

FIX PROTOCOL LIMITED

COMPETITION LAW COMPLIANCE

POLICY



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for

FIX TRADING
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FIX PROTOCOL LIMITED

COMPETITION LAW COMPLIANCE POLICY

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Message from the FIX Program Office

FIX Protocol Limited (FIX) is firmly committed to complying with competition law and the Directors, Global Steering Committee and staff are asked to fully support this competition law compliance policy. However, it is the responsibility of all of us to ensure that we comply with it.

The main aim of competition law is about making sure that markets work well for consumers. It requires businesses to compete with one another – on price, on the quality of goods and services they offer and by being innovative.

Competition law protects the idea of a level playing field in markets. It prohibits competitors scheming or colluding to protect themselves from the risks, costs or uncertainties of the competitive process. It also prohibits businesses in positions of market dominance from abusing their power to distort or restrict competition.

It is about fair play, respecting the rules of the game and striving to win on the merits. FIX supports these values and objectives. For this reason, it has put in place this competition compliance policy.

This policy sets out what is and is not acceptable in general terms, but if you are in any doubt as to whether any conduct could amount to an infringement of competition law, you should ask for further guidance from the Global Steering Committee Co-Chairs or the Operations Director.

It is essential that you read and comply with this policy.

Thank you in advance for giving it your full attention.

FIX Program Office

1 **OUR COMMITMENT TO COMPLIANCE**

- 1.1 FIX is firmly committed to complying with all applicable competition laws in the conduct of our business.
- 1.2 This policy provides an overview of the main competition law rules that apply to us. It also sets out guidance and procedures that must be followed when dealing with matters to which competition law may apply.
- 1.3 The purpose of this policy is to assist the FIX Directors, Global Steering Committee, staff and members in understanding the law in respect of anti-competitive agreements and practices, recognising potential issues and avoiding infringements. The term “You” in this policy should be interpreted as covering the Directors, Global Steering Committee, staff, members and anyone else acting on behalf of FIX.
- 1.4 Failure to comply with this policy will be viewed very seriously. You should therefore take the time to read this policy carefully.

2 **WHY COMPETITION COMPLIANCE IS IMPORTANT**

- 2.1 Compliance with competition rules is a critical issue for FIX. Failure to comply with competition rules can have an extremely high financial cost. By way of example, the Competition and Markets Authority (CMA) can impose fines of up to 10% of annual worldwide turnover based on its previous financial year (which in FIX’s case is the combined worldwide turnover of all of its members).
- 2.2 In addition to the risk of large fines, compliance with competition rules is vital for the following reasons:
 - an agreement which infringes competition law may be wholly or partially invalid, which means that we cannot enforce it;
 - third parties who suffer loss as a result of anti-competitive behaviour can commence proceedings and recover damages (and other related costs) from us;
 - investigations and findings of infringements attract adverse publicity and could significantly damage our reputation;
 - investigations and possible legal proceedings resulting from infringements can take years to resolve, leading to high costs and taking up management time;

- cartel activities such as price fixing, market sharing or bid rigging can result in personal criminal sanctions for the individuals involved, including unlimited fines and imprisonment of up to five years;
- a competition law infringement by a company can lead to a director being disqualified for up to fifteen years.

2.3 If you have any queries, or are uncertain whether competition law may apply to specific activities, you should contact the Global Steering Committee Co-Chairs or the Operations Director.

3 **WHAT COMPETITION LAW IS RELEVANT TO FIX?**

3.1 Competition law prohibits (1) cartel activities (2) other anti-competitive agreements and (3) dominant companies from abusing their dominant position.

3.2 FIX has carried out a risk assessment and its current view is that the risk associated with cartel activities and potentially illegal information sharing is high, but that the risks associated with other anti-competitive agreements and abuse of a dominant position are low.

3.3 Accordingly, this policy focusses on cartel activities.

Cartel activities

3.4 Cartels are agreements where two or more competitors agree (whether in writing or otherwise) not to compete with each other. Cartels include agreements between competitors to:

- fix prices
- share customers or markets
- restrict output
- engage in bid-rigging
- boycott a competitor, customer or supplier
- exchange commercially sensitive information (either directly or indirectly through a third party such as a common supplier or customer).

Other anti-competitive agreements

3.5 Agreements between competitors that do not relate to cartel activities and agreements between businesses that are not competitors are usually less sensitive from a competition law perspective – and usually require more detailed examination to determine whether they present any competition law risks.

