



## OIL & GAS UK - COMPETITION LAW COMPLIANCE POLICY<sup>1</sup>

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<sup>1</sup> This replaces the Oil & Gas UK policy dated September 2015

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## 1. CEO Foreword: Statement of policy, and overview

1.1 The basic concepts of competition law are simple: competitors must compete, not collude; and must not abuse their “dominant position”. Since all trade associations assist their members to work together on legitimate issues of common interest - e.g. regulatory matters and the development of the relevant industry - we must always be clear on the boundaries competition law places on our activities. This is by far the biggest area of legal risk which all of us in Oil & Gas UK have to manage.

Trade associations are of special interest to competition authorities, as by definition they arrange meetings of competitors (see 1.2 below).<sup>2</sup> Bona fide collaboration on legitimate industry issues is permitted; using any meetings as a “cover” for collusion in anti-competitive practices is prohibited. (ANNEX B is a 1 page summary to be used as a “Competition law reminder” for all meetings. Sections 3 and 4 on pages 6-9 provide non-exhaustive lists of “dos and don’ts”).

1.2 In our Articles of Association, our first “object” reads: “To further and generally develop the industry of exploring for, the exploitation of and production.....of oil and natural gas (the “Industry”) [in the UKCS] and to promote the **consideration and discussion of all questions** affecting the Industry, aid its expansion and general utility, and **generally assist and promote cooperation** among persons engaged in the Industry”. (Emphasis added).

1.3 Competition law prohibits various activities, from price fixing and market sharing to the anti-competitive exchange of confidential business information (see Annex A). It also controls the abuse of market power. If the authorities cannot establish that collective action by trade association members results from an agreement between them, they might still judge that members are in a collective dominant position.

1.4 Competition law is about substance, not form; but the written record (including any email in our system) is critical if we are investigated. Information exchanged and activities discussed formally or informally, in emails or telephone calls or at informal social events (again see footnote 2) can all provide evidence of a breach of competition law.

1.6 The sanctions in this area are severe<sup>3</sup>. We and our members could be fined up to 10% of group worldwide turnover, and also face potential claims for damages. Individual members may be implicated in a trade association investigation even if they did not openly and actively support the relevant agreement/activity. Moreover, under EU competition law, trade association members may have joint and several liability for breaches. Remember also that a mere allegation of a breach of competition law can cause severe reputational damage.

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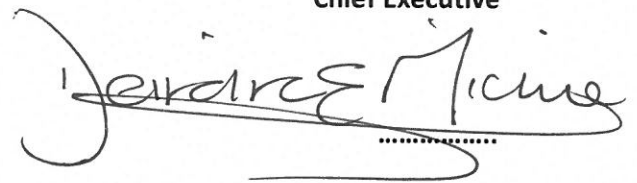
<sup>2</sup> A famous quote from Adam Smith’s “Wealth of Nations” (1776) illustrates why we need to ensure that we are never party to unlawful discussions/information exchanges: “*People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices*”.

<sup>3</sup> The most serious breaches can lead to individuals facing up to 5 years imprisonment and/or an unlimited fine. Directors can be disqualified from office for up to 15 years. (Enterprise Act 2002).

- 1.7 If you have any question or concern in this area, please raise it immediately with your supervisor, our Legal Department (who will provide training – see section 2), the Director of Finance and Corporate Services or me. (Oil & Gas UK members should report any concerns in the first instance to their own legal advisers). Pending satisfactory resolution of your question, you should not proceed further.
- 1.8 Any breach of this policy may become a disciplinary matter – but nobody will ever be disciplined for "taking a pause" and raising a question or concern; so please read this document carefully, keep it handy for reference - and if in doubt, ask.

**Deirdre Michie**

**Chief Executive**

A handwritten signature in black ink that reads "Deirdre Michie". The signature is written in a cursive style with a large initial 'D' and a long horizontal flourish at the end.

