



## WINDEUROPE COMPETITION COMPLIANCE POLICY

WindEurope and its members are committed to full and fair competition, and neither WindEurope nor its activities, working groups or task forces shall be used in any way inconsistent with relevant competition laws. In order to promote the compliance with these laws, WindEurope has adopted this Competition Compliance Policy in which the basic rules for competition compliance are set out. Because of the importance of preventing competition law violations, both in the interest of WindEurope and its members and in the general interest, WindEurope considers acceptance of and compliance with this Policy a condition of its membership.

As the members of WindEurope come from several jurisdictions and may be subject to various national competition laws, including European competition law and US antitrust law, this Policy is based on the strictest standards. The applicability of the competition rules of any jurisdiction to WindEurope's and its members' activities is governed by the 'effects doctrine'.

According to this doctrine, the activities of (associations of) companies are governed by the law (or laws) of all places where such activities may affect the conditions of competition, regardless of the law that is stated to apply to the activities. For example, a price-fixing agreement that is entered into in South Africa, but that also has an effect on prices in the EU and the USA, may be subject to both EU competition law and US antitrust law. Conversely, a contract that only states that US law applies to it, but that does not have any effect on the conditions of competition on markets within the USA, is generally not subject to US antitrust law, but only to the law(s) of the place(s) where there may be such an effect.

For reference purposes only, an outline of the European competition rules is attached to this Policy. WindEurope members are responsible for conferring with their own respective legal counsel for any country or jurisdiction-specific competition law advice.

### **No Anticompetitive Agreements or Understandings**

Neither WindEurope nor any working group, task force or activity of WindEurope shall be used for the purpose of bringing about or attempting to bring about any agreement, understanding or concerted practice, written or oral, formal or informal, express or implied, among competitors regarding:

1. Prices (including current and future pricing policies), premiums, discounts, promotions or other financial terms or conditions under which services are offered to customers by members;
2. Fixed specifications from which may not be deviated (not even on a customer's request) or volumes of services offered to customers by members;
3. Commercial details concerning individual customers or entities to whom any actual or proposed future services may be offered.

WindEurope shall not induce or tolerate any discussion of costs or any exchange of commercial information for the purposes of or with the probable effect of:

1. Increasing, maintaining or stabilizing prices and other commercial terms or conditions offered to customers by members;
2. Reducing competition with respect to the range, quality or specifications of services offered to customers by members;
3. Promoting agreement among members with respect to their commercial purchases, including the selection of products or services for purchase, the choice of supplier and the prices they will pay for products or services.

### **No Discussions on Competitively Sensitive Issues**

No WindEurope meeting or activity shall include discussions or dissemination of information among competitors regarding competitively sensitive issues. In no case shall WindEurope members discuss or disclose information to each other on their individual prices, rates, costs, discounts or other financial and commercial terms and conditions of any actual or proposed services offered to customers. Neither shall other competitively sensitive issues be discussed, including individual members' financial performance, individual information on any member's costs, product or service specifications, anticipated service offerings or individual customer information.

This prohibition does not cover such information that at the time of discussion has legitimately been made public (e.g. because it has been published by a stock exchange), historic information that is over one year old, nor aggregated information that does not in any way provide the members the possibility to identify what part of the information applies to any individual company.

WindEurope members shall at all times comply with the WindEurope Competition Compliance Guidelines that have been replaced with this policy.

### **Publications and Reports**

Papers published by WindEurope or presented in connection with WindEurope activities should not discuss or refer to prospective prices, premiums, or other financial terms or conditions of services offered by its individual members.

### **Independent Dealings with Vendors and Customers**

All WindEurope members and any companies associated with them will act independently in their commercial dealings with suppliers and customers. No WindEurope activity or communication shall include any agreement, or any discussion which might be construed as an agreement, to collectively refrain from purchasing any equipment, services, or supplies from any specific vendor, or from selling products or services to any specific customer.

## The European Competition Rules

The Treaty on the Functioning of the European Union (“TFEU”) requires that all companies, associations and other (legal) persons doing business in Europe to comply with two main competition rules: (1) the prohibition of cartels and (2) the prohibition to abuse a dominant position

Both are shortly outlined below in as far as they may apply to WindEurope’s activities.

### The Cartel Prohibition

Article 101 TFEU provides that *“all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market”* are prohibited.

The cartel prohibition has a broad scope and its constitutive elements are interpreted widely in European case-law. The term *“associations of undertakings”* covers all structures in which undertakings cooperate or organise, regardless of their form and level of organisation. The terms *“agreement”*, *“decision”* and *“concerted practice”* are also defined broadly in European case-law. An *“agreement”* covers more than the traditional contract and includes all possible expressions of a common intention. For there to be a *“decision”* of an association of undertakings, it is not necessary for the measure in question to be binding on the association’s members. Also an advice that the members are expected to follow qualifies as a decision. *“Concerted practices”* form a hybrid rest-category, covering forms of coordination between undertakings which, without having reached the stage where a proper agreement or decision has come about, *“knowingly substitute the risks of competition for practical cooperation.”*

There is no strict division between the categories of conduct. A communication from WindEurope to its members that has an anti-competitive effect might, depending on the circumstances, be regarded either as a decision (from WindEurope) or as a concerted practice (between WindEurope and the members concerned).

Certain types of behaviour are always prohibited by Article 101 TFEU, regardless of whether they actually have anti-competitive effects. These so-called *“hard core cartels”* include fixing of purchase or selling prices or other important trading conditions between competitors; bid rigging; limiting or controlling production, product development, technical development, or investment; dividing the markets or sources of supply or customer allocation; collective boycotting (see above); and sharing commercially sensitive information. It is essential to ensure that WindEurope’s members do not engage in any such types of conduct.

## Abuse of Dominant Position

Article 102 TFEU provides that undertakings enjoying a “*dominant position*” are not allowed to abuse that position. A dominant position is defined as a position of economic strength, which enables an undertaking to prevent effective competition by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers. The existence of a dominant position depends on the market share of the undertaking in question, relative to the market share of its main competitors. In general, a dominant position only exists if an undertaking’s market share exceeds 40%.

The abuse of dominant position applies to undertakings. As such, it does not apply to associations of undertakings. However, there are exceptions to this rule for standard setting bodies, especially when they administer a system of quality marks.

## Sanctions

The European Commission may punish the violation of Article 101 or 102 TFEU by imposing administrative fines, up to a maximum of 10% of the annual turnover of the companies involved. If the infringement has been committed by an association of undertakings, the maximum fine is 10% of the combined annual turnover of all its members. Fines are calculated on the basis of “*affected turnover*”, i.e. the turnover achieved with the product(s) or service(s) to which the infringement relates, for the duration of the infringement. Depending on the gravity of the infringement, fines are normally set at an amount between 1% and 30% of the “*affected turnover*” (subject to the maximum mentioned above).

If an association of undertakings is not able to pay a fine that was imposed on the association for violating the competition rules, the remaining amount of the fine may be collected from the association’s members, regardless of a specific member of the association has itself been involved in the illegal conduct.

If the infringement has not been terminated at the time of the Commission’s decision, the Commission may furthermore impose an order to end the infringement subject to a periodic penalty payment. Additional fines can be imposed for refusal to cooperate with a Commission investigation or for intentionally providing misleading information.