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IFPI

Competition Law Compliance Manual



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Contents

Introduction to Competition Law	Page 4
IFPI's Activities – Areas of Risk for IFPI	Page 4
The Role of the Compliance Team	Page 5
Fines, Penalties and Enforcement	Page 6
Who is Affected?	Page 6
Guidelines for Meetings and Related Communications	Page 7
Legislative Campaigns	Page 8
Anti-Piracy Activities	Page 9
Independent Representation	Page 11
Statistics and Market Research	Page 11
Membership Issues	Page 12
Licensing and other Commercial Activity / Collective Negotiation	Page 12
MLCs / Producers' Collecting Societies	Page 13
Charts and other Promotional Activities	Page 13
Dealings with Technology	Page 14
Monitoring Parallel Imports	Page 15
Dawn Raids and Legal Privilege	Page 15
Annex 1	
IFPI Market Reporting – Competition Law Compliance Guidelines	
Annex 2	
Dawn Raid Procedure	

IFPI

Competition Law Compliance Manual

Statement by Frances Moore, CEO

As the international recording industry trade association, representing a wide variety of our members' interests around the world, it is essential that we lead by example to ensure that IFPI conducts all its activities in a fair and non-discriminatory manner in full compliance with applicable competition law (or "anti-trust") rules.

Many of you will already be aware that the penalties for failing to respect competition rules can be very severe, including criminal sanctions in some jurisdictions and very large fines as well as negative publicity for the industry. Even in those countries that do not have developed competition laws, anti-competitive conduct can reflect badly on the record companies that have international presence and the industry generally. In addition, such anti-competitive conduct can have effects in jurisdictions with competition laws, exposing the industry to investigation and potential liability. For these reasons we must not only comply with competition law rules, we must also be seen to be complying with them.

That is why we have developed this Competition Law Compliance Manual, the first edition of which was issued in 2002. Although competition laws are complex, there are fundamental rules that all IFPI and national group staff are required to know and follow. It is essential that you are able to identify situations where competition law issues may arise and where you may need to seek legal advice. This Manual will help you to do this.

The Manual is being distributed to all IFPI staff in London and in Regional Offices who are required to comply with it. It is also being distributed to IFPI National Groups. IFPI expects the National Groups to adopt the Manual, or a similar policy reflecting their own laws, as appropriate.

The Manual identifies various situations, activities, and potential agreements where you (and therefore IFPI, its members and IFPI National Groups) might attract the scrutiny of competition authorities. Market reporting is one of the many activities where competition compliance is particularly important, and you will see that this revised version of the Manual incorporates the guidance previously contained in IFPI's Market Reporting – Competition Compliance Guidelines. While it is not possible in a Manual like this to cover every circumstance where difficulties might arise, if you are in doubt at any time, you should speak to IFPI's Compliance Counsel, or the Compliance Officer within your own organisation.

IFPI has an unequivocal policy of conducting its activities in full compliance with all applicable laws, including competition laws. Please take time to read and understand the contents of the Manual thoroughly. To emphasise the importance of compliance it's only fair to make clear that a failure to follow the guidance in this Manual may result in disciplinary action. Where such failure amounts to gross misconduct, it may result in dismissal.

Frances Moore
CEO, IFPI

WHAT IS COMPETITION LAW?

Competition law ensures that market forces, like supply and demand and consumer choice, shape the competitive playing field between companies. Most countries have adopted tough laws to discourage businesses from acting anti-competitively, distorting this competitive playing field.

Some activities will always be anti-competitive, like price fixing or agreeing to divide up the market. Often the position is not clear-cut and some activities may be found to be anti-competitive in some situations but not in others. This Manual explains when you should be alert and think carefully about how your behaviour may be perceived. If you think there might be a competition law issue, you should ask for help from the Compliance Officer in your organisation, or IFPI's Compliance Officer, Dan Pickard.

The laws of most countries prohibit two main categories of anti-competitive behaviour:

- agreements, concerted behaviour or informal co-ordination between companies which have an anti-competitive object or effect; and
- 'abusive' behaviour by companies in a strong market position. Such abusive behaviour can also be punished where a number of undertakings carrying on the same activity together occupy a position of dominance, as is sometimes alleged in connection with the recording industry.

