Proforest Competition Law Guidelines

May 2026

Contents

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Proforest Competition Law Guidelines (May 2026)

1. Why competition law is relevant

The mission of Proforest is to help people produce and source agricultural and forest commodities responsibly and resiliently. Proforest supports companies throughout supply chains to have positive social and environmental outcomes in the places where commodities are produced. Proforest supports these companies and other stakeholders through: (i) the provision of consultancy services; (ii) supporting collaboration between companies, stakeholders and governments; and (iii) developing innovative new methods, tools and guidelines.

1.1 Competitor collaborations often can and do pursue legitimate objectives and perform legitimate functions, delivering improved sustainability results to the benefit of the population at large. However, since sustainability collaborations involve contacts between competitors, they can give rise to competition law risk. Consequently, they need to be designed and managed appropriately. They need to be implemented with adequate safeguards, and kept under regular review to prevent scope creep into illegal territory. Exchanges of competitively sensitive information ("**CSI**") or agreements between companies that restrict competition are illegal in nearly all jurisdictions.

1.2 The consequences of infringing competition law (for both companies and NGOs, even in pre-competitive spaces and despite meetings being held under the Chatham House Rule) vary between jurisdictions, but can include:

(a) Corporate fines (which can be up to 10% global turnover);
(b) Personal liability (e.g., imprisonment, director disqualification and / or fines);
(c) Negative publicity and damage to reputation; and / or
(d) Investigations, litigation and damages claims.

1.3 For the purposes of these Guidelines, references to:

(a) The **convenor** and **technical lead** mean the person or entity responsible for designing, organising, facilitating or operating a multi-stakeholder initiative, including setting agendas, managing governance arrangements, coordinating information flows, and holding / delivering meetings or training; and

(b) **Participating companies** mean downstream competitors and / or upstream suppliers that take part in such initiatives.

These references are used throughout the Guidelines to distinguish between risks arising from the facilitation and operation of initiatives and risks arising from the conduct of companies participating in them.

2. The basics of competition law compliance

2.1 Although competition law (also referred to as "antitrust law") differs from one country / region to another, all of these national / regional laws and regulations on competition prohibit any conspiracy, agreement, discussion, understanding or arrangement among competitors or potential competitors to:

- Fix, maintain, increase or control prices (or any element of price) for the supply or purchase of a product or service;
- Allocate sales, territories, customers or markets for the production or supply of a product or service (for example, confining businesses to different geographical areas, lines of business or customers); and
- Fix, maintain, control, prevent, lessen or eliminate the production or supply of a product or service (for example, restricting volumes produced or made available for sale).

Case highlight

In *Banana Importers (2015)*, the CJEU upheld a finding that two banana importers had participated in a price-fixing cartel by exchanging CSI relating to future banana pricing in advance of setting and issuing price quotations to customers. That conduct was found to constitute an anticompetitive concerted practice, and fines totalling €60.3 million were imposed.

2.2 Third party service providers will be liable if they participate in, or facilitate, anticompetitive agreements in their own right, for example by:

- Facilitating the exchange of information or discussion amongst competitors of CSI with the aim or effect to restrict competition relating to prices, production, innovation, customers or markets;
- Developing and operating tools used to implement or monitor an anticompetitive arrangement; or
- Excluding or discriminating against companies by refusing membership of collaborative multi-party initiatives on non-objective grounds.

Case highlight

In *AC Treuhand (Heat Stabilisers) (2015),* the European Court of Justice (the "**CJEU**") confirmed that a third-party service provider may be found liable for participating in an anticompetitive agreement where it facilitates that agreement, even if it is not active on the affected market.

The European Commission (the "**Commission**") found that consultancy firm AC Treuhand played an "essential role" in two price-fixing cartels by organising and attending cartel meetings and collecting and disseminating commercially sensitive sales data. On that basis, the Commission imposed fines totalling €348,000. The CJEU upheld the decision, emphasising that competition law applies "*irrespective of the market on which the parties operate*" and that excluding facilitators from liability would undermine effective enforcement.

2.3 In addition to formal agreements, in some jurisdictions (including the EU) any informal or tacit understanding between competitors that restricts competition, divides markets, or allocates customers is sufficient to breach competition law and attract substantial fines. This includes coordination or exchanges conducted through informal communication channels (e.g., WhatsApp or Signal).

2.4 Generally, when it comes to competitor collaboration in the sustainability space:

2.4.1. Lower risk collaborations include lobbying, benchmarking (when undertaken by an independent third-party benchmarking provider acting as a **convenor** / **technical lead**), non-binding commitments / codes, joint research and development for sustainable products and innovative processes, and pooling information about the social and environmental sustainability credentials of downstream and / or upstream companies.

2.4.2. This means that, in general, it is permitted / pro-competitive for **convenors** / **technical leads** to facilitate multi-stakeholder initiatives where stakeholders:

(i) share experiences in general terms, such as problems encountered in their sustainability journeys;

(ii) share evidence in the public domain on issues which the initiative seeks to address;

(iii) share best practices on policies / strategies to which they are already committed in the public domain;

(iv) discuss 'in principle' mechanisms which could be used by individual companies to meet sustainability goals;

(v) discuss voluntary sustainability standards; or

(vi) identify best practice minimums, emphasising that individual companies will make individual decisions and are encouraged to exceed any identified sustainability best practices or minimum targets.

