



ÉTICA & COMPLIANCE

NA CONSTRUÇÃO

— **CBIC** —

CODE OF CONDUCT ON COMPETITION

GUIDELINES ON ETHICS AND COMPLIANCE
FOR INSTITUTIONS AND COMPANIES IN
THE CONSTRUCTION INDUSTRY

CBIC

ÉTICA & COMPLIANCE

NA CONSTRUÇÃO

— **CBIC** —

CODE OF CONDUCT ON COMPETITION

GUIDELINES ON ETHICS AND COMPLIANCE
FOR INSTITUTIONS AND COMPANIES IN
THE CONSTRUCTION INDUSTRY

Co-Organizador



Iniciativa da CNI - Confederação
Nacional da Indústria

Organizador



CREDITS

José Carlos Martins

President, CBIC

Ana Cláudia Gomes

President, Social Action and Citizenship Forum – FASC/CBIC

Carlos Eduardo de Lima Jorge

President, Public Work Committee – COP/CBIC

GO Associados

Advisors

Doca de Oliveira

Communication Coordinator – CBIC

Geórgia Grace

Project Coordinator – CBIC

Cláudia Rodrigues

Project Management – FASC/CBIC

Denise Soares

Project Management – COP/CBIC

Gadioli Branding e Comunicação

Graphic Design

CODE OF CONDUCT ON COMPETITION

GUIDELINES ON ETHICS AND COMPLIANCE
FOR INSTITUTIONS AND COMPANIES IN THE
CONSTRUCTION INDUSTRY

Brasília, June 2016

Câmara Brasileira da Indústria da Construção - CBIC
SQN - Quadra 01 - Bloco E - Edifício Central Park
13º Andar CEP 70.711-903 - Brasília/DF
Telefone: (61) 3327-1013

ÉTICA & COMPLIANCE

NA CONSTRUÇÃO

— **CBIC** —

CÓDIGO DE CONDUTA CONCORRENCIAL

GUIDELINES ON ETHICS AND COMPLIANCE
FOR INSTITUTIONS AND COMPANIES IN
THE CONSTRUCTION INDUSTRY

Co-Organizador



Iniciativa da CNI - Confederação
Nacional da Indústria

Organizador



TABLE OF CONTENTS

Introduction	09
1. Compliance Programs	12
2. Concepts of competition	16
I. What is competition's legal framework?	16
II. What is the importance of competition for CBIC and our members?	16
III. How can the respect for competition improve society's well-being?	17
IV. When does abuse of economic power occur?	17
V. What is a cartel?	17
VI. What is the difference between cartel and oligopoly?	18
VII. Why fight against cartels?	18
VIII. Who to look for in case of behavior that damages competition?	18
IX. How to define the relevant market? How is this topic important?	19
X. What is the barrier to entry concept?	19
3. Necessary steps to be taken in relationships	22
I. Competitors	22
II. Clients	22
III. Providers	23
IV. Sector associations	24
V. General	25
VI. Penalties	26
4. Market practices subject to risk	30
5. Role of sector associations in the development of best practices on competition	34
I. Exchange of sensible information	35
II. Meetings with competitors	35
III. Price rigging	36
IV. Ethical code	36
V. Standardization and certification	36
VI. Criteria for accepting and expelling members	37
VII. Treatment granted to non-members	37
VIII. Exchange of information	37
6. CBIC Compliance Program	40
Anexo: conheça outras publicações CBIC	43





INTRODUCTION

The Brazilian Construction Industry Chamber (Câmara Brasileira da Indústria da Construção, CBIC) was founded in 1957, in the State of Rio de Janeiro, aiming to approach issues related to the Construction Industry and the Real Estate Market, and to represent the industry in Brazil and abroad. Headquartered in Brasília, CBIC gathers 77 company groups and associations from the construction industry in all 27 states of the Federation.

CBIC represents the industry at a political level and supports the integration of the construction's productive chain nationally, contributing for Brazil's economic and social development.

CBIC also represents the Brazilian Construction Industry abroad. We are also members of the Inter-American Construction Industry Federation (FIIC), affiliated to the Internatio-

nal Confederation of Construction Associations (CICA). FIIC and CICA, along with other international entities from other geographies, comprise an entity in charge of a global interchange within the industry.

This code aims to set up guidelines to reference best practices on the protection of competition by CBIC members in Grants and PPPs, in order to prevent competition violations and to ensure the competitive environment in the industry.

