revenue, market plans, or market share data;
 - (g) future strategies and plans of individual companies;
 - (h) the exercise (individually or in concert) of intellectual property rights that create, enhance or maintain market power² and thereby harm competition;
 - (i) changes in industry production, capacity or inventories;
 - (j) bids on contracts for particular products and procedures for responding to bid invitations;
 - (k) plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers;
 - (l) 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 companies toward such suppliers or customers; and

² That said, the Bureau does not consider an owner of IP to have contravened the Competition Act if it attained market power solely by possessing a superior quality product or process, introducing an innovative business practice or other reasons for exceptional performance.

(m) any other confidential or sensitive information (even if it does not fit in any other category above) which would be likely to affect competitive behaviour or rivalry.

2. **Discrimination:** Don't discriminate against competitors when developing product or intellectual property standards, specifications or programs.
3. **Collective Action:** Don't engage in any collective action by way of refusal to deal, boycott or embargo which would affect competition – whether among competitors, suppliers or customers.
4. **Pricing or IP Licensing:** Don't enter into an agreement or make any threat or promise involving the pricing or IP licensing activities of other companies.
5. **Sanctions:** Don't have sanctions aimed at forcing members to obey various association recommendations which may have an anti-competitive effect. However, sanctions implemented for legitimate purposes, such as for failure to comply with stewardship programs or with standards for safety and environmental protection (whether voluntary or imposed by law), don't raise concerns under the Competition Act.
6. **Informal Meetings:** Don't hold unscheduled or informal Meetings (between competitors), whether held in conjunction with regular Meetings or not.
