TCCA
ANTI-TRUST & COMPETITION LAW POLICY
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*This document outlines the conduct that TCCA ("**TCCA**" or the "**Association**") expects of its members with respect to competition law and antitrust activities. Members must be mindful of their conduct in relation to other members of the Association, especially around those who are likely to be actual or potential competitors. Also, the Association and its members need to be aware of the risks of breaking competition law when discussing issues facing our industry. All board members, members' representatives and contractors should therefore read this document carefully and ensure they are acting in compliance with this policy at all times while acting with, for, or on behalf of TCCA.*

Competition Law Introduction

Competition laws aim to ensure that businesses compete fairly and freely to deliver the best quality products and services at the best possible prices. In the context of TCCA there is a central principle that members should act independently on the market when conducting TCCA business and when selling or promoting their own products, services, and interests. Members of TCCA collaborate for the benefit of competition and provide an environment within the market that enables competition through a number of different activities. Examples include defining and supporting open standards, encouraging adoption, and promoting these open standards to the benefit of the market and customers. **TCCA expects its members to demonstrate the highest standards of professionalism and integrity at all times in compliance with competition laws and TCCA's values.**

Failure to comply with competition laws could have very serious consequences for the Association, its members, and individuals. Consequences could include:

- significant fines (up to 10% of TCCA's and/or a member's annual worldwide turnover).
- adverse publicity and damage to TCCA's and/or its members' reputations.
- being sued by third parties (e.g., customers) for losses arising out of anti-competitive conduct ("damages actions").
- agreements can be rendered void and unenforceable.
- imprisonment of up to 5 years and/or unlimited fines for the individuals involved.
- disqualification from acting as a director (for up to 15 years); and
- disciplinary action.

Competition Law

Anti-competitive behaviour is against the law in the vast majority of countries around the world and enforcement action can be taken by competition authorities against the company and the individuals involved.

TCCA must comply with competition laws in each country where it operates, trades or to which it contributes to, channels, or otherwise facilitates one or more members' activities.

There are two basic rules of competition law, which are that:

1. agreements between two or more companies which are anti-competitive are unlawful; and
2. companies that hold a dominant position in their market(s) must not abuse that dominance.

Compliance with the rules is enforced by competition law authorities (e.g., CADE in Brazil, the FTC in the US, the European Commission in the EU, and the Competition and Markets Authority in the UK). They have extensive powers to investigate breaches of competition law including company/individual searches as well as covert surveillance.

Anti-competitive Agreements

Agreements between two or more companies or individuals which prevent, restrict, or distort competition are unlawful.

Anti-competitive agreements can arise between competitors (e.g., between two suppliers) or between companies at different levels of the supply chain (e.g., between a supplier and a reseller, or a supplier and a customer).

Agreements need not be formal or in writing to be anti-competitive: an "understanding" can also fall foul of competition law. For example, an anti-competitive agreement can be established from:

- a single meeting, telephone call or e-mail between competitors.
- informal contact such as a chat with a friend in the pub or on the golf course.
- a "nod and a wink" or a gentleman's agreement; and/or
- indirect contact through a third party, e.g., using a common customer as a "postbox" for sharing information.

There are two types of anti-competitive agreements:

- The first are those that are so serious that a competition law authority does not need to show that they have had any effect on the market, just that the agreement was made. These are agreements to:
    - fix prices (with competitors or resellers).
    - limit production / development / investment (with competitors).
    - share markets (with competitors) (e.g., dividing up customer groups or geographical areas and agreeing not to enter into each other's territory); and
    - bid rigging (with competitors) (e.g., where a group of competitors agree to let one competitor win the bid and take steps to ensure that happens by, for example, putting in very high and uncompetitive bids).
- The second type of anti-competitive agreements are those which are not obvious breaches of competition law but could have an anti-competitive effect on the market. These types of agreements are not always considered to be anti-competitive, however if a company is dominant in its relevant market, they are more likely to be considered anti-competitive. For example, an agreement which imposes a non-compete obligation on a broker or exclusive or long-term supply agreements with a reseller.

Information Exchange

The exchange of confidential, strategic and/or commercially sensitive information with competitors can give rise to serious competition law issues. This is the case whether the information is exchanged directly, indirectly via a third party such as a reseller or at a trade association, or inadvertently (e.g., by a "slip of the tongue" in conversation). However, an exchange of genuinely public information or information which is equally accessible (in terms of costs of access) to all competitors and customers is usually allowed.