It was elaborated based on the Compliance Program Guide from the Administrative Council for Economic Protection (Conselho Administrativo de Direito Econômica, CADE) and on the booklet on Fighting Trusts on Unions and Associations, drafted in 2009 by the now defunct Economic Law Secretariat (Secretaria de Direito Econômico, SDE).





1. COMPLIANCE PROGRAMS

1. COMPLIANCE PROGRAMS

An antitrust compliance program is characterized by establishing internal regulation to be complied with by the companies, aiming to prevent practices against the eco-

nomy and to introduce a new culture towards competition.

Compliance programs are based upon three pillars:



Prevention: To ensure that the company is compliant with competition rules



Encourage competition in the supply chain



Actively advocate competition

From the standpoint of the Organization for Economic Cooperation and Develop-

ment (OCDE), the five cornerstones for a compliance program are:



Risk assessment



Buy-in from senior management



Monitoring



Training, records, and documentation



Ongoing enhancement



There is no unique compliance program model. It is necessary to consider:



The size of the company



The value and nature of commercial activities



The location of activities and deals performed



Ongoing assessment of risks







2. CONCEPTS OF COMPETITION



2. CONCEPTS OF COMPETITION

I. WHAT IS COMPETITION'S LEGAL FRAMEWORK?

The 1988 Federal Constitution devotes a whole chapter to economic activity's general principles.

Free competition is placed as one of the angular stones so to establish repression on

abuse of economic power that aims to the elimination of competition, the dominance of markets and the arbitrary increase of profits. The chapter also stipulates penalties for actions against economic order.

II. WHAT IS THE IMPORTANCE OF COMPETITION FOR CBIC AND OUR MEMBERS?

CBIC Members deal with issues related to competition with their vendors, buying from markets with quite different structures. In this specific case, as acquirer of goods

and provider of products and services, companies can create mechanisms that may enable the procurement market.



Furthermore, companies exposed to free competition tend to align with consumer's wishes and expectations, because they are always at risk of losing share for new products with higher quality.

III. HOW THE RESPECT FOR COMPETITION MAY INCREASE SOCIETY'S WELL-BEING?

As for providers, encouraging competition forces raw-material and service providers to keep their prices as low as possible, as otherwise they would risk losing their clients to other companies. Furthermore,

companies exposed to free competition tend to align with consumer's wishes and expectations, because they are always at risk of losing share for new products with higher quality.

IV. WHEN DOES ABUSE OF ECONOMIC POWER OCCUR?

The abuse of economic power occurs every time a company or a group of companies uses its economic power to damage competition through anti-competition behavior. Such abuse is related to the use

of such power against competitors - potential or actual - aiming to keep or expand a dominant share in the market at the expense of consumer's well-being.

V. WHAT IS A CARTEL?

A cartel is an agreement among competitors to jointly maximize profits. Instead of having these companies competing against themselves, they coordinate their behavior so to obtain profits as higher as possible at the expense of consumers. When such coordination takes places, less is produced and sold at a higher price, thus reducing well-

-being. It is known that cartels can be arranged by price rigging, setting up territories for each company, illegal agreement on public and private bids and so on. Among the many cartel practices there is the exchange of strategic information to fully or partially get rid of competition.

VI. WHAT IS THE DIFFERENCE BETWEEN CARTEL AND OLIGOPOLY?

A common mistake is to treat oligopoly and cartel as the same thing. An oligopoly is a market specific regime where few companies operate. It is the middle ground between the monopoly, where there is only one company and the competitive

market, where there is a very large number of participants. It is not a crime to join an oligopoly. As it is the case in many other countries, the majority of the Brazilian output is produced by oligopolies.

VII. WHY FIGHT AGAINST CARTELS?

Because cartels aims to rig prices, share clients and agree on other commercial policies through an overt or implied cooperation among market's main participants,

aiming for getting profits similar to those obtained in a monopoly. If cartels are fought against, prices are lower and consequently society's well-being increases.

VIII. WHO TO LOOK FOR IN CASE OF BEHAVIOR THAT DAMAGES COMPETITION?

Reports shall be made to the General Superintendence of the Administrative Council for Economic Protection (Superintendência Geral do Conselho Administrativo de Defesa Econômica, CADE), being substantiated by documents that may guide the entity's assessment, preferably in de-

tail. If evidence is found for anti-competition behavior, the General Superintendence updates the administrative inquiry into an administrative process to ensure the defendant broad defense rights about the administrative inquiry findings and to perform a supplemental instruction.