**27 May 2016**

## **2. Oil & Gas UK Competition Law Compliance Training**

- 2.1 Oil & Gas UK will ensure that all Oil & Gas UK staff receive training on competition law. All staff will be briefed on the specifics of these guidelines and also on the wider nature of competition law principles.
- 2.2 Training will be updated on an annual basis for all staff members within Oil & Gas UK. Any member of staff joining Oil & Gas UK during the year shall be provided with initial training.
- 2.3 Certain positions, notably Directors, front of house staff and legal advisors will require additional and more in depth training. In particular, Oil & Gas UK recognises the importance of understanding the Dawn Raid Response Guidelines, which are provided in a separate document.

### 3. Dos and Don'ts

These provide brief practical guidance to Oil & Gas UK staff and members to aid compliance with competition law and highlight certain areas where extra caution should be taken. Please note that these lists are not exhaustive. You should aim to comply not only with the letter of these guidelines but also with their spirit.

#### **Oil & Gas UK Staff**

##### ***Do***

1. Continue the Oil & Gas UK policy of ensuring that membership and access to membership benefits remains open to all applicants on an equal basis and on non-discriminatory terms.
2. Protect the confidentiality of all commercially sensitive information – see Annex A; and for examples of “commercially sensitive information” see the list on page 9.
3. Unless specific legal advice from the Group Legal Advisor or external counsel has approved an alternative approach, aggregate and anonymise any commercially sensitive information provided to Oil & Gas UK on a confidential basis before distributing it to members. Confirm with the Group Legal Advisor before distribution. Record the steps taken to ensure protection, aggregation and anonymity.
4. Ensure that where Oil & Gas UK publishes standards, codes of practice or standard terms, they are clearly marked as recommendations, their use by members is not enforced and they do not contain any matters which could affect competition between members.
5. Follow the guidelines on agendas, procedures and minutes of all meetings set out in Section 4.
6. Flag any concerns that you may have should discussions during meetings or at any time stray into inappropriate matters. Stop such discussions. Consult the Group Legal Advisor on whether the topic may be addressed and if so, how.
7. Report any competition law concerns to the Group Legal Advisor, the Director of Finance and Corporate Services, another Director of Oil & Gas UK or the Chief Executive.

##### ***Don't***

1. Share commercially sensitive information with members or create any opportunity for members to share such information except in accordance with specific legal advice.
2. Unless specific legal advice from the Group Legal Advisor or external counsel has approved an alternative approach, distribute any commercially sensitive information without first aggregating and anonymising it and checking that appropriate agreements are in place for the use of the information and to protect confidentiality.
3. Seek to establish standards or common approaches between members on commercially competitive aspects of their business, such as prices.

## **Members of OIL & GAS UK**

Members of Oil & Gas UK should note the following points as well as any guidance provided by their own companies.

### ***Do***

1. Review agendas in advance of meetings and raise any concerns.
2. Keep to the agenda of the meeting, save for AOAB agreed as discussed in section 4 below. Flag any concerns that you may have if discussions during meetings stray into inappropriate matters. Consider whether you should leave the meeting. Have your concerns (and if it is the case, your leaving) minuted.
3. Review the draft minutes of meetings to ensure that they are accurate and correct any inaccuracies as soon as possible.
4. Ensure commercially sensitive information is disclosed to Oil & Gas UK staff only on the explicit understanding that it will be aggregated and anonymised before distribution among members or after specific legal advice from the Group Legal Advisor or external counsel that any alternative approach is justifiable under competition law.
5. Report any competition law concerns regarding any Oil & Gas UK activity to the Chief Executive, the Group Legal Advisor, the Director of Finance and Corporate Services or another Director of Oil & Gas UK.
6. Use Oil & Gas UK forums and committees to discuss non-confidential technical and/or scientific issues relevant to industry (tax, legislation, quality, health, HSE, corporate, social responsibility, regulatory compliance); and general issues regarding industry's relations with government and other institutions, general promotional opportunities and public relations activities and the extent, size and operation of the UK supply chain.
7. Use extra vigilance at Oil & Gas UK conferences, social gatherings, drinks receptions and also at breakout lunches and coffee sessions at Oil & Gas UK meetings.

### ***Don't***

1. Use Oil & Gas UK as a forum for inappropriate discussions such as:
  - a. the exchange of commercially sensitive information with other members
  - b. the formulation of collective positions on commercially sensitive issues such as pricing and output, or boycotts of suppliers or customers
  - c. any attempt to establish common terms of business with other members
  - d. the consideration of current tenders or other activities which could be interpreted as collusion in tendering processes.
2. Hold any meeting of any Oil & Gas UK workgroup which has not been notified to Oil & Gas UK staff or which does not comply with this policy.
3. Breach any of the "don't" prohibitions in Section 4 below.

## 4. Procedure for all Oil & Gas UK meetings

When participating in any Oil & Gas UK meeting (including the Board and Councils), forum, committee or working group Oil & Gas UK staff and members should note the following:

### **Do**

1. An Oil & Gas UK staff member should normally be present at all meetings
2. At the beginning of any meeting, the Chair will remind attendees (as noted on the sign-in sheet) of the Annex B notice; that discussions are subject to competition law; and that this Policy is available for reference.
3. Chairs must draft the agendas well in advance; consult with the Group Legal Advisor if concerned about any of the proposed agenda items and take advice of external counsel if the Group Legal Advisor so advises, before circulating the agenda.
4. Make the agenda (including all relevant attachments) available in advance to all member companies' representatives for the relevant meeting so that members have sufficient time to raise any concerns in advance of the meeting.
5. After the safety briefing/safety moment and endorsement of prior minutes, reconfirm the agenda and agree on any "AOAB" - "any other agreed business" - item(s) which any participant believes need to be raised. AOAB items should be limited to minor practical matters such as notifications of changes of personnel or meeting dates or places, notification of issues which are being addressed in other fora or news items which may be of interest to members, or notifications of items which may be appropriate to be added to the agenda for future meetings, but should not involve substantive discussions of these items; but if there is a concurrent and related Oil & Gas UK meeting, or an issue on which a relevant external announcement is expected during the meeting, this may also be flagged at the outset, and agreed to be discussed under AOAB.
6. Keep to the agenda and limit AOAB items to those agreed at the beginning of the meeting.
7. Take a careful note of any competition concern raised by an attendee. Do not try to prevent any member raising a concern or leaving the meeting. Minute this.
8. If discussions begin to stray into competition-sensitive areas, stop the conversation. Ask everyone to consider whether the topic is appropriate and take legal advice (in the case of members, from their own legal advisers) before resuming that conversation. Minute the action of stopping the discussion, reference to taking legal advice and the advice subsequently given.
9. Ensure that accurate minutes are taken for all meetings. Be mindful of how the minutes could be interpreted by someone who was not present.



10. Circulate draft minutes to attendees well before the next meeting. Ask for comments by a deadline. Have the minutes formally approved at the opening of the next meeting and then posted on the Oil & Gas UK extranet or distributed appropriately.
11. Consider whether it may be beneficial to have a legally qualified person present at the meeting to ensure compliance with this Policy.
12. Be sensitive to appearances created through contacts with competitors generally.

### ***Don't***

1. Discuss any items that are not on the agenda, save for AOAB items referred to above.
2. Present any new documentation at the meeting for any agenda item.
3. Have "off the record" discussions.
4. Proceed with any discussions in respect of which a member or Oil & Gas UK staff member has expressed a legitimate competition law concern.
5. Unless sanctioned by specific legal advice, raise any item of information which is **commercially sensitive information** for any member company, such as:

#### Pricing information

- Individual company or industry prices (e.g. pipeline tariffs), price changes, price differentials, margins, price mark-ups, discounts, allowances, credit terms, rebates, commissions rates, price changes, terms of sale including enforcing resale prices.

#### Costs and production information

- Individual company data on costs, production, production capacity, pipeline ullage, inventories, sales;
- Plans of individual companies concerning field developments or the design, production, distribution or marketing of particular products, including proposed territories or customers;
- Changes in industry production capacity (other than nameplate capacities) or inventories and the like;
- Overhead or distribution costs, costs accounting formulas, methods of computing costs.

#### Market information

- Company bids and procedures for responding to bid invitations;
- Intentions to bid or not to bid;
- Matters relating to actual or potential individual suppliers or customers or to business conduct of firms toward them;
- The identity of customers or suppliers;

#### Investment, divestments and future plans

- Non-public information relating to the future plans of individual companies concerning investments or divestments (such as, capacity closure, expected use of production capacity, expansion plans or market entry or exit);

- Intentions to enter or not enter certain markets;
- Distribution or marketing of any product, including new customers.

## ANNEX A

### Confidentiality Requirements and Obligations on Oil & Gas UK

#### 1. Introduction

Oil & Gas UK compiles, analyses and publishes data in an aggregated form on various aspects of oil and gas E&P and decommissioning activities to inform all interested parties of the business outlook for the UK Continental Shelf.

For instance, for many years now Oil & Gas UK has compiled and published an annual “Activity Survey” providing a concise business outlook for E&P activity on the UK Continental Shelf, after collating the business plans of the E&P operators. Each operator submits a questionnaire detailing its current business performance (production and capital/operating expenditure) and future investment scenarios. The data is collected jointly on behalf of Oil & Gas UK and DECC with most responders sending it directly to both parties.

Oil & Gas UK produces a range of other surveys, including on decommissioning, and is often asked to consider ad hoc requests for industry-wide information. Oil & Gas UK also carries out research into issues of interest to its members in the context of which Oil & Gas UK may request data which, even if not published, will inform those research activities.

Clearly, much of the data received by Oil & Gas UK is commercially confidential. Oil & Gas UK recognises that it is under an obligation to treat such confidential information with care, both to avoid any disclosure or identification of any company’s commercial position, and to avoid any behaviour which might be deemed anti-competitive.

Oil & Gas UK has reviewed its management of commercially confidential information received from its members. The following summarises the risk assessment and mitigation measures taken by Oil & Gas UK to address these risks.

#### 2. Risk assessment

The following are the key risk areas.

- a) Risk analysis and data categorisation
- b) Data security, internal and external
- c) External publishing / disclosure of data
- d) Disclosure of any competitor information
- e) Third party access to data

### 3. Mitigation measures

#### 3.1 Risk analysis and data categorisation

Before requesting from its members information which is commercially confidential (any information which is not available from public sources such as the company's website or DECC databases may constitute commercially confidential information) Oil & Gas UK needs to consider whether this information gives rise to any competition law risks. If the answer is yes, then the data needs to be treated as follows.

The obligation to consider the nature of the data is an obligation primarily of the Oil & Gas UK Director within whose remit the information is being requested, but any Oil & Gas UK staff or contractor involved in requesting the data can and should ask whether this analysis has been carried out.

##### **Risk factors**

When is information to be regarded as giving rise to competition law risks?

Information exchanges between competitors are regulated by competition law because they may give rise to risks of co-ordination of the behaviour of the parties involved, in other words reducing the competitive rivalry between them.

This means that where the information exchanged is purely technical data in relation to an existing process it is unlikely to give rise to competition law risks (but there may be other reasons why companies would not want it published, for instance because it involves intellectual property rights belonging to them or their contractors).

By contrast, information which is commercial, particularly that which relates to future plans as to development, production, technical innovation, pricing, and sales, is very likely to give rise to competition law risks. A list of examples of "commercially sensitive information" is set out in section 4 above.

If there is any doubt as to how the information should be categorised, the Group Legal Advisor must be consulted forthwith.

Various factors which may increase the competition law sensitivity of an information exchange are set out in the Risk Assessment Table below, to assist with the analysis of any particular exchange. Just because one of the "high risk" elements is present does not of itself mean that any particular exchange would automatically infringe competition law, but the presence of more than one element would be likely to be problematic.

<b>High Risk</b>	<b>Low Risk</b>
Supply/exchange of information with direct or potential competitors whether directly or through third parties (including OIL & GAS UK and any adviser/consultant/other third party)	Exchange of information with non-competitors (which will not be forwarded to actual or potential competitors)
Confidential information	Public domain information
Current information (covering present/immediate future)	Historical information
Exchange relating to current or future commercial strategy in market-facing context: <ul style="list-style-type: none"> <li>• development and/or production plans or strategies</li> <li>• individual company pricing policy including discount policies/costs/profit margins</li> <li>• marketing strategy</li> <li>• other internal business models, stakeholder or other influencing factors</li> <li>• customer information</li> <li>• information as to current or future suppliers</li> </ul>	Exchange regarding non-commercial aspects of a market, including: <ul style="list-style-type: none"> <li>• purely technical or process information (which is not new/innovative/conceptual/in development)</li> <li>• general policy of regulators</li> <li>• central government policy</li> <li>• lobbying initiatives</li> <li>• generalised consumer preferences or needs</li> <li>• other general industry trends</li> </ul>
Information which goes beyond the purpose of a specific (competition compliant) collaboration	Information which is strictly limited to the collaboration arrangement (which itself has been approved in competition law terms by the Group Legal Advisor or external counsel)
Data which is precise (e.g. attributable to (i) a particular development, or (ii) a particular customer relationship)	Data which has been generalised (anonymised and/or aggregated)
Information which is freely disseminated within recipient company	Information the dissemination of which is restricted within the recipient company (e.g. where a clean team is established and information barriers are strictly observed)
Frequent exchanges	Infrequent exchanges
Implied or explicit recommendations accompanying the exchange	No further discussion of the information exchanged

## 3.2 Assuring data security, internal and external

### **Obligations of Oil & Gas UK employees**

All Oil & Gas UK contracts of employment place strict obligations on each employee individually regarding the confidentiality of data.

### **Internal data security**

All data received from any company which is categorised as high risk or which includes more than one element in the High Risk column above or where there is any concern whether the relevant item(s) could be High Risk (including data in relation to the Activity Survey) should be sent to a specifically named individual in each case.

The data should then be held on a dedicated, secure directory, within which it is analysed. Special protection measures should be established, equivalent to those already in place for Activity Survey data, to ensure that only named individuals have access to the data. (The Director of Finance and Corporate Services will advise on the IT requirements to put such measures in place).

Other employees of Oil & Gas UK cannot access the data on any basis whatsoever.

Companies providing the data should be informed as to any analysis which Oil & Gas UK has done regarding the competition law sensitivity of the data, whether any data they are providing is going to be subject to special storage measures within Oil & Gas UK and how any data may be published as this may assist them in deciding whether or not to participate in the survey or other activity.

### **External data security**

Oil & Gas UK's IT system is designed to prevent third party access to Oil & Gas UK's data banks and proprietary information. All data, whether or not high risk, is subject to the same protection policies as all documents held online by Oil & Gas UK. A Username and Password are required to access any data. Nobody outside Oil & Gas UK is provided with such means of access. A Username and Password are issued to every employee as they commence their employment and are annulled when the individual leaves the employment of Oil & Gas UK. This constrains who can access the data, provides traceability, and seeks to prevent the possibility of any external party gaining access to data held by Oil & Gas UK.

## 3.3 External publishing / disclosure of data

When information derived from high risk data is published either generally or to a small group – i.e. when such information is shared with one or more third parties - any publication should ensure that all data is aggregated and presented in compiled form such that no one company position can be identified nor any corporate or individual project identified.

All data, however set out, should be shown in aggregated form, including the content of all graphs and tables. Where data presented in the report is released, for example excel spread sheets of

individual graphs for third party reproduction, then the data should be supplied in no greater definition than that presented in the graph produced by OIL & GAS UK.

Before publication or release, any document containing information derived from high risk data (including the Activity Survey report) should be separately reviewed by the relevant Director and the Group Legal Adviser to ensure that it conforms to this Policy and that confidentiality will be maintained.

### **3.4 Avoidance of disclosure of competitor information**

It is important that no single company can identify confidential information belonging to any of its competitors from surveys or other data made available by Oil & Gas UK. Where Oil & Gas UK provides individual feedback against benchmarks, the feedback report must not be able to be deconstructed by the recipient to the level of individual company data.

All such reports, benchmarks and data must be reviewed by the relevant Oil & Gas UK Director and the Group Legal Adviser before being supplied to the company concerned.

For example, as part of the Activity Survey, member companies are offered feedback on where their company and assets sit on an operated basis compared to the UKCS either as a whole or on a regional basis. Oil & Gas UK provides such information showing the specific company's data mapped against the whole population. However, before doing so, Oil & Gas UK ensures that all comparator data is aggregated such that no other party, field or development can be separately identified and that the sample population of any data is sufficiently large to prevent any third party being identified.

This approach should be replicated for other surveys, reports and benchmarks.

### **3.5 Managing third party access to data**

From time to time, Oil & Gas UK may be asked to release high or medium risk data to members or third parties other than in the form of aggregated and anonymised reporting. If it is desired to publish or otherwise disclose data in a non-aggregated but anonymised form, or to include data regarding specific companies or projects which is not public, then two issues need to be considered. The first is whether this is likely to give rise to competition law concerns - it may be possible to justify disclosure of data which is not anonymised and aggregated but this should be done only after taking advice from the Group Legal Adviser who may choose to seek external legal advice. The second is that, even if there are no competition law concerns, the company which supplied the data may have supplied it on the condition that it was published only in aggregated and anonymised form. In that case it will be necessary to seek the relevant company's consent to the disclosure.

Therefore, this should be done only:-

- i. where the Group Legal Adviser (who may choose to seek external legal advice) has agreed that such disclosure may be justified in competition law terms (for example the release of such information is indispensable to the achievement of a legitimate aim, in a case where it

would not be possible for members to understand the results of a survey and to take appropriate decisions if the information were available only in aggregated and anonymised format);

- ii. with the consent of those members which have supplied the data; and
- iii. subject to strict criteria for access to and use of the data under appropriate confidentiality restrictions.

It may be appropriate for the information to be made available only in hard copy at a meeting (no copies to be taken away) and/or to restrict access to a small number of representatives of each contributing company (a “clean team”). The Group Legal Advisor will advise on the appropriate treatment of the material.

Oil & Gas UK should always create and retain a note of the rationale for the release of such data (including the competition law justification), the companies concerned and the criteria applied for access to and use of the data.

For example, all Activity Survey raw data is released to DECC which jointly conducts the Activity Survey with Oil & Gas UK. In addition, the raw data is provided under an explicit confidentiality agreement to Professor Alex Kemp of Aberdeen University who conducts further analysis of the data on behalf of DECC. It is only that analysis which is published by the University when complete.



## ANNEX B

### Competition Law Reminder for All Meetings

All discussions are subject to Oil & Gas UK's Competition Law Compliance Policy, and must be minuted.

Unless the information is legitimately in the public domain, we do not discuss prices, costs, production quantities, sales, suppliers, customers, business plans, commercial strategies or other confidential information except upon specific legal advice.

Whilst this meeting is a legitimate context for competitors to discuss generic industry issues, remember that we are competitors and that competition law always applies.

Adhere to the agenda and only discuss relevant policy, technical, organizational and/or resourcing matters of a non-commercially sensitive nature. "AOAB" - any other agreed business - must be notified and agreed at the start of the meeting, for discussion at the end.

All present must remain vigilant. If you have any competition law concerns you must intervene and alert the meeting of your concern. If in doubt, consult your legal advisors.