



## **ENSA ANTITRUST GUIDELINES**

ENSA is a trade association which aims to raise awareness among EU citizens and national and EU political decision makers about soy foods and to promote the consumption of natural soy foods as an integral part of a healthy and balanced lifestyle. In doing so, ENSA members are committed to ensuring strict compliance with national and European competition laws.

The objective of these guidelines is to ensure that ENSA members are aware of the requirements laid down in article 81 and 82 of the Treaty establishing the European Community and that their activities within ENSA are at all times in compliance with these requirements as well as relevant national laws that may apply in countries in which they are active.

Infringements of competition laws are treated very seriously and may result in heavy fines. These guidelines shall therefore be used as a reminder by ENSA members. Should any question arise about the compliance of a discussion or action within ENSA, the Secretariat invites members to raise this immediately and to seek legal advice as appropriate.

For this purpose,

- 1) ENSA members shall be aware of the provisions laid down in article 81 and 82 of the Treaty establishing the European Community as well as relevant national competition laws that may apply in countries in which they are active.
- 2) Discussions within ENSA shall only serve the legitimate purpose of the association and shall not result in sharing commercially sensitive information. In particular, ENSA members shall not discuss the following categories of information:
  - Product and price-related information, including costs, discounts, mark-ups, terms of trade, margins etc.
  - Allocation of geographical markets, customers, suppliers or products
  - Production levels or quotas
  - Current or projected procurement/tendering, etc.

ENSA members may only share certain information with the Secretariat, provided that this information relates to non-commercially sensitive issues, such as historical data, technical information, general industry studies, market research on the soy category, scientific information related to soy developments, positions on policy and regulatory issues relating to or impacting soy foods.

- 3) Special care should be taken to ensure that no ENSA meeting is used as a means to share any commercially sensitive information. For this purpose, all meetings shall follow a pre-established written agenda; the Secretariat will prepare minutes promptly after the meeting; informal meetings should not be held.



- 4) Participation in ENSA meetings and activities is voluntary, and failure to participate must not be used to penalise any member. Similarly, any standards and/or business practice recommendations endorsed by ENSA must remain voluntary.
- 5) Each ENSA member, including any new member, will be provided with a copy of these guidelines. The guidelines shall also be made available on the ENSA website at: [www.ensa-eu.org](http://www.ensa-eu.org)

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## **Annex**

### **TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

#### **Article 81**

*1. The following shall be prohibited as incompatible with the common market: 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, and in particular those which:*

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
- (b) limit or control production, markets, technical development, or investment;*
- (c) share markets or sources of supply;*
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

*2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.*

*3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:*

- any agreement or category of agreements between undertakings,*
- any decision or category of decisions by associations of undertakings,*
- any concerted practice or category of concerted practices,*

*which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:*

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;*
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.*

#### **Article 82**

*Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.*

*Such abuse may, in particular, consist in:*

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*



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*(b) limiting production, markets or technical development to the prejudice of consumers;*

*(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*

*(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

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