

FERTASA COMPETITIVE BEHAVIOUR COMPLIANCE GUIDELINES

Introduction

All Fertilizer Association of Southern Africa (FERTASA) members should be aware that the determinations and conduct of FERTASA, through its Board of Directors, and the involvement by individual members in FERTASA committee meetings and activities, are subject to the Competition Act No 89 of 1998 as amended (“the Competition Act”) as an association as defined in the Competition Act.

Competition regulators show a particular vigilance towards trade associations and industry meetings because they involve meetings between competitors and at which industry matters could be discussed which could lead to the inference of collusion, co-operation or co-ordinated conduct.

FERTASA is committed to compliance with the Competition Act. FERTASA requires all members to comply with the following guidelines at any FERTASA meeting, or in their dealings as a FertASA member, namely:

1. Avoid High Risk Areas

FERTASA meetings of members must not be used as a means of discussing or otherwise communicating competitively sensitive information.

Competitively sensitive information includes:

- Pricing information
 - Current or future prices;
 - Pricing strategies;
 - Trading terms and/or conditions.
- Customer information
 - Confidential customer specific information, including key contract terms, margins, discounts and rebates;
 - Decisions whether or not to supply a particular customer (including selection or termination of customers);
 - Up-coming customer tenders (including whether to respond to a tender and details of any tender response).
- Sales information which is non-aggregated, specific and detailed.
- Current or future marketing strategies and plans.

- Restricting supply to particular customers, geographic territories or sales territories on terms not derived independently.
- Allocating customers, tenders or sales territories.
- Any form of collusive tendering.
- Other sensitive information
 - Production costs and or production levels;
 - Capacity and output levels;
 - Profits and profit margins.

2. Agenda

FERTASA meetings of members must have an agenda that has been circulated in draft and agreed to by members prior to each meeting. Discussions in any meeting must adhere to the agreed agenda in so far as this is practicable, reasonable and possible in the circumstances.

3. Commencement of meetings

At the commencement of each meeting the Chairperson shall read out the following reminder statement:

“FERTASA is committed to compliance with the Competition Act. This meeting is conducted in accordance with FERTASA’s Competitive Behaviour Compliance Guidelines”.

4. Minutes of meetings

Minutes should be made of all FERTASA meetings of members. These minutes should be:

- Sent to each member present at the meeting after the meeting has taken place;
- Considered by each member before the next meeting to ensure that they accurately reflect the discussions of the meeting; and
- Settled and ratified at the next meeting as being a true and correct record of the matters discussed at the previous meeting.

5. Objections at a meeting

In the event that a discussion occurs at a meeting that any member present believes involves competitively sensitive information or might raise issues under the Competition Act, that member should immediately and unambiguously point out his/her objections and request that the discussion cease. If the discussion persists, such member must immediately withdraw from the meeting and the minutes of the meeting must record his/her objection and withdrawal.

6. Sharing of market information, data and statistics

Where it is proposed to have a discussion on legitimate matters of relevance to the fertilizer industry and it is necessary to discuss any aspect that is suspected to be competitively sensitive information, then members must obtain legal advice prior to any discussion occurring and/or information being shared. Competitively sensitive information should not be communicated on the basis that the discussion is “*subject to legal advice*” which will be subsequently obtained. **Prior advice must be obtained.**

Where potential competitively sensitive market information is to be discussed at a meeting of FERTASA members, this information must be limited to historical data. Such data must be collated and aggregated by FERTASA staff and/or an independent party and must only be disclosed to members on an aggregated basis so that individual companies’ data cannot be identified.

7. General behaviour

FERTASA and its members accept that:

- each business entity or member should act independently in respect of their decisions and practices in buying or selling, by keeping related information strictly confidential;
- markets cannot function successfully in the absence of competition and that the activities of FERTASA should strengthen and encourage competition;
- relevant industry information should not only be shared with members of FERTASA, but should be made available to all interested parties including consumers;
- a clear distinction should be made between issues which should and can (in terms of the Competition Act), be dealt with by collective actions of the members through FERTASA and issues which should be dealt with by individual business entities independently from FERTASA;
- misuse/abuse of power by dominant players is prohibited;
- FERTASA should not bargain on behalf of its members in respect of price and any other trading conditions and FERTASA should not intervene in any way in the transactions of its members.

Approved by the Board of Directors on 4 March 2014

“FERTASA is committed to compliance with the Competition Act. This meeting is conducted in accordance with FERTASA’s Competitive Behaviour Compliance Guidelines”.

I, the undersigned, hereby acknowledge that I have read the FERTASA Competitive Behaviour Compliance Guidelines and undertake to comply with the said Guidelines:

INITIALS AND SURNAME	JOB TITLE	COMPANY	SIGNATURE	DATE