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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**LATIN AMERICAN COMPETITION FORUM**

**Session I: Competition Issues in Trade Associations**

**Call for Country Contributions**

**13-14 Septembre 2011, Bogotá (Colombia)**

*The attached document is circulated in preparation for the discussion under Session I of the Latin American Competition Forum at its forthcoming meeting to be held on 13-14 September 2011 (Colombia). Written contributions for that session should reach the Secretariat by 17 August at the latest. Advance notice of contributions by 29 July would be useful.*

Contact: Ms. H el ene Chadzynska, Administrator, LACF Programme Manager  
Tel.: +33 (0)1 45 24 91 05; Fax: +33 (0)1 45 24 96 95; Email: [helene.chadzynska@oecd.org](mailto:helene.chadzynska@oecd.org)

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## LATIN AMERICAN COMPETITION FORUM

-- 13-14 September 2011, Bogota (Colombia) --

Session I: Competition Issues in Trade Associations

### CALL FOR COUNTRY CONTRIBUTIONS

#### 1. Introduction

1. This request for contributions is circulated in preparation for the discussion to be held in Session I of the Latin American Competition Forum (LACF, 13-14 September 2011 in Colombia). Session I will discuss *Competition Issues in Trade Associations*. You are invited to make a written contribution to this discussion.

2. This call for contributions will identify possible issues which countries may wish to address in their written contributions and further discuss during the session on 13 September 2011. This should not be considered a prescriptive or exhaustive list of issues, and countries should feel free to describe other relevant issues that reflect their experiences. Speakers will be selected on the basis of the written contributions submitted to the OECD Secretariat in response to this call. All participating countries are invited to prepare submissions. To assist the OECD Secretariat with the detailed planning of the session, **advance notice by 29 July 2011** of your intention to provide a contribution would be helpful. The contributions should be sent by email to Erica Agostinho [Erica.Agostinho@oecd.org] (copied to: Helene Chadzyska [Helene.Chadzyska@oecd.org]) **by 17 August 2011 at the latest** (in electronic Word document, 5 pages maximum in Spanish or English). Country contributions will be circulated to participants through the OECD (<http://www.oecd.org/competition/latinamerica>) and Colombian websites (URL to be circulated shortly).

3. Background Notes on (i) the Potential Pro-Competitive and Anti-Competitive Aspects of Trade/Business Associations and (ii) Information Exchange Between Competitors under Competition Law, which were prepared by the OECD Secretariat for Working Party 3 and the Competition Committee respectively, are available on the LACF website: <http://www.oecd.org/competition/latinamerica>. The Secretariat will circulate a revised and updated version of the Trade Association Background Paper in advance of the LACF meeting.

4. Trade associations (also referred to as business associations) play an important role in modern economies. Although their principal function is to provide services to their members, trade associations also have important industry promotion functions. Most trade associations take an active role in shaping the way their industry works. They promote product standards and best practices (including compliance with competition law); they also define and promote standard terms and conditions of sale. They publish and enforce codes of ethics, and in some cases they formulate and enforce industry self-regulation. They issue recommendations to their members on a variety of commercial and non-commercial issues. Trade associations are also active lobbyists: representing and protecting the interests of members as regards legislation, regulations, taxation and policy matters likely to affect them.

5. In many countries, including in Latin America, the existence and some of the activities of trade associations are protected by the fundamental rights of freedom of association and expression and the right to freely petition the government. In order to prevent conflicts between these fundamental rights and competition policy objectives, many jurisdictions have exempted a number of trade association activities from the application of competition rules. However, these exemptions are generally interpreted narrowly, because accommodating these values may also impose costs on consumers.

6. Trade associations remain by their very nature exposed to antitrust risks, despite their many pro-competitive aspects. Participation in trade and professional associations' activities provide ample opportunities for companies in the same line of business to meet regularly and to discuss business matters of common interest. Such meetings and discussions, even if meant to pursue legitimate association objectives, bring together direct competitors and provide them with regular opportunities for exchanges of views on the market, which could easily spill over into illegal coordination. Casual discussions of prices, quantities and future business strategies can lead to agreements or informal understandings in clear violation of antitrust rules. It is for this reason that trade associations and their activities are subject to close scrutiny by competition authorities around the world.

7. The traditional areas of concern about trade associations are price fixing, allocation of customers or territories and bid-rigging. However, naked price fixing or customer allocation conspiracies orchestrated by a trade association are becoming rarer. Instead, competition enforcement is increasingly focussed on trade associations' practices that facilitate collusion among their members. Unduly restrictive membership rules, exchange of detailed and sensitive commercial information, exclusive or closed industry standards, marketing restrictions, and "ethical" codes regulating pricing or other trading practices that limit the members' ability to compete freely are among the antitrust-sensitive issues which most affect the activities of trade associations today.

8. Companies often exchange various types of information through different channels, including trade associations, which lead to increased transparency in the market which can be efficiency enhancing on the one hand, as well as a means of facilitating collusive outcomes among competitors, on the other hand. The potential for anti-competitive effects depends on a number of key factors, such as the type of information exchanged and the structural characteristics of the market involved. Competition authorities have considered the characteristics of the information exchanged, such as the subject matter, the historical nature of the information and the level of aggregation, as well as the way in which the information is exchanged.

## QUESTIONS FOR CONSIDERATION IN COUNTRY CONTRIBUTIONS

1. Countries are invited to address these general issues by reference to the illustrative questions below. Wherever possible, these responses should be illustrated by reference to specific cases.

### 1. Application of competition law to trade associations

- What is the definition of a trade association for antitrust purposes?
- Are the activities of trade associations specifically covered by the competition laws in your jurisdiction? Does this include second degree associations (i.e. associations of associations)?
- Are the activities, and if so which ones, exempted from the application of competition law (e.g. lobbying activities)?
- Do trade associations have a separate antitrust liability from their individual members? If so, under which conditions?

### 2. Pro-competitive role of trade associations

- How are the lobbying activities of trade associations assessed for their pro-or anti-competitive effects (e.g. does an agreement between members seeking to secure government imposed restraints on competition breach antitrust rules)?
- Are trade associations a vehicle for the competition authority to disseminate sound competition principles in a specific industry sector? Do trade associations foster compliance with competition rules through measures/programmes for their members?
- Briefly describe the industry promotion activities undertaken by trade associations considered to have legitimate purposes e.g. product standardisation, industry reports, best practices.

### 3. Anti-competitive role of trade associations

- Please provide examples of trade associations being used as a mechanism to organise naked restrictions on competition, e.g. price fixing, customer/market allocation, collusive tendering.
- Please provide examples of members using legitimate trade association activities to cover anti-competitive practices, without the knowledge of the trade association?
- As compared to these hard core antitrust infringements, have you sanctioned other trade association activities which raise competition concerns, e.g. restrictive membership rules, market information sharing, standard setting and certification programmes, restrictions on advertising activities.

### 4. Information exchange between competitors via trade associations

- What factors do you consider in assessing the lawfulness of information sharing programmes of trade associations? Are these practices differently from direct exchange of information between competitors?
- Do you, and if so how, distinguish between different types of information exchanges?
- Does your agency have guidelines or best practices on information exchange in the context of trade associations?