If evidence is found for anti-competition behavior, the General Superintendence updates the administrative inquiry into an administrative process

IX. HOW TO DEFINE THE RELEVANT MARKET? HOW IS THIS TOPIC IMPORTANT?

The relevant market is understood as the economic space in which it is plausible to assume the possibility of applying economic power. By setting up boundaries to the relevant market, it is possible to determine comparison benchmarks for agents operating in a given region and industry. From the Competition Law standpoint, it is im-

portant to determine a product's relevant market. A proper definition of this market can help to design bid's notices, increasing competition by inserting substitute goods or services, as well as expanding the range of competitors by allowing the participation of foreign vendors, for instance.

X. WHAT IS THE BARRIER TO ENTRY CONCEPT?

Barrier to entry is factors in or out of productive process that may limit the competition level in a given market. As an example, one can mention high and unrecoverable costs, brands and patents, and new technologies. Several barriers to entry

arise naturally from technical aspects that are inherent to the productive process. However, homologation criteria that are justified but create nevertheless excessive barriers artificially preventing more competitors to bids shall be avoided.







3. NECESSARY STEPS TO BE TAKEN IN RELATIONSHIPS



3. NECESSARY STEPS TO BE TAKEN IN RELATIONSHIPS

According to Law 12.529/11, the following are violations to the economic order:

- I - To limit, misrepresent or damage in any way free competition or free initiative;
- II - To dominate a relevant market of goods or services;
- III - To arbitrarily increase profits; and

IV - (iv) To abuse a dominant position.

The law establishes necessary steps to be taken in relationships with competitors, clients, providers, and sector associations. Relationships deemed as illicit are subject to penalties by CADE.

I. COMPETITORS

In a relationship with competitors, some precautionary steps shall be taken. The following are violations to the economic order:

- I - To agree, combine, manipulate or adjust with competitors:
 - Prices of goods or services individually offered;
 - The product or marketing of a restricted or limited quantity of goods or the delivery of a restricted or limited number, volume or frequency of services;
 - The division of portions or segments of an actual or potential market for goods or services, through the distribution of clients, providers, regions or periods of time, among others; and

• Prices, terms, benefits or absence in a public bid.

II - To promote, obtain or influence the adoption of a uniform or joint commercial behavior among competitors;

III - To limit or prevent new companies to access the marketplace;

IV - To place obstacles to the constitution, operation or development of a competitor;

V - To prevent a competitor access to raw-material, input, equipment or technology sources, as well as to distribution channels; and

VI - Utilize false means to generate variation on prices of third parties

II. CLIENTS

In a relationship with clients, some precautionary steps shall be taken. The following are violations to the economic order:

I - To impose resale prices, discounts, payment terms, minimum or maximum quanti-

ties, profit margins or any other marketing terms to distributors, retailers and representatives, in order to affect their businesses with third parties;

II - To differentiate buyers of goods or services by setting distinct prices or operational sale terms or service delivery;

III - To refuse to sell goods or deliver services within usual payment terms of a marketplace;

IV - To make difficult or to break the continuity or development of trade relationships of undetermined period due to a refusal from the other party to submit to unjustifiable or anti-competition clauses and commercial terms;

V - To put obstacles to the constitution, operation or development of a buyer of goods or services;

VI - To sell goods or deliver services below cost prices without justification; and

VII - To subordinate the sale of a good to the acquisition of another or the usage of a service, or subordinate the delivery of a service to the usage of another or to the acquisition of a good.

III. PROVIDERS

The relationship with providers shall also be run on a careful basis. The following are violations to the economic order:

I - To place obstacles to the constitution, operation or development of a provider;

II - To differentiate providers of goods or services by setting distinct prices or operational sale terms or service delivery; and

III - To make difficult or to break the continuity or development of trade relationships of undetermined period due to a refusal from the other party to submit to unjustifiable or anti-competition clauses and commercial terms.



IV. SECTOR ASSOCIATIONS

It is understood by Sector Association the partnership of companies and persons with their own legal framework and legal nature, of civil nature, whose aim is not the future share of profits and is not subject to bankruptcy, as it is constituted to deliver services to its members.

Sector Associations shall take several precautionary steps, such as the nature of meetings and events, information and data in discussion, and the potential to eliminate competition partially or in full. As per the above, Sector Associations shall take steps required to ensure their activities lead to the accomplishment of their legitimate, licit goals.

Meetings are legal until proved otherwise. Basically, topics affecting the sector as a whole can be discussed, such as legal affairs, sector's representation to authorities, among others. All strategic information shared shall be considered as suspicious. The mere exchange of information suffices for companies to change their behavior in the marketplace, which is not competition as they already know their competitors' reactions. In other words, competition is harmed when one already knows what the other is about to do, and buyers pay more and/or obtain worse products or services.

