



Institute
and Faculty
of Actuaries

IFoA Volunteer Information Pack Competition Law Guidance

Prepared on behalf of the IFoA by Blake Morgan

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1 INTRODUCTION

- 1.1 In line with our core values, we are committed to conducting our business with honesty and integrity, in full compliance with the law, and we expect all IFoA staff and members and lay volunteers to maintain those values. Because the IFoA's membership comprises persons working for competing organisations there is a risk that activities which the IFoA may support or encourage could have an adverse effect on competition. There is also the risk that the IFoA itself will infringe competition law if it can be said to have aided or assisted in the anti-competitive activity in question. So those involved must consider the competition law risks of what is proposed and if necessary take steps to ensure competition law is complied with.
- 1.2 The IFoA is not in a position to give legal advice. However by issuing this guidance the IFoA aims to highlight the importance of competition law compliance and draw attention to some specific risk areas. The guidance was prepared for general information purposes only and is not a substitute for, nor is to be relied on as, legal advice.
- 1.3 We may amend or update this guidance from time to time.

2 WHO IS THIS GUIDANCE RELEVANT TO?

- 2.1 This guidance is relevant to individuals engaged in activities for or on behalf of the IFoA and includes office holders, members and lay volunteers (referred to as "volunteers" in this guidance).

3 WHAT IS COMPETITION LAW AND WHY IS COMPLIANCE IMPORTANT?

- 3.1 Competition law is about ensuring businesses compete fairly and that consumers are protected from anti-competitive agreements and conduct. Most developed countries now have competition laws in place. The UK has a system of competition law modelled on EU law and it is currently expected that this will continue in place following Brexit, at least initially. This guidance is based on EU law but is considered to be of general application although as noted above the IFoA does not provide legal advice so you should always take local legal advice in your country if you have concerns. Competition law outlaws:
- 3.1.1 cartels (for example price fixing or market sharing agreements or understandings or agreements to exclude others from certain markets– these are always serious breaches of competition law which can never be justified)
- 3.1.2 other anti-competitive agreements, decisions or concerted practices which need not be formal or in writing. They can be informal understandings or coordinated conduct which allows the parties to gain a competitive advantage to the detriment of other businesses or consumers, for example by limiting how aggressively they may compete or by coordinating their behaviour. They can include the decisions of membership bodies such as the IFoA – for example recommendations or best practice procedures. Areas of particular relevance to the IFoA and to the work of volunteers and volunteer groups are:
- (a) *Information Exchange*. This can cover the exchange of information between experts or more generally through the publication of the work of a group. Information exchange is likely to infringe competition law where

commercially sensitive data is exchanged (for example current prices and/or pricing intentions, or information is exchanged about a firm's future strategy) which can then allow competitors to modify and/or align their behaviour or which otherwise adversely affects other firms or consumers. As a general rule:

- (i) the exchange or disclosure of future commercial intentions (especially pricing intentions and strategic information) will infringe competition law
 - (ii) the dissemination of historic aggregated and anonymised data is usually acceptable since it will not generally enable parties to co-ordinate their commercial conduct
 - (iii) the exchange of data that is unrelated to the factors by which businesses compete will not raise competition concerns.
- (b) *Price (and other) signalling.* This can arise if volunteer group members use public means to indicate to the market that there is an intention to raise prices (e.g. "the IFoA advises the UK public that UK insurance premiums will have to rise by 10% in 2019"). Recommendations as to the terms on which products are offered may also be problematic especially if they concern prices.

3.1.3 anti-competitive conduct (an abuse of a dominant market position e.g. charging consumers discriminatory pricing or predatory pricing to unfairly gain market share) – this is less likely to be relevant in the context of what the IFoA does.

3.2 Breaching competition law can give rise to:

- 3.2.1 fines or penalties or other regulatory action (e.g. a requirement to cease or modify the conduct in question)
- 3.2.2 damages claims from aggrieved businesses and consumers in the courts
- 3.2.3 the commission of criminal offences
- 3.2.4 the disqualification of company officers
- 3.2.5 time consuming and disruptive investigations from competition regulators whatever the final outcome of the investigation might be
- 3.2.6 adverse publicity and reputational damage.

4 STEPS TO HELP AVOID BREACHING COMPETITION LAW

4.1 It is important to think through the purpose of any meeting, collaboration, research activity, survey or information exchange at the outset and consider:

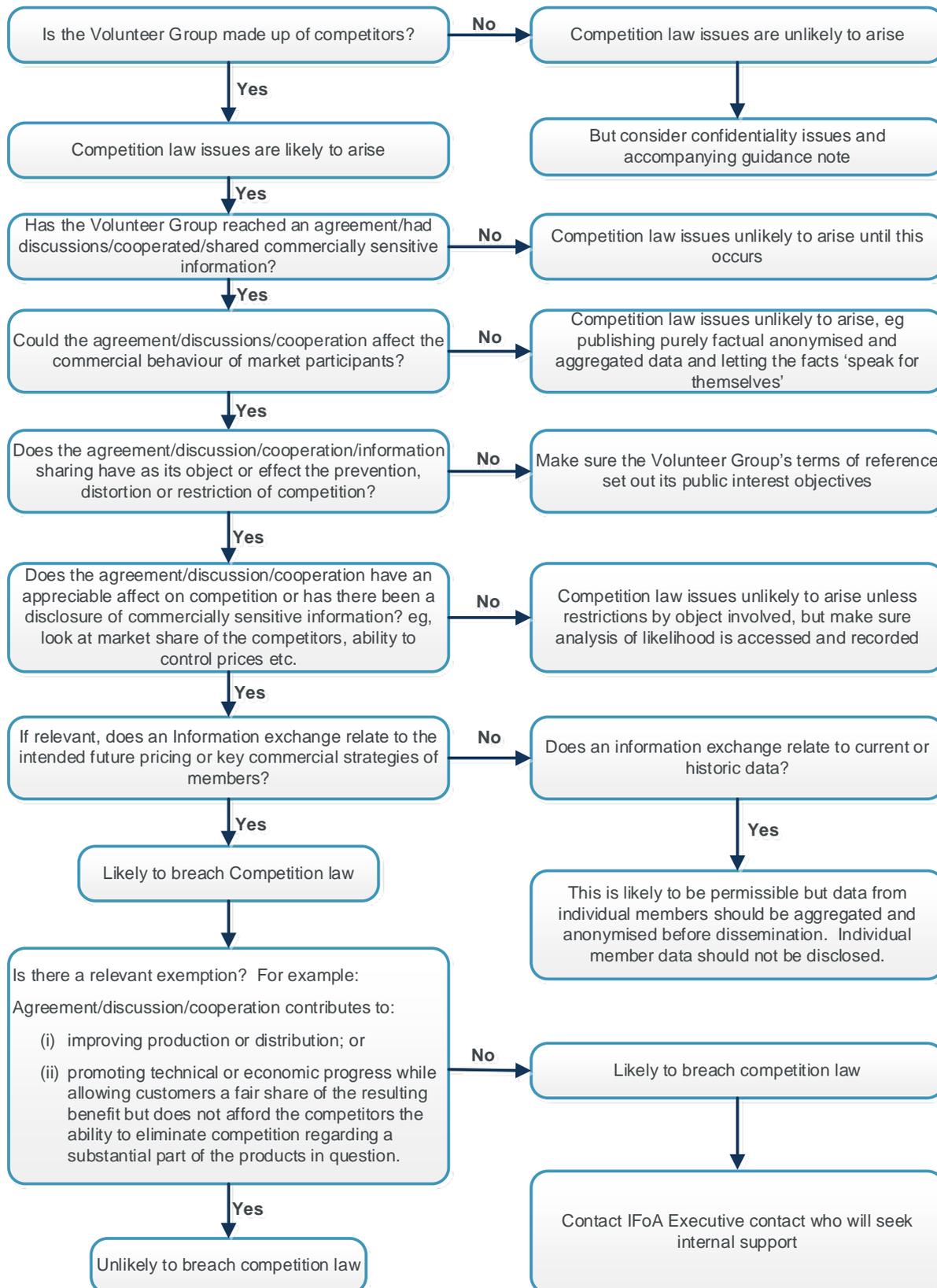
- 4.1.1 what kind of information might be shared or published and for what purpose?

- 4.1.2 could it help align the behaviour of competitors or otherwise disadvantage other firms/market participants or consumers?
 - 4.1.3 is there a clear public benefit or consumer justification in what is proposed? If so and there still remains a competition concern then it is possible the benefits of what is proposed may outweigh the potential risks and so be "exempted" under competition law - if in doubt legal advice should be taken.
 - 4.1.4 you may find the flow chart at the end of this guidance helpful in highlighting areas you should consider.
- 4.2 Doing this will help identify if there are any competition issues at the outset.
- 4.3 Other practical steps to take include:
- 4.3.1 agree terms of reference and the purpose and objectives of your volunteer group
 - 4.3.2 have a meeting agenda in advance, follow it (to avoid straying into risky areas) and keep minutes. The Chair should remind members of any relevant competition law issues at the outset and, if necessary, end the meeting before a risk of infringing competition law occurs. If you have concerns, object and have your objection noted in the minutes. Leave the meeting if you continue to have concerns and have your departure noted in the minutes as well. You should contact your IFoA Executive contact to determine next steps. It may be that a lawyer should be invited to attend and intervene in the discussion if the topic will be sensitive from a competition law perspective – however the expectation is that sensitive topics will in any event be avoided
 - 4.3.3 do not share future pricing or strategic information
 - 4.3.4 exchange any confidential information via the IFoA Executive rather than directly between members of your group
 - 4.3.5 (i) anonymise collated information and aggregate the information presented so that individual firms are not disclosed nor do the firms themselves have access to information from other firms and (ii) when conducting surveys arrange for an independent third party to conduct the survey
 - 4.3.6 keep a record of what information is exchanged
 - 4.3.7 use non-disclosure agreements (NDAs)/confidentiality agreements where appropriate. Your IFoA Executive contact will be able to provide assistance in setting these up
 - 4.3.8 avoid making commercial recommendations in any project outputs.

5 FURTHER INFORMATION

For further information, please contact your IFoA Executive contact.

Competition Law Decision Tree





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