Commercially sensitive information in this context includes:

- information on current or future prices (including both the prices themselves as well as the timing of any price changes).
- trading terms (including terms of sale or delivery) or promotional activities.
- details of any new products (and the timing of when they will be introduced).
- turnover or profit margins, as well as production capacity and costs.
- customer lists.
- customer strategies (including product/customer specific profitability).
- key contracts or contract terms, such as any matters relating to specific suppliers or customers that are significant to core drivers of market competition.
- commission, rebates and discounts (including any planned changes); or
- details of volumes/output (including intended future sales; market shares; territories/regions).

Whilst information which does not raise competition risks (such as information which is not strategic (e.g., historic) or is strategic but has been anonymised and aggregated) may be shared, caution must always be exercised in these types of data exchanges and specialist legal advice should be sought.

Golden rules for information exchange:

- when attending meetings with competitors, have an agenda and stick to it.
- keep a record of what was discussed at meetings.
- object to any discussions about commercially sensitive information and make sure that this is recorded in the meeting minutes.
- leave the meeting if necessary and make a "noisy exit" – it is important to have evidence of repudiation of an information exchange such as making sure that your departure is recorded in the meeting minutes.
- if another member tells you about their future prices, you must reject the information and promptly report the incident to TCCA and to your company.
- remember these rules apply to formal and informal meetings.
- manage information properly and document that this is being done; and
- anyone with concerns should report this to the CEO, Kevin Graham, via email: (kevin.graham@tcca.info), or mobile: +61408571556 who will take further advice if required.

Abuse of Dominance

The second key competition law rule (the first being anti-competitive agreements) is that companies which hold a dominant position in their relevant market(s) must not abuse that dominant position. Dominance itself is not anti-competitive, however, if a company abuses its dominance, it can attract regulatory action.

A dominant company usually has market power, i.e., they are able to act independently of their competitors, customers and suppliers and are able to set prices and production volumes without competitive pressures. Companies such as Coca-Cola and Microsoft have been found to be dominant in the past. Whilst it is unlikely that a company that has a market share below 40% would be considered dominant, it is not impossible. It is also possible to be dominant in a market you might consider to be "niche" or a sub-section of the wider market.

Guiding Principles

Within the context of TCCA, it is everyone's responsibility to monitor each member's behaviour and ensure no one member abuses its position or behaves in an anti-competitive way. TCCA has produced some guiding principles to help members ensure that they do not break competition law and breach this policy. Whilst these principles are not exhaustive, they may help members to understand what they can and cannot do with regards to competition law whilst working with or for TCCA.

- To ensure compliance with competition law, members and their representatives are strictly forbidden from exchanging commercially sensitive information either formally or informally, intentionally, or inadvertently, or directly or indirectly through a third party. Examples of commercially sensitive information are listed above.
- Members must take into account and follow the golden rules for information exchange set out above, including immediately leaving and reporting to the Association any TCCA meetings where competitively sensitive information is exchanged.
- Members must and will collectively ensure that any standard contract terms and conditions developed by the Association are clear, easily understood, in plain language and fair to customers.
- The Association and its members must and will ensure that the rules and admission criteria for the Association are transparent, proportionate, non-discriminatory, and based upon objective standards.
- The Association and its members must and will ensure that the requirements for any quality certification schemes the Association operates are fair, reasonable and are available to all businesses that meet them.

TCCA and its members must **NOT**:

- allow the Association to be a channel or facilitator for the sharing of commercially sensitive information between members about pricing, customers, or output plans.
- allow members to discuss commercially sensitive information in or around association events, including in 'unofficial meetings' or at social events.
- issue formal or informal pricing or output recommendations to members.
- develop Association rules or practices that restrict members from advertising their prices or discounts, soliciting for business or otherwise competing with other members.

- require members to provide the Association with commercially sensitive information, such as information about pricing and/or output intentions.
- publish messages suggesting that lower prices mean lower quality.
- establish irrelevant or arbitrary rules for the admission of new members; or
- adopt rules that restrict members' advertising and promotional business practices, beyond ensuring such practices are legal, truthful, and not misleading.

If any member has any questions relating to the subject matter of this document or any concerns regarding the behaviour of any other member then please contact, Kevin Graham, TCCA CEO, confidentially via email: kevin.graham@tcca.info, or mobile: +61408571556, who will, if required obtain specialist legal advice.

TCCA Limited is a company incorporated under the Companies Act in England and Wales, company number 04155039.
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