2.4.3. Careful consideration, design and implementation must be given to voluntary sustainability standards (e.g., applied to upstream suppliers), joint infrastructure funding and joint buying. This means that, in general, legal advice should be sought in relation to multi-stakeholder initiatives that discuss:

(i) information on specific purchasers or upstream suppliers, including who downstream manufacturers buy from;

(ii) actual standard-setting; or

(iii) recommendations for sustainable solutions, including baselines and other reference points.

This is a particular risk in relation to Landscape initiatives, considering these could involve sustainability standards, joint infrastructure funding and the sharing of information on specific upstream suppliers.

2.4.4. <u>Higher risk</u> collaborations include any mandatory design / packaging standards and agreements to phase out products. Legal advice should be sought before considering any such arrangement.

2.4.5. Finally, **conveners** / **technical leads** and **participating companies** involved in multi-stakeholder initiatives should not facilitate <u>any</u> discussions about:

(i) price or any element of price;

(ii) living wage / income *guarantees* (but note, legal requirements and broader considerations regarding achieving minimum living wages / incomes may be discussed where appropriate, provided companies remain free to pay workers more than any applicable minimum);

(iii) boycotts / blacklists – i.e., any type of understanding or agreement to not purchase from certain upstream suppliers or to exclude "bad actors" from the supply chain;

(iv) agreements not to compete, including allocating markets or customers;

(v) agreements between downstream competitors or upstream suppliers to limit individual investment efforts in sustainability innovation or technical development; or

(vi) agreements between downstream competitors or upstream suppliers not to advertise / promote their own sustainability efforts and innovations.

2.5 The above principles of prohibited conduct and safeguards against the exchange of CSI (see below for more detail) should guide **participating companies** working with **convenors** / **technical leads** in all of activities in connection with multi-stakeholder initiatives.

2.6 Antitrust / competition law is complex and varies across jurisdictions. Where there is uncertainty, caution should be exercised and questions raised, as <u>lack of intent or poor judgment is not a defence for non-compliance</u>.

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3. When to engage legal counsel

3.1 ESG and sustainability initiatives increasingly intersect with regulatory regimes that require companies to carry out detailed supply-chain due diligence and to collect, verify and disclose information about their sourcing.[1] It should be noted from the outset that whilst these obligations are legally mandated, they do not create a "safe harbour" under competition law.[2] Where companies are required or encouraged by law or public authorities to collect or share information, or where they have discretion as to what information they share, competition law continues to apply[3] – so legal counsel should be engaged in the event of any uncertainty. In practice, companies must not use regulatory requirements or compliance obligations as a means to exchange CSI or otherwise restrict competition. Any information exchange undertaken for compliance purposes should be restricted to what is required by the applicable law or regulation, and precautionary measures may need to be implemented where CSI is being exchanged.

3.2 More generally, engagement with legal counsel at the appropriate junctures when designing and implementing sustainability initiatives is key to mitigate risks associated with competitor collaboration, guard against "scope creep" into illegal territory, and can also maximise opportunities. In the context of these initiatives, legal counsel **should be considered** in the following circumstances:

- NDAs;
- Starting a new collaboration, when the scope of a collaboration changes, or when a collaboration is implemented (e.g., if the downstream companies involved in an existing Landscape initiative decided to agree a new offtake agreement to buy products if suppliers meet certain conditions);
- Circulating agendas to competitors (see section 5.5 below for further guidance);
- Signing an agreement with a competitor; and
- Attending a meeting with a competitor.

3.3 Even though sustainability discussions may take place at a "pre-competitive" point in time and/or be conducted under the Chatham House Rule, this does not insulate the organisations involved against competition law risks. It is critical for competitors to remember that certain topics and discussions remain off-limits.

3.4 Businesses should also always seek advice in relevant jurisdictions, as regulators' approaches to sustainability-related collaboration between competitors can vary significantly. While some authorities have published guidance that is broadly supportive of certain environmental or sustainability collaborations (e.g., the Commission in the EU), the scope, legal basis and degree of certainty offered in other jurisdictions can differ materially.

3.5 In particular, there are important distinctions between: (i) regimes that recognise targeted exemptions or enforcement flexibility for certain categories of sustainability agreements;[4] (ii) regimes that assess such

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[1] For example, under Regulation (EU) 2023/1115 on deforestation-free products (EU Deforestation Regulation), operators and traders placing in-scope commodities and products on the EU market must obtain specified information from upstream suppliers, conduct risk assessments and mitigation measures, and submit due diligence statements to a central EU information system to demonstrate that products are deforestation-free and legally produced.

[2] "Safe harbour" refers to an explicit legal protection under which specific conduct is deemed permissible, provided prescribed conditions are satisfied.

[3] Commission *Guidelines on the applicability of Article 101 TFEU to horizontal co-operation agreements*, para 372.

[4] E.g., the EU agricultural "sustainability exemption" under Article 210a of Regulation (EU) No 1308/2013 (as interpreted in the Commission's 2023 Guidelines on Sustainability Agreements in the Agriculture Sector) and Austria's Sustainability Guidelines, which introduce a specific exemption for certain ecological sustainability agreements that meet defined criteria.

collaboration more generally under broader sustainability frameworks;[5] and (iii) regimes that apply general competition law principles without recognising any sustainability-specific safe harbours.[6]

3.6 These divergences are especially relevant when operating across multiple jurisdictions, as, depending on participants' risk appetite, they can necessitate designing initiatives and internal policies to comply with the most restrictive applicable standard, notwithstanding more permissive approaches elsewhere.

