

Guidelines on Compliance with Competition Law

Introduction

The Energy Institute is a technical learned society which exists to promote professionalism and good practice in the energy industry. The main objectives of the Energy Institute are:

- to promote the role, status and contribution of energy professionals in society and maintain professional standards;
- to equip energy professionals with tools to enable their positive contribution to society;
- to ensure the availability of good quality energy education and learning provision;
- to provide a forum for debate to facilitate the development and dissemination of energy knowledge and good practice; and
- to enhance public understanding of energy resources and their role in society.

In pursuit of these objectives, the Energy Institute works with its members and member companies, drawing on their skills and experience through the operation of various committees and workgroups.

Major policy decisions, programmes and budgets are agreed by the EI Council. The EI Technical Programme, which is the principal means by which the EI develops industry good practice, is agreed, funded and managed via the Scientific and Technical Advisory Committee, with specific responsibilities for parts of the technical programme being devolved to Technical Committees and workgroups, each with well defined and specific terms of reference.

The nature of the EI Technical Programme is such that participants from various companies meet on a regular basis to discuss scientific and technical issues relating to the energy industry and the delivery of good practice guidance. This results in the publication of guidance documents, technical and scientific papers, and the holding of technical workshops and training. In undertaking their duties the various technical committees liaise with regulators, industry bodies, academia and a wide range of outside parties.

Competition Law

The basic principle of competition regulation is that it is prohibited for two or more competitors to enter into any form of agreement or arrangement which has the object or effect of preventing, restricting, distorting or limiting competition in the market concerned.

The EI is committed to ensuring that all of the activities carried out under or in association with its name, are strictly compliant with all relevant competition regulations. Participants in EI activities are to be aware at all times of their obligations under the relevant competition laws.

The international nature of the EI's technical activities means that EI and its member companies must be aware of and ensure compliance with all applicable competition laws. Due to the nature of the EI and its partners, the most likely applicable competition laws are:

- UK's competition legislation – in particular the Competition Act 1998 and the Enterprise Act 2002;

- EC Legislation – in particular Article 81 of the Treaty of Rome; and
- US' antitrust laws.

Competition laws from other countries where the effects of anti-competitive practices are felt may also be applicable. The consequences of not complying with the above legislation are significant and can include punitive fines, forced divestment of a business or even imprisonment.

Governance

The EI Royal Charter of Incorporation and Bye-Laws, which form its Code of Governance, underline the fact that its activities, objectives and programmes should comply with the law, both in respect of its own activities and those taking place in its name.

Compliance with Competition Law

In order to ensure compliance with competition law, the EI Officers, working with the relevant Committees and Committee Chairman, should ensure that:

- All meetings have a clearly defined agenda, agreed with the Chairman and circulated in advance of the meeting. Agendas should not contain open ended items, such as “Any Other Business”. Technical meetings may have “Any other technical business” included.
- Minutes should be produced for all meetings; these should be agreed by the Chairman before circulation to Committee members in advance of the next meeting. Any comments which any Committee Member has on the minutes should be raised with the Chairman and addressed at the beginning of the subsequent meeting.
- An attendance record should be circulated at each meeting for signature by attendees. This should remind members of their responsibilities relating to competition law.
- If there is any doubt as to whether a particular matter is a legitimate one for discussion, request that the discussion be postponed and seek legal advice. In such case, consideration should be given to having a lawyer present.
- Before, during and after a meeting, care should be taken to ensure that the following issues are not discussed:
 - Pricing or pricing elements: including individual company or industry prices (whether current or future pricing), price differentials, margins, price changes, price mark-ups, discounts, allowances, rebates, commission rates, credit terms, price changes, terms of sale generally (including enforcing resale prices);
 - Market Sharing: including matters relating to individual customers, particularly “collusive tendering” (bid rigging), intentions to bid or not to bid, intentions to enter or not to enter certain markets, or other forms of sharing or allocating the market with competitors such as territorial allocations or respecting “home” markets;
 - Future Plans or strategic intentions: including information relating to non-public future plans of individual companies concerning investments or divestments (e.g. capacity closure, expansion plans or market entry or exit) or the design, production, distribution or marketing of particular products including proposed new territories or customers;
 - Costs: including production or distribution costs, cost accounting formulas, methods of computing costs, individual company figures on sources of supply, inventories, sales etc.

- Production: including capacity expansion or debottlenecking intentions, over-capacity or over-supply forecasts or predictions, capacity shutdown or mothballing intentions, storage investment intentions etc.

It is the responsibility of all Committee Members to make sure that their own participation in committee meetings will not give rise to breaches of competition law requirements. Each participant has a responsibility to comply with his or her own company's competition policy requirements. Should it be felt that an improper or questionable subject is raised, a meeting participant should ensure any objection is recorded with the Chairman and in the minutes

Regardless of the subject matter, no individual should participate in a meeting which addresses issues outside the Committee's terms of reference, or which otherwise fails to conform to these guidelines. The requirements outlined are also applicable to any social or other gathering connected with the EI's activities. In the event of any inappropriate discussion, an objection should be raised at the time and also lodged with the Energy Institute. The matter should be raised with the individual's own company compliance officer.

The aim of these guidelines is to underline the importance that the EI attaches to its competition compliance procedure and to remind Members that their conduct whilst engaged on EI related projects should at all times be in accordance with these guidelines and applicable competition legislation. Members are reminded that this is not a comprehensive document and outlines the minimum requirements only; Members with specific concerns should notify the relevant EI Officer in the first place and should seek advice from their own company's counsel or compliance officer if applicable.

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