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Picon Limited

Competition Law Compliance Manual

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1. Introduction

This Manual is a component of Picon's Competition Law Compliance Programme, which is intended to ensure that Picon acts in accordance with the requirements of competition law.

The purpose of the Manual is to provide a brief description of competition law (also known as "antitrust law"), a general understanding of the types of conduct that are prohibited and general guidelines for compliance with competition law. Special emphasis is given to UK competition law, although EU competition law may also be relevant, particularly in connection with dealings with EUMAPRINT. In substance, UK and EU competition law impose essentially the same requirements.

Because trade associations and other types of industry groups often involve meetings and discussions among competitors, it is important that all business and meetings are conducted properly and in a manner that does not give rise to unnecessary risks or the appearance of non-compliance with competition law.

This Manual is not intended to contain a complete list of potential legal problems or to be a "do-it-yourself" lawyer's course. However, in order to protect Picon and its members, the Manual does set out the way in which Picon will conduct its business and meetings. Members are required to adhere to the provisions detailed in the Manual when engaging in Picon business and meetings.

2. Picon's Policy Statement on Competition Law Compliance

It is the policy of Picon:

- Fully to comply with the requirements of competition law and to avoid even the appearance of unlawful conduct.
- To provide periodic training regarding compliance with competition law to Picon Executive Committee.
- To inform Picon members that business and meetings of Picon will be conducted in accordance with competition law.
- To cooperate fully with all reasonable requests from government authorities for information and documents in connection with any investigation of conduct that may violate applicable competition laws.

3. What is competition law?

This Manual focuses on UK competition law. EU competition law provisions are very similar to the UK provisions but have a different geographic basis (i.e. there must be an effect on trade between EU Member States).

Both UK and EU competition law prohibit:

- anti-competitive agreements; and
- the abuse of a dominant position.

This Manual focuses on the prohibition of anti-competitive agreements in the UK as this is the key concern for Picon.

3.1 Anti-competitive agreements

Chapter I of the Competition Act 1998 prohibits agreements and concerted practices between and amongst undertakings and decisions by associations of undertakings which restrict, distort or prevent competition in the UK. Agreements amongst members of Picon and decisions of Picon will potentially come within the purview of Chapter I.

An anti-competitive agreement can take many forms. It need not be – and rarely is – in writing or the product of a formal meeting or communication. An anti-competitive agreement can be oral and vague and can arise out of a casual conversation. An informal "gentlemen's understanding" can be just as unlawful as a formal written agreement.

Moreover, the companies involved need not reach an agreement. Competition laws also apply to concerted practices. A concerted practice might be found, for example, where one company "signals" to its competitors a future price increase and that company and its competitors then were to increase prices at or about the same time.

When your actions are unilateral in nature, the best way to avoid any inference of concerted action is to make business decisions on the basis of independent judgement and self-interest, without prior discussion with third parties such as competitors.

The types of agreements likely to be prohibited include those which:

- fix the prices of goods or services;
- limit the levels of products or services supplied to customers;
- divide markets (including allocating contracts or customers); and
- seek to boycott suppliers, customers or competitors.

Price agreements and communications

An agreement regarding price, i.e. "price-fixing," is the most serious violation and is the most common type of activity to raise competition law problems. As a general matter, price-fixing is considered to be so inherently wrong that no business justification for such an agreement can save it from constituting a violation.

Unlawful price-fixing generally consists of any agreement between or among competitors to "fix" or stabilize prices, i.e. to set prices within a general range or at particular levels (including floor or ceiling prices), whether those levels are higher, lower or the same as prices already being charged. It may also involve agreements to maintain a differential or "handicap" between prices charged or agreements regarding the timing of pricing actions.

Price is a very broad concept, encompassing minimum prices, discounts, promotions, rebates, credit practices, distribution charges, contract terms, pricing formulae and any other element of pricing. Thus, any agreement, however arrived at, by which personnel of competitors coordinate any element of price can be unlawful.

Non-price agreements and conduct involving competitors

Other types of agreements and practices involving competitors that should be avoided include:

- dividing markets or allocating customers;

- agreeing other non-price terms and conditions to apply to customers or agreeing to apply discriminatory conditions;

- agreeing not to supply to or purchase from a third party; and

- enforcing supplementary obligations on parties to contracts which bear no relation to the subject of the contract.

