

# MEMBERSHIP PACK

## THIS PACK INCLUDES:

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A new member application form

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Details of the application process

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A copy of the ITMA Code of Practice

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EU Competition Guidelines for ITMA Members

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## NEW MEMBERSHIP APPLICATION FORM

*Note to Applicants:* Please ensure that this form is completed in full  
– failure to do so may delay your application.  
Once completed please forward the form to the  
International Tyre Manufacturers' Association.

**1. NAME OF MANUFACTURER OR BRAND REQUESTING MEMBERSHIP**

ADDRESS OF HEAD OFFICE

ADDRESS OF UK (or European) OFFICE

NAME OF COMPANY OFFICER RESPONSIBLE FOR UK OPERATIONS  
OR UK DISTRIBUTOR:

**2. NAME OF PROPOSED ITMA REPRESENTATIVE:**

**3. TURNOVER AND OWNERSHIP OF APPLICANT:**

**a)** State annual turnover in local currency: (worldwide) of parent company.

**b)** Give brief outline of ownership:

**4. PRODUCT RANGE: (Tick as appropriate)**

CAR

TRUCK

TRACTOR

OFF HIGHWAY

INDUSTRIAL

MOTOR CYCLE

OTHER

TUBES

We confirm that all our company's product ranges comply with all current applicable EU and international regulations.

**MEMBERSHIP RATES**

There is a standard basic charge of GBP £1,350 (+ UK VAT @ 20%),

PLUS

A 'multiplier' of GBP £500 per £1 million UK turnover + VAT (to a maximum of £5000)

Prices correct for 2017

Completion of this document represents a formal request for Membership of the Imported Tyre Manufacturers' Association Limited. If accepted for membership the applicant agrees to be bound by the rules of the Association. Members are required to give 12 months written notice should they wish to resign their membership.

SIGNED:

COMPANY:

DATED:

ITMA  
Belmont House  
London Road  
Billericay  
Essex  
CM12 9HJ

Director: A Graham  
Telephone: + 44 (0) 7802 250511  
E-mail: [agraham@itmaeurope.com](mailto:agraham@itmaeurope.com)

Company Limited by Guarantee. Registered in England: 1824999

**FOR ITMA USE ONLY:**

A) DATE APPLICATION RECEIVED

B) APPLICANT ADVISED:

C) SUBSCRIPTION RECEIVED:

## NEW MEMBER APPLICATION PROCESS

Complete the ITMA Membership  
Application Form



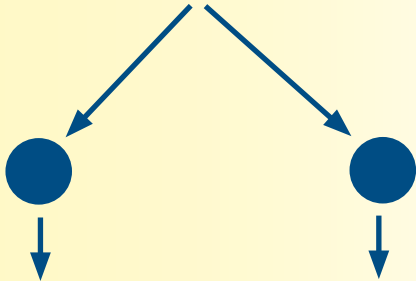
Please read the ITMA "Code of Practice" as well as the "Code of Practice on Product Recalls" issued by VOSA. Membership is subject to your agreement to abide by both.

Application is proposed & seconded  
by 2 different member companies



This procedure helps to maintain the professional reputation of ITMA and its member companies. Members must be proposed and seconded by a director or company secretary of an existing ITMA Member Company. A list of members can be found on the ITMA website [www.itma-europe.com](http://www.itma-europe.com)

Members consider & if necessary  
vote on the application



Telephone  
notification  
with reasons for  
ITMA rejection

Notification  
from ITMA  
Welcome Pack  
is sent

Invoice is issued  
for subscription  
and joining fee

ITMA prepares a proposal for presentation to its Members with the information you have provided. Turnover information supplied to us is kept in strict confidence and will be used for ITMA statistics and subscription calculation purposes only. Turnover is not used or published in isolation at any time.

On acceptance the applicant will be issued with a Welcome Pack that includes full details of member benefits.

Subscription fees run from 1st January to 31st December. Fees for members joining throughout the year will be calculated on a pro-rata basis. Subscription fees are reviewed annually.

# GUIDELINES FOR MEMBERS ON COMPLIANCE WITH EU AND UK COMPETITION LAW ON ASSOCIATION BUSINESS

## Introduction

ITMA, trading as International Tyre Manufacturers Association, is committed to complying with EU competition legislation and with the provisions of the UK Competition Act 1998, the Enterprise Act 2002 and subsequent or amending legislation.

By following the guidelines below you reduce the risk of your causing the Association to infringe this legislation. A breach of the rules can expose the Association and its members to fines of up to 10% of turnover.