IFPI IS PARTICULARLY EXPOSED

Trade associations such as IFPI and its National Groups are particularly at risk from competition law problems because their membership is largely made up of competitors operating at the same level of the industry. It is often said that trade associations provide the best source of information for competition authorities investigating infringements within an industry. The activities of trade associations account for a high proportion of competition law infringement decisions.

IFPI's exposure is particularly high, because it represents an industry where a small number of companies account for a large percentage of overall sales. For these reasons IFPI must ensure that it is not, and cannot be viewed directly or indirectly as, a vehicle or forum for anti-competitive or collusive activity by its members. Guidelines for IFPI meetings have been specifically included in this Manual (see page 7) to ensure that this does not occur.

References to IFPI in this Manual should be interpreted as including National Groups unless otherwise stated.

IFPI'S ACTIVITIES – AREAS OF RISK FOR IFPI

IFPI and National Groups carry out many functions which benefit the industry as a whole, and are likely to increase the efficiency of the market. These activities generally raise no competition law concerns and include:

- lobbying for the interests of members, for example on legislation and policy matters including anti-piracy and IP protection;

- promoting and protecting members' interests in the media;
- informing members about legislation and government policy; and
- providing a range of services of an advisory or consultancy nature.

The other activities and objectives of IFPI are also legitimate, provided that the guidelines set out later in this Manual are followed. For example, co-ordinating and supporting investigations and litigation against large-scale infringement of members' rights, the collation and dissemination of statistics and other market data, and collective negotiation in certain circumstances (such as in connection with the licensing of musical works from the authors' societies).

This Manual is intended to help you distinguish relatively risk-free activities from more sensitive activities which may in some circumstances be prohibited and therefore need to be treated with caution. This is more likely to be the case where IFPI's activities affect the commercial interests of IFPI members, for example:

- the conduct of meetings, where IFPI member record companies (i.e. competitors) are present;
- the operation of charts or other promotional activities (which have on occasion been alleged to be exclusionary);
- anti-piracy measures and collective litigation, especially where the defendant is seeking to negotiate licence deals with the companies; and
- advice in connection with commercial activities, such as internet licensing, or recommendations to collecting societies generally.

This Manual does not list everything that might cause concern, or how to deal with every possible issue. It covers the main types of activity which IFPI or IFPI National Groups carry out (or might consider carrying out) from time to time. If, having read these guidelines, you need further clarification, you should immediately contact your Compliance Officer or speak to IFPI's Compliance Counsel.

THE ROLE OF THE COMPLIANCE TEAM

Within IFPI, the Compliance Counsel is the Compliance Officer, responsible for implementing IFPI's compliance policy and dealing with queries from IFPI staff and IFPI National Groups.

IFPI National Groups should have their own Compliance Officer who can liaise with IFPI's Compliance Counsel. Compliance Officers should be equipped with the necessary expertise (with the additional back-up of outside lawyers where appropriate) to help identify concerns and to advise on how best to deal with potential competition problems.

The Compliance Officer should be in a position to conduct regular reviews of files and documents and hold interviews and training sessions with other employees. All members of staff need to give such sessions their fullest co-operation.

FINES, PENALTIES AND ENFORCEMENT

Breaches of competition law, whether deliberate or inadvertent, are extremely serious.

Competition authorities can impose heavy sanctions:

- fines – there are a number of recent cases where cumulative fines imposed by authorities totalled hundreds of millions of Euros/US Dollars;
- agreements may be void and unenforceable and future practices restricted;
- in some jurisdictions, criminal penalties may be imposed on those involved, including imprisonment; and
- actions for damages can be brought by those affected by infringements.

Competition law infringement decisions against IFPI, its members or National Groups can have other far reaching effects on both individual businesses and the recording industry more generally:

- competition investigations result in bad publicity which could have a damaging long term effect on a company's reputation and lead to increased scrutiny from the authorities in the future; and
- competition investigations require large amounts of senior management time and the instruction of external advisors, and are extremely costly to companies.

