

OIL & GAS UK – COMPETITION LAW COMPLIANCE POLICY

1. Statement of policy and overview of competition law

- 1.1 As the UK's leading trade association for the oil and gas industry, it is essential that Oil & Gas UK conducts all of its operations within the law, including competition law.
- 1.2 Competition law prohibits a wide range of activities, ranging from price fixing and market sharing to the exchange of business information which has the effect of reducing uncertainties between competitors (and as such facilitating co-ordination between them).
- 1.3 Trade associations are particularly susceptible to competition law and your presence at meetings, events or industry social occasions where unlawful activities are discussed or information exchanged can be considered a breach of competition law; it does not have to be laid down in a formal document.
- 1.4 The sanctions for acting in breach of competition law are severe. Businesses can face fines of up to 10% of their group worldwide turnover, as well as being open to potential claims for damages. The most serious breaches of competition law could even lead to individuals facing up to 5 years imprisonment and/or an unlimited fine. Directors can be disqualified from office for a period of up to 15 years.
- 1.5 In addition to the legal sanctions for non-compliance, breach of competition law can result in reputation damage, which can have a severe detrimental impact upon any entity.
- 1.6 If any employee or member has any doubt about a competition law compliance issue affecting the company, its staff or its members they should raise it immediately with their supervisor, a Policy Director, the Finance Director or the CEO, as the employee or member may choose. Pending satisfactory resolution of their concern they should not proceed further with the matter in question.
- 1.7 Any breach of this competition law compliance policy may be regarded as a disciplinary matter. On the other hand, nobody will ever be disciplined for "taking a pause" and raising a question in such circumstances.



17th February 2011

Malcolm Webb

Chief Executive

Oil and Gas UK

2. OGUK Competition Law Compliance

- 2.1 Oil and Gas UK ("OGUK") will ensure that all OGUK staff receive training on the competition laws that have resulted in the production of these guidelines. All staff will be briefed on the letter of these guidelines but also on the wider nature of competition law principles.
- 2.2 Training shall be updated on an annual basis for all staff members within OGUK and any member of staff joining OGUK during the year shall be provided with initial training.
- 2.3 OGUK notes that certain positions, notably directors, front of house staff and legal advisors will require additional and more in depth training. In particular, OGUK recognises the importance of understanding the Dawn Raid Response (please see section 5).

3. Do's and Don'ts for Oil & Gas UK

3.1 In order to provide brief but practical guidance to Oil and Gas UK staff and members to ensure compliance with the relevant competition laws we have listed below some do's and don'ts (as well as highlighting certain areas where extra caution should be taken). Please note that the lists are not exhaustive. You should aim to comply not only with the letter of these guidelines but also with their spirit.

3.2 Internal OGUK Staff

Staff of OGUK should take note of the following points to ensure that they comply with competition law:

Do:

- Protect the confidentiality of all commercially sensitive information – for example, by following the Activity Survey internal procedure.
- Aggregate and anonymise any commercially sensitive information before distributing it to members.
- Ensure that, if you require to publish standards, codes of practice or standard terms, these do not concern matters which would affect competition between members e.g. pricing.
- Continue the OGUK policy of ensuring membership and access to membership benefits remains open to all applicants on an equal basis and on non-discriminatory terms.
- Issue agendas for meetings in advance that are set and do not provide for 'any other business' to be discussed at any point during the meeting.
- Produce full and accurate minutes of those meetings which are approved by the members.
- Flag any concerns that you may have should discussions during meetings stray onto inappropriate matters and consider whether the meeting should be brought to an end.
- Report any competition law concerns to the CEO, the Finance Director or Policy Director.

Do not:

- Share commercially sensitive trading information with members or permit such sharing.
- Distribute any commercial information without first aggregating and anonymising the information.
- Seek to establish standards or common approaches between members on commercially competitive aspects of their business such as price.

3.3 Amongst Members of OGUK

Members of OGUK should take note of the following points to ensure they comply with competition law:

Do:

- Review agendas in advance of meetings and raise any concerns.
- Ensure the agenda is adhered to and flag any concerns that you may have should discussions during meetings stray onto inappropriate matters and consider whether you should leave the meeting and have this minuted.
- Review minutes of meetings to ensure that they are accurate and correct any inaccuracies.
- Ensure commercially sensitive information is disclosed to OGUK staff only on the understanding that it will be aggregated and anonymised before distribution amongst members.
- Ensure that, if any meetings are required, these are based upon non-sensitive trading issues, for example on safety standards.
- Report any competition law concerns regarding OGUK to the CEO, the Finance Director or Policy Director of OGUK.

