

## **Competition/Antitrust Law Guidelines for Members of the Global Foreign Exchange Committee**

As of 27 June 2018

### **Introduction**

Many jurisdictions have adopted competition laws (sometimes referred to as antitrust laws) to prohibit conduct which prevents, restricts or distorts competition in their markets. The Global Foreign Exchange Committee (**GFXC**) has a mission to bring together members of the public and private sectors to promote a robust, liquid, open, and appropriately transparent foreign exchange (**FX**) market, and one of its aims is to promote an effective market with competitive pricing.

Even though the GFXC aims to encourage a competitive FX market, it could attract competition law scrutiny because it brings together competitors in the global FX market to discuss economic, financial, and market conditions. In doing so, a question could arise as to whether competitors participating in GFXC activities are coordinating their conduct, attempting to exclude other market participants from the market, or are otherwise sharing non-public, competitively sensitive information and reducing “competitive uncertainty” in the market.

The GFXC is committed to conducting its affairs in strict compliance with competition laws. Not only can anticompetitive conduct result in criminal penalties or administrative and civil sanctions but it would also reflect poorly on the GFXC and its members. The GFXC is an international group, and it is possible that its activities could come under the scrutiny of competition law authorities in different jurisdictions. The purpose of these Competition/Antitrust Law Guidelines (**Guidelines**) is to provide the general guidance on avoiding unlawful or illegal anticompetitive activity. They are not intended and should not be construed to constitute legal advice with respect to compliance with a given jurisdiction’s competition laws.

**These Guidelines apply to all GFXC activities, including those of any subgroup. Adherence to them is mandatory for all GFXC members (Members) and is a condition for participating in the GFXC. Members are individually responsible for ensuring that their actions comply with competition laws and should expect careful scrutiny of their actions. Members should review these Guidelines carefully and should share them with any of their staff involved in GFXC activities.**

Members are ultimately responsible for their own compliance with relevant competition laws, and should raise any questions about and report suspected violations of the Guidelines to a member of the GFXC Secretariat or a lawyer for their respective organisation (or, where applicable, to a lawyer retained specifically to represent the GFXC in connection with its activities). Lawyers from organisations that participate in

the GFXC may attend GFXC meetings or participate in GFXC activities. Such a lawyer does not act as counsel to the GFXC but rather to the organisation by which he or she is employed or retained.

### **Impermissible Conduct**

Some activities may constitute “per se” violations of competition laws, regardless of their effects on competition. Members should not engage in any of the following conduct or activities in conjunction with their work on the GFXC.

- **Price Fixing Agreements:** Members should never agree to fix prices, fees, commissions, or any other element of the price or terms of a transaction. They should also never make agreements that could have the effect of fixing prices, fees, or commissions. Discussions concerning these issues should always be avoided, and members should never share or compare confidential, proprietary or competitively sensitive information concerning their firms’ prices or fees, or the process of setting prices or fees, including costs that impact pricing or bidding, as this may be seen as an attempt to fix prices, fees, or commissions. Certain confidential, proprietary or competitively sensitive information may be shared, aggregated, and disseminated through the GFXC Secretariat when appropriate to advance the GFXC’s work.

- **Boycotts:** “Boycotts” refers to agreements among competitors to refuse to deal with someone, or to deal with a particular firm (or firms) differently than others. Members should never agree either to treat a particular individual, firm, or group of firms (including a sector of an industry) in a prescribed manner, or to boycott any individual, firm, or group of firms (including a sector of an industry). Members may not discuss setting prices for any particular customers or vendors, nor should they agree to deal or not to deal with particular customers or vendors in a specific product.

- **Allocation of Customers or Market Division:** Members should never agree to allocate customers or products among themselves. Members may not discuss confidential, proprietary or competitively sensitive plans to expand into or withdraw from certain geographic or product markets.

**Abuse of Dominant Position** is another form of conduct that Members should not engage in. A Member having a dominant position in a particular market is not a violation of competition law *per se*. However, where a Member exploits its dominant position to eliminate competition, that Member will have abused its dominant position.

### **GFXC Activities**

The following activities may or may not be permissible, depending on the circumstances. Care should be taken that otherwise permissible activities do not mask or promote actions that are or could be interpreted as anticompetitive. Care should also be taken to consider

whether the GFXC's pro-competitive aims can be achieved through less restrictive means.

