



**Fire Industry Association**

Leading Excellence in Fire Since 1916

## **FIA Competition Law Course 2022**

### **1. Aim**

The aim of this course is to provide sufficient detail on Competition Law to enable our FIA Board, Council Members and all other Committee Members to understand the requirements for fair trading in accordance with the applicable legislation.

On completing this course, you will be able to attend meetings and other events including social gatherings with the knowledge and understanding of competition legislation to protect yourself, your company and the FIA from prosecution.

### **2. Incentive**

If you or your organisation infringes Competition Law, the enforcement body will impose stringent penalties that may:

- Include a heavy fine
- Directly affect your employment
- Include a custodial sentence
- Result in business closure owing to financial penalties and adverse publicity

### **3. Why is this Important to the FIA and its Members?**

As a Trade Association, the FIA provides opportunities for members and companies from across the industry and beyond to meet professionally or socially. Any such event has the potential to infringe Competition Law and lead to prosecution.

This course forms part of the FIA's compliance programme in respect of Competition Law and must be completed by all FIA Board, Council and other Committee Members.

#### 4. Brexit Implications

Following Brexit, EU Competition Law continued to apply in the UK until 31<sup>st</sup> December 2020 as part of the Transition Period. Beyond this date, the Trade and Cooperation Agreement [TCA] applies which defines the EU/UK relationship including arrangements in respect of Competition Law and Antitrust. The key implications of this are:

- The TCA aims to provide a 'level playing field' in the way that UK and EU businesses are regulated.
- The UK must maintain effective Competition Laws and ensure enforcement by independent authorities.
- The TCA and European Commission may exchange information with the UK antitrust authority, the Competition and Markets Authority [CMA].
- Since 31<sup>st</sup> December 2020, UK regulators and the English courts are no longer required to interpret UK Competition Law consistently with case law of the European Court but must still maintain consistency with EU competition case law and EC decisions made prior to 1<sup>st</sup> January 2021 unless it is considered 'inappropriate' to do so.
- Importantly, EU Competition Law effectively continues to apply in the UK although some divergence in its relative detail is likely in the future.

The FIA will check regularly for any divergence of UK Competition Law from that of the EU and amend this course accordingly as well as making all Committee members aware of these changes directly.

#### 5. General Rules for FIA Members

- Never do anything that is or which could be misinterpreted as restricting or reducing competition to the detriment of customers.
- Do not say anything to fellow members, particularly those that are employed by a competitor, which is not in the public domain.
- Never have one-on-one or side meetings with a fellow member who is employed by a competitor without a lawyer or other independent witness being present.
- Refuse to participate in any inappropriate discussions. If they continue, put your refusal on record, immediately leave the meeting and report the matter to the FIA Chairman.

#### 6. Member Guidelines

- **Never put yourself in a position that could be misinterpreted.**
  - A social drink, round of golf or travelling together may be totally innocent but could create the impression that anti-competitive discussions or collusion is taking place.
  - Being seen with a competitor, followed coincidentally by some action in the marketplace, could readily arouse suspicion.

- A single call to the CMA raising suspicion is all it may take for an investigation to be triggered, damaging the reputation of the FIA and any implicated parties even if all are eventually exonerated.
- CMA investigations are very invasive, disruptive, expensive and generate bad PR regardless of the outcome.
- **Never discuss or share any of the following:**
  - Prices charged to customers including rebates or surcharges or any potential plans to change pricing, rebates or surcharges
  - Any terms and conditions of sale
  - Details of any specific customer or active project
  - Any current bids or proposals
  - Arrangements or proposals to ‘carve-up’ markets, territories or customers
  - Product costs, product development or R&D activities
  - Production activity
  - Company strategy
  - Specifics of current company sales, orders or profit performance

As a general rule, if it is not in the public domain, don’t share it!

- **Exercise caution with one-on-one meetings or side discussions:**
  - FIA board meetings, Council meetings and Working Groups provide an environment for these types of discussions during coffee, lunch and other breaks.
  - These conversations may be totally innocent but may be observed by others as less so.
  - Remain in ‘public’ areas with others in earshot when having these conversations.
  - If you need to have a legitimate discussion with a competitor outside of the main meeting, document the need, draw up an agenda and identify a suitable independent witness who can be present.
  - Be especially careful when engaging with long standing colleagues or friends where familiarity may lead to an unintended slip or error.

Remember to think about how things will look!

- **If an inappropriate discussion starts during a meeting:**
  - Immediately raise your concern to the group in a polite but firm manner.
  - If the discussion continues, state your refusal to participate and ask for this to be entered on the record.
  - Leave the meeting quickly.
  - Document the event for your own records.
  - Report the issue to the FIA Chairman and, if appropriate, your employers' legal department or advisor.
  
- **If you ever see or suspect improper activities or discussions:**
  - Raise your concerns in writing to the FIA Chairman.
  - This will be treated in the strictest of confidence and will be appropriately investigated by the FIA.
  - Report the concern to your employers' legal department or advisor.

## **7. The Legislation**

- The main pillars of UK Competition Law are the Competition Act 1998 and the Enterprise Act 2002 on mergers and markets.
- Chapters I and II of the Competition Act 1998 are modelled on Articles 101 and 102 TFEU [the Competition Law provisions].
- Article 81 of the Treaty of Rome and Chapter 1 of the Enterprise Act prohibit agreements between undertakings, decisions by associates of undertakings or concerted practices which have as their object or effect the restriction or distortion of competition.
- Article 82 of the Treaty of Rome and Chapter 2 of the Enterprise Act prohibit conduct by one or more undertakings which amounts to the abuse of a dominant position.
- Definitions of uncompetitive practices include:
  - Price fixing
  - Fixing trading conditions
  - Market sharing
  - Production or investment limiting
  - Bid-rigging
  - Joint purchasing or selling
  - Sharing information

- Restricting advertising
- Setting technical or design standards
- Agreements can take many forms, whether they are legally enforceable or not, written or oral. There does not have to be a physical meeting to form an agreement as an exchange of letters, e-mails or telephone calls will suffice.
- An agreement will fall within the legislation if it is intended to, or has the effect of, preventing, restricting, or distorting competition.
- The CMA will apply the ‘appreciable effect on competition’ test to determine the level to which an agreement affects the market.

## 8. Investigation

- The CMA will carry out an investigation when they have reasonable grounds to suspect that an infringement of Competition Law has taken place.

The CMA’s investigation procedures [updated on 10<sup>th</sup> December 2021] are covered in detail in their publication ‘Guidance on the CMA’s investigation procedures in Competition Act 1998 cases: CMA8’ which runs to 38 pages.

To attempt to summarise this here would create an imbalance in the content of this course and, in any case, the purpose of the course is to outline Competition Law itself and the means by which the FIA and its members may ensure that they remain within the bounds of current legislation.

Anyone wishing to view the CMA document will find it here:

[www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases](https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases)

## 9. Trade Associations

- Trade Associations are the most common form of association between businesses, furthering trade interests through:
  - Representation to Government and its agencies
  - Promoting and protecting member interests in the media
  - Collection and analysis of statistics and market research
  - Promulgating standards, codes of practice or standard terms and conditions of sale
  - Advisory and consultancy services
  - Commercial advice

- Such services are of benefit to the industry and serve to improve the efficiency of the marketplace as a whole. However, Trade Associations may provide, either directly or indirectly, the vehicle for anti-competitive behaviour or collusive activity. Decisions, rulings or recommendations of a Trade Association or between its members which has an appreciable effect on competition may infringe Competition Law. The CMA test to assess the appreciable effect on competition will be applied to each individual case and typically, Associations with a higher membership are more likely to have a greater appreciable effect.
- The CMA recommends a compliance programme to ensure that businesses understand Competition Law and act to prevent infringement.
- The FIA programme includes a policy statement and training as featured in this document.

## **10. The FIA Statement of Compliance**

- The Fire Industry Association:
  - Considers it mandatory that its activities are at all times carried out in accordance with the applicable law.
  - Supports the view that business must be conducted in an atmosphere of free competition, i.e. on the basis of price, technology and quality.
  - Recognises that the legislation intends to stimulate free competition and therefore that this legislation has its full support.
- The FIA Policy provides clear rules to its members. It reduces the risk of improper conduct and consequently of fines being imposed. Violation of this Policy will result in FIA imposing sanctions.
- The FIA policy applies to all actions, discussions or decisions originating within and from the FIA.

## **11. Consultation and Decision Making in the FIA**

- Procedures
  - Meetings of a Body, Committee, Working Group or other forms of co-operation within the Association will only take place after they have been convened in writing. The notice convening the meeting shall also include the agenda for the meeting.
  - Minutes will be kept for each meeting as referred to above. These will be sent to all members invited to attend the meeting. The minutes will also be available to the Board of the Association for information.
  - At meetings, only matters on the Agenda shall be discussed. A minute shall be kept of all discussions. It is not permitted to agree that any issue will be discussed without a minute being kept.
  - During a meeting, if market-related topics are discussed, the chairman shall suspend the discussion on that subject until the advice of an expert in the field of Competition Law is obtained.

- Prohibited Topics

The following topics are definitely prohibited within and on behalf of the FIA:

- Information or arrangements about prices, price components, rebates, pricing strategy and calculation, and intended changes in prices.
- Terms and Conditions for supply and payment relating to contracts with third parties.
- Information about business strategies, product developments and future market conduct.
- Information about profits, profit margin, market shares, and intended investments, as far as this information is not publicly available.
- Co-ordination of bidding towards third parties, regional or personal division of markets or sources, express or tacit agreement about boycotting certain companies or cutting-off the supply or purchase against a certain company.

- Topics that might present a problem

The following topics might, under certain circumstances, present a problem from a Competition Law point of view. This means that these topics must at all times be discussed within the context of the trade organisation with proper consultation with an expert in the field of Competition Law:

- Schemes for recognition and membership criteria. For as long as recognition or membership of the Trade Association does not play a decisive part for the potential customer when choosing a product or service, there are no objections to this from a Competition Law point of view. As soon as the customer does find this important, however, these schemes must satisfy specific criteria.
- The Secretariat is allowed, in principle, to collect commercial information about individual companies and the Trade Association may make this available to the members in an aggregated manner. However, this may sometimes lead to problems and it must in any event be guaranteed that individual members are not provided with any confidential information about other members.

- Position Papers and Press Releases.

- The FIA ensures that no Position Paper or Press Release contains a wording that, intentionally or unintentionally, could suggest an arrangement, a uniform conduct or a recommendation by FIA or member companies that is in contravention of Competition Law.

## **12. Competition Law Training**

The FIA trains all Secretariat personnel and members of all FIA committees to ensure that there is compliance with Competition Law during all meetings. This training helps to identify areas of discussion which must be stopped immediately if raised inadvertently.

This Training Course is made available to all committee members and a copy is readily available on the FIA website. All committee members must complete this course and those attending an FIA meeting, event, training course or gathering of any sort are encouraged to complete the Training Course voluntarily.

- All Secretariat staff will complete this Training Course and a record will be kept in their personnel file.
- All elected Officers, Chairs and Vice-Chairs of FIA committees will complete this Training Course and a record of this will be kept by the Secretary of that committee.
- All other elected members will complete this Training Course and again a record of this will be kept by the Secretary of that committee.
- All representatives acting on FIA's behalf will complete this Training Course and a record of this will be kept by the Secretary of the relevant committee to which they report.
- All FIA Trainers will complete this training course and a record of this will be kept by the Training Manager.
- Anyone else completing this course, whilst encouraged to do so, will not be recorded as having done so, due to the administrative burden and potential for error.
- All Agendas produced for FIA meetings will contain the following statement:

'Please note in attending this meeting, you are agreeing to conform to FIA policy to comply with Competition Law. This meeting is convened and is being held in accordance with the Memorandum and Articles of Association of the FIA and regulations made by the Association. The Association has put in place procedures to ensure compliance with all relevant Competition Laws and this meeting is subject to those procedures.'

## **13. Concluding Comments**

Thank you for completing this short course on Competition Law as it applies generally within the UK and specifically in respect of the conduct of all those associated with the FIA.

As you will know by now, firms involved in anti-competitive behaviour may find their agreements to be unenforceable and risk being fined up to 10% of group global turnover as well as exposing themselves to possible damages actions. Further risks include disruption and damage to a company's reputation and significant legal costs and management time.

The FIA's Compliance Policy and the training of FIA staff and members promotes an understanding of Competition Law to manage and mitigate the risks of non-compliance.