## 1. UK rules – the Competition Act 1998

### 1.1 Chapter I Prohibition

Chapter I outlaws agreements between undertakings, decisions between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.

The prohibition targets cartels and price fixing amongst other practices. The prohibition applies to both formal and informal agreements whether or not set out in writing. It also applies to looser forms of co-operation – known as concerted practices – and to decisions of associations such as trade associations.

The prohibition applies only if relevant activity has an appreciable effect on competition in the relevant UK market. However agreements entered into between members of a trade association are likely to have an appreciable effect given their leading positions in many relevant markets.

### 1.2 Chapter II Prohibition

This prohibits conduct on the part of one or more undertakings which amounts to abuse of a dominant position in a market if it may affect trade within the UK (see para 6 below).

## 2. EU rules

### 2.1 Article 81(1) EC Treaty

This outlaws agreements between undertakings, decisions of 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.

The European Commission has issued a Notice on agreements of minor importance (de minimis), which states that in general Article 81 (1) will not apply to vertical agreements where each party holds no more than 15% market share of the relevant market, or horizontal agreements where the combined market share of the parties is no more than 10%. Agreements made between members of a trade association will be horizontal in the majority of cases. However this exemption would not apply in the case of price-fixing or market sharing.

### 2.2 Article 82 EC Treaty

This outlaws abuse by one or more undertakings of a dominant position within the common market insofar as it may affect trade between Member States.

NB: The rules apply in parallel to the UK rules and businesses can find themselves in breach of both EU and UK rules. Although the UK rules use similar (but not identical) wording to the EU rules they are more likely to apply to distinct or regional markets in the UK. [These guidelines therefore focus on the Competition Act and in particular on the Chapter I Prohibition. However many of the observations made in relation to the Chapter I prohibition apply equally to Article 81.]

## 3. Consequences of Infringement

The European Commission and the Director General of Fair Trading have wide-ranging powers of investigation and enforcement and can enter premises and demand documents at short notice or without notice (dawn raid). Documents include minutes of meetings, diaries, data, information stored on computer, sales figures etc. Both the Federation and its members can be the subject of a dawn raid.

Infringement by a trade association and/or its members of either EU competition law or the Chapter I or II Prohibitions could result in penalties being imposed on the Association itself, its members or both. Breaking the law in this area could have serious consequences for the Association and its members, for instance:

- Under EU law fines of up to 10% of worldwide group turnover can be imposed;
- Price fixing can result in imprisonment;
- Under UK law fines of up to 10% of UK turnover can be imposed for negligent or intentional breach;
- Restrictive agreements could be void and unenforceable;
- Involvement in proceedings may damage the industry's good name and reputation;
- Justified complaints could also lead to actions for compensation from affected parties;
- Dealing with an investigation by the European or UK authorities is both time consuming and expensive.

#### 4. Scope of Chapter 1 Prohibitions Affecting Trade Associations

The Office of Fair Trading guidance "Trade Associations, Professions and Self Regulating Bodies" (OFT408) acknowledges the value of trade associations. It states: "The functions of trade associations are clearly useful to members – especially perhaps to smaller firms – and they may be beneficial in increasing the efficiency of the market system as a whole".

While the Act strengthens the law on anti-competitive agreements, the activities of trade associations which have no appreciable effect on competition will be of no concern. A trade association could be indirectly the vehicle for anti-competitive, or even collusive, activity. Care must be constantly exercised to ensure the decisions, recommendations and other activities of such associations are not restrictive of competition and illegal.

The Chapter I prohibition can apply to agreements, decisions or concerted practices entered into by the Association:

**4.1 Agreements:** can be informal or formal and do not need to be in writing. An agreement can also be implied from conduct and it does not need to be intended to be binding. If an agreement is anti-competitive, the fact that such an agreement was made within a trade association makes no difference – it will still be caught by the Chapter I prohibition.

#### 4.2 Decisions include:-

4.2.1 resolutions of a management board or of the members in general or binding decisions of an executive committee the effect of which is to limit the commercial freedom of action of the members in some respect;

4.2.2 recommendations including oral recommendations which it is intended that members should follow;

4.2.3 membership rules.

**4.3 Concerted practices:** this is informal cooperation without any formal agreement or decision having been reached. In order for there to be a concerted practice there needs only to have been a meeting of minds which infers commitment to act in a certain way so replacing the risk of competition with a practical form of cooperation.

#### 5. Trade Association Activities

Below are examples of decisions, rules, activities of trade associations which have the potential to breach the prohibition. This is not an exhaustive list – it includes types of activities which would generally fall within the Chapter I prohibition.