These are the reasons why a lot of care shall be taken when joining meetings. The following are violations to the economic order:

I - To join meetings to discuss fixing prices; and

II - To join meetings to discuss marketing process and/or market share

For this reason, it is recommended that:

I - Before joining any meeting, the first thing to do is always to examine the agenda to find if topics included can be discussed. Extreme care must be applied with the recurring item "Other topics of general interest", which usually hides problems. The best thing is not having this topic in the agenda.

II - By joining a Sector Association meeting and if any topic off-agenda is covered, and if such topic may constitute a violation against economic order, it is necessary to flag it to the other participants of the meeting and if the discussion proceeds, it is required to leave the venue immediately, requesting that such leave is added to the meeting minutes and after that, to send a message to the Association explaining the reason for the leave (which may constitute future evidence in case of being accused of practices against the economic order).

III - Request that the meeting minutes record the departure from the meeting. When receiving the meeting minutes, even if not incident has taken place, it should be carefully examined to prevent any wrong conclusions. If such leave has occurred in the terms of the item above, and if such

The mere exchange of information suffices for companies to change their behavior in the marketplace, which is not competition as they already know their competitors' reactions.

leave is not properly registered in the meeting minutes, it is very important to send

a message to all meeting participants, also in the terms of the previous item.

V. GENERAL

The following are violations to the economic order:

I - To grant or request exclusivity for advertising on mass media;

II - To regulate markets for goods or services, establishing agreements to limit or control research and development of technologies, the production of goods or the delivery of services, or to make difficult investments for the production of goods or services, or to their distribution;

III - To destroy, render unusable or corner raw materials, intermediary or finished products, as well as to destroy, render unusable or make dif-

ficult the operation of equipment to produce, distribute or transport them;

IV - To corner or prevent the exploration of industrial, intellectual or technological property rights;

V - To retain production or consumer goods, except in case to ensure recovery of production costs;

VI - (vi) To partially or fully cease company's activities without a justified and proved reason; and

VII - (vii) To exercise or explore abusively industrial, intellectual, technology or brand property rights.



VI. PENALTIES

The practice of acts that violate the economic order subjects to the penalties below:

- **Companies:** 0.1% to 20% of gross revenue of the company, group or conglomerate in the industry where such violation has taken place;

- **Administrators:** 1% to 20% of the fine imposed upon the company; and

- **Sector Associations:** 50,000 BRL to 2 billion BR.

In case of **relapse, fines are doubled.**

FINES APPLIED RECENTLY BY CADE TO EXECUTIVES IN CASES OF CARTELS

Executives	Administrative Process	Ruling Year	Fine (R\$)
Surveillance Cartel (bids for hiring surveillance services in the state of Rio Grande do Sul)	08012.001826/2003-10	2007	5,9 milion
Refrigerated Warehouse Cartel	08012.002493/2005-16	2005	1,3 milion
Medicine Gas Cartel	08012.009888/2003-70	2008	5,4 milion
Peroxide Cartel	08012.004702/2004-77	2011	16 milion
International Air Cargo Cartel	08012.011027/2006-02	2013	1,5 milion
Fuel Cartel in the city of Caxias do Sul - RS	08012.010215/2007-96	2013	10 milion
Fuel Cartel in the city of Londrina/PR (2000)	08012.001003/2000-41	2013	4,3 milion
Cement Cartel	08012.011142/2006-79	2014	24,4 milion
Air Cargo Cartel (ECT Bids)	08012.010362/2007-66	2014	1,1 milion
International Maritime Hose Cartel	08012.010932/2007-18	2015	117 mil



FINES APPLIED RECENTLY BY CADE TO COMPANIES IN CASES OF CARTELS

Company	Administrative Process	Year of Ruling	Fine (BRL)	Value (BRL)
Rebar Cartel	08012.004086/2000-21	2005	340 milion	7
Gravel Cartel	08012.002127/2002-14	2005	60 milion	15-20
Surveillance Cartel (bids for surveillance services in the State of Rio Grande do Sul)	08012.001826/2003-10	2007	35,3 milion	15-20
Refrigerated Warehouse Cartel	08012.002493/2005-16	2007	13,7 milion	5
Sand Cartel	08012.000283/2006-66	2008	1,3 milion	10-22,5
Medicine Gas Cartel	08012.009888/2003-70	2011	2,3 bilion	25 (50 for a company deemed as repeat offender)
Peroxide Cartel	08012.004702/2004-77	2012	133,6 milion	-
International Air Cargo Cartel	08012.011027/2006-02	2013	195 milion	-
Fuel Cartel in the city of Caxias de Sul – RS	08012.010215/2007-96	2013	55 milion	-
Fuel Cartel in the city of Londrina - PR	08012.001003/2000-41	2013	31,6 milion	-
Cement Cartel	08012.011142/2006-79	2014	3 bilion	-
Air Cargo Cartel (ECT's bid)	08012.010362/2007-66	2014	82 milion	-
International Maritime Hose Cartel	08012.010932/2007-18	2015	13,4 milion	-
Medical-hospital Services Cartel	08012.006969/2000-75	2015	18,6 milion	-

