



## Competition Law Guidelines:

**For meetings between Competitors within and when representing The Retail Motor Industry Organisation or any of its Constituent Associations in South Africa.**

### Introduction:

Competition laws prohibit, among other things, agreements, understandings, or other arrangements between businesses that restrict competition.

It is widely recognised that industry associations perform legitimate functions, which benefit consumers and their members, and which promote the competitiveness and efficiency of the industry as a whole. However, given the nature of industry associations, participation within an industry association may provide platforms for members to meet under its auspices to coordinate their actions. The RMI recognises that some of its members are in a horizontal relationship (i.e. competitors) and/or in a vertical relationship (i.e. firms and their suppliers, customers, or both). We further recognise that employees of the RMI as well as elected office bearers and members often represent the RMI on committees and platforms that include other competitor businesses who are not members, examples of such platforms can be found in governmental departments, the SABs, the NRCS, etc.

It is thus the policy of the RMI to comply strictly with South African competition laws. The RMI expects its employees, directors, office bearers, members, and other representatives, as well as representatives of members who participate in RMI meetings, any subsequent committees (referred to above) and working group structures ("Participating Members"), to the extent of such participation, to comply with competition laws.

### **Purpose of the document**

This document provides guidelines for conduct for interactions between competitors in the South African vehicle retail industry to minimise the risk of a contravention of the Competition Act.

The Competition Law Compliance Guidelines provide a basic outline of competition law compliance and risks. They are intended to help RMI employees, directors, members, office bearers, other representatives, and Participating Members to recognise sensitive situations, problem areas, and behaviour that is or might be considered to be anti-competitive so that relevant steps can be taken to avoid any concerns.

These Guidelines should not be used as an alternative to seeking specific legal advice. If you have any queries or are uncertain about whether competition laws may apply to specific discussions, activities, or specific jurisdictions, you must report the concern to either of the RMI's Chief Executive Officers or take advice from your own attorneys before proceeding.

### **Responsibility:**

It is the responsibility of each RMI employee, office bearer, member, other representative and Participating Member to know and understand the content of these Guidelines. All RMI employees, office bearers, members, other representatives, and participating Members have the responsibility to ensure that their behaviour complies with the provisions of the Competition Act.

Any employee, office bearer, member, or other representative of the RMI who becomes aware of behaviour by an RMI Participating Member that gives rise to risk of non-compliance with the Competition Act must immediately inform either of the Chief Executive Officers.

### **Importance of compliance with the Competition Act:**

Compliance with the Competition Act facilitates effective competition in markets, leads to lower prices and greater consumer choice, lowers barriers to entry for new market participants, increases participation in the South African economy, increases efficiency, leads to economic growth and development, and ultimately benefits South Africa's economy and South African society. Compliance with the Competition Act is therefore the right thing to do.

### **Risks of non-compliance with the Competition Act:**

Non-compliance with the Competition Act can expose a firm to various negative outcomes, such as:

- Administrative penalty

If a firm is found guilty of contravening certain sections of the Competition Act, it may be liable to pay a fine of up to 10% of its annual turnover.

- Civil damages claim.

Any person who has suffered loss or damages as a result of a prohibited practice may institute civil proceedings against the firm found to have engaged in the prohibited practice and attempt to recover such loss or damages.

- Reputational damage

An offending firm suffers reputational damage that can affect the willingness of customers to do business with it.

- Possible criminal liability

It is a criminal offence for a director or manager of a firm to engage in cartel behaviour. The penalty for cartel conduct is a fine of up to R500 000 or imprisonment of up to 10 years, or both.

- Other direct and indirect costs

A firm under investigation can incur significant legal costs. Involvement in competition proceedings generally places significant pressure on senior management and relevant employees' time and resources.

## The Do's

- **DO ENSURE** agendas and minutes of meetings are produced and circulated to all attendees, and accurately reflect the discussions that occur.
- **Do review and clear** agendas of meetings in advance, to ensure that the subjects to be discussed are consistent with Competition Law, and strictly adhere to the agenda during the meetings.
- **Do limit the discussions**, or exchange of information, during meetings solely to the issues at hand and only share information that is necessary to meet the objectives of the meeting.
- **Do** consider carefully if a potential (or actual) exchange of information has any value in predicting the future commercial behaviour of a participating competitor, and refrain from sharing any information that might have this effect.
- **Do** feel free to use and share information from the public domain, including historical and aggregated industry information (which doesn't allow an individual business's pricing or commercial strategy to be identified), but do be careful that it doesn't lead to discussions on future strategy.
- **Do** always state that you cannot discuss any matters that might arise that you think could contravene Competition Law; do immediately terminate such conversations; do keep a record of such conversation; and do report this to your company or organisation as soon as possible.
- **DO SEEK ADVICE** from your attorneys before participating in the following potentially sensitive activities:
  - Gathering and exchanging statistical information
  - Benchmarking
  - Creating industry standards
  - Self-policing regulations
  - Sponsored Research
- **DO CONSULT** with your attorneys on all competition law-related questions.
- **DO OBJECT** if improper or questionable subjects are raised and ensure your objection is recorded in the minutes. If the discussion on those subjects continues notwithstanding your objection, leave the meeting and request that your departure be recorded in the minutes.

## **The Do Not's**

- Don't discuss any competitively sensitive information that the competition authorities might suspect could lead to anti-competitive behaviour.
- Don't exchange, or discuss with competitors, commercially sensitive or strategic information, including, but not limited to:

### **Competitively sensitive information:**

#### **Prices:**

- Sale or purchase prices
- Discounts
- Timing of price increases
- Price setting methodology or process
- Labour rates

#### **Terms:**

- Terms and conditions of sale or purchase
- Refraining from supplying a product or service
- Blacklisting or boycotting customers or suppliers

#### **Production:**

- Restricting capacity or output

#### **Market allocation:**

- Geographic areas in which competitors operate.
- Types of products or services supplied by competitors.
- Allocating customers or suppliers between competitors
- Excluding competing companies from a market

#### **Information relating to:**

- Future business plans or strategies
- Employees compensation, benefits, remuneration
- Limiting quality competition or research
- Production costs and volumes
- Production capacity
- Inventories
- Profit/ Profit Margins
- Customer lists
- Bidding behaviour
- Supply or marketing schedules
- Any future developments, trends or market conditions in your industry which might have an impact on competition.
- Any other information that might allow competitors to adapt their business strategies accordingly.

- Don't fix any prices or price-related conditions with competitors.
- Don't arrange any market sharing with competitors including allocation of territories, customers, distributors, or suppliers.
- Don't use the excuse of achieving the objectives of the meeting to ask competitors to reveal sensitive information on market, strategy, and business.

#### **The use of industry information by the RMI:**

The RMI's policy (and that of its constituent organisations), where applicable so as to avoid possible contraventions of Competition Law, is to utilise the services of third-party providers to collect and collate competitively sensitive information (disaggregated information) which the RMI intends to use and share – this is aggregated by such third party, to ensure that disaggregated information is not shared directly with the trade association or its members.