



**GLOBAL FORUM ON RESPONSIBLE BUSINESS CONDUCT**  
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## Competition Law and Responsible Business Conduct

**Date and Time: 19 June 2015, 9:30 – 11:00**

**Location: Room CC7, OECD Conference Centre**

This session discusses where legal concerns with respect to competition law exist in the context of collaborative initiatives promoting responsible business conduct (RBC) and where they do not. It will also discuss strategies that companies can employ to avoid or diminish antitrust concerns in the context of RBC initiatives.<sup>1</sup>

Both the OECD Guidelines and the UN Guiding Principles recommend that if an enterprise identifies a risk of contributing to an adverse impact, then it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impacts to the greatest extent possible. “Leverage” can be exerted acting alone or in co-operation with other entities as a strategy to influence other enterprises to be more responsible. Beyond addressing adverse impacts, collaborative initiatives amongst businesses promoting RBC can also be an effective way of identifying and monitoring risk and contributing to economic, environmental and social progress.

However firms engaged in RBC initiatives have raised questions on the intersection between competition law and RBC standards developed at international level. The concern is that competition law may chill RBC initiatives, particularly if these entail co-operating with other companies (and possibly competing companies) and participation in industry or multi-stakeholder initiatives.

The goal of competition policy is to contribute to overall welfare and economic growth by promoting market conditions in which the nature, quality, and price of goods and services are determined by competitive market forces. In addition to benefiting consumers and a jurisdiction’s economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer demand.

Competition law does not prohibit collaborative activities by companies, unless they affect important parameters of competition. For example, if RBC activities involve competitors’ co-ordination of companies’ independent decisions on prices, volumes or where to / whom to sell, they may be viewed as an infringement of competition law. Any other co-operation activity would have to be assessed to balance alleged pro- and anti-competitive effects.

Conducting such an assessment however is not a bright line exercise and ongoing doubts continue to exist with regard to where liabilities may arise in the context of RBC initiatives. Likewise, there is a lack of empirical data on the pro-competitive effect of RBC initiatives. This lack of clarity is exacerbated by the fact that often such initiatives will often have limited resources, without access to legal counsel on these issues

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<sup>1</sup> A paper on Competition Law and Responsible Business Conduct outlining these issues was developed by the OECD Secretariat as reference material for this session and can be accessed here:  
[mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/2015GFRBC-Competition-Law-RBC.pdf](http://mneguidelines.oecd.org/globalforumonresponsiblebusinessconduct/2015GFRBC-Competition-Law-RBC.pdf).