3.6 However, the following types of agreements between suppliers and customers are regarded as constituting serious infringements of competition law:

- an agreement which requires the customer to resell the supplier's products or services at a fixed or minimum resale price (this is commonly referred to as resale price maintenance);
- an agreement which bans a customer selling in the EU from making any sales to another EU country.

Abuse of a dominant position

3.7 A business that enjoys substantial market power over a period of time might be in a dominant position. The assessment of a dominant position is not based solely on the size of the business and/or its market position, although a business is unlikely to be dominant if its market share is less than 40 per cent.

3.8 Anti-competitive conduct by a dominant business which exploits customers or has an exclusionary effect on competitors is likely to constitute an abuse.

3.9 In view of FIX's market position, in general it is unlikely to be considered dominant. However, it may be that certain member organisations have a stronger position in their local markets, in which case you may need to seek further specific guidance.

4 HOW DOES COMPETITION LAW APPLY TO FIX?

4.1 FIX is a membership organisation for the individual FIX member organisations and is subject to competition law in the same way as any other business.

4.2 Each member organisation is treated as a separate entity for the purposes of competition law and, where a member provides private trading, brokerage, fund management and/or investment advisory services, it is regarded as a competitor of every other member that provides those services.

4.3 Accordingly, as FIX is a membership organisation of competitors, FIX cannot coordinate the conduct of the FIX members in relation to pricing or other areas where they compete with one another.

- 4.4 Particular care needs to be taken by FIX since it constitutes what is referred to under EU Competition law as an “association of undertakings” (of which trade associations, like FIX, are the most prominent form). Decisions of associations of undertakings are explicitly recognised by EU law as being capable of infringing the prohibition on anti-competitive agreements and even constituting a form of cartel activity.
- 4.5 Indeed, FIX’s rules, regulations and constitution are capable of giving rise to an anti-competitive agreement, as can even any non-binding recommendations that it issues. In FIX’s case, the provision of messaging services and online forums may be seen as enabling illegal information sharing and/or a “concerted practice” between member organisations, if these platforms are used in such a way as to facilitate direct or tacit collusion or even merely reduce ‘strategic uncertainty’ between competing undertakings. In other sectors, for example, traders have manipulated trading volumes to artificially inflate or reduce prices for commodities, stocks or currencies. This is illegal.
- 4.6 The European Commission has the power to fine infringers up to 10% of their global turnover for the business year preceding the infringement in question. In FIX’s case, this could mean 10% of not only its own turnover but the aggregate turnover of all of its members combined.
- 4.7 In the event that FIX itself is unable to meet the amount of any financial penalty that is imposed under Competition law, the Commission also has the ability to pursue the member organisations individually for contributions (on a “joint and several” basis).
- 4.8 The UK competition enforcement authorities, being the CMA (and, in FIX’s case, also the Financial Conduct Authority, which possesses competition law powers concurrent with those of the CMA), have similar powers to impose and collect fines for anti-competitive conduct.

5 **DOS AND DON'TS**

- 5.1 This section describes some of the specific situations which you may come across and gives guidance on how to deal with them.
- 5.2 In cases of doubt, you should seek further guidance from the Global Steering Committee Co-Chairs or the Operations Director.
- 5.3 In this section:

- the term “Customer” refers to private and institutional investors and other recipients of services provided by member organisations of FIX.

Pricing

5.4 FIX should not:

- have any involvement in discussions or agreements with a Customer that relate to the fees to be charged by members for managing funds/arranging trades;
- agree with members what prices or fees they should charge;
- recommend to members what prices or fees they should charge;
- pass on any information received from a member in relation to its pricing or fee structure to any other member;
- act as a forum for the discussion or exchange of pricing information between members.

5.5 For these purposes references to prices and pricing information include past, current and future prices, as well as discounts, rebates, price changes and pricing methods.

5.6 It is permissible for FIX:

- to negotiate and agree fees, rates and purchase prices on behalf of FIX LLPs for brokerage, administrative, regulatory insurance or other services that members require;
- to promote best practice and trading strategies among members, provided that:
 - FIX has no involvement in setting the price of trades or fees to the Customer; and
 - any fees or pricing information is kept confidential and not disclosed to any other member organisation.

Customer or market sharing

5.7 FIX should not:

- agree with, or make any recommendations to, members as to:

- where or which trading platforms/exchanges they should carry on their activities;
- which Customers or suppliers they should or should not deal with; or
- what services they should provide;
- pass on any information received from a member in relation to any of these matters to any other member;
- act as a forum for the discussion or exchange of information in relation to any of these matters between members.

