

COMPETITION COMPLIANCE POLICY
Asia Video Industry Association
AVIA

1.0 Competition Compliance Policy

The Asia Video Industry Association (AVIA) has the policy to comply with all applicable laws, including competition laws. There is no general competition immunity for activity engaged in under the auspices of an industry association. Instead, competition authorities may scrutinize industry groups precisely because they consist of companies sometimes with competing commercial interests and thus offer an opportunity for collusion. In fact, many actions to enforce the competition laws have been brought against industry associations and their members.

It is expected that all AVIA staff and all member company representatives involved in AVIA activities will be sensitive to the unique legal issues involving industry associations and will take all measures necessary to comply with the competition laws. AVIA recognizes the potentially severe consequences of failing to comply with these laws and adopts this policy to guard against and mitigate these risks. All AVIA members shall abide by this policy and all applicable competition laws, for which this policy is not a substitute.

2.0 Basic Competition Principles and Prohibited Practices

Competition laws aim to protect competition by prohibiting concerted practices that unreasonably restrain trade and abusive practices by individual companies that have, or are attempting to gain, dominant market positions. The primary areas of concern for AVIA are outlined below.

2.1 “Hard Core” Offenses (Criminal Prosecution Potential)

Certain competition violations are referred to as “hard core” or “per se” offenses. Conduct that falls in this category is automatically presumed to infringe the law by many regulators or courts, and the absence of any actual harm to competition is unlikely to be a defense. Conspiracies falling in the hard core category are the most likely to be punished severely, as criminal offenses or serious infringements, and include the following:

- *Price-fixing agreements*: These are agreements or understandings among competitors (or potential competitors) directly or indirectly to fix, alter, peg, stabilize, standardize, or otherwise regulate the prices paid by customers. This category includes an agreement among buyers fixing the price they will pay for a product or service. “Price” is defined broadly to include all price-related terms, including discounts, rebates, commissions, credit terms and the timing and manner of price related decisions. Agreements among competitors to fix,

restrict, or limit the amount or output of product that is produced, sold or purchased, or the amount or type of services provided, may be treated the same as price-fixing agreements.

- *Bid-rigging agreements*: These are agreements or understandings among competitors (or potential competitors) on any method by which prices or bids will be determined, submitted, or awarded. This includes rotating bids, agreements regarding who will bid or not bid, agreements establishing who will bid to particular customers, agreements establishing who will bid on specific assets or contracts, agreements regarding who will bid high and who will bid low, agreements that establish the prices firms will bid, and exchanging or advance signaling of the prices or other terms of bids.
- *Market or customer allocation agreements*: These are agreements or understandings among competitors (or potential competitors) to allocate or divide markets, territories, or customers.

2.2 Sensitive Activities

There are other activities that, though typically not subject to criminal prosecution, are nevertheless legally sensitive, and may lead to investigations, litigation and regulatory proceedings, and fines and civil liability. These activities include:

- *Group boycotts*: An agreement with competitors, suppliers, or customers not to do business with another party, or to do business only on certain terms, may be found illegal as a boycott or “concerted refusal to deal.” In certain circumstances this conduct may be treated as automatically illegal and subject to heavy fines or even criminal prosecution.
- *Exclusionary standard setting, certification or best practices*: Industry association standards-development, certification programs, and best practice guidelines generally are pro-competitive and lawful. Such activities may be found to infringe the law, however, if they have the effect of fixing prices, unreasonably restricting output or innovation, or if they result in firms being boycotted or unreasonably excluded from the market.
- *Exclusionary membership criteria*: Membership criteria with the intent or effect of excluding and disadvantaging others should be given careful legal review.
- *Coordination of commercial strategy*: The coordination of commercial strategy such as product release dates, marketing policies or product windows may be an unlawful infringement.
- *Sensitive Pricing Information Collection and Dissemination*: Data collection and sharing can provide substantial pro-competitive benefits if properly conducted.

Among other requirements, the data should not concern price or price-related terms; it should generally be historical in nature and be reported in the aggregate.

2.3 Other Activities Including Lobbying and Litigation

- *Petitioning*: While there can be protection from competition law liability for lobbying, litigation and other governmental petitioning activities, AVIA's executive office recognizes that specifics may vary by jurisdiction and initiatives must undergo approval of the AVIA executive office.
- *Joint research and development programs*: While not normally discouraged by competition laws, proposals for association involvement in these types of programs must undergo approval of the AVIA executive office.

3.0 Competition Law Infringements Can Have Severe Consequences

Violations of the competition laws can have very serious consequences for AVIA and its employees as well as for AVIA members and their employees.

3.1 Fines and Penalties

Competition violations are punishable by potentially steep fines and other penalties and may be criminally prosecuted in some jurisdictions. Corporations, industry associations and other undertakings can be subject to very high fines. Depending on the jurisdiction, the maximum fine may be a fixed amount (e.g., US\$100 million for each infringement) or a percentage of turnover (e.g., 10%). Individuals may be subject to personal penalties or other sanctions or even imprisonment in some jurisdictions. The events that give rise to a competition violation often provide the basis for other related charges, which, if proven, carry additional penalties.

Additional consequences of a competition law infringement for a corporation, industry association or other undertaking can include: dissolution, exposure to private lawsuits, exposure to enforcement actions in other jurisdictions or countries, disruption of normal business activities, the expense of defending investigations and lawsuits, and reputational harm.

Additional consequences for an individual can include: prison, termination of employment, loss of community status and reputation, loss of or disqualification from directorship or future employment opportunities, and exposure to litigation.