- **Information Sharing:** Members may discuss common problems and challenges of a general, administrative, legal and regulatory or logistical nature, but no discussion should have as its purpose encouraging uniform action or reducing or eliminating competition. Information about a member's business may be shared in order to foster general understanding, and to contribute to the drafting of best practice recommendations. However, information sharing among members concerning confidential, proprietary, or competitively sensitive information can raise antitrust concerns. Such information includes but is not limited to information on prices, business plans, marketing plans, new product development, internal costs, non-public profit estimates, hiring, employee compensation, and investments. When appropriate to advance the GFXC's work, certain confidential, proprietary or competitively sensitive information may be shared, aggregated, and disseminated through the GFXC Secretariat.

- **Best Practices Recommendations/Standard Setting:** These are some of the most important GFXC activities, and it is important that members adhere to a few principles to mitigate risk. Best practices recommendations and standard setting should seek to enhance the efficiency, stability and integrity of the market and should discourage practices that have a detrimental effect on customers. Best practices recommendations and standard setting may not have the purpose of reducing or eliminating competition in the pricing of products or services, fees, commissions, advertising or any other dimension or restricting transactions with particular parties or on particular platforms. Members may not enter into a collective agreement not to transact with specific counterparties or on specific platforms or on the basis of whether best practices have been adopted. Such an agreement could constitute an unlawful boycott.

## **Procedures**

The GFXC has a number of procedures which aim to help maximize compliance with the letter and the spirit of competition laws and to promote transparency, consistency, and fairness in group proceedings.

- The GFXC Secretariat will serve as the repository of official records.
- The GFXC Secretariat will provide each member and each non-member participating in GFXC activities with a copy of these Guidelines.
- All GFXC meetings will have an agenda which will be made available on the group's website.
- Minutes of GFXC meetings, including a list of all attendees, will be recorded and made available on the GFXC website.

- All meetings, working group sessions, conference calls, and other GFXC-sponsored activities will be attended by a member of the GFXC Secretariat.
- Any materials that will be presented at GFXC meetings or shared with members in furtherance of GFXC activities should be made available to the GFXC Secretariat in advance of distribution. The GFXC Secretariat should administer any distribution to members.
- Members may consult with their own counsel on matters related to GFXC meetings and activities.
- Members are ultimately responsible for their own compliance with relevant competition laws, and should raise any questions about and report suspected violations of these Guidelines to a member of the GFXC Secretariat or a lawyer for their respective organisations (or, where applicable, to a lawyer retained specifically to represent the GFXC in connection with its activities).

## **Appendix**

To aid your application of these Guidelines, below is a list of “dos” and “don’ts.”

### **Do:**

- Members are ultimately responsible for their own compliance with relevant competition laws, and should raise any questions about and report suspected violations of the Guidelines to a member of the GFXC Secretariat or a lawyer for their respective organisations (or, where applicable, to a lawyer retained specifically to represent the GFXC in connection with its activities).
- Members should inform the GFXC Secretariat about any and all meetings, working group sessions, conference calls, and other group-sponsored activities, that take place outside of the regularly scheduled group meetings. (Members need not, however, inform the GFXC Secretariat of activity taking place solely between the members of a single firm.)
- Members should provide any materials that will be presented at GFXC meetings or shared with members in furtherance of GFXC activities to the GFXC Secretariat in advance of distribution. The GFXC Secretariat should administer any distribution to members.
- Members should distribute copies of these Guidelines to any colleagues or vendors who work with them on GFXC matters.
- Members should be mindful that their discussions or actions could draw scrutiny or incur reputational harm even if they do not constitute unlawful or illegal conduct.

### **Don’t:**

- In conducting GFXC activities, members should not, without prior review by the GFXC Secretariat, have discussions with other members about:
  - their company’s prices for products, assets, or services, or prices charged by competitors;
  - costs, discounts, terms of sale, profit margins, or anything else that might affect those prices;
  - the resale prices its customers should charge for products or assets it sells to them;
  - allocating vendors, markets, customers, territories, products, or assets with competitors;
  - limiting production or offering of services;
  - whether or not to deal with any other company;
  - details of their employees’ compensation;

- lending standards, interest rates, or loan origination output;
  - any competitively sensitive information concerning its company or a competitor; or
  - any other sensitive competition subjects in conducting GFXC activities (such as price discrimination, reciprocal dealing, or exclusive dealing agreements).
- Members should not stay at a meeting, or any other gathering, if they observe these kinds of discussions are taking place.