3.7 By way of example, the boxes below include high-level overviews of the varying approaches taken towards sustainability initiatives under antitrust / competition frameworks in the EU, UK, US, Brazil and Indonesia:

European Union
The Commission has taken a more permissive approach for sustainability agreements and has published guidance suggesting it may take an even more flexible approach in the agriculture sector specifically (**"Guidance"**), although it should be noted that this Guidance is non-binding and should not be relied upon without first consulting with legal experts. The Guidance: (a) Covers agreements, decisions and concerted practices involving at least one or more producers of agricultural products that relate to the production of or trade in agricultural products and that aim to apply a higher sustainability standard than that mandated by EU or national law; (b) Provides an exception for agreements that: • Include at least one or more producers (or associations of producers) of agricultural products; • Contribute to one or more of the following sustainability objectives, which should be identified in the agreement itself: ▪ Environmental objectives, including climate change mitigation and adaptation, the sustainable use and protection of landscapes, water and soil, the transition to a circular economy (including the reduction of food waste), pollution prevention and control and the protection and restoration of biodiversity and ecosystems; ▪ The production of agricultural products in ways that reduce the use of pesticides and manage risks arising from their use or that reduce the risk of antimicrobial resistance in agricultural production; and / or ▪ Animal health or welfare. • Identify a sustainability standard (higher than EU or national EU law) relating to the sustainability objectives identified, the results of which should be tangible and measurable or at least observable and describable; and • Contain restrictions on competition that are "indispensable" to the attainment of the sustainability standard[7], which involves considering whether: ▪ It is necessary for operators to cooperate to achieve the sustainability standard instead of doing so individually; and

[5] E.g., the UK's Green Agreements Guidance and subsequent informal guidance and the French Competition Authority's sustainability informal guidance framework introduced in 2024.

[6] E.g., the United States, Indonesia and Brazil assess sustainability-related collaboration under ordinary competition law principles, without applying any distinct sustainability-specific framework.

[7] Parties to any agreement need to monitor the "indispensability" criteria on an ongoing basis.

- If the standard could be achieved by means of another less restrictive type of provision.

(c) Includes guidance on requesting an opinion from the Commission on whether a sustainability agreement fulfils the exception (noting that such opinions do not have binding force).

United Kingdom

The UK has also taken a more accommodating approach to sustainability-driven collaboration. The UK Competition and Markets Authority (the "**CMA**") has issued a specific guidance for assessing environmental sustainability agreements through its Green Agreements Guidance ("**Green Guidance**").

- The Green Guidance recognises that cooperation between competitors may, in some cases, be necessary to overcome first-mover disadvantages and deliver environmental benefits, particularly in the context of climate change agreements. In such cases, the CMA applies a more permissive approach to exemption, including a broader interpretation of the "fair share to consumers" criterion, allowing it to take into account the overall climate benefits accruing to UK consumers rather than confining the assessment to the affected product market.
- Since the Green Guidance was published, the CMA has continued to issue a range of informal guidance in relation to specific sustainability collaborations.[8]
- Across both its formal and informal guidance, the CMA has shown a willingness to support sustainability and climate-driven collaboration where initiatives are voluntary, limited in scope and carefully designed to avoid companies aligning their commercial behaviour.
- In practice, this has involved requiring commitments to be implemented by companies individually, avoiding collective decisions on pricing or volumes, restricting the sharing of CSI, keeping initiatives open to other participants, and putting governance arrangements in place to reduce the risk of exclusion or foreclosure.
- The CMA has made clear that more ambitious or wide-ranging initiatives must be supported by stronger evidence, clearer transparency and ongoing oversight.

United States

Sustainability related coordination is assessed under general competition law principles and US authorities have repeatedly emphasised that sustainability or ESG objectives do not insulate conduct from antitrust scrutiny.[9]

- In recent years, US enforcement activity and litigation, particularly at state level, has shown an increased willingness to scrutinise sustainability-related collaboration under traditional cartel and exclusionary-conduct frameworks, particularly output restriction and concerted refusals to deal. This scrutiny has focused on arrangements alleged to influence output, investment decisions or market

[8] See, for example: CMA informal guidance in relation to (i) *Fairtrade Foundation Shared Impact Initiative* (November 2023), assessing collective retailer commitments under the Green Guidance framework; (ii) *WWF-UK / UK grocery retailers* (March 2024), concerning a joint supply-chain decarbonisation commitment and the application of the climate change agreement framework; (iii) *Builders Merchants Federation* (March 2025), relating to an ESG supply-chain assurance platform with open participation and data safeguards; and (iv) *3Keel – Landscape Enterprise Networks (LENs 2.0)* (January 2026), addressing a structured collaboration at the landscape-level subject to conditions on eligibility, non-binding guidance and information-sharing controls.

[9] See e.g., Letter from U.S. Senators Marco Rubio, Mike Lee, Kevin Cramer and others to major US law firms (17 November 2022).

access, or to operate through collective pressure or uniform standards that may constrain independent commercial behaviour.[10]

- However, in February 2026 the US Supreme Court agreed to review whether climate change litigation should be pursued in US federal courts rather than US state courts, a development that could bring greater certainty to an increasingly complex area of litigation.