In addition to fines, Law 12.529/2011 allows CADE the application of other penalties to individuals and companies violating the economic orders.

Under the terms of article 38 of Law 12.529/2011, such penalties consist of:

I - Publication in half page of a newspaper named in the ruling, under the expenses of the violator, of the statement of court ruling by 2 (two) consecutive days of 1 (one) to 3 (three) weeks in a row;

II - Prohibition to get loans from official financing institutions and to join bids for acquisitions, divestitures, delivery of works and services, grants of public services by the Federal, State, City and Federal District public administrations, as well as by entities of indirect administration by no less than 5 (five) years;

III - Enrollment of the violator to the Consumer Defense National Registry;

IV - Recommendation to relevant public entities to: **I** - grant a compulsory waiver for an intellectual property right held by the violator, when the violation is related to the use of such right; and **II** - deny an installment plan for paying federal taxes owed by the violator or to write off, fully or partially, tax incentives or public subsidies;

V - Dissolution of a partnership, transfer of partnership control, sale of assets or partial cease of activities;

VI - Prohibition to market under its own name or as a representative of a company by no less than 5 (five) years; and

VII - any other action or measure required to eliminate the harmful effects to the economic order.





4. MARKET PRACTICES SUBJECT TO RISK

4. MARKET PRACTICES SUBJECT TO RISK

Anti-competition behaviors can be divided into horizontal and vertical.

Horizontal behavior is the attempt to reduce or eliminate competition in the same relevant market, whether by agreements with competitors or through predatory pricing.

Horizontal behavior is also divided into two large groups:

I - Collusive behavior, that assumes an agreement among competitors within the same market; and

II - Exclusive or unilateral behavior, in which the owner of dominant share in the market behaves in a way to unilaterally exclude their competitors from the relevant market.

Exercising predatory pricing, another example of horizontal behavior, is a pricing strategy with the goal to get rid of rivals and entrants to the market, thus obtaining gains in the long-term. It can be described as selling products below their cost of production, thereby eliminating competitors.

Exercising predatory pricing, another example of horizontal behavior, is a pricing strategy with the goal to get rid of rivals and

entrants to the market, thus obtaining gains in the long-term. It can be described as selling products below their cost of production, thereby eliminating competitors.

Cartels, by its turn, can be described as an agreement among competitors under several guises, such as price rigging, production, distribution quotas and geographical division, aiming extraordinary gains.

As for vertical behavior, it consists of restrictions imposed by producers, bidders or distributors with significant market power of goods or services in a given market of origin upon vertical markets across the productive chain. Such restriction can be placed since the production of raw materials until the final product's distribution.

More common vertical behaviors are: fixing resale prices, when the producer determines the price to be used by distributors; restriction on geographies and clients, when the producer controls the distribution of the product in some regions or for some clients; exclusivity agreements to prevent the sale of products by other agents; tie-in sales, when the sale of a product is tied-in to the purchase of another product, and so on.

ANTI-COMPETITION BEHAVIORS

HORIZONTAL BEHAVIOR	VERTICAL BEHAVIOR
I - Cartels	I - Resale price fixing
II - Other agreements among companies	II - Temporal restrictions to the base
III - Illicit acts by Sector Associations	III - Exclusivity agreements
IV - Predatory pricing	IV - Refusal to negotiate
	V - Tie-in sales
	VI - Price listings

There are basically three steps to identify whether a practice constitutes or not a violation against the economic order:

I - The identification of the nature of the behavior and the its legal definition, by means of evidences included in the investigation process;

II - Analysis of the agent's dominant position and delimitation of the relevant market; and

III - Assessment of damages or benefits brought in by the behavior in the relevant market. Having these steps past, a reasonable judgment must be performed to condemn those agents that engaged in behaviors whose effects are not enough offset by the practice's benefits.