Output restrictions

5.8 FIX should not:

- agree with, or make any recommendations to, members as to the volume of work or trades they should undertake;
- pass on any information received from a member in relation to their volume of work or trades to any other member;
- act as a forum for the discussion or exchange of information in relation to volume of work or trades between members.

Bid rigging

5.9 FIX should not:

- agree with, or make any recommendations to, members as to whether or how they should respond to a tender;
- pass on any information received from a member in relation to its tender bid to any other member;
- act as a forum for the discussion or exchange of information in relation to tender bids between members or for arrangements relating to the submission or retention of bids by or between members or relating to bid rotation, collusive sub-contracting arrangements (e.g. A deliberately loses bid to B in return for promise of sub-contract from B) or market or customer allocation.

Boycotts

5.10 FIX should not:

- agree with, or make any recommendations to, members not to deal with a competitor, Customer, particular trading platform or exchange or supplier (e.g. broker, agents, arranger IT developer or software provider or insurer) or alternatively to suggest dealing exclusively with any particular supplier to the exclusion of others;
- pass on any information received from a member that it is not dealing with a competitor, Customer or supplier to any other member;
- act as a forum for the discussion or exchange of information between members in relation to whether members should deal with a competitor, Customer, particular trading platform or exchange or supplier (e.g. broker, agents, arranger IT developer or software provider or insurer).

Exchange of commercially sensitive information

5.11 FIX should not:

- pass on any commercially sensitive information received from a member to any other member;
- act as a forum for the discussion or exchange of commercially sensitive information between members.

5.12 For these purposes, commercially sensitive information means information relating to such matters as prices, identities of customers, volumes of trade, commercial strategies of individual companies, trade secrets, innovative technologies or processes marketing and business plans, specific fund and trading portfolios, costs information, [investment trends/techniques for specific stocks] or any other information that is not in the public domain and that could influence a competitor's conduct.

5.13 It is permissible for FIX to disseminate to members:

- publicly available information;
- information that is sufficiently aggregated or anonymised, such that no information relating to an individual member could be identified or reverse engineered by any other member.

- 5.14 Written agendas should be prepared (and adhered to) for all meetings of the Directors, steering bodies, Committees and Working Groups and clear, contemporaneous records should be kept of what was said (i.e. in the form of minutes).
- 5.15 Any suspect conversations or conversations which might have the potential to involve disclosure or indication of future pricing or commercial intentions should be terminated immediately and a record made in the relevant minutes that those present actively distanced themselves from the possibility of illegal information exchange.
- 5.16 Online forums should have appropriate warnings posted on their pages alerting member users to the dangers of posting commercially-sensitive information under competition law, and threads and 'chat' areas should be monitored periodically.
- 5.17 FIX should also take care to ensure that consultation documents issued to members in relation to, for example, prospective legislation or regulatory developments do not communicate any sensitive aspects of members' conduct on the marketplace. This risk might arise if, for instance, a regulatory response circulates the strategic intentions of any member organisations.

Standards setting and providing guidance

- 5.18 As part of its role and services to member organisations, FIX consults on and sets or recommends certain standards in terms of quality, best practice etc.
- 5.19 FIX must take special care when adopting standards, in particular to ensure that:
- members all have unrestricted access to participate in any standard-setting process;
 - the content of any standards created is objective does not deliberately favour or exclude any particular business or group of businesses;
 - standards are adopted through an entirely transparent procedure;
 - compliance with any standard is optional and not made mandatory; and
 - access to the standard is provided on fair, reasonable and non-discriminatory (a.k.a. "FRAND") terms.
- 5.20 Technical guidance on how bills and legislation ought to be interpreted, and representations to governmental bodies as part of consultation exercises will not normally present competition law risks. However, this would change if any positions, recommendations or views FIX adopts through such guidance and/or representations

would be likely to prompt uniform conduct or compromise the independence of members' behaviour on the marketplace.

6 YOUR RESPONSIBILITIES

- 6.1 You must ensure that you read, understand and comply with this policy.
- 6.2 You are required to avoid any activity that would (or might) lead to or suggest a breach of this policy.
- 6.3 You must notify the Global Steering Committee Co-Chairs or the Operations Director as soon as possible if you believe or suspect that a conflict with this policy has occurred or may occur in the future.
- 6.4 Any person who breaches this policy will face disciplinary action, which could result in dismissal for gross misconduct.
- 6.5 This policy does not form part of any employee's contract of employment and it may be amended at any time.