Do not:

- Fix prices or output capacities or exchange commercially sensitive information with other members.
- Use OGUK to formulate collective positions on commercially sensitive issues such as pricing and output.
- Attend meetings with the intent of establishing common terms of business with competitors (unless prior legal approval has been obtained).
- Collude in tendering processes.
- Hold additional 'secret meetings' under the umbrella of OGUK

3.4 Procedure for Forums, Committees and Working Groups

When participating in any of the above, staff and members should take note of the following points to ensure compliance with competition law:

Do:

- Issue agendas for all meetings in advance detailing items for discussion.
- Ensure that full and accurate minutes are taken for all meetings and, in so doing, be mindful of how the minutes could be interpreted by someone who was not in attendance at the meeting.
- Consider as a group whether it may be beneficial to have a legally qualified person present at meetings to ensure compliance with these guidelines.

Do not:

- Have 'off the record discussions' or discuss any items that are not on the agenda and which may raise any competition law concern (please refer to sections 3.2 and 3.3 for further information).
- Proceed with any discussions in respect of which a member or member of OGUK staff has expressed concern.
- Exchange commercially sensitive information.

4. Illustrative Examples

A. Agenda for forthcoming members meeting – commercially sensitive information?

4.1 Situation - you have received the agenda for the forthcoming member's meeting in two weeks time. Included within the items for discussion is the following "Current business interests of members – areas for commonality of approach?" Does this raise any concerns and, if so, what should you do?

4.2 Solution – the item should raise concern for members as it could potentially envisage members sharing commercially sensitive information around their current business practices e.g. pricing strategies and identity of customers/suppliers. It is not permissible in any situations for members to exchange commercially sensitive information as this could adversely affect competition in the market place. Further, even if the intention of this agenda item was to discuss legitimate matters e.g. in relation to safety standards and environmental procedures, the inclusion of the item as it stands could raise suspicion not only internally but also externally if OGUK's records were to be examined by competition authorities. In order to ensure that a clear audit trail is maintained, clarification should be sought as to the specific scope of the agenda item and, if competition law concerns remain, these should be brought to the attention of the relevant individuals. A revised agenda should be circulated that either: (a) specifically states that safety standards and environmental procedures will be discussed or; (b) has had the item removed from the agenda.

B. Proposal to develop standard terms

4.3 Situation - a proposal has been raised by a member to develop a set of standard terms and conditions for use in industry contracts. The purpose of this is to reduce time spent by companies in reviewing 'boilerplate provisions' and to increase certainty/awareness around the terms on which companies will do business. Concern has been raised as to whether this will be appropriate in terms of competition law.

4.4 Solution - provided that the scope of the terms and conditions are carefully monitored so as to ensure that they do not cover 'commercial' aspects of business (e.g. around payment and giving numerical values to caps on liability) then this should be acceptable. The types of clauses that may usefully be covered could include matters such as contract formation, general obligations of the contractor/client and non-price related payment conditions. It would be good practice to obtain clear guidance from the outset as to the parameters of discussions

and also be vigilant to ensure that discussions around standard terms do not stray into dangerous/commercial territory.

5. Dawn Raid Response

- 5.1 A variety of agencies now have the power to conduct unannounced investigations, or "dawn raids". These may be in relation to suspected infringements of both civil law (i.e. affecting the company) and criminal law (i.e. affecting individual employees). Dawn raids may be launched to investigate, amongst other things, suspected:
- 5.1.1 Breaches of competition law;
 - 5.1.2 Breaches of the financial services regime;
 - 5.1.3 Breaches of data protection legislation; and
 - 5.1.4 Fraud and other crimes.
- 5.2 It is the OGUK policy to co-operate with any investigators who produce the required, valid authorisation papers and who are acting within the scope of their authority. Potentially criminal and/or disciplinary offences may be committed if any OGUK employees impede or seek to obstruct the authorities in their investigation.
- 5.3 In the event of a dawn raid, it is vital to ensure that:
- 5.3.1 Appropriate senior management within OGUK are immediately made aware of the investigation;
 - 5.3.2 Expert advice and assistance is promptly obtained (e.g. from external lawyers);
 - 5.3.3 The investigation is closely managed e.g. with all investigators being shadowed throughout the dawn raid.
- 5.4 Accordingly, OGUK considers it appropriate to put in place procedures, as part of its risk management strategy, to ensure that any such investigation is managed in a way which minimises the disruption caused by any dawn raid and to ensure that OGUK and its staff comply with their legal obligations. OGUK has therefore produced a Dawn Raid Procedure that details the policy for dealing with any dawn raids. This procedure is intended to provide practical guidance, summary legal advice, and "golden rules" on best practice. The procedure is available below.



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