5. ROLE OF SECTOR ASSOCIATIONS IN THE DEVELOPMENT OF BEST PRACTICES ON COMPETITION

5. ROLE OF SECTOR ASSOCIATIONS IN THE DEVELOPMENT OF BEST PRACTICES ON COMPETITION

Sector Associations vary in terms of membership and may represent members from one or more sectors. They are critical to develop the economy as the venue for companies to debate legitimate common interests (environmental and labor concerns, for instance).

However, such associations cannot go beyond their institutional role, coordinate and/or influence agreements among their members with regard to standardize market behaviors. There is a huge risk to violate the Competition Protection Law for entities assembling competitors among their membership.

Sector Associations shall make their best efforts to avoid their involvement, as well as of their members, in anti-competition behavior. They cannot be used to hide meetings where executives in the same industry agree on prices, market strategies, clients and participation in bids.

Thus, compliance programs, the publication of meeting minutes and agendas, as well as the adoption of clear criteria for accepting and expelling members, are recommenda-

tions from CADE to Sector Associations. It is not wise to have employees from the sales force to join the meetings as well. The exchange of trade information, the participation in meetings without a clear agenda, joint standardization and certification of procedures are initiatives that raise a red flag by the antitrust authority.

The following activities by Sector Associations may be understood as violations to competition:

- I** - Exchange of sensible information
- II** - Meeting with competitors
- III** - Price rigging
- IV** - Ethical codes
- V** - Standardization and certification
- VI** - Criteria for accepting and expelling members
- VII** - Treatment granted to non-members
- VIII** - Joint acquisitions

Sector Associations shall make their best efforts to avoid their involvement, as well as of their members, in anti-competition behavior.

I. EXCHANGE OF SENSIBLE INFORMATION

It is required extreme care at the collection and dissemination of sensible commercial information, such as current and future prices, market share, costs, production levels, marketing plans, growth plans, discount policies, among others.

In this procedure, it is important to focus on the following points:

- To collect only “historical” data
- To spread information only in aggregate form
- To adopt a confidential mechanism of collecting sensible information, under the authority of an external and independent audit (black box)

- Do not force members to provide sensible commercial information for the Sector Association

- To make available the statistics from the data collected to the public (to a reasonable monetary value, if applicable), i.e., to members and nonmembers of the Sector Association

As more concentrated is a sector, larger will be the risks of the information collection and dissemination to be considered as a violation to competition.

II. MEETINGS WITH COMPETITORS

Meeting competitors in a Sector Association’s headquarters may rise concerns about competition.

Thus, it is recommended to Sector Associations that:

- Create public agendas for meetings with clear, well defined topics
- Draft meeting minutes capturing the whole discussion
- File documents with the goal to demonstrate that discussions are legitimate

It is recommended to companies:

- Leave the meeting if you are surprised when others start discussing sensible topics for competition
- Include in the meeting minutes the reason of your leave and report the event to CADE (even if anonymously)

Meetings and discussions among competitors taking place out of the Sector Association headquarters (such as in lunches and social meetings) raise the same concerns.



III. PRICE RIGGING

Elaborating, disseminating and implementing price listings by Sector Associations may be violations to competition laws by facilitating and influencing the adoption of uniform prices among competitors at the expense of consumers.

Thus, it is recommended to not elaborate, disseminate or implement price listings

even for reference purposes, given the potential negative effects to the consumer and the risk to violate competition laws.

Official price listings from Public Administration for bid processes are the exception.

IV. ETHICAL CODE

Ethical cods are mostly beneficial to the market, determining minimum standards of quality for producing a good or delivering a service.

However, such codes may violate competition laws if they contain rules related to:

- Commercial practices, such as pricing, discount policies, clients, margins;
- Participation in public bids;

- Limitation to types of products and services;
- Forecasts from companies that may or may not participate in the market; and
- Advertising and marketing restrictions.

It is recommended, thus, that Sector Associations' ethical codes include clear provisions about the relevance and the compliance to Competition Protection Law.