7 HOW TO RAISE A CONCERN

- 7.1 You are encouraged to raise concerns about any issue or suspicion of malpractice at the earliest possible stage. If you are unsure whether a particular act constitutes a breach of competition law or if you have any other queries, these should be raised with the Global Steering Committee Co-Chairs or the Operations Director.
- 7.2 If you raise a concern, it will be treated in confidence and the matter will be investigated confidentially. We will ensure that the matter is dealt with effectively and that you are informed of the outcome of the investigation.
- 7.3 If you wish to raise a concern anonymously, you should send a brief written summary of your concern by post to the Global Steering Committee Co-Chairs or the Operations Director.

8 PROTECTION

- 8.1 We are committed to ensuring no one suffers any detrimental treatment as a result of refusing to breach competition law or because of reporting in good faith their suspicion that an actual or potential breach has taken place or may take place in the future.

8.2 If you believe that you have suffered any such treatment, you should inform the Chairman.

9 TRAINING AND COMMUNICATION

9.1 Training on this policy forms part of the induction process for all new Director and GSC members and employees. All existing Director and GSC members and employees will receive annual training on how to implement and adhere to this policy.

9.2 It is the responsibility of all of us to communicate our commitment to compliance with competition law to all suppliers, contractors and business partners at the outset of our business relationship with them and as appropriate afterwards.

10 WHO IS RESPONSIBLE FOR THE POLICY?

10.1 The Global Steering Committee Co-Chairs and Operations Director have the role of driving compliance within and across FIX [(and the FIX “community”)] and has responsibility for ensuring that there is a clear message about the importance of complying with competition law. However, overall accountability for this policy rests with the Directors and Global Steering Committee.

11 MONITORING AND REVIEW

11.1 FIX will monitor and review the implementation of this policy on an annual basis, considering its suitability, adequacy and effectiveness. Any improvements identified will be made as soon as possible.

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APPENDIX 1

WATCH YOUR LANGUAGE

Take care with your language in all business communications, whether in writing or in the course of telephone conversations or meetings. Careless language could be very damaging if the company is subject to an investigation by the competition authorities or is involved in litigation with another company. A poor choice of words can make a perfectly legal activity look suspect.

Many internal documents are likely to come under scrutiny during an investigation or legal proceedings involving a third party, even those which you might believe to be confidential such as diaries, telephone call records or personal note books. Documents in this context are not limited to papers, but will include any form in which information is recorded: computer records and databases, e-mail, microfilms, tape recordings, films, videos and so on can all be examined.

You should therefore follow these guidelines:

- Consider whether you need to write anything down at all.
- If you think it might be a sensitive area, speak to in-house counsel (or an external legal adviser in the absence of an in-house lawyer) before committing it to paper.
- Whenever you write something down, remember that it could be made public one day.
- Avoid giving the impression that a customer is getting special treatment (“This is a special deal for you only”), particularly if the company may be in a dominant market position.
- Avoid any suggestion that an industry view has been reached on a particular issue such as price levels.
- Do not use guilty vocabulary (“Please destroy/delete after reading”).
- Do not speculate about whether an activity is illegal or legal.
- Do not write anything that implies that prices are based on anything other than the company’s independent business judgement.
- Do not keep papers for any longer than provided for in the company’s document retention programme.

- Avoid keeping lots of different versions of the same document in your files or computer system.
- State clearly the source of any pricing information (so it does not give the false impression that it came from talks with a competitor).
- Keep accurate notes of all meetings with competitors [and ensure that contact forms are completed].
- Avoid power or domination vocabulary, such as “This will enable us to dominate the market”, or “We have virtually eliminated the competition”.
- Avoid language suggesting that the company has a strategy to drive a competitor out of business.
- Follow the same rules if annotating copies of notes or memorandums originated by others.

E-mail and voicemail

E-mail and voicemail can often contain even more damaging statements than letters or memoranda, because they are usually sent or left casually, in the false belief that they are confidential or will be destroyed after a short time. Both e-mail and voicemail messages can be accessed during an inspection by the competition authorities or in legal proceedings. They are regarded as a particularly good source of information because they are stored by time and date and can give a full picture of what was done and said.

You should therefore:

- Take as much care in sending messages by e-mail or leaving them on voicemail as you would when sending a letter or memorandum. Assume that all e-mail or voicemail messages may be read or heard by others, including competition authorities.
- Keep in mind that e-mail and voicemail messages, even if deleted, leave a potentially damaging record that may have to be produced to the competition authorities or in legal proceedings.
- Exercise particular caution with messages sent to or received from outside the company over the internet. Remember that e-mail messages are often appended to other e-mail messages and may be forwarded or replied to several times.