## **5.1 Pricing**

Collective price fixing or price coordination of any product or service is likely to breach the prohibition, whatever form it takes. In practice any decisions including any recommendations as to prices and charges, including discounts and allowances, are likely to be found to have an “appreciable effect on competition”.

## **5.2 Information exchange**

Making information publicly available is generally considered helpful to competition. Trade associations often act as a forum for information exchange. The collection and publication of statistics are legitimate functions of a trade association.

## **5.3 Exchange of price information**

This may lead to price coordination and therefore eliminate competition. Sharing historical information (over three years old) is less of a problem. While the compilation of, for example, general price trends for an industry may not have an appreciable effect on competition, it must not cover confidential information relating to individual undertakings. If done independently through a trade association there is little effect on competition.

However the exchange of specific price information between competitors is likely to facilitate the coordination of market conduct, whether done independently by the members or the trade association itself, and so will be caught by the Chapter I prohibition.

## **5.4 Exchange of non-price information**

The exchange of information on output and sales should not affect competition provided that it is sufficiently historic and cannot influence future competitive behaviour. However there may be an effect if it is possible to break up the information and identify the participants and if the exchange relates to recent, current and future information. The exchange must not enable confidential or sensitive business information to be shared.

## **5.5 Technical standards**

Trade associations may assist in or facilitate the setting up of technical industry standards. If the system and the requirements of certification are objective and reasonable and open to everyone they are unlikely to be of concern. However the introduction of standards only open to members or which decrease significantly the ability of new competitors to set up in the market may well have an appreciable effect on competition.

## **5.6 Terms of membership**

Rules of admission to an association or association group should be transparent, proportionate, non-discriminatory and based on objective standards. Those that are not may breach the Chapter I prohibition especially if exclusion from membership puts an undertaking at a disadvantage. Similarly procedures to expel members not based on reasonable and objective standards and no proper appeals procedure are at risk.

## 5.7 Exclusions and exemptions

Certain exemptions and exclusions are available but careful consideration should be given before assuming any of these will apply.

The kinds of activities of the Association which might be considered suitable for individual exemption include:

### i) **Standard terms and conditions**

These are generally regarded as of benefit to consumers as long as they do not include terms likely to be relevant to a customer in choosing between competing suppliers, for example, if they indirectly affect the prices to be charged.

### ii) **Codes of conduct**

These are often drawn up with the approval of OFT in its consumer protection role.

## 6. **Abuse of dominant position**

A business commits an offence where it is in a dominant position in its market and abuses that position. A trade association can be affected by these rules in a number of ways. An individual member may be dominant. Alternatively a number of members may collectively be dominant (though the legal basis for collective dominance is not well established). In addition the association itself may have market power and exert dominance though this will not occur often.

The following are examples of actions of a dominant undertaking which are likely to infringe the Chapter II prohibition:

- Imposing excessive prices for products
- Selling or procuring the sale of products at below cost (predatory pricing)
- Unjustifiable refusal to supply
- Discriminatory pricing
- Forcing customers to buy unrelated products

There is no fixed percentage market share which establishes dominance. A market share of 40% or more may be treated as dominant and as a general rule dominance is presumed where a business holds over 50% of the market. However, depending on the structure of the market, the particular threshold may be lower.

While the Association and its members should be aware of these rules, it is unlikely that they will have a direct impact on its activities given its influence and position in the industry. Individual members may, however, be dominant and the Association should ensure that it is not party to any activities where abuse of a dominant position can be alleged.

## **7. Meetings of Members of the Association**

Membership of the Association provides a useful forum in which to discuss matters of industry concern. However, unless care is exercised, the decisions, recommendations and other activities of the Association could run the risk of being considered as restrictive of competition and illegal.

**7.1** All Association staff, Board, Group and Committee members should familiarise themselves with the Act's prohibitions and comply with them through following these guidelines.

**7.2** The Board, Groups and Committees should be issued once each year with these guidelines.

**7.3** In considering admission or expulsion from the Association and its groups the President and Director must ensure that they are not in breach of the Chapter I prohibition (see 5.6)

**7.4** Those chairing Association meetings, wherever they may be held, must never permit the following issues covered by the Chapter I prohibitions to be discussed:

- Price levels
- Discounts
- Sales information
- Standard terms and conditions for customers which will affect price or credit and are material to the manner in which competitors compete.

### **7.5 Chairs of Association meetings should:**

Ensure that a written agenda is issued in advance and does not cover subjects likely to be subject to prohibition under the Act.

Stick as far as possible to the written agenda. Do not allow discussion to diverge into matters likely to be subject to prohibition under the Act.

If concerned about a particular conversation, the Chair of the meeting should request that the discussion is ended. If members or others refuse to end the discussion the meeting must be closed immediately by the Chair and the foregoing accurately recorded in the minutes. The incident should be reported to the Secretary, acting as Compliance Officer.

**Alfred Graham**  
**ITMA Director & Compliance Officer**

## **CODE OF PRACTICE**

### **Introduction**

This Code of Practice was drawn up by ITMA, trading as International Tyre Manufacturers Association in relation to the supply of new tyres.

The principles set out are not intended to interpret, qualify or supplant the law of the land, and are not intended to be applied to non-consumer sales. The Code will be brought up to date from time to time as the occasion demands.

The Association regards it as a duty laid on its members that they will accept the Code in its entirety, and make their adherence to it known to their customers. In particular, the Code's provision for redress should be made clear in the event of a dispute. A customer who feels dissatisfied with the treatment he has received from a member has the right to submit his grievance to the Association as a final resort.

It should not be overlooked that the customer also has his part to play. It is only by cooperating fully with those who sell, make and service tyres that the customer can get the maximum benefit from his or her purchase. In particular, by maintaining the vehicle and its tyres in accordance with manufacturers instructions; customers can ensure that they get the best possible use out of their tyres and that their troubles are reduced to a minimum.

### **Throughout the Code:**

The term **MANUFACTURER** is taken to include concessionaire/importer or brand owner who are members of the Association.

The term **DEALER** is taken to include retail dealer or distributor or supplier of goods or services.

The term **CUSTOMER** is taken to include the purchaser or user.

The term **MANUFACTURER'S WARRANTY** refers only to that warranty (if any) offered by the manufacturer to the customer. Customers may find that the manufacturer's warranty is not available to them if they have purchased a tyre not intended for European markets.

### **General**

**1.1** Dealers must bear in mind that for the sale of goods to customers they are responsible under the current Sale of Goods Act for ensuring that the goods are of merchantable quality and fit for the purpose for which they are required. Statements whether oral or in writing which are in apparent conflict with this principle must be avoided.

**1.2** Each tyre must conform fully to all legislation affecting its construction, use and maintenance and must be of merchantable quality. This paragraph does not affect any legal responsibilities placed on manufacturers and users to ensure this.

## **Advertising**

2.1 All advertising by manufacturers and dealers must comply with the codes and standards set by the Advertising Standards Authority and relevant broadcasting authorities.

2.2 Advertisements must not contain any references to guarantees or warranties which purport to take away or diminish any rights of a consumer nor should they be worded as to be understood by the consumer as so doing.

2.3 Claims and descriptions in advertisements should not be false or misleading. In particular any comparison with other products of different manufacturers should be based on a similar set of criteria and should not be presented in such a way as to confuse or mislead the customer.

## **Service**

3.1 ITMA member companies accept a responsibility for ensuring the reasonable availability of replacement products to the distribution chain.

3.2 Replacement tyres should be readily available from the manufacturer from the time that a new size/type of tyre is offered for sale in either Original Equipment or Replacement markets.

## **Handling Complaints under the Code**

4.1 ITMA members must ensure that effective and immediate action is taken with a view to achieving a just settlement of a complaint. To this end they will operate a fair and equitable policy for the handling of complaints. If, after efforts have been made to resolve a problem, the customer remains dissatisfied the dealer must draw his attention to the conciliation and arbitration procedures available through the appropriate trade association. Members must give every assistance to their dealers in handling complaints under warranty, or those in which the manufacturer is otherwise involved.

4.2 When complaints are raised through a third party (e.g. a Trading Standards Officer, Citizens Advice Bureau, or other authorised representative of the customer) co-operation must be given and every attempt should be made to re-establish direct communication with the complaining customer and to reach a satisfactory agreement.

4.3 In the event that the complaint is not resolved, manufacturers and dealers must make it clear to a customer that he has the right to refer the complaint to the appropriate trade association.

4.4 Manufacturers and dealers will give every assistance to the association concerned while it is investigating a complaint. The trade association will establish liaison as necessary.

4.5 Where conciliation has failed to resolve a dispute the Association has agreed to co-operate in the operation of low cost arbitration arrangements. Customers must always be advised that they have the option of taking a claim to the courts but cannot seek redress by both means, either simultaneously or successively.