



INNOVATION TO IMPACT

ANTITRUST/COMPETITION LAW REMINDER

1. BACKGROUND

- 1.1 This Reminder has been **endorsed by Innovation to Impact** as part of its commitment to compliance with the strictest and most developed antitrust/competition laws and principles. It is intended to **provide antitrust/competition law guidance to Innovation to Impact members** when they interact, both at meetings (including via conference calls, webcasts and other means) hosted, organized or sponsored by Innovation to Impact (or any other meeting when attending in connection with, or as representatives of Innovation to Impact) as well as in informal discussions before or after such meetings and any associated correspondence.
- 1.2 Innovation to Impact recommends that all members bear in mind the principles of this Reminder during all meetings with competitors. However, this Reminder is not a substitute for members obtaining their own anti-trust/competition law advice and/or implementing their own anti-trust/competition law compliance policies.
- 1.3 The Reminder **aims to ensure strict observance and compliance by Innovation to Impact and its members with all applicable antitrust/competition laws**. “Applicable antitrust/competition laws” include US/EU laws as well as underlying principles of national laws in any other relevant jurisdiction. Therefore, it is essential that Innovation to Impact and its members comply with this Reminder at all times.
- 1.4 **Strict compliance with antitrust/competition laws forms part of the culture of Innovation to Impact**. Any violation of the antitrust/competition laws can expose both Innovation to Impact and participating companies to lengthy and costly administrative (and in some countries) criminal investigations, significant reputational damage, business disruption, the potential unenforceability of agreements, hefty fines and civil liability for damages. In a growing number of countries, such violations can also lead to sanctions against business managers and executives having engaged in illicit conduct.

2. KEY ANTITRUST/COMPETITION LAW PRINCIPLES

- 2.1 While some activities among competitors are both legal and beneficial to the industry, **group activities of competitors**, in particular within associations/forums, **are inherently suspect** under the antitrust laws. Agreements or combinations between or among competitors need not be formal to raise questions under antitrust/competition laws, but may include any kind of understanding, formal or informal, secretive or public, under which each of the participants can reasonably expect that another will follow a particular course of action.
- 2.2 Generally speaking, the antitrust/competition laws prohibit any agreement or concerted action which restricts competition unless it produces overriding benefits to consumers. However, **agreements or concerted practices** which are aimed at **coordinating or influencing the competitive behaviour** of companies active on the same market – in particular the fixing of prices and/or output or the allocation of customers or markets – rarely produce consumer benefits and **may be treated as cartels**. Cartels are the antitrust/competition law offence most **heavily prosecuted** by the antitrust/competition law regulators around the world.



Each meeting participant is responsible to see **that topics**, which may give an appearance of an agreement or concerted action **that would violate the antitrust/competition laws, are not discussed at your meetings**. It is the responsibility of each participant in the first instance to avoid raising improper subjects for discussion, to object to these topics and actively distance themselves if such topics are raised by others.

- 2.3** This Reminder has been prepared to assure that participants in meetings are aware of this obligation.
- 2.4** Innovation to Impact exists to objectively promote industry partnership, prioritization and investment. Innovation to Impact (and its members) will not promote or defend the interests of any one company in preference to another (whether an Innovation to Impact member or otherwise).
- 2.5** The **DOs** and **DON'Ts** presented below highlight only the most basic **RED FLAGS** when engaging in contact with competitors through Innovation to Impact meetings or events. Each participant in a meeting (including Innovation to Impact) should be thoroughly familiar with his/her responsibilities under the antitrust laws and should consult in-house or external legal counsel in all cases involving specific situations, interpretations or advice.

3. DON'TS

3.1 Do not, in fact or in appearance:

- Attend Innovation to Impact meetings without a pre-approved written agenda or clear indication of the purpose.
- Fix purchase or selling prices or other trading conditions.
- Fix minimum prices to be followed by resellers/distributors.
- Limit supply of products, services, output, markets, technical development or investment.
- Allocate markets or customers, whether through bid rigging or otherwise with your competitors
- Reach understandings or agreements – verbal or written, implemented or not – or even hold discussion on anything related to commercially sensitive information, such as:
 - Individual company prices, rebates, price changes, price differentials, mark-ups, margins, discounts, allowances, credit terms, or data that bear on price, e.g. costs, production, capacity, inventories, sales volumes, and orders.
 - Industry pricing policies, price levels, price changes, future prices or differentials.
 - Trading terms and conditions.
 - Current and future production or capacity levels.
 - Bids on contracts for particular products; procedures for responding to bid invitations.
 - Individual business and Capex plans and marketing plans and strategies including investment decisions (e.g. mergers or acquisitions of new business divisions, land and buildings investments and investments in new technologies.) and specific target markets, target customers and business methods.



- Adoption of new standards, which might have the effect of excluding certain technologies, agricultural techniques, production processes or products from any market.
- Adopt or recommend standards that would materially disadvantage certain companies (including non-members) by making it materially more difficult for them to compete or enter the relevant markets.
- Accept commercially sensitive information from a competitor or agree to share such information with your competitor(s), even if the discussion relates to supposed "market gossip".
- Participate in any information exchange, market survey, or benchmarking exercise that allows access to individualized competitive information from the various competitors.
- Engage in conduct the purpose or effect of which is to exclude any competitor or supplier or to engage in collective boycotts.
- Adopt any rules or recommend any conduct which could have the object or effect of preventing or distorting competition e.g. price-fixing, market-sharing.
- Assume that you have to follow recommendations of Innovation to Impact or assume that others will.
- Allow, encourage, or participate in any breakout or 'shadow' meetings before or after the main meeting during which individual competitors exchange commercially sensitive information.
- Discuss or exchange information regarding the above matters during social gatherings incidental to Innovation to Impact meetings, even in jest.
- Use ambiguous or grey language in minutes of meetings which could be in danger of being misinterpreted if read by competition authorities at a later date.

4. DO'S

4.1 In addition, it is particularly important that you DO:

- Read this Reminder before you attend any Innovation to Impact meeting.
- Acknowledge the Reminder at the start of the meetings.
- Have an agenda and adhere to prepared agendas for all meetings.
- Get minutes taken and object if they do not accurately reflect the discussion and actions taken.
- Protest against any discussions or meeting activities which appear to violate the above **RED FLAGS**; dissociate yourself from any such discussions or activities and leave any meeting in which they continue – even being the passive recipient of sensitive information from competitors may be a breach of antitrust/competition laws.
- Consult with your in-house or external legal counsel on all antitrust/competition law questions relating to meetings, and promptly report any violation of the above **RED FLAGS**



- Consult with your in-house or external legal counsel before any benchmarking exercise is undertaken where any confidential information may be exchanged with Innovation to Impact or its members.

5. CONFIRMATION

"I hereby confirm that I have read and understood the Innovation to Impact Antitrust/Competition Law Reminder. I agree that I will adhere to the compliance principles as described in the Reminder and otherwise take necessary steps to ensure Antitrust/Competition law compliance during our dealings with Innovation to Impact and its members".

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Signed:

On behalf of:

Date