

# THE CANADIAN FEDERATION OF INDEPENDENT GROCERS

The Board of Directors of the Canadian Federation of Independent Grocers has adopted the following policy to ensure that all activities of the organization operate in compliance with Canadian Competition Law. Prior to meetings and events CFGI members will be reminded of the need to abide by the terms of the policy statement.

## COMPETITION LAW COMPLIANCE POLICY AND GUIDELINES

October 2010

CFGI is a not-for-profit, industry-funded association representing the interests of independent and franchised grocery retailers in Canada. The Membership in CFGI is comprised of retailers from every region of Canada. CFGI also has a separate Associate Membership for suppliers to independent grocers.

The *Competition Act* ("Act") is a federal statute whose general purpose is to maintain and encourage effective competition in Canada. The Act seeks to accomplish this by prohibiting certain activities that might reduce or prevent competition or harm consumers. It contains both criminal and civil provisions. It sets out certain prohibitions on how competitors may deal with each other, as well as how businesses treat their customers. It prohibits certain pricing, marketing and advertising practices.

A trade association serves its membership by sponsoring meetings and other activities at which its members, many of whom are competitors, can share ideas and information and discuss common interests. As such, trade associations are subject to strict scrutiny under the competition laws. Trade associations must act carefully and cautiously in the conduct of their activities to ensure that they do not create situations that could be construed as violations of the *Competition Act*.

Violating the *Competition Act* has significant legal, financial and reputational consequences for associations and their members. In addition to resulting in injurious publicity, loss of management time and significant legal costs, violation can expose the participants and their respective directors and officers to significant fines, liability for damages to private parties, class action litigation and even imprisonment.

### Policy

It is CFGI's Policy to strictly comply with the *Competition Act*. This Policy applies to all members of CFGI, including Retail Members and Associate Members and their respective Boards, Committees and Councils. Due to the serious consequences from non-compliance, Members should conduct themselves in a manner which avoids even the appearance of questionable conduct under the *Competition Act*. As a trade association, CFGI's activities are distinct from the business of CFGI's Members, who will also have their own *Competition Act* compliance policies.

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## **Guidelines**

Certain conduct among competitors is clearly illegal under the *Competition Act*. This includes activities such as price fixing, allocating customers or markets, and restricting production or supply of products. With very limited exceptions in the case of certain joint ventures, an offence is committed when someone agrees with a competitor or potential competitor to

- fix, maintain, increase or control the price for the supply of a product;
- allocate sales, territories, customers or markets for the product or supply of a product; or
- fix, maintain, control, prevent, lessen or eliminate the production or supply of a product.

Bid rigging is an additional criminal offence under the *Competition Act*. Bid-rigging exists when one or more persons undertake not to submit a bid, or agree on the response(s) to a call for bids, without making known the fact of their agreement to the person who requested the bid.

The following Guidelines are provided to CFG Members to help ensure that meetings and activities of CFG members do not lead to breaches of the *Competition Act*. The Guidelines apply to discussions at both formal and informal meetings. Please keep in mind that the *Competition Act* is complex, and these Guidelines do not cover all contingencies. Please consult legal counsel if you have questions about the *Competition Act* or these Guidelines.

## **DO NOT**

- In formal CFG Meetings or in informal discussions following such meetings, do not discuss or exchange information with competitors or potential competitors (defined widely) concerning competitive factors such as:
  1. *Pricing* - this includes anything that might directly or indirectly affect pricing such as costs, discounts, rebates, payment terms, surcharges, profit margins, possible increases or decreases in prices, suggested retail prices, pricing procedures, credit terms or response to tenders;
  2. *Markets and Market Allocation* – this includes conversations about sales territories, or marketing strategies;
  3. *Supply and Manufacturing* – this includes conversations about production runs, plans for production or ending production, production quotas or supply/demand imbalances;
  4. *Customers* – this includes conversations about individual customers and their purchases and prices paid, or boycotting customers or other industry participants.

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- Obtain a copy of the Agenda prior to participating in a meeting of CFGM Members, including Committees and Sub-Committees;
- Keep minutes of meetings which clearly indicate the participants and the matters discussed and which follow the agenda for the meeting
- Confine discussions to the immediate subjects for which the meeting was convened;
- Review the Minutes of the meeting and report mistakes;
- Be alert to discussions that may raise competition law concerns. If improper discussions arise, Member representatives should voice their concerns and, if necessary, leave the meeting, have their departure noted in the minutes and immediately report the incident to those responsible for their companies' Corporate Compliance Programs;
- Seek legal advice if a particular situation gives rise to competition law concerns or questions;
- Seek legal advice before discussing potentially sensitive competition issues;
- Consider using Independent agencies to collect and aggregate statistical information which may be commercially sensitive, and take steps to preserve the anonymity of the collected data. The information collected should be historical in nature; and
- Provided this will not result in price fixing, allocating customers or markets, restricting production or supply or bid rigging, CFGM Members may, as a general rule,
  1. Cooperate in lobbying governments to change laws or policies (but avoid discussions about the impact that government measures will have on product pricing or output);
  2. Cooperate in encouraging the development of training programs;
  3. Cooperate on research and development for the benefit of the sector, which may result in the development of industry standards, best practices and benchmarks available to the sector at large (legal advice should first be obtained);
  4. Cooperate on measures to protect the environment, consumers at large or a specific segment of the population such as seniors (legal advice should first be obtained);

### **Other *Competition Act* Provisions**

The *Competition Act* is divided essentially into two categories of business practices that may give rise to action by the Competition Bureau. The first is comprised of criminal offences such as price fixing, allocating customers or markets, agreements to restrict production or supply and bid-rigging, which are discussed above. The Act also contains criminal offences for deceptive telemarketing and deliberately or recklessly misleading advertising. The second category consists of restrictive trade practices such as refusal to deal, resale price maintenance, exclusive dealing, tied selling and market restriction, agreements among competitors that are anticompetitive (but not criminal), certain other deceptive marketing practices and abuse of

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dominant position. These matters are dealt with by the Competition Tribunal which can issue temporary or permanent orders prohibiting such practices and ensuring that competition is restored. In the case of deceptive marketing practices and abuse of dominance, the Competition Tribunal can also levy financial penalties. Further discussion of these other provisions of the *Competition Act* is beyond the scope of this Guideline.

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*McCarthy Tétrault LLP DOCS #9720196 v. 2*

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Page 4 of 4