

## COMPETITION LAW GUIDELINES - .UK Registry Advisory Council (UKRAC)

*Recognising that the council members of UKRAC are competitors for the supply of .UK domain names, the council members hereby agree and acknowledge the importance of complying with UK competition law and that all meetings and discussions convened by UKRAC must be conducted in accordance with the competition best practice guidelines below.*

### 1. Competition law risks

There are 2 key competition law risks:

- The sharing or disclosure of confidential information between actual or potential competitors can give rise to an infringement of competition law. This is because the disclosure of certain types of “competitively sensitive information”, described further below, may reduce the incentive to compete. This applies even where there is no intention to break the law.
- Entering into any form of agreement or understanding (written or unwritten, formal or informal) which has as its object or effect the coordination of commercial behaviour between competitors is an infringement of competition law. Council members must at all times avoid discussing or agreeing joint or coordinated commercial behaviour.

Council members and other participants should also be mindful of the need to comply with these guidelines during any informal discussions which take place after the meeting has concluded.

### 2. The importance of compliance

The UK Competition and Markets Authority, has extensive powers to investigate and penalise suspected anti-competitive behaviour. The consequences of breaching competition law are serious and can include:

- **Fines.** Fines of up to 10% of worldwide group turnover (including for those businesses that participated in the unlawful behaviour and any parties that facilitated the breach);
- **Reputational damage.** There is likely to be substantial reputational harm to the businesses involved;
- **Business disruption.** Even if no adverse finding is made, dealing with an investigation can be costly and a major distraction to business operations;
- **Individual sanctions.** There are also potential consequences for individuals; it is a criminal offence to participate in cartel conduct. Directors involved in competition law infringements may face director disqualification orders for up to 15 years;
- **Damages claims.** Third parties that have suffered losses as a result of an infringement can bring damages actions to the courts.

### 3. What is competitively sensitive information?

Broadly speaking, any information which is specific to your own organisation, not in the public domain, and which could give a competitor insight into your future strategy in the market could be deemed to be “competitively sensitive”.

While individual participants will need to exercise their own judgement, we set out below some examples of areas to avoid.

#### *What topics should be avoided?*

Council members should not discuss details of the following areas relating to their own current or future business activities:

- **pricing** for their services or products;
- confidential **negotiations or contractual terms** agreed with individual customers;
- confidential negotiations or contractual terms agreed with **Nominet**;
- information concerning **profits or profit margins**;
- confidential **future strategy or expansion plans**; and
- the **exclusion or boycotting** of any customers, suppliers or third parties.

Under no circumstances should you enter into a discussion, agreement or understanding about restricting the extent to which you compete with other registrars, or discuss or agree any proposals to take forward coordinated commercial behaviour

Information in the public domain is very unlikely to be deemed competitively sensitive.

#### **4. Practical tips for UKRAC council members to avoid the exchange of competitively sensitive information**

- All discussions should fall within the scope of the permitted discussions as set-out in the “UKRAC purpose and terms of reference statements” under section 2. “Scope and remit”, and be limited to areas which are considered **necessary** and **proportionate**.
- To the extent practicable, prior to meetings, an agenda of the approved discussion areas shall be circulated to the council members and other participants.
- A caution shall be read by the chair of the meeting, reminding participants to read and observe these guidelines.
- In the event of any discussion straying into any higher risk topics, the chair may intervene and ask that the discussion move on to a different item or, if necessary, the meeting be reconvened.
- If at any point during the meeting you are unsure about whether to raise a particular item for discussion, please do ask the meeting chair.
- As a general rule of thumb, ask yourself if you would be comfortable if your discussion was made public. If in doubt, participants should avoid sharing confidential information and seek legal advice.