3.2 Private Remedies

In contrast to public enforcement actions, private civil cases for competition law violations can often be initiated by individuals, companies and public officials. They can seek to recover multiple damages in some jurisdictions. Legal fees will often be sought. Even unfounded allegations can be a significant drain on AVIA and its members' financial and human resources, and an unproductive distraction from the AVIA's mission. For these reasons, AVIA strives to avoid even the appearance of impropriety in all its dealings and activities.

4.0 Guidelines for Meetings and Other Association Functions

AVIA meetings, conference calls and other activities with AVIA members by their very nature sometimes bring competitors together. In light of the costs involved in defending competition claims, even when they are without merit, it is always necessary to conduct AVIA meetings in a manner that avoids even the appearance of improper conduct. Generally, the best way to accomplish this is by following regular procedures and avoiding competitively sensitive topics.

It is important to remember that a competition violation does not require proof of a formal agreement. In fact, purported illegal collusion or concerted action often is alleged based solely on evidence that all members of an industry association acted in a parallel manner following a meeting.

4.1 Meetings

Because of their sensitive nature, certain topics may not be discussed at meetings of AVIA unless otherwise advised by legal counsel. These prohibitions apply equally to all AVIA sponsored social functions or other informal association gatherings. Off-limit topics include:

- sales or production related information;
- prices, pricing methods, or terms or conditions of sale or licensing;
- pricing practices or strategies, including methods, timing, or implementation of price changes;
- discounts, rebates, service charges, or other terms and conditions of purchase, sale and/or license;
- price advertising;
- what constitutes a fair, appropriate, or "rational" price or profit margin;
- whether members should do business with certain suppliers, customers, or competitors;
- complaints about the business practices of individual firms; and
- confidential company plans regarding future product or service offerings.

It is recommended that the following meeting guidelines be observed:

- When feasible, written agendas shall be prepared in advance. Agendas may not include any subject that is identified in this Policy as improper for consideration or discussion.
- Advice of counsel should be sought in advance where there is a likelihood any competitively sensitive issues may be discussed.
- Meetings should follow the written agenda and not depart from it except for legitimate reasons. Informal or “off the record” discussions of competitively sensitive topics are not permitted.
- Members shall terminate the discussion immediately if they have any doubts as to the legitimacy of a discussion, and seek legal counsel’s advice before continuing the discussion.

5.0 Document and E-Mail Guidelines

Many competition investigations and lawsuits are fueled by poorly phrased or exaggerated statements in internal documents, with e-mails being a leading culprit. Common sense should be used when composing documents and e-mails. No matter how informal or private a communication is intended to be, it must be assumed that anything written in a document or e-mail is potentially discoverable in an investigation or lawsuit, absent a legitimate claim of privilege. As a general rule, nothing should be written or communicated that you would not want read aloud to a prosecutor, plaintiff’s lawyer or judge.

6.0 Standards, Certification and Best Practices Guidelines

Industry association standard-setting, certification programs and best practice guidelines can be highly pro-competitive and beneficial to suppliers and customers. Competition problems will arise, however, if such a program is used as a device for fixing prices, restraining output, or chilling innovation, or if it has the effect of boycotting or unreasonably excluding competitors from the market. Accordingly, these types of activities should be undertaken subject to legal review.

These programs must serve identifiable public interests, such as protecting copyrighted content from infringement or preventing false or deceptive marketing practices, and they must do so in a manner that does not unreasonably restrict competition.

The programs must not have the purpose or effect of unreasonably (i) restraining price or quality competition, (ii) limiting output of products or services, or (iii) discouraging innovation. No company should be denied certification on arbitrary grounds. There can be no agreements to refuse to deal with any company for lack of voluntary certification or noncompliance with best practice guidelines.

As a general matter, these programs should be voluntary and have reasonable process. Reasonable process means, among other things, that companies with a direct and

material stake have a chance to participate in the formation of the standard, certification criteria or best practice guidelines; and that the process is free from dominance or bias by any particular industry segment or company.

More specifically, any standard, certification or best practice guideline activity of AVIA should generally be conducted in accordance with the following basic principles:

- Participation in the program should be voluntary and open or accessible on reasonable terms to persons who are directly and materially affected. Any fee or cost charged to participants should be reasonable, and there should be no arbitrary requirements to participate.
- Timely notice of the activities should be provided to participants.
- No industry segment, interest group, or company should be allowed to dominate or bias the process. All views and objections should receive fair and equitable consideration.
- Reasonable procedures should govern the methods used to develop standards, certification criteria or best practice guidelines.
- The procedures should entail the impartial handling of complaints concerning any action or inaction by AVIA with regard to its standards, certification, or best practice guideline activities.

7.0 Executive Responsibilities

The CEO of AVIA has the ultimate responsibility to oversee the implementation of the AVIA's competition compliance policy. The Chief Policy Officer is responsible for implementation and where necessary, obtaining advice of qualified counsel.

8.0 Training

All AVIA employees will receive a copy of this compliance policy and will sign an acknowledgment that they have read it and have been given an opportunity to ask questions. In addition, AVIA's orientation for new employees at appropriate levels will include a presentation on competition compliance.

9.0 Complaint Investigation, Internal Enforcement and External Contacts

The AVIA CEO and Chief Policy Officer must be promptly notified of any reports of noncompliance or other complaints. If there is reason to believe that a competition law violation may have been committed, an investigation will be undertaken immediately.

Employees that violate or fail to comply with this compliance program are subject to disciplinary action, ranging from adverse reviews to termination.

It is AVIA policy to cooperate with authorized government authorities in connection with any investigation. Before complying with any written or oral information request,

AVIA, its employees and members have the right to obtain advice of legal counsel in most jurisdictions. Consequently, should an attorney or investigator representing any governmental entity or other third party request information, documents, or an interview, the matter must be referred immediately to the AVIA CEO and Chief Policy Officer. Similarly, any written inquiries must be forwarded to them upon receipt.