Communications with in-house and external counsel

This section of the manual contains guidelines which must be followed in order to assist FIX Protocol in claiming legal professional privilege for communications with in-house and external counsel. It is also applicable to its members.

Companies are in some circumstances able to prevent the disclosure of communications with their external or in-house lawyers on the ground that the communications are protected by the right of legal professional privilege, and can therefore be kept confidential. Privilege under UK law extends not only to communications with external lawyers from European Economic Area (EEA) countries but also to advice from in-house lawyers and lawyers from outside the EEA (e.g. US lawyers). Such communications will be privileged whether or not the legal advice given or sought is closely related to the investigation.

It should be noted that this is different to the position under EU law, where the right to claim privilege does not extend to in-house counsel.

To enable the company to substantiate any claim of legal professional privilege which it may wish to make in order to protect the confidentiality of communications with in-house or external counsel, these guidelines must be followed:

- Make sure that each request for legal advice clearly displays the name of in-house or external counsel, and that the words “Privileged and confidential request for legal advice” appear at the beginning of the communication.
- Do not send copies of your communications with in-house or external counsel to anyone else.
- Do not in the same communication also seek in-house counsel’s views on non-legal matters, even if they are related to the request for legal advice.
- If you are replying to a request for information from in-house or external counsel, ensure that the words “Privileged and confidential. Prepared at the request of in- house [external] counsel” appear at the beginning of your reply.
- Do not refer to communications between non-lawyers as being “privileged and confidential”, even where in-house counsel receives a copy.
- All communications passing between you and in-house or external counsel should be kept separately in files marked “Privileged and confidential”.
- When dealing with third parties, you should not refer to legal advice received by the company without the prior consent of in-house counsel.

- In cases where it may be appropriate to refer to legal advice when dealing with third parties, the best course is to refer to a separate record of the advice which has been prepared by in-house counsel himself.

APPENDIX 2

DOCUMENT RETENTION AND DESTRUCTION

You should refer to the company's document retention and destruction policy for general guidance when deciding how long to keep any particular documents or records. In the context of this manual you should note, however, that:

You must not destroy documents or records (which would not otherwise be destroyed in accordance with the company's usual policy) because you think they contain damaging information. This will damage the company's standing with the competition authorities if it comes to light in an investigation, and can lead to criminal penalties.

If you are notified that the company is under investigation by the competition authorities, all document destruction in the areas identified by in-house counsel must immediately cease until further notice.

APPENDIX 3

DEALING WITH ENQUIRIES

Telephone enquiries

If you receive any enquiry from a lawyer from outside the company, put it through to in-house counsel immediately or, if you do not have an in-house counsel, take the caller's details and say that such matters are handled by the company's external lawyer. Do not answer any questions. Instead, politely terminate the call and ensure that the matter is referred to the company's approved external lawyer, together with the identity and contact details of the caller. From that point on, the in-house counsel or approved external lawyer should take the lead in dealing with the matter.

If you receive an enquiry from an inspector or other government official, put it through to in-house counsel immediately. If counsel is not available, do not put it through to another person but note down the name of the caller, the purpose of the call, the name and number of the inspector and his contact telephone number. Record any other information he gives you, such as the date and time of a potential inspection. Pass all this information as soon as possible to in-house counsel [or to an appropriate senior person within the organisation].

You should be cautious if you receive a telephone enquiry about who does what within the company. Do not answer enquiries unless you are certain that they are bona fide and that you know who the caller is and what they want the information for.

Visitors

If one or more inspectors arrive in person, ask to see their identity cards (and write down their names, the name of their organisation and the time they arrived). Contact in-house counsel immediately or, in his absence [one of the company's senior managers designated to deal with this situation]. Keep the inspectors in the reception area where you can see them until in-house counsel or manager arrives.

Do not:

- Allow the inspectors to wander round the building;
- Put the inspectors in a room containing files or records.

The procedures to be followed when handling investigations (or "dawn raids") by the Competition and Market Authority are set out in the company's separate guidelines [Competition and Market Authority investigations].

Note to users: many companies prefer to deal with the procedures to be followed in the event of a Competition and Market Authority dawn raid in a separate document which can easily and quickly be consulted if such a raid occurs.

APPENDIX 4

Contact report form

Date of meeting/conversation:

Venue (if a meeting):

Organisation name:

Name of contact and job title:

Purpose of meeting/conversation:

Summary of what was discussed:

Name:

Date: