



## AMICE COMPETITION LAW COMPLIANCE STATEMENT

On 08 June 2022, the AMICE Board of Directors adopted the following policy so that the Association, its members and their respective representatives comply with applicable competition laws. The aims of the AMICE competition law compliance statement (the “**Statement**”) are (i) to provide comfort to any member that the other members are aware of the competition law risks and (ii) to make sure that AMICE staff can enforce this Statement to provide additional assurance for activities undertaking as part of the AMICE mission.

EU competition and anti-trust laws (the “**Laws**”) are aimed at ensuring that competitive behaviour between economic actors (undertakings) is not restricted nor distorted, and apply to AMICE, its members and their representatives. The Laws include prohibitions on anticompetitive agreements and arrangements, and on abuse of a dominant market position. Examples, drawn from European Union legislation, are set out in **Annex 2**.

This Statement is a manual setting out the basic competition law principles with which AMICE’s members and their representatives, and AMICE and its representatives, are required to comply.

This Statement is not a substitute for legal advice.

### 1 INTRODUCTION

The Association’s primary objective is to advocate for appropriate and fair treatment of all mutual and cooperative insurers in Europe by providing a platform for mutual and cooperative insurers of all sizes to combine their resources and expertise, exchange experiences across national borders and discuss key issues and concerns relating to EU legislative and regulatory changes. AMICE encourages its members to collaborate and share views on topics and developments which may impact them. The Association hosts activities to support its advocacy activities, such as preparing data and publications about the mutual/cooperative insurance sector and assisting members with individual queries.

The Association plays a useful and necessary role within the mutual/cooperative insurance community by undertaking activities that many individual companies are unable to perform independently. This includes representing its members in multiple matters of interest for the sector, establishing and maintaining relations with policy and decisionmakers in respect of the fair and equal treatment of mutual/cooperative insurers, providing information relevant to and about its members, acting as a point of contact for the sector, following general market developments and new technologies, promoting quality and standards within the sector, producing data about the sector and its size, and other activities required to fully execute its remit as the European representative body for the mutual/cooperative insurance sector. The Association provides a forum for exchange of ideas in general matters of interest to the sector.

AMICE represents many hundreds of mutual/cooperative insurers in Europe, both directly and indirectly. Caution is therefore advised at any meeting or activity where potentially competing members are present, given that all members are required by EU and national law to compete independently from each other. As the Association includes some members who may in fact be competing entities, the Association must remain watchful in order to be and remain compliant with competition law at all times.

This Statement shall be explicitly, unambiguously and unconditionally accepted by every Association member as well as by the Association itself. The Association and its members will ensure proper notification to their representatives in relation to this Statement and competition law compliance in general.

## 2 GENERAL PRINCIPLES

The Board of Directors stresses that it is not the objective of the Association to play any role in its members' decisions concerning market competition, nor to restrict in any way competition among members or potential members. The Association shall not be used as a forum for discussions that would facilitate any kind of anti-competitive agreements or understandings. No anti-competitive behaviour in connection with any of the Association's activities is permitted or condoned.

Anti-competitive behaviour and associated behaviour by the Association or its members that is not permitted includes:

- (i) controlling or influencing current or future prices for purchase or sale of services and goods, controlling, influencing price increases or decreases, or artificial stabilisation or standardisation of prices;
- (ii) limiting capacity;
- (iii) boycotting, blacklisting, or refusing to deal with certain persons or companies so as to create unfair competitive advantages;
- (iv) allocating or dividing of markets, customers or territories;
- (v) exchanging current and specific information about prices, capacity, costs, customers, markets and other commercially sensitive information;
- (vi) all activities seeking to distort fair competition;
- (vii) creating the impression (by statements or otherwise) that the Association or its members are involved in such activities.

It is of the utmost importance to know that unlawful behaviour can comprise of, amongst others, an informal or a formal verbal or non-verbal understanding.

## 3 COMPETITIVELY SENSITIVE INFORMATION

Members of the Association should not discuss nor to exchange any competitively sensitive information.

For the purpose of compliance with the Laws, members of the Association should assume that they are "competitors" when sharing information at least when partaking in AMICE activities. That means that even if members are active in different countries and do not consider themselves to be competitors, for the purpose of AMICE activities these members are to behave as if they were competitors.

An undertaking in possession of competitively sensitive information originating from a competitor, is deemed to be no longer competing independently. "Competitively sensitive information" is defined as company-specific information which, if made public, could impact competitors' future behaviour. Competitively sensitive information includes, but not limited to, the following information:

- (i) non-public financial information;
- (ii) details of any current or proposed commercial relationships and agreements;
- (iii) information on sales volumes or values, unless publicly available;
- (iv) information on market shares, unless publicly available; and
- (v) information on existing, recent or future business strategies.

Members of the Association should be aware that participating in various types of Association activities, such as discussions/meetings, information exchanges, data collections, working groups and projects, etc., may give rise to competition liability.

Social gatherings, relating to the Association meetings, attended by representatives of competing businesses follow the same principles as formal, regular meetings.

#### 4 GOOD PRACTICES

The Association advances the importance of competition law compliance. Therefore, it will take upon itself to establish a number of good practices that will facilitate compliance with competition law at all Association events and meetings. Subsequently, the Association and its members will proactively work towards a realisation, where they can, of the obligatory Good Practices as set out below:

- (A) Agenda: Before every statutory meeting, the Association will make a draft agenda, which will be circulated to the members. Members of the Association are called upon to identify topics that may raise potential concerns from a competition law compliance perspective as soon as possible so that the concerns can be reviewed and the agenda can be amended accordingly.
- (B) Minutes: Every statutory meeting shall be recorded in minutes. These minutes shall accurately reflect the content of the meeting. The Association will circulate the minutes to the representatives of the participants for review.
- (C) General reminder: All participants present at meetings are required to familiarise themselves with this Statement. In order to facilitate this process, the Association's President or Secretary General will issue the Statement to any new member and its representative(s). Also, the Association will issue a list of "Do's and Don'ts" regarding the Laws and will distribute such list to its members. This list is attached as **Annex 2**.
- (D) Handbrake-procedure: If any of the members participating in an AMICE meeting are concerned that competitively sensitive information is about to be disclosed during a discussion, the representative should immediately raise their concerns to the chair of the meeting or to the Secretary General. In such case, the discussion on the subject will be immediately suspended and legal advice on the subject will then be obtained.
- (E) External legal expertise: External counsel may be invited to a meeting if the agenda makes it advisable to do so and to provide the legal advice as listed under B.

#### 5 SANCTIONS

When a member, a representative of a member or anyone else present at Association meetings does not abide by the Statement, he/she/it may be asked to leave the meeting and such conduct could lead to the exclusion as a member of AMICE.

## **ANNEX 1. COMPETITION LAW GUIDELINES FOR AMICE MEMBERS**

Set out below are the guidelines for attendance at, and/or participation in any Association meeting or event. The purpose of this checklist is to remind Association's members of the competition law requirements applicable during and after formal meetings, informal meetings, events, presentations, etc., of the Association.

### Do:

- Always insist that you receive an agenda and review it prior to attendance to make sure that no item on the agenda raises competition law concerns that are in your view not sufficiently addressed;
- Seek legal advice if you are concerned that the activities of the Association or any of its members could raise competition law concerns and inform the Secretary General immediately;
- Seek legal advice before discussing potentially sensitive competition issues;
- Feel free to immediately raise any concerns that may arise during a meeting and leave any meeting if your concern is not immediately acknowledged and addressed by the chair or Secretariat representative;
- Feel free to discuss technological and market developments or planned changes in the law and regulations;
- Be cautious in the presence of competitors even in informal or social situations. Even informal discussions or throw-away comments can lead to problems if, for example, there is subsequent significant uniformity in action by competitors afterwards;
- Allow for an open dialogue between members in Association meetings and do not exclude a specific member or group of members from particular meetings.

### Do not:

Discuss with any other competitor or potential competitor, at any given time, on any of the following:

- Price or price elements (including discounts, rebates, surcharges, allowances, concessions, price mark-ups, and the like);
- Terms and conditions on which you supply services to your customers;
- Information relating to individual customers, suppliers, or competitors;
- Allocation of services, customers, markets, territories, or sales;
- Bids, bidding terms, tactics, strategies or practices;
- Refusals to purchase from, or modification of purchase arrangements with, suppliers;
- Profits, margins and costs;
- Strategic plans, business plans, intentions, promotional activities and marketing strategies or investment plans; or
- Any other confidential or competitively sensitive information.

## **ANNEX 2. EU COMPETITION LAW**

### **Article 101 - anti-competitive arrangements**

Article 101 of the Treaty on the Functioning of the European Union (set out below) prohibits any agreement or practice between two or more undertakings which affects between the Member States of the EU and which has the object or effect of preventing, restricting or distorting competition within the EU to an appreciable extent. The effect on trade and competition can be actual or potential.

If, for example, you arrange with a competitor to fix prices, or to allocate customers or markets, the arrangement will be prohibited by Article 101. However, more routine commercial agreements such as joint ventures and distribution agreements can also be caught.

In fact, all types of agreements, where the object or effect is to restrict competition, can be caught by Article 101. This includes unwritten agreements, 'gentlemen's agreements', directions by an association and any other types of informal agreement between competitors.

Even mere attendance at a meeting where a company discloses, for example, its pricing plans to its competitors can be caught by Article 101, even in the absence of an explicit agreement to raise prices.

### **Article 101 of the Treaty of the Functioning of the European Union**

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

## **Article 102 - abuse of a dominant position**

Article 102 makes it illegal for companies with strong market power (referred to as a "dominant position") to exploit their position in a way which may affect trade between Member States of the EU, for example, by imposing excessively high or predatorily low prices, or discriminating between customers without justification.

Generally speaking, a company will be in a dominant position if it can take business decisions without regard to its competitors. Assessing whether a company is in a dominant position depends on a variety of factors of which market share is only one. However, as a general guide, there is a high risk that companies with a market share of 50% or more would be regarded as dominant. If the market share is below 40%, the company is unlikely to be dominant.

## **Article 102 of the Treaty of the Functioning of the European Union**

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

## AMICE SHORT-FORM COMPETITION STATEMENT

### AMICE Competition Statement



#### DO

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- ✓ Seek legal advice before discussing potentially sensitive competition issues;
- ✓ Feel free to immediately raise any concerns that may arise during a meeting and leave any meeting if your concern is not immediately acknowledged and addressed by the chair or Secretariat representative
- ✓ Feel free to discuss technological and market developments or planned changes in the law and regulations;
- ✓ Be cautious in the presence of competitors even in informal or social situations. Even informal discussions or throw-away comments can lead to problems if, for example, there is subsequent significant uniformity in action by competitors afterwards
- ✓ Allow for an open dialogue between members in Association meetings and do not exclude a specific member or group of members from particular meetings

#### DONT

- Discuss with any other competitor or potential competitor, at any given time, on any of the following:
- × Price or price elements (including discounts, rebates, surcharges, allowances, concessions, price mark-ups, and the like);
  - × Terms and conditions on which you supply services to your customers;
  - × Information relating to individual customers, suppliers, or competitors;
  - × Allocation of services, customers, markets, territories, or sales;
  - × Bids, bidding terms, tactics, strategies or practices;
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  - × Strategic plans, business plans, intentions, promotional activities and marketing strategies or investment plans; or
  - × Any other confidential or competitively sensitive information.

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