

Terms of Reference

Adopted 1 January 2012

UK Oil Industry Taxation Committee

The United Kingdom Oil Industry Taxation Committee consists of two committees. These are:

- The UKOITC Direct Tax Committee
- The UKOITC Indirect Tax Committee

UKOITC represents its member companies in dealings with HMRC, HMT, DECC and the European Commission on a range of tax issues affecting the UK oil and gas industry.

Role

The role of UKOITC is to:

- clarify, identify and, where appropriate, seek to resolve tax issues that affect the oil and gas industry;
- seek to minimise tax costs and risks, and the tax-related administrative burden; and
- optimise after-tax cash flows for the industry.

Structure

UKOITC is a not-for-profit organisation formed and maintained on a voluntary basis by tax professionals working in the UK oil and gas industry. A joining fee and membership fee may be charged to cover expenses. There are two main committees which are structured as follows:

Direct tax

A Chair and Secretary are elected by the membership at the last Committee meeting of every second year for a two year term. It is possible for the existing Chair and Secretary to nominate themselves for re-election. Meetings are held approximately every 2 months. An agenda for the meetings is circulated to the membership prior to each meeting. Minutes for the meetings are circulated to the membership after each meeting.

Specific technical issues may be discussed in detail by subgroups which are formed as and when necessary. There is no formal process to elect a subgroup lead. Subgroup meetings are held as necessary and regular reports are made by the subgroups to the main committee.

Indirect tax

A Chair is elected by the Committee members for a twelve month term. There is no permanent Secretary. Meetings are held quarterly to debate and decide priorities. A minute taker is appointed for each meeting and minutes are circulated after each meeting.

A lead person is elected for each of the four key indirect tax areas: Value Added Tax; Excise Duties; Customs Duties; Environmental Taxes on the same basis as the Chair. It is possible for the existing Chair and lead persons to nominate themselves for re-election.

Technical working parties are set up on an ad hoc basis to deal with specific issues.

Membership

It is not necessary to be a member of both the direct tax committee and indirect tax committee, and in fact membership criteria to each committee are different as set out below. A committee may invite other associations, companies or individuals to attend meetings as and when required, but they do not take part in the decision making process.

As a condition of attending and participating in UKOITC meetings, the representatives of member companies are expected to ensure that they have the necessary delegation of authority to represent their company during UKOITC meetings and discussions.

Direct tax

Membership of UKOITC Direct Tax Committee is open to companies/firms/individuals that:

- are primarily involved in upstream oil and gas exploration and production in the UK continental shelf; or
- are professional advisors to the upstream oil and gas industry.

Indirect tax

Membership of UKOITC Indirect Tax Committee is open to companies/firms/individuals that:

- are primarily involved in refining, distribution or marketing of oil products; and
- have a UK hydrocarbon oil excise duty deferment account.

A representative of the UK Petroleum Industry Association (UKPIA) is entitled to attend UKOITC Indirect Tax Committee meetings to offer impartial advice on oil industry issues that affect indirect taxes. UKPIA is not a member of UKOITC Indirect Tax Committee and does not take part in the decision making process.

Appeals process for declined membership

UKOITC undertakes to give specific reasons for rejection of membership if requested. An appeal needs to be made in writing to the Chair by the organisation concerned. The appeal should explain why the organisation considers the reasons given to be invalid.

An appeals committee panel will be formed by the relevant Committee to consider the appeal. The appeals committee panel will be provided with all the relevant documentation and correspondence relating to the membership application.

The appeals committee panel will report back to the next relevant Committee meeting giving feedback and a recommendation that the rejection should be upheld or overturned. Feedback will also be given to the applicant, if again rejected, giving reasons for rejection.

There will be no further recourse to appeal the decision.

Meetings and records

A draft agenda is to be circulated before all committee meetings and with sufficient time for members to review. "Any Other Business" items shall not be included in the agenda. If any additional item for discussion is raised for inclusion on the agenda its inclusion must be agreed by all attendees before there is any discussion on the matter. If there is any doubt as to the inclusion of an item from a Competition Law perspective, such item will be removed from the agenda and shall not be considered.

Minutes shall be taken of each meeting and circulated in draft form to those attending as soon as possible after the meeting inviting comments within a set timeframe. After agreement, the final version shall be circulated to all members and published on the UKOITC website. Members shall consider and follow the Competition Law Guidelines at all meetings and events.

Events and other meetings

The following other meetings and events may take place over the year:

UKOITC Annual Dinner

An annual dinner is generally held towards the end of the calendar year for members and their guests. A fee is charged to members to cover the cost of attendance. UKOITC covers the costs of guests invited by the Chairs of each Committee.

Direct tax

HMRC Oil & Gas Direct Tax Forum

A quarterly meeting hosted by HMRC, attended by UKOITC and other oil and gas industry groups, to discuss direct tax issues. A draft agenda is prepared by HMRC and circulated for comment before the meeting. Minutes are prepared by HMRC and circulated for comment to attendees before being finalised and posted on HMRC website.

Joint HMRC/UKOITC Conference

An annual conference hosted by HMRC, attended by UKOITC. Part of the cost of the conference is covered by UKOITC as agreed between UKOITC and HMRC. Presentations are made on topical issues by HMRC, industry representatives and other invited speakers. A programme is circulated prior to the conference.

UKOITC Awayday

An Awayday conference generally held every 12 months. A fee is charged to delegates to cover the cost of attendance. Speakers and organisers costs are covered by UKOITC. Speakers from industry, HMRC and others as appropriate are invited by the Committee to speak about topical issues. A programme is circulated prior to the conference.

Indirect tax

HMRC Oil & Gas Indirect Tax Forum

A bi-annual meeting hosted by HMRC LBS Oil & Gas Sector, attended by UKOITC, to discuss indirect tax issues. A draft agenda is prepared by HMRC and circulated for comment before the meeting. Minutes are prepared by HMRC and circulated for comment to attendees before being finalised.

Meeting with HMRC Excise Policy Group

No set timing for such meetings is in place, but are arranged when there are topical and key matters to discuss relating to excise issues. Meetings are hosted by HMRC and attended by UKOITC and other oil and gas industry groups. A draft agenda is prepared by HMRC and circulated for comment before the meeting. Minutes are prepared by HMRC and circulated for comment to attendees before being finalised.

Officers

Direct tax

The Chair presides over meetings of UKOITC Direct Tax Committee and conducts its business in an orderly fashion. The Chair's duties also include acting as its head, its representative to the outside world and its spokesperson. The Chair is a signatory to the bank account.

The Secretary records the minutes of all meetings and circulates relevant information and correspondence to members. The Secretary is a signatory to the bank account.

The Treasurer monitors and reviews income and expenditure providing updates at meetings on the balance of the UKOITC bank account and making recommendations to the committee on the annual subscription charges and joining fees. The Treasurer is the main signatory to the bank account and holds the cheque book.

Indirect tax

The Chair presides over meetings of UKOITC Indirect Tax Committee and conducts its business in an orderly fashion. The Chair's duties also include acting as its head, its representative to the outside world and its spokesperson and circulates relevant information and correspondence to members of the Committee.

There is no permanent Secretary. A minute taker is appointed for each meeting and minutes are circulated after each meeting.

Competition Law Guidelines

Introduction

This Guide is designed to enhance the understanding of UKOITC members as to how competition laws apply to trade association activities.

Whenever participants meet together or communicate attention needs to be given to compliance with competition laws. In the case of UKOITC UK national law is directly applicable and the European Commission may also have jurisdiction depending on the markets affected by UKOITC's activities. Indeed, in respect of global market, the antitrust laws of the United States and other countries could be applicable.

While trade associations generally seek, quite properly, to promote understanding and co-operation among their members, activity conducted by or through a trade association may be just as vulnerable to challenge under competition law as if the same companies were meeting or acting together without the medium of an association.

While UKOITC has a clearly stated compliance policy it must be supported by the actions of member companies – particular care is required from individual representatives who serve on UKOITC committees who should be conversant with applicable competition laws to avoid actions or discussions in their work within UKOITC that might raise compliance questions. The main purpose of this Guide is to help members recognise what is, or might become, a compliance issue. Some actions or discussions by a trade association or its members are clearly illegal; many others are wholly legal and proper; and there is a sizeable “grey area” or danger zone in between. This grey area between legal and illegal activity is sometimes vague and uncertain.

UKOITC's policy is not only to avoid actual violations of law – it must ensure also that its activities are conducted in a way which does not create even any appearance of impropriety which might invite investigation by enforcement authorities. To meet these requirements, UKOITC has adopted and observes several basic policies:

1. It has a well-defined, constructive terms of reference.
2. It is structured so that technical work is carried out by subgroups with specific and limited functional purposes, who report to the main committees.
3. It has approved the issue of this Competition Law Guide to help both member company representatives on UKOITC committees comply with competition laws.