Brazil

- Brazil has not adopted sustainability-specific competition law guidance or a dedicated exemption. The Administrative Council for Economic Defense (**CADE**) has also not taken a clear stand on how (if at all) environmental benefits will be weighed when assessing sustainability agreements among competitors.
- Accordingly, sustainability-related coordination continues to be assessed under general antitrust principles, and the key question in practice is whether the structure of the cooperation preserves competitive independence and avoids mechanisms that facilitate coordination (particularly through governance and information flows).
- More recently, CADE has also indicated (at least at Commissioner level) that certain sustainability collaborations will (generally) rarely raise competition law concerns, including arrangements that:[11]
  - (i) seek to comply with mandatory international standards;
  - (ii) promote the adoption of better sustainability practices within companies;
  - (iii) develop open databases and green labels; or
  - (iv) coordinate sectoral awareness initiatives.

Indonesia

- While there has been no sustainability-specific competition law guidance or enforcement in Indonesia, sustainability-related collaboration is assessed solely under the general competition law framework and ESG objectives do not provide any safe harbour from cartel or information-exchange scrutiny by the Indonesian Competition Commission (the "**KPPU**").
- A "rule of reason" approach is taken when assessing competitor collaboration in non collusive arrangements, requiring the KPPU to assess the purpose and competitive impact of collaboration, including market power, effects on prices or output, efficiency gains, necessity, and whether benefits outweigh competitive harm. Although ESG considerations could theoretically be factored into this balancing exercise in the future, this appears to be unlikely in the near term.

[10] See, for example: *Texas et al. v. BlackRock, Inc., State Street Corp. and Vanguard Group, Inc.* (complaint filed November 2024, alleging that coordinated climate-related commitments reduced coal output); the multi-state Attorneys General investigation into the Consumer Goods Forum, the Green Blue Institute and the Plastics Pact (announced October 2025, alleging that uniform sustainability standards distorted competition); and the Florida Attorney General's investigation into CDP and the Science Based Targets initiative (launched July 2025), examining alleged coordination and pressure mechanisms with potential anticompetitive effects.
[11] Vote rendered in Consultation No. 08700.004130/2024-11 on September 17, 2024.

3.8 It is particularly important that you engage promptly with legal counsel if you suspect that any CSI has been exchanged or that you have agreed on a common approach that amounts to an illegal restriction of competition (e.g., price-fixing, boycotting or blacklisting certain suppliers, wage-fixing, etc.) in any jurisdiction.

4. Key competition law risks when facilitating or participating in multi-stakeholder initiatives

4.1 The key competition law risks that may arise for **convenors** and **technical leaders** (when facilitating or operating multi-stakeholder initiatives), and for **participating companies** (through their conduct within those initiatives) are: (i) facilitating the exchange of, or actually exchanging, CSI between downstream and / or upstream players; (ii) facilitating, or actually, price-fixing; and (iii) facilitating, or taking part in, collective boycott.

Key risk 1: Facilitating the exchange of, or actually exchanging, CSI between downstream and / or upstream players

4.2 Facilitating the exchange of, or actually exchanging CSI between competitors is a key risk in this context, particularly in multi-stakeholder initiatives. CSI is non-public information, the disclosure of which would reduce the receiving party's uncertainty regarding the disclosing party's current or future pricing, commercial strategy or other competitive behaviour.

4.3 **Convenors and technical leaders** in multi-stakeholder initiatives will potentially have access to sensitive and *potentially* sensitive information about **participating companies**. There is a risk that the **convenors / technical leaders** could inadvertently act as 'hubs' for *indirect* information exchange by sharing CSI between different companies ('spokes') in multi-party initiatives, dampening competition between such companies by increasing transparency and predictability. There is also a risk that any shared algorithms (such as monitoring tools) or data hubs could inadvertently share CSI if companies input sensitive data into them.[12]

Case highlight

In *Eturas (2016)*, the CJEU confirmed that competition law may be infringed through indirect coordination where competing companies use a shared digital platform or technical system that facilitates alignment of conduct. The Court held that travel agencies using a common online booking system could be presumed to have participated in a concerted practice where they were aware of a system message announcing and implementing a uniform discount cap, unless they could rebut that presumption, for example by publicly distancing themselves from the restriction or showing independent conduct. The judgment confirmed that coordination can arise without direct contact between competitors, where a common intermediary or technical system acts as a hub.

[12] See, for example: CMA blog post on *AI and collusion: frontiers, opportunities and challenges* (March 2026) in which the CMA explained: "*Colluding businesses may use the same algorithm or data hub to exchange competitively sensitive information indirectly – which might in some cases also include delegating pricing decisions to the hub or receiving from it recommendations (based on co-mingled data) […] The hub may allow businesses to increase prices above competitive levels, maximising collective profits. UK law recognises that indirect information exchange through third parties, such as algorithm providers, can constitute illegal, anticompetitive conduct*."

4.4 **Companies participating** in multi-stakeholder initiatives must not use such initiatives to facilitate *direct* information exchange – e.g., training sessions or meetings attended by competitors must not be used by the companies to exchange CSI.

Case highlight

In *Portuguese Banks (2024)*, the CJEU confirmed that a single / "standalone" exchange of CSI may constitute a competition law infringement, even if it is not linked to a wider anti-competitive practice and no actual market impact has been shown.

Key risk 2: Facilitating, or actually engaging in, price-fixing

4.5 Facilitating (by **convenors and technical leaders**), or engaging in (by **participating companies**), price-fixing is another potential key risk in this context. In any industry, discussions about sustainability initiatives can lead to increased costs for manufacturers and, where the relevant input or sustainability effort represents a significant cost for the product concerned, potentially increased prices for consumers. Discussions on legitimate topics (e.g., proposed regulation, sustainability goals) have, in practice, been known to stray into illegal territory, including price-fixing cartels.

4.6 **As a purely hypothetical example**, there is a risk that discussions that begin as genuine sustainability initiatives may morph into price-fixing cartels, where downstream competitors agree to raise prices to reflect increased costs. This could arise, for example, where companies collectively decide to increase prices (for instance by 10%) on the basis that commitments to work only with upstream suppliers paying living wages / income and/or using sustainable, low-impact farming practices will increase input costs.

Case highlight

In *Laundry Detergents (Washing Powder) (2011)*, the Commission found that contacts between competing manufacturers within the context of an industry-wide environmental initiative amounted to a cartel aimed at stabilising market positions and coordinating prices. The Commission concluded that discussions between consumer goods companies concerning plans to concentrate and improve the environmental performance of laundry detergents over an extended period constituted an infringement of competition law. Following that infringement finding, fines totalling EUR 315.2 million were imposed, while the whistleblower was granted immunity.

Key risk 3: Facilitating, or taking part in, collective boycott

4.7 Facilitating (by **convenors and technical leaders**), or actually taking part in (by **participating companies**) a collective boycott, is the other key risk in this context. Some of the initiatives will involve collecting data on how "well" upstream suppliers are performing against certain sustainability goals and how mature their due diligence processes are. Collecting / sharing general information about which upstream suppliers have "sustainable" or "unsustainable" production processes may help downstream competitors fulfil their sustainability obligations, and therefore can be done in a way that is compliant with competition law. However, that information must not reduce uncertainty regarding actions of competitors in the market. Therefore, it must not identify who their current or future suppliers are. Companies must also continue to decide independently whether or not to purchase from particular suppliers in the light of that information.

(a) **As a purely hypothetical example**, the potential risk to bear in mind is that information shared through a multi-stakeholder initiative (for example, information indicating that an upstream supplier is performing very poorly against certain sustainability criteria, or that particular regions present very high sustainability risks), could lead to collective withdrawal if the downstream companies involved in that initiative were to collectively agree amongst themselves to stop using, phase out or terminate a particular upstream supplier, or collectively avoid sourcing from a particular area and therefore from particular upstream suppliers.

5. Competition law compliance – assistance to and participation in multi-stakeholder initiatives

5.1 This section sets out guidance for (i) **convenors and technical leaders** when designing, delivering or facilitating multi-stakeholder initiatives, including training and meetings, and (ii) **participating companies** when attending or contributing to such initiatives.

5.2 When working with (potential) competitors in the sustainability space, particular attention should be given to:

(i) Membership rules;
(ii) Day-to-day operation of multi-stakeholder sustainability initiatives, including sustainability workshops / external meetings;
(iii) Standard setting;
(iv) Joint lobbying;
(v) Joint proposals / bids;
(vi) External communications; and
(vii) Upstream / downstream compliance training.

<u>Membership rules</u>

5.3 **Convenors** / t**echnical leaders** should ensure that multi-stakeholder initiatives do not disadvantage or exclude certain competitors, undertakings or stakeholders taking part in such initiatives. In particular, any formal associations should check that:

- Any membership criteria are reasonably related to the legitimate purpose of the initiative, are objective in nature, are laid down uniformly for all potential members and are not applied in a discriminatory manner;
- If membership is refused, there is an internal procedure for appeal within the initiative / association; and
- The members of the initiative / association are aware of their antitrust obligations and have an antitrust compliance policy or guidelines for members in place.

<u>Day-to-day operations of multi-stakeholder sustainability initiatives, including sustainability workshops / external meetings</u>

5.4 Unless stated otherwise, the below rules should be followed by **convenors** and **technical leaders** responsible for organising or facilitating meetings, workshops or training sessions:

5.5 **DO:**

✓ Always draw up agendas (see **Annex 2** for the agenda template) for any meetings involving (potential) competitors and review proposed agenda items to ensure that no items on the agenda raise competition law concerns. When in doubt, seek legal advice before scheduling the item on the agenda.

✓ Ensure the agenda is circulated to all workshop participants in advance. This agenda should include a "competition law compliance statement" (see **Annex 1** for the antitrust compliance statement template) to be read out at the start of the meeting. The minutes should record when this has been read out. This statement should also be displayed in any presentation or circulated as a handout.

- ✓ If financially possible, ensure a competition (or in-house) lawyer is present at *substantive* meetings (particularly in-person) involving competitors to intervene if there is a risk of CSI being exchanged. If a competition lawyer is engaged, they should approve the agenda and materials for the meeting in advance.
- ✓ Ensure you know how to object and stop the conversation if it turns to competitively sensitive topics. If any inappropriate discussion (e.g., a discussion on CSI – see **below on topics which should not be discussed**) arises during a meeting, request that such discussion be stopped immediately. Simply being present at an improper conversation makes you and your company liable, even if you say nothing improper.
- ✓ If your protests are ineffective, stop the meeting entirely and / or leave the meeting and request that your departure be recorded in the minutes.
    - Seek legal advice immediately. In the meantime, do not change your market behaviour as a result of the disclosure, and do not discuss the matter further save for any discussion with legal counsel.
- ✓ Ensure that even in informal or social situations, antitrust compliance is top of mind. Even informal discussions or throw-away comments can lead to problems if, for example, there is subsequent uniformity in action by (potential) competitors afterwards.
- ✓ Allow open and equal participation of participants in initiatives / association or committee meetings and do not exclude a specific member or group of members from particular meetings without objective reasons linked to the purpose of that particular meeting. This includes conducting meetings in a common language understood by all those present.
- ✓ Ensure minutes are drafted of every initiative / association meeting and circulated (including presentations shared) to participants for review and comment (see **Annex 3** for template meeting minutes). If the minutes are inaccurate or incomplete or raise any questions, insist on rectification.
- ✓ Keep in mind that activities relating to standard-setting, lobbying activities, benchmarking and statistics dissemination can bring along competition law risks.
- ✓ Seek legal advice immediately if you are concerned that the activities of the initiative / association raise competition law concerns.

5.6 The following rules apply to all participants, including **convenors**, **technical leaders** and **participating companies. DO NOT:**

- ✗ Enter into discussions with competitors on topics that are not on the agenda, or go "off the record".
- ✗ Before, during or after an initiative / association meeting, **discuss or allow to be discussed** between (potential) competitors any of the examples of CSI in **Table 1** below, or any other confidential or competitively sensitive information.

Table 1: Guidance on high risk, competitively sensitive information

Examples of CSI
• Current or future sale or purchase prices of a commodity or final products, or any element of price (e.g., rebates, surcharges, mark-ups, discounts, credit terms, or any information that might signal one or more upstream supplier's or downstream competitor's future pricing decisions to another);

Examples of CSI
• Costs, in particular for individual manufacturers (e.g., raw materials, production, distribution and transportation costs, accounting formulas, methods of computing costs) or passing on costs to consumers (e.g., due to more sustainable but more costly inputs); • Profits and profit margins; • Terms or conditions on which downstream competitors source from upstream suppliers or supply to customers (including credit terms, warranties); • Individualised information on quantity, production capacities or quality of production or supply (including excess supply or capacity, sales volumes or revenues, planned closures, etc.); • Business strategy, including investment and acquisition / divestment plans, technology plans, and advertising, marketing or promotion plans, including proposed territories or customers; • Matters relating to individual upstream suppliers or customers that might exclude them from any market or marketplace or influence the business conduct of firms towards them, including the selection, rejection or termination of customers or suppliers and boycotts / blacklists; • Individual upstream supplier / downstream competitor recruitment, remuneration or compensation packages for employees / contractors / workers (including pay, bonuses, benefits and living incomes for farmers). If desirable, you can discuss legal requirements for and broader considerations regarding achieving minimum living wages / incomes in various jurisdictions, but downstream competitors and upstream suppliers must always be able to pay workers more than any minimum living wage / income; and • Holding back on innovation or investment in sustainability or technical development and / or not promoting / advertising sustainability efforts.

Table 2: Guidance on generally lower risk information that is less likely to be considered competitively sensitive

Examples of information that is generally not considered competitively sensitive
• Publicly available information, including evidence / best practices on policies / strategies to which downstream competitors or upstream suppliers are already committed in the public domain; • Non-confidential, general issues and trends (e.g., health and safety matters and developments relating to anti-discrimination, harassments and abuse, child-labour and climate change); • Developments in legislation affecting sustainability and lobbying efforts / relevant public relations (e.g., the Business and Human Rights Resource Centre), but NOT the specific impact that this has on any individual downstream company or upstream supplier in terms of costs, prices, production capacities and business strategy; • Issues relating to technology in general such as the characteristics and suitability of particular equipment and information technology, but NOT an individual downstream competitor's or upstream supplier's own proposals regarding the adoption of specific equipment and technology;

Examples of information that is generally not considered competitively sensitive
• Experiences in general terms such as problems / roadblocks encountered on downstream competitors' and upstream suppliers' own sustainability journeys (e.g., difficulties creating policies that are suitable for different regions / jurisdictions), but NOT the specific impact on prices, costs or production capacities; and • 'In principle' mechanisms which could be used to meet sustainability goals (e.g., voluntary targets, industry standards / quality labels), provided that individual companies always remain free to apply higher sustainability standards / goals.

Standard setting

5.7 Antitrust agencies recognise that standards, quality labels, principles, tools and guidance can generate benefits. However, the nature of any standard in particular and how it is decided upon can raise serious issues under antitrust laws. The same is also true of principles, tools and guidance if they are so strictly enforced so as to equate to a standard. Legal advice should be taken when developing a standard, but these pointers will keep risk to a minimum.

5.8 **DO:**

- ✓ Ensure that participation in standard-setting is as **unrestricted** as possible: competitors (and / or stakeholders) affected by the standard must be able to take part in choosing and elaborating the standard;
- ✓ Adopt a transparent procedure for establishing any standard;
- ✓ Give access to the standard on fair, reasonable and non-discriminatory terms; and
- ✓ Make it clear that the standard is **voluntary** and **minimum**, which companies are free to exceed.

5.9 **DO NOT:**

- × Discuss or agree on whether and / or how to pass on costs of any initiative to customers.
    - o Language is important – be careful not to use terms that could be misinterpreted as a signal / encouragement for price increases. Where possible, referring to how an initiative leads to higher "quality" products may be safer than saying an initiative will "increase value", which could imply that e.g., companies involved in initiatives to produce a standard will "increase value" by charging consumers higher prices for products meeting the standards.
- × Boycott, threaten or take other steps to penalise suppliers / customers who do not assist with initiatives or participate in any common scheme;
- × Develop (without taking separate legal advice) any sort of joint "blacklist" of non-compliant suppliers etc. If one is created by a third party, do not discuss its composition etc. with (potential) competitors;
- × Discuss or agree on any individual or collective commercial reaction to any future standards or regulatory developments (e.g., modifications to products etc., amendments to terms of supply, production curtailment);
- × Agree that companies / stakeholders will not develop or pursue new, alternative or supplier technologies;

- ✗ Agree to limit in any way technical development of any products or processes; or
- ✗ Share information that might result in the conduct above.

Joint lobbying

5.10 **Convenors**, **technical leads** and **participating companies** may engage in joint lobbying of governmental or regulatory bodies (e.g., in relation to law or regulations) in order to represent or protect the interests of participants. This might cover lobbying, advocacy and joint initiatives such as commissioning reports, gathering intelligence and jointly approaching suppliers and customers, but only in respect of legitimate topics.

5.11 Joint lobbying is unlikely to give rise to any competition law concerns provided that the following is respected:

- ✓ Due attention should be given to the intention behind lobbying activities: the aim can never be to restrict competition (e.g., by delaying standard-setting processes or filing frivolous lawsuits).
- ✓ There is no discussion about or agreement on how to react commercially to new regulatory developments – it is acceptable to cooperate with competitors in respect of the content and scope of a new regulation, **BUT NOT** on how this will impact the company's business, and how the company will react.

5.12 However, there can be a fine line between legitimate and illegal conduct. The following are key pitfalls:

- ✗ Do not take actions that are aimed at boycotting or punishing collectively any particular suppliers, producers or customers for not assisting with one of your initiatives.
- ✗ Do not discuss how to pass on the cost of any legitimate joint activities onto customers.
- ✗ Do not discuss how to react commercially to regulatory developments, covering production / supply / customer arrangements / product modification.
- ✗ Do not share information that could influence behaviour and lead to any of the events above.

5.13 If it is necessary for a multi-stakeholder initiative or association to obtain confidential commercial information from members in order to lobby effectively, **convenors / technical leads** should seek legal advice and ensure appropriate safeguards are put in place to avoid the disclosure of such information between the members (e.g., for example, by arranging for the information to be collected and processed by the **convener** / **technical lead**, or more preferably a neutral third party).

Joint proposals / bids

5.14 An agreement between potentially competing bidders, regarding the level or frequency of bids in response to tenders is strictly prohibited and is a criminal offence in many countries.[13] Types of bid rigging include:

(a) **Bid suppression** – competitors agree not to submit a bid or to withdraw a bid;

(b) **Complementary bidding** – competing bidders agree to submit token bids that are: (i) too low; or (ii) do not meet the criteria of the lender; and / or (iii) contain unacceptable conditions;

(c) **Bid rotation** – competing bidders taking turns at being the "winning" bidder; and

(d) **Compensatory arrangements** – the successful bidder agrees in advance to make payments or subcontract parts of a project to other companies to compensate them for not bidding / "losing".

[13] This could include Proforest bidding in an agreement with a competitor e.g., The Nature Conservancy or Conservation International.

5.15 These rules apply to all tenders, whether issued by public authorities or private parties. In addition, the mere exchange or receipt of information between competitors relating to bidding intentions or bid levels may itself give rise to competition law concerns.

5.16 However, joint proposals / bids between competitors may be permitted in limited circumstances, provided that they are genuinely necessary to enable participation in a tender and are not used as a means to reduce or distort competition.

5.17 Joint proposals or bids may be appropriate where the parties could not reasonably submit a credible bid independently, for example where they: (i) have complementary skills, specialisms or expertise; (ii) have access to different technologies, assets or geographic coverage required for the tender; and/or (iii) are economically or technically incapable of bidding alone.

5.18 Any joint proposal or bid must be fully transparent vis-à-vis the tendering authority or counterparty, including outside of formal tender processes, and must not involve any agreement or understanding relating to participation, pricing or strategy in other tenders or commercial opportunities.

5.19 Where joint proposals or bids are pursued, the following safeguards should be applied:

- ✓ cooperation must be strictly limited to what is necessary for the preparation and submission of the specific joint bid;
- ✓ any information exchanged must be limited to information required for that bid and must not include CSI unrelated to it;
- ✓ there should be clear contemporaneous records documenting the objective reasons why joint bidding is necessary and why the parties could not reasonably bid independently;
- ✓ there must be no side arrangements or pre-agreements, including relating to bid rotation, compensation, future tenders or subcontracting outside the scope of the specific project; and
- ✓ the parties must remain free to compete independently outside the specific joint proposal or bid.

5.20 It is recommended that legal advice is obtained before entering into any discussions with a competitor concerning a joint proposal or bid, including before sharing any information relating to bidding intentions, pricing or participation in a tender.

External communications

5.21 For multi-stakeholder initiatives, **convenors and technical leaders**, together with **participating companies**, should consider aligning on how those involved describe the relevant project's work on their respective websites, and have that language checked by a competition lawyer to ensure the language used or the fact there are multiple different descriptions are not creating unnecessary competition law risk.

Upstream / downstream competition compliance training

5.22 As a minimum, upstream suppliers and downstream **participating companies** involved in multi-stakeholder initiatives with **conveners** / **technical leaders** should have read and understood these Guidelines. They must understand what CSI is and how to object and stop any conversations that turn to competitively sensitive topics, such as those set out in **Table 1** above.

Annex 1: Antitrust Compliance Statement

Proforest's mission is to help people produce and source agricultural and forest commodities responsibly. Therefore Proforest supports companies throughout supply chains to have positive social and environmental outcomes in the places where commodities are produced. In achieving its mission, Proforest commits to respect all applicable laws and regulations and invests in an ongoing basis considerable time and effort to ensure that all of its operations are conducted in compliance with applicable antitrust provisions. Proforest and its employees commit to apply the highest standards when it comes to antitrust compliance to avoid any association, either directly or indirectly, with any violation of antitrust provisions.

We are here to discuss [insert purpose of meeting] and discussions at this meeting will be strictly limited to topics on the agenda, which has been circulated to meeting participants in advance.

Some of the participants in this meeting may be competitors in certain areas and therefore it is important that we comply with certain principles at this meeting. Breaching competition laws can result in serious penalties in many jurisdictions. As participants in this meeting, [and during any informal settings (e.g., during lunch)], we need to be mindful of the constraints of global antitrust / competition laws. There shall be no discussions of agreements or concerted actions that may restrain competition.

There shall also not be any exchange of confidential or competitively sensitive information – including, but not limited to, individual company current or future price information, costs, margins, volumes and capacity, market shares, third party business partners, including individual upstream suppliers and downstream customers, sales and operating plans, plans related to strategies for business, investment, marketing etc., rates, salaries / wages, market practices, or any other competitive aspect of an individual company's operation. Each attendee is reminded to abide by their obligations under global competition laws and by attending this meeting confirms their intention to do so.

Each participant is obliged to speak up immediately for the purpose of preventing any discussion falling outside these bounds[, including in informal / social settings]. Each company remains free to take its own independent action in innovation and sustainability and all other areas of competition and will abide by these principles throughout the sessions [and when socialising today]. If you are concerned whether it is permissible to disclose or discuss an issue, please raise this concern. [Minutes of this meeting are being taken and will be circulated together with a list of attendees after the meeting] [OR] [This meeting is being recorded, and the recording will be circulated after the meeting].

Annex 2: Agenda Template

Agenda

Meeting Name:

Meeting Date:

Meeting Time/Place:

Participants:

ANTITRUST COMPLIANCE STATEMENT (must be read out loud to the group):

We are here to discuss [insert purpose of meeting] and discussions at this meeting will be strictly limited to topics on the agenda, which has been circulated to each of the meeting participants in advance.

Some of the participants in this meeting may be competitors in certain areas and therefore it is important that we comply with certain principles at this meeting. Breaching competition laws can result in serious penalties in many jurisdictions. As participants in this meeting, [and during any informal settings (e.g., during lunch)], we need to be mindful of the constraints of global antitrust / competition laws. There shall be no discussions of agreements or concerted actions that may restrain competition.

There shall also not be any exchange of confidential or competitively sensitive information – including, but not limited to, individual company current or future price information, costs, margins, volumes and capacity, market shares, third party business partners, including individual upstream suppliers and downstream customers, sales and operating plans, plans related to strategies for business, investment, marketing etc., rates, salaries / wages, market practices, or any other competitive aspect of an individual company's operation. Each attendee is reminded to abide by their obligations under global competition laws and by attending this meeting confirms their intention to do so.

Each participant is obliged to speak up immediately for the purpose of preventing any discussion falling outside these bounds[, including in informal / social settings]. Each company remains free to take its own independent action in innovation and sustainability and all other areas of competition and will abide by these principles throughout the sessions [and when socialising today]. If you are concerned whether it is permissible to disclose or discuss an issue, please raise this concern. [Minutes of this meeting are being taken and will be circulated together with a list of attendees after the meeting] [OR] [This meeting is being recorded, and the recording will be circulated after the meeting].

Agenda Items:

1. …
2. …

Annex 3: Meeting Minutes Template

DRAFT MEETING MINUTES

Meeting Name:

Meeting Date:

Meeting Time/Place:

Participants:

ANTITRUST STATEMENT READ:

X Yes, by: ____________________ □ **No**

Meeting Topics:

1. … (see slides of [insert relevant reference to slides/presentation in case appropriate])
2.
3.
4. **Other matters** - No other matters were discussed.
5. **Close** - With no further business, the meeting was adjourned at [ ]

____

[***insert name of person taking minutes***]