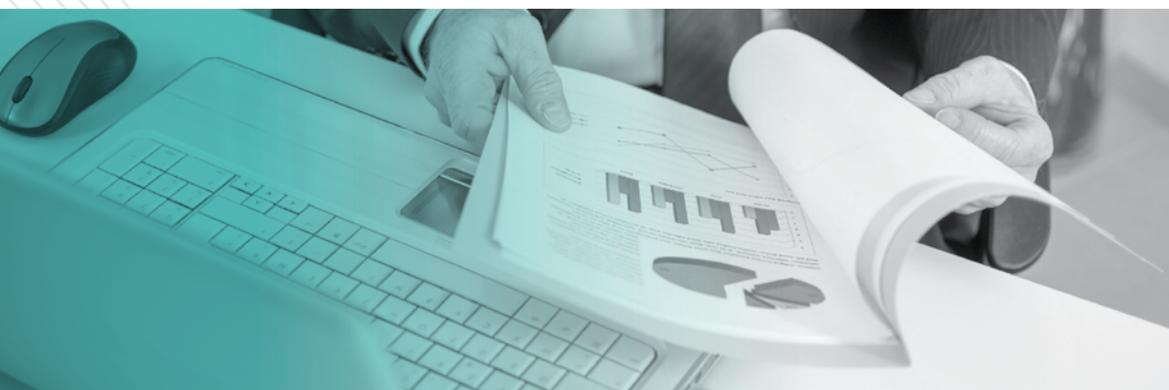
V. STANDARDIZATION AND CERTIFICATION

Many times, Sector Associations aims specifically to promote quality and safety standards; elaborate technical studies; certify, organize and crate rules for productive standards, among others.

Care must be taken so that the means used are not deemed restrictive to competition for no reason, i.e., that they do not pose artificial barriers to entry against new competitors in the market, prevent innovation in the industry or prevent competition otherwise.

Thus, in order to not configure such practices as violations, Sector Associations shall:

- Adopt unbiased standardization and certification criteria to avoid generating benefits to some companies on purpose, at the expense of other competitors
- Conduct open debates on standardization and certification for all stakeholders



VI. CRITERIA FOR ACCEPTING AND EXPELLING MEMBERS

In order to not violate competition laws, the adherence to the Sector Association shall be voluntary and based on transparent, objective, and fair criteria.

Criteria for accepting, excluding and expelling members shall not negatively interfere in the ability of a company to compete in the market.

VII. TREATMENT GRANTED TO NON MEMBERS

Sector Associations shall not give rise to uniform commercial behavior against non-members or against entrants to a market.

This way, any time the Sector Association provide a service deemed as critical for

economic agents to compete at equal levels in the market, they shall provide access to such services to non-members at reasonable conditions.

VIII. EXCHANGE OF INFORMATION

Some Sector Associations create a common system to acquire products and services for their members. Through such system, buyers can have access to higher product volumes and more variety, thus obtaining lower prices, which incentivizes competition among vendors.

However, it would be a violation against the economic order if the Sector Association members have market power and use it to cause harm to providers without creating market efficiencies or to other competitors that are not members of the association.

BEST PRACTICES - DOS AND DON'TS

 Do	 Don't
Adopt a program to ensure compliance with anti-trust legislation by membership	Do not allow for the exchange of sensible commercial information among competitors
Adopt a strict system of rules for collecting and consolidating market data under an autonomous audit firm	Do not participate in meetings in Sector Associations before making sure that the meeting will cover legitimate topics
All data compilation shall be publicly available even at a reasonable price	Do not adopt standardization and certification criteria that potentially may harm the market
Post meetings' agenda and minutes	The Sector Association board of directors may not derive benefits for their companies from their roles in such association nor allow for agreements in benefit for any company or individual
Adopt clear acceptance and expelling criteria for members	





6. CBIC COMPLIANCE PROGRAM

6. CBIC COMPLIANCE PROGRAM

It is important that CBIC and its members get involved in the creation of defensive and proactive agendas pursuing good competition practices.

I. DEFENSIVE AGENDA

Important practices for the defensive agenda:

- Avoid any commercial practice that may be described as a cartel;
- Prevent vertical behavior that may constitute a violation;
- Introduce a code of behavior; and
- Provide ongoing training to avoid violations against the economic order.

II. PROACTIVE AGENDA

Important practices for the proactive agenda:

- Ongoing market monitoring to detect illegal acts against companies, allowing for an effective cooperation with competition authorities and aligning the productive chain to the imperative of reducing costs;
- Actuate the authorities to fight against anticompetition rules within competition’s legal framework; and
- pursue compensation for damages caused by anticompetition practices.

III. BEST PRACTICES - DOS AND DON'TS



Do

Adopt a program to ensure compliance with anti-trust legislation by membership

Adopt a strict system of rules for collecting and consolidating market data under an autonomous audit firm

All data compilation shall be publicly available even at a reasonable price

Post meetings’ agenda and minutes

Adopt clear acceptance and expelling criteria for members



Don't

Do not allow for the exchange of sensible commercial information among competitors

Do not participate in meetings in Sector Associations before making sure that the meeting will cover legitimate topics

Do not adopt standardization and certification criteria that potentially may harm the market

The Sector Association board of directors may not derive benefits for their companies from their roles in such association nor allow for agreements in benefit for any company or individual







ANEXO

**CONHEÇA OUTRAS
PUBLICAÇÕES CBIC**

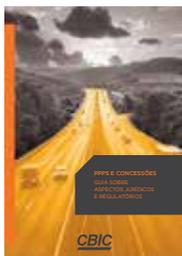
CONHEÇA OUTRAS PUBLICAÇÕES CBIC

Acesse o site da CBIC (www.cbic.org.br/publicacoes) e baixe os livros gratuitamente.

INFRAESTRUTURA (OBRAS PÚBLICAS E CONCESSÕES)



PPPs e Concessões - Propostas para Ampliar a Participação de Empresas (2ª Edição)
Ano: 2016



PPPs e Concessões - Guia sobre Aspectos Jurídicos e Regulatórios
Ano: 2016



PPPs e Concessões - Propostas para Ampliar a Aplicação em Estados e Municípios
Ano: 2016



PPPs e Concessões - Guia para Organização de Empresas em Consórcios
Ano: 2016



PAC - Radiografia dos Resultados 2007 a 2015
Ano: 2016



PAC - Avaliação do Potencial de Impacto Econômico
Ano: 2016



Ciclo de Eventos Regionais Concessões e PPPs - Volumes I e II
Ano: 2015/2016



Um Debate Sobre Financiamento de Longo Prazo para Infraestrutura
Ano: 2016



Investimento em Infraestrutura e Recuperação da Economia
Ano: 2015



Diálogos CBIC | TCU Contribuição da CBIC para o Manual "Orientações para Elaboração de Planilhas Orçamentárias de Obras Públicas"
Ano: 2014



Report International Meeting Infrastructure and PPPs
Ano: 2015



Propostas para Reforma da Lei de Licitações
Ano: 2015

RESPONSABILIDADE SOCIAL E EMPRESARIAL



Guia de Ética e Compliance para Instituições e Empresas do Setor da Construção
Ano: 2016



Código de Conduta Concorrencial
Ano: 2016



Plataforma Liderança Sustentável
Ano: 2016
cbic.org.br/liderancasustentavel

MEIO AMBIENTE E SUSTENTABILIDADE



Manual de Implantação do Conselho de Desenvolvimento da Cidade
Ano: 2014



Guia de Compra Responsável na Construção
Ano: 2015



Mapeamento de Incentivos Econômicos para construção Sustentável
Ano: 2015

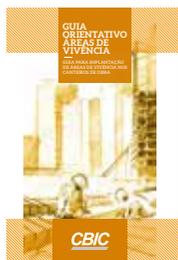


Guia de Orientação para Licenciamento Ambiental
Ano: 2015

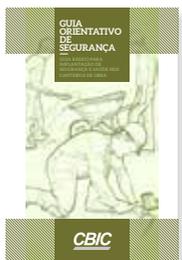
RELAÇÕES TRABALHISTAS



Guia Contrate Certo - Guia para a Contratação de Empreiteiros e Subempreiteiros na Construção Civil
Ano: 2014



Guia Orientativo de Áreas de Vivência
Ano: 2015



Guia Orientativo de Segurança
Ano: 2015



Guia Orientativo de Incentivo à Formalidade
Ano: 2016

TECNOLOGIA E INOVAÇÃO



Coletânea Implementação do BIM - Volumes I a V
Ano: 2016



Guia Orientativo para Atendimento à Norma NBR 15.575/2013
Ano: 2013



Boas Práticas para Entrega do Empreendimento Desde a sua Concepção
Ano: 2016



Catálogo de Inovação na Construção Civil
Ano: 2016



Catálogo de Normas Técnicas Edificações
Ano: 2016



Análise dos Critérios de Atendimento à Norma de Desempenho ABNT NBR 15.575
Ano: 2016



Guia Nacional para a Elaboração do Manual de Uso, Operação e Manutenção das Edificações
Ano: 2014

MERCADO IMOBILIÁRIO



Perenidade dos Programas Habitacionais - PMCMV: Sua Importância e Impactos de uma Eventual Descontinuidade
Ano: 2016



Melhorias no Sistema de Crédito Imobiliário - O Sistema Brasileiro de Poupança e Empréstimo e o Crédito Habitacional
Ano: 2015



O Custo da Burocracia no Imóvel
Ano: 2014



ORDEM E



Co-Organizador



*Iniciativa da CNI - Confederação
Nacional da Indústria*

Organizador



Co-Organizador



Iniciativa da CNI - Confederação
Nacional da Indústria

Organizador