The Applicable Laws

UKOITC and its member companies must ensure compliance with all applicable competition laws. These are:

- UK competition legislation – in particular the Competition Act 1998 and the Enterprise Act 2002 which gives the Office of Fair Trading (OFT) extensive investigatory powers in respect of anti-competitive practices and introduces a new criminal offence for individuals engaged

in certain types of cartel agreements. Individuals who are convicted of offences under the Enterprise Act may face imprisonment.

- EC Legislation – in particular Article 101 of the Treaty on the Functioning of the European Union which prohibits any practice which has the object or effect of preventing, restricting or distorting competition within the Common Market
- US antitrust laws.

Summary of applicable laws

The fundamental principle of all competition or antitrust laws is that it shall be unlawful for two or more competitors to enter into any form of agreement or arrangement regarding the supply of goods or services which has the object or effect of preventing, restricting or distorting competition, either between themselves or with others. The clearest examples of this are agreements between competitors which have the object or effect of restricting competition as regards:

- Pricing;
- Terms and Conditions of Purchase or Supply;
- Division of Territories or Customers or Restriction of Production Quantities or types of goods to be produced, supplied or acquired.
- Limiting Quality, Competition or Research

Any communications regarding pricing (and any matters related thereto) create the greatest risk of investigation under competition laws.

However, it is not only pricing information that is potentially sensitive. In a number of cases in Europe it has been found to be a breach of competition law for companies to exchange with actual or potential competitors, either directly or indirectly, information which has the object or effect of influencing market conduct of competitors; disclosing market conduct; and / or results in an artificially transparent market. Cases have been brought against companies for competition law infringement in respect of information exchange on sales volumes; customers; orders; capacity utilisation; market share information; and sales terms and conditions.

Both formal and informal agreements and arrangements fall within the scope of these prohibitions; they do not in any way presuppose some form of written formal agreement. An informal agreement, a common understanding, and in some cases even a concerted practice, may be regarded as falling within the ambit of competition laws.

A “concerted practice” is a form of co-ordination, without a formal agreement or decision, by which undertakings come to a tacit understanding to avoid competing with each other. Direct or indirect communication between competitors, such as the exchange of commercially sensitive information in trade associations, has in certain cases been found to be a sufficient “plus factor” to sustain an allegation of a cartel.

Participation in UKOITC Committee Meetings

Avoidance of the risk of an unintentional violation of competition laws will best be assured if all meetings of UKOITC committees and subgroups are conducted in strict compliance with the procedures set out in this Guide.

The Chair of the committee or subgroup must ensure that the meeting complies with the requirements of this Guide. In particular, an appropriate agenda should be prepared that clearly sets out the intended scope of the meeting. This should be circulated sufficiently in advance of the meeting to enable participants to satisfy themselves that only legitimate issues will be discussed. "Any Other Business" items shall not be included upon the agenda. If any additional item for discussion is raised for inclusion on the agenda its inclusion must be agreed by all attendees before there is any discussion on the matter. If there is any doubt as to the inclusion of an item from a Competition Law perspective, such item will be removed from the agenda and shall not be considered. It is incumbent upon the Chair to then ensure, during the meeting, that only matters on the agenda are discussed.

Following the meeting an accurate and complete written report of the proceedings at each meeting should be prepared. The minutes of the meeting should be circulated, in draft as soon as possible after the meeting and, in any event, before the next scheduled meeting for approval at that subsequent meeting.

It is the responsibility of all members to make sure that their own participation in committee/subgroup meetings will not give rise to even an inference of non-compliance with competition law requirements. Thus, even when carrying out approved and legitimate activities, members must be careful to avoid discussions or exchanges of information with participants on any subject not appropriate to UKOITC's objectives and procedures, since such discussions or information exchanges might give rise to inferences of an agreement or restrictive activity. As examples, any discussion of, or exchange of information on, the following should be avoided in all cases:-

- a) Individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit and other trading terms, etc.
- b) General price levels, price changes, differentials, etc.
- c) Individual company plans or statistics on costs, production, capacity, investment, inventories, sales, etc.
- d) Production or sales volumes and / or capacity utilisation.
- e) Bids on contracts for particular products, plant, etc. and procedures for responding to bid invitations.
- f) Plans of individual companies concerning the specification, production, distribution or marketing of particular products, including proposed territories or customers.
- g) Matters relating to individual suppliers or customers which might have the effect of excluding them from any market.

Regardless of subject matter, no individual should participate in a meeting which addresses issues outside the committee's terms of reference or subgroups objectives, or which otherwise fails to conform to the procedures in this Guide.

Information Exchanges

Exchanges of information between competitors are referred to in several other paragraphs of this Guide. Such exchanges may be unlawful, and careful attention should be given to those references.

Improper discussions

It is important to avoid discussions on the above subjects, not only at formal UKOITC committee meetings, but also at social or other gatherings connected with those occasions. If any improper discussions start in your presence you should protest: if the discussion continues, you should promptly excuse yourself from the group and communicate your protest to the UKOITC chairperson. Even if you do not take part in any improper discussions, your presence without participation could still get you and your company into trouble. In case of doubt as to whether a particular subject may properly be discussed with your competitors, you should consult your own Company's legal advisers.

Production of Documents

Competition authorities may require the production of documents, including information held in electronic form, and discovery of documents may also be required in civil proceedings. Normally, the only ground of resistance to such demands for documents is legal professional privilege which may protect from disclosure certain communications with legal advisers. Before any document is disclosed, legal advice should be taken. It is recommended that suitable internal procedures are put in place in case such demands are made. It should also be remembered that the European Commission does not recognise the privilege attaching to communications with in-house lawyers – therefore if an investigation is conducted under EC law the only legal privilege the Commission will recognise is in respect of legal advice provided by an external counsel who is admitted to a European bar.

The EC authorities may carry out on the spot investigations without prior notice. Under the Enterprise Act 2002 the OFT has draconian powers to carry out “dawn raids” on any premises whether business or residential. In the case of business premises, raids can be carried out in appropriate circumstances without notice and without warrant. During such a “dawn raid” investigating officers may require any person on the premises to:

1. Produce any document that the officer considers relevant.
2. Provide an explanation of any such document.
3. State where any such document can be found.
4. Produce any information held on computer in a form in which it can be read and taken away. The investigating officer can then take copies or extracts from any of these documents.

Anyone who hinders an investigation or fails to comply with the requirements of the relevant competition authorities may themselves be committing a criminal offence. This may lead to imprisonment and/or a fine for:

- unreasonable failure to answer questions or provide information or documents;
- making false or misleading statements;
- destroying, concealing or falsifying documents relevant to an investigation;

Care must therefore be taken to avoid wording any written documents, including reports or notes from committee meetings, in a way that might be interpreted as indicating, contrary to fact, the existence of any anti-competitive discussions or decisions. Every memorandum, letter, e-mail or other document should be written with the assumption that it will one day be examined for competition law implications. Enforcement cases may be based on documents which are in reality innocent but have been written in such a way as to create suspicion and require explanation. Such

documents may include personal notes based on recollection, or taken at committee or other meetings, which record personal impressions rather than the facts of what transpired.

Application of Competition Laws to UKOITC

The recognised and proper activities of UKOITC and its committees/subgroups can be accomplished effectively if participating members and staff are alert to the prohibited types of behaviour and react quickly when the danger signals appear.

Obviously, activities should be conducted in such a way as to avoid any possible misinterpretation of agreement among its members which might reasonably be regarded as restricting competition, especially with respect to prices, terms and conditions of purchase or sale, controlling production or sales, division of territories, or refusals to deal in any form whatsoever. Further guidelines are given here to highlight potential danger zones to be avoided. If a danger zone appears, legal advice should be obtained for specific guidance.

1. UKOITC's role is clearly defined in the Terms of Reference (see above). This is consistent with the requirements of competition law so long as UKOITC's activities do not impinge upon or seek to affect the commercial interest or practices of individual members. Examples of what is acceptable include representations to Government on fiscal or energy policies which might affect industry as a whole, or the promotion of common standards in the fields of environmental health and safety. Conversely, it is not acceptable for there to be any action, or even exchange of information, on an individual member's commercial practices such as pricing or terms and conditions of sale: nor is it acceptable for member companies to act in a concerted manner.
2. It has always to be borne in mind that boundaries can easily be overstepped. The Chair of UKOITC committees and subgroups need to ensure that any discussions remain within such legitimate boundaries.
3. An ostensibly lawful programme or activity runs a greater risk of getting into vulnerable areas if its scope is not clearly and restrictively defined. That is the main reason why UKOITC operates primarily through subgroups, and imposes limitations on the subject matter and duration of any ad hoc committees dealing with matters concerning a particular problem or issue.
4. As a member of a UKOITC committee or subgroup, you and your company may be held responsible for any improper acts that may occur which you know about (or should know about), and if you fail to protest or dissociate yourself from them.

Conclusion

It is hoped that this Guide will help you to understand how this important area of law applies to trade association activities and assists you to carry out your UKOITC work in full compliance with these laws and with UKOITC policies. Again, please remember that this is a limited outline and is not intended to be a complete description – specific problems related to UKOITC work can be raised through the Chairperson, or you should consult your own Company's legal advisers.