Information sharing

The sharing of commercially sensitive information between competitors may give rise to competition concerns because it may be used to facilitate anti-competitive practices. Commercially sensitive information is information that is of competitive value and is not already in the public domain. Such information includes prices, costs, stock levels, customer details, margins and strategic planning.

3.2 Abuse of a dominant position

Chapter II of the Competition Act 1998 prohibits an abuse by one or more undertakings of a dominant position within the UK or a substantial part of it. To the extent that Picon members active in the same product markets have a combined market share of around 40% or more in all or part of the UK, it is possible that Picon and those members will be considered to be collectively dominant. This means that decisions of Picon will be decisions that could potentially fall foul of the Chapter II prohibition. The kinds of behaviour that amount to an abuse under Chapter II are those that have the effect of excluding competitors or exploiting customers.

4. Consequences of violating competition law

The implications for Picon and its member companies of breaching the competition rules may include:

- Substantial fines of up to 10% of worldwide group turnover for the preceding business year.

- The agreement or decision of Picon which violated competition law will be void and illegal.

- Picon and its member companies could also be the subject of civil actions involving damages claims from third parties who have been affected by an infringement.

- Investigations and any resultant legal proceedings would be extremely expensive and take up lots of management time.

- An infringement could have severe consequences on the reputation of Picon and its member companies.

5. Guidance on conducting Picon business

5.1 General guidance

Members must not use Picon or Picon meetings or events to exchange information or data, or enter into an agreement with a competitor or multiple competitors regarding:

- Current or future prices or any component of such price, including discounts, promotions, or any other component.

- The processes or formulae by which prices are set.

- Past, current or projected future performance, including revenues and market shares in specific markets or market segments.
- Costs.
- Current or future marketing or sales plans or promotions.
- Business plans and strategy.
- Plans to enter or exit markets.
- Allocation or division of markets or sales territories or customers.
- Relations with third parties, including any agreement not to do business with a third party or to restrict the amount of business done with a third party.

5.2 Conduct at Picon meetings

If you are chairing or attending a Picon meeting:

- Circulate an agenda in advance and stick to the agenda.
- Ensure that full minutes of the meetings are taken.
- If members start to discuss or exchange commercially sensitive information, state that such discussion or exchange must stop immediately.
- If the discussion or exchange does not stop, the relevant members must be asked to leave the meeting and their departure should be recorded in the minutes.
- Retain copies of documents, records or data which are received or exchanged in meetings.

Do not assume that a certain practice or conduct is lawful because others have done it in the past or because it is industry standard.

If you are concerned that unlawful discussion or exchange of information has occurred at a Picon meeting or event:

- Do not continue with or attempt to cover up conduct which you are concerned may violate competition law.
- Keep records of any conversations concerning the matter.
- Do not destroy any documents relating to the matter.

5.3 Guidance in relation to documents

When you are creating Picon documents in any format (including emails, file notes, memos, presentations and business plans) you should comply with the following rules:

- Avoid language which could imply competitor collusion or which could suggest secretive behaviour (e.g. “competitor x is not complying”, “this is in accordance with industry agreement”, “please destroy after reading”, “this is for your eyes only”).

- Do not write anything that implies that Picon is used as a forum to discuss prices or reduce uncertainty in the market.

- Do not speculate on or exaggerate the market strength of Picon members (e.g. avoid using words such as “dominate” and “monopolise”).

- Documents created in connection with legal advice should be identified as such (e.g. “prepared for the purpose of obtaining legal advice”).

Regarding documents and data relating to Picon matters, please bear in mind:

- In connection with competition investigations and private lawsuits, companies are often required to locate and produce huge amounts of documents and data. In the event of such an investigation or lawsuit, you are to preserve and maintain all documents and data that may be relevant. This applies even to documents and data that may be subject to automatic destruction or “over-write” programmes or to policies requiring the destruction of documents or data after a certain period of time.

- It can be a criminal act to destroy documents or data that are relevant to a competition investigation once an investigation has commenced. Therefore, please ensure that you do not destroy or delete any such documents or data and take affirmative steps to exclude such documents and data from any automatic destruction programmes or policies.

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