The fact that IFPI and IFPI National Groups have taken the trouble to carry out and follow up a compliance programme may be regarded favourably should a court or regulator at a future date find a breach of competition rules, resulting in a smaller fine than might otherwise have been imposed. This is dependent on the programme being communicated and implemented effectively.

WHO IS AFFECTED?

If you are involved in any of the activities below, please read the next sections very carefully. This could mean the difference between legitimate trade association activity and serious sanctions.

- Attendance at board meetings (including IFPI Main Board, Regional Board and IFPI National Group Director meetings) or participation in IFPI committees at which representatives of IFPI's member companies or collecting societies also attend, including the Performance Rights Committee (PRC) and the International Legal Committee (ILC), or any national equivalent.
- The collection, compilation and dissemination of market data and other statistical information.
- Enforcement and the prevention of piracy, internet anti-piracy and litigation.
- Assistance to members or collecting societies with licensing arrangements and other related commercial activities.

- Direct dealings with third parties that are actual or potential business partners of IFPI members, including retailers, online service providers and ISPs, or recommendations to members about such dealings.
- The compilation and exploitation of charts, or the organisation of award ceremonies and other initiatives for the promotion of the industry or IFPI members' products.
- Participation in technical co-operation or standardisation groups, such as MPEG, DDEX, repertoire database initiatives, ISRC, or any specific projects in these fields.
- If you are involved in any communications related to these activities, whether written or oral, electronic or hard copy, it is essential that you also apply the principles below in such communications.

GUIDELINES FOR MEETINGS AND RELATED COMMUNICATIONS

It is a fundamental principle that each individual record company must always exercise its own independent commercial judgment in:

- pricing its products or services;
- dealing with its customers and suppliers; and
- selecting the markets in which it will compete.

The nature and content of discussions between competitors at IFPI meetings and in any other relevant communications involving IFPI therefore needs to be strictly controlled to ensure there is no discussion of such matters (whether in relation to past, current or future activities).

Meetings and communications attended by company representatives

The following guidelines apply where IFPI or National Group meetings include company representatives and in relation to all relevant communications involving IFPI.

- It is essential that agendas are prepared and circulated in advance of all meetings, and that the agenda items are limited to issues which fall within the competence of the relevant committee, by virtue of its objectives, or more generally the objectives of IFPI.
- A draft agenda should be scrutinised by the Compliance Officer of the relevant organisation before it is circulated to determine whether, in respect of any specific agenda item, it is necessary to require attendance of the Compliance Officer (or even external counsel) and to check that all agenda items are permissible.
- Discussions should be confined to the agenda items and minutes should be kept.
- There must be no discussion, formally or informally, of commercial issues which relate to any individual member, including, but not limited to any of the following subjects:
 - the cost of any element of production or distribution, development (including A&R spend), procurement or marketing of any product, system or service; and/or

- any company specific business strategy, trade secret or commercial information, including pricing or other terms or conditions of deals.
- Any propositions and standards discussed or recommended shall in all respects be voluntary and there must be no penalty, express or implied, for deviation from any recommended technical standards.

Where specific work is being done that requires the use of company-specific commercial information in an aggregated form (for example collated data relating to artists' income from streaming, or industry income from user-uploaded content services), your Compliance Officer should be consulted to ensure that the information can be collected and presented in a manner that is consistent with competition law.

Avoiding discussion of individual commercial terms and cost structures is equally important in circumstances where representatives of third parties - such as music publishers, artists, ISPs or retailers - are present at meetings. If you are conducting meetings that include such third parties, for example a meeting to discuss a collective licensing deal, you should consult your Compliance Officer in advance.

Meetings and communications with others – e.g. collecting societies

The above guidelines apply at meetings where competitor record companies are present. The considerations can differ at meetings of producer collecting societies from different countries, since the societies are not necessarily direct competitors of one another with respect to "traditional" uses within their country such as broadcasting and public performance. In general it is permissible for the societies to compare certain details relating to traditional uses, including revenues and tariffs, for the purpose of developing best practice.

However, there are areas in which collecting societies will be regarded as actual or potential competitors, including where they are licensing services that can be subscribed to from various countries, such as simulcasting, webcasting and other new media uses. For this reason all collecting society meetings should be supervised by the Compliