

**THE AAC PRODUCER
ASSOCIATION (AACPA), INDIA
COMPETITION COMPLIANCE GUIDELINES**

COMPETITION COMPLIANCE GUIDELINES

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FOREWORD

The AAC Producers Association (AACPA), established in May 2014, is a society registered under the Societies Registration Act, 1860 (Bylaw 21) of the Government of India. The AACPA functions according to its stated objectives in the Memorandum of Association (MOA). In addition, AACPA has spelt out its Vision and Mission as given below:

Vision

Making AAC block the preferred building material of choice across the whole of India

Mission

- Provide leadership to the AAC Blocks industry in India
- Provide exceptional value to the Members without sacrificing the interests of end users, builders, architects, designers and owners
- Develop, maintain and improve self-regulatory framework of Quality
- Encourage sustainable development with the use of AAC Blocks
- Establish and promote within members the highest business, operational and quality standards
- Share latest developments and knowledge in AAC technology within member companies and with customers

The AACPA is consistently sought to instill a culture of compliance with various Indian laws amongst its members. The AACPA acts as a nodal agency to voice the industry's achievements and concerns before various Government agencies, regulators and ministries and its customers. At the same time the AACPA ensures that its good offices are not used for carrying out any illegal activity by its members. In furtherance of it's a vowed policy of strict adherence to the legal regime in India, AACPA Re-affirms its commitment to comply with the requirements stipulated under the newly Enacted competition law- the Competition Act, 2002. It is AACPA's policy that all its constituent members strictly comply with the requirements stipulated under the Competition Act, 2002 and the guidelines laid out in this Compliance Manual not only in form but also in substance. To assist its members in identifying

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situations that may have competition implications, AACPA is bringing forth this Competition Compliance Manual.

1. Statement of Policy

The Government of India has enacted a new legislation-the Competition Act, 2002 ('the Act'). The Act seeks to prevent such business practices which may have adverse effect on competition in India. It establishes an entirely new set of rules and regulations which may require a change in the manner in which enterprises have been carrying out business in India and the way trade associations have been functioning in India.

Although trade associations such as the AACPA are aimed at and make pro-competitive contributions to the Indian economy, the very fact that trade associations bring competitors together presents risks under the Act. Very often trade associations are viewed as a platform, which bring competitors together and facilitate the conclusion of agreements, which may have anti-competitive effects. Such agreements attract significant penalties under the Act. Hence it is imperative that office bearers of the AACPA and the representatives from its members exercise extreme caution while carrying out their functions.

The AACPA's office bearers and constituent members are required to acquaint themselves of the requirements stipulated under the Act and the guidelines stipulated in this manual. Any proposed deviation from this policy must be approved, in advance, by the President of AACPA with advice of legal counsel. Violation of this policy may subject the member to disciplinary action, including dismissal from membership.

II. Applicability of the Competition Act, 2002 to the AACPA

The Competition Act, 2002 seeks to regulate three types of conduct:

- (a) Anti-competitive agreement;
- (b) Abuse of dominant position;
- (c) Mergers and acquisitions

The Act does not contain any direct provision with respect to the functioning of trade associations. However, since the membership of trade associations comprises of competitors, every decision, direction or recommendation of an association will inevitably be required to be arrived at by consensus amongst the members. This meeting of minds between or amongst competitors is likely to be construed as an 'agreement' within the meaning of the Act.

It is important therefore that the decisions, directions and recommendations of AACPA and its members are not such as to attract scrutiny from the CCI and be characterized as anti-competitive agreements. Such decisions, directions and recommendations may be construed as anti-competitive agreements if they:

- (a) Result in price fixing;
- (b) Limit or control the supply of goods;
- (c) Result in division of markets;
- (d) Result in bid rigging or collusive bidding.

III. Objectives of the Competition Compliance program

The AACPA's Competition Compliance Program has the following objectives:

- I. Disseminate knowledge about what may constitute an illegal behavior under the Competition Act, 2002;
- II. Prevent violation of the provisions of the Competition Act, 2002 and all the Rules, Regulations & Orders made there under;
- III. Facilitate early detection of violations of the provisions of the Competition Act, 2002 and take preventive/corrective measures;
- IV. Promote a culture of compliance;
- V. Promote good corporate governance.

IV. Benefits of Compliance with Competition Act, 2002

The Competition Act, 2002 has become operational since May 20, 2009 and will be elementary in governing business transactions. Strict compliance with the requirements under the Act will benefit AACPA and its members in a number of ways, including:

- I. Providing AACPA and its members an advantage by enabling it to detect any violation at an early stage and take preventive steps;
- II. Assisting AACPA and its members in enhancing its reputation and building goodwill;
- III. Avoiding fines or mitigating the level of fines;
- IV. Pre-empting the possibility of concluding potentially void agreements;
- V. Avoiding possible actions for compensation;
- VI. Obviating or reducing the costs and negative effects of litigation and regulatory intervention.

V. Major Costs of Non-Compliance with the Provisions of Competition Act

Non-compliance with the requirements stipulated under the Competition Act, 2002 may prove very costly to trade associations and its members. The costs of non-compliance may be one or more of the following:

- I. Loss of goodwill and damage to reputation of trade association and its members;
- II. Substantial fines leviable on the association and its members:
 - a. In case of anti-competitive agreements:- Up to 10% of the average turnover of the enterprise in the last three years
 - b. In case of cartels: - Higher of three times the profits or 10% of the average turnover of the enterprise for each year of the continuance of such cartel;
- III. In case a violation of the provisions of the Act is determined by the Competition Commission of India, affected parties may approach the Competition Appellate Tribunal for compensation, which can be very substantial, depending upon the type of violation involved;
- IV. Drain of resources in handling competition law infringement cases.

VI. Compliance Guidelines for the AACPA

The following guidelines are prescribed for the AACPA members.

A. GUIDELINES FOR AACPA MEETINGS

AACPA shall not act as a platform for its members to either expressly or tacitly enter into anti-competitive agreements. Following are guidelines for the AACPA members:

a. Pricing and cost related issues

It must always be borne in mind that in no event shall there be a co-ordination between members of AACPA or the use of AACPA as a platform to determine the prices or manufacturing costs related to AAC blocks.

The AACPA members shall not facilitate the following activities:

- Joint determination of purchase or selling prices;
- Joint determination of price increases or decreases;
- Joint fixation of specific minimum or maximum prices;
- Agreement on rebates, discounts and other terms or conditions of sale;
- Exchange of price related information with members unless it is completely historical.
- Discuss what constitutes a 'fair profit level'
- Discuss the actual costs of production of individual Members

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b. Limiting production, supply etc.:

AACPA members are prohibited from holding any discussion, understanding, plan or facilitating agreements between the members that may lead to restriction or limitation on the production or supply of AAC blocks in particular:

The AACPA members shall not facilitate discussions or agreements on:

- Concerning the freezing, limitation or closing down of production capacity;
- For not using or employing a certain technology;
- For not selling a certain type of AAC blocks.

c. Market sharing:

In an AACPA meeting, Members shall be prohibited from discussing or sharing information on markets or allocating the market. In particular, the AACPA shall not encourage the following activities:

- Share or allocate markets among competitors in respect of specific territories, products, customers, or sources of supply;
- Fix production, buying or selling quotas among competitors.
- Bidding prices for projects
- Collusive tendering

d. Boycotts:

Refusal by Members to deal with one or more customers or suppliers in order to hinder such supplier or customer to do business is prohibited under the Act: The AACPA members shall not facilitate the following activities in their association meetings:

- Mutual agreement among all Members not to sell to certain customers or not to purchase from certain suppliers;
- Mutual agreement among Members to make the supply or purchase of goods subject to certain conditions.

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e. Collection and dissemination of information.

AACPA or its members shall not collect and disseminate information about prices, discounts, conditions of supply, profit margins, cost structures, calculation practices, distribution practices, territories or customers.

B. GUIDELINES ON RESTRICTION ON MEMBERS

Rules of admissions as members to an association should ideally be transparent, non-discriminatory and based on objective standards. Terms of exclusion from membership may have an appreciable adverse effect on competition if the effect of the exclusion is to put an enterprise at a competitive disadvantage. Similarly, the procedures for expulsion from membership may have an appreciable adverse effect on competition if they are not based on reasonable and objective standards and there is no recourse to proper appeal in the event of denial of or expulsion from membership.

AACPA should not:

- Exclude certain competitors from membership in their association when the applicant meets all by law requirements
- Restrict Members from dealing with non-members
- Prevent non-members from obtaining access to information which, if denied would limit the ability of the applicant to complete effectively with members of the association

C. GUIDELINES FOR CORPORATE COMMUNICATION

The powers of the CCI for conducting investigation and adducing evidence are very broad and include the powers for search and seizure. It is possible that the Members of AACPA may discuss issues related to the state of competition internally or with external person or organization. Sometimes the internal or external memos, e-mail and letter correspondences may because of the ambiguity in the language or exaggeration give rise to the suspicion of an anti-competitive practice. In order to pre-empt the possibility of misconception and misinterpretation it is advisable therefore that all memos, e-mails and letters be written carefully and in unambiguous terms. Competition Compliance Manual

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AACPA should not:

- Use words that may suggest illegal or secretive behavior, e.g. “please destroy after reading”, or “I should not tell you this, but....”
- Use language that falsely suggests members have collaborated amongst themselves e.g. “industry agreement” or “industry policy”.
- Use expressions that could appear flippant or as though you are speaking in code. For example, refer to a member by name, not as “our French friends”.

AACPA may:

- Use code-names to refer to legitimate projects that are confidential.

a. Minutes of AACPA meetings:

The AACPA office bearers and members shall adhere to the following rules while conducting/participating in the association meetings:

- Fix and circulate an agenda for the meeting in advance;
- Informal commercial discussions of any kind shall be avoided before or after the meetings;
- Accurate, detailed notes of the meetings must be taken;
- Objections should be made against any deviation from the agenda during the meetings which stray into prohibited areas;
- If any Member seeks to initiate a discussion on improper, objections must be voiced and recorded immediately. If the Member persists, other Members shall withdraw from the meeting. The minute keeper shall record the reasons for withdrawal of certain members from the meeting.