

ICMA COMPETITION LAW GUIDELINES

ICMA recognises the importance of compliance with all relevant competition laws in connection with ICMA activities. In the context of discussions and other activities related to ICMA, including discussions held at general meetings, meetings of the ICMA board, councils, committees, sub-committees or of any other ICMA group including meetings of ICMA staff that also may include non-ICMA individuals, all involved should be aware of relevant competition laws and receive guidance on how to observe the letter and the spirit of those laws in practice.

These Guidelines, which have been prepared in conjunction with external competition law counsel, are made available publically on ICMA's web site and to all ICMA members ("ICMA Members") and member representatives, as well as to ICMA staff to give them a better understanding of permissible and impermissible conduct in their activities that relate to or concern ICMA and relevant competition laws.

ICMA Members should ensure that these Guidelines are made available to all their member representatives involved with ICMA activities.

ICMA also runs refresher sessions for relevant staff so the practical application of competition law principles is understood and respected.

In general, ICMA activities should be unlikely to give rise to any significant concerns under competition law. **However, as competition law can sometimes be breached inadvertently, it is important to be aware of the main principles involved, alert and sensitive to the issues should they arise, and to observe some basic rules.**

The following is a summary overview of the types of activities and issues those involved in ICMA activities should look out for in order to comply with competition law.

As these Guidelines are intended to be used as a quick-reference tool, they should not be a substitute for legal advice on any specific matter.

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GENERAL GUIDELINES

Competition law generally prohibits all agreements (formal or informal, written or oral) and concerted practices which have the aim or effect of restricting competition including, but not limited to:

- Fixing, coordinating or sharing information on prices, quotes, fees, bids, costs, rebates, discounts, sales volumes or strategies, or other competitive or commercially sensitive terms;
- Agreements to limit or restrict business or access to markets;
- Allocating markets or customers;
- Fixing, coordinating or sharing of pricing or bidding intentions, i.e., “bid rigging”; and
- Collective boycotting.

NB: As **no formality is required**, a “nod and a wink” or saying something out loud (either in a formal or informal setting) in the expectation that it will be heard and acted upon and **other forms of consciously parallel behaviour** could infringe competition law as much as a formal agreement.

Infringement of competition law can result in substantial fines and behaviour and agreements which infringe competition law are void and unenforceable. Those who suffer damage as a result of a breach of competition law are entitled to claim compensation before national courts.

Breach of competition law can also result in criminal penalties, including imprisonment, fines and the disqualification of directors. The following general guidelines apply in all situations and are intended to minimise the risk of competition law infringement (inadvertent or otherwise):

Don't

- Discuss with competitors (or in a forum in which competitors can overhear) your firm's pricing policy, prices, fees or other commercially sensitive terms offered to specific customers/potential customers, strategic plans, forthcoming marketing activities, or generally anything you would not want your competitors to know if you wanted to compete against them as vigorously as possible.
- Agree with competitors, or suggest or imply to them that they should supply only certain customers or geographic areas or market segments (leaving others to your firm).
- Agree with competitors not to deal with clients who will not accept certain conditions for trading securities.
- Discuss specific deals or negotiations with competitors, unless there is a legitimate rationale such as syndication for having such a discussion. Exercise care to ensure discussions do not stray into areas not necessary for legitimate co-operation including but not limited to discussion of fees (where banks are in competition with each other) or other competitively sensitive terms and immediately end discussions which go beyond their legitimate purpose.
- Discuss recommendations in relation to industry prices or the standardisation of prices or competitive terms of business between members.
- Require ICMA members or third parties to adhere rigidly to the standard documents and

recommendations.

Do

- If a discussion regarding the above takes place, object and take other necessary actions including seeking legal advice.

INFORMATION SHARING

NB: An exchange of commercially sensitive information can achieve the same result as an explicit anti-competitive agreement and can attract equally serious consequences (as described above).

The guiding principle is that any information that could be regarded as competitively sensitive should never be exchanged. This includes prices and information on other terms on which firms compete in the market place.

Don't

- Exchange **commercially sensitive** information, e.g., about prices, quotes, fees, bids, costs, rebates, discounts, sales volumes or sales strategies, or other competitive or commercially sensitive terms, i.e., terms on which you might compete, or any other information you would not want a competitor to know.

Do

- Before sharing any such information, ask whether this information could help rivals to predict your firm's future competitive strategy, in particular in relation to pricing and terms? If the answer is yes, consider how the aims of the information exchange can be achieved without this unwanted effect. Ultimately, if this cannot be excluded, the information sharing should not take place;
- Ensure that the information being provided is of historical interest only (typically at least 12 months old);
- Ensure that the information is aggregated sufficiently over a minimum of 5 firms to prevent identification of data on individual firms;
- Ensure that access to the exchanged information is strictly limited and does not include the front office, i.e., those responsible for businesses that could be affected competitively by having such information; and
- Contact your relevant legal contact if you receive unsolicited information from another member that you do not think that you should have received. Note your objection.

ICMA ACTIVITIES AND COMPETITION LAW

The objectives of ICMA, as set out in ICMA's statutes, by-laws, rules and recommendations focus primarily on:

- Promoting good relations amongst ICMA Members and providing a basis for joint examination and discussion of questions relating to the international capital markets and issuing rules and making recommendations governing their operation; and
- Providing services and assistance to participants in the international capital markets.

In practice, ICMA as a trade association and self-regulatory organisation with rules and non-binding recommendations:

- Studies and resolves technical problems affecting the market;
- Promulgates rules and standards of good practice governing the orderly functioning of the market;
- Encourages improvements in international capital markets and provides services and assistance to ICMA Members; and
- Enhances relations between ICMA Members and with related national and international markets.

These activities, which encompass a range of organisational, structural and constitutional matters relating to ICMA's internal arrangements, as well as more market related activities, may also involve the issuing or amending of ICMA statutes, by-laws, rules, recommendations, guidelines and other documents (such as standard form contracts). Such activities should be unlikely to give rise to any significant concerns under competition law and should be efficiency enhancing from a competition perspective. However, ICMA may, taking a risk-based approach, determine that it is appropriate for ICMA's external competition counsel to review any such new proposals, or alternatively rely on the judgement of ICMA's Legal Department in this regard.

WHAT TO DO IF IN DOUBT

Competition law compliance is largely a matter of using common sense and exercising due caution. By reading these Guidelines and abiding by the "do's and don'ts" included in the preceding sections, ICMA and ICMA Members should be alert to and be able to steer clear of most conduct that might lead to an allegation of competition law infringement in relation to ICMA activities.

Remember, however, that the application of competition laws to some situations may not be clear cut and in case of doubt about the possibility of infringement, it is always best to ask an expert, and therefore seek legal advice, preferably in advance of any relevant meeting where the actions or topics you are concerned about are likely to be discussed.

In the unlikely event that discussion at an ICMA related meeting takes a turn you are uncomfortable with, say so and:

- Suggest that the meeting takes a break in order to seek advice from a member of the ICMA Legal Department or legal department of a relevant member firm. Most concerns can be cleared up quickly and the meeting can proceed; or otherwise;
- Suggest that the discussion is deferred to a later date, pending confirmation of appropriate legal advice; or
- If the discussion continues nevertheless, record your objection, leave and contact the ICMA Legal Department or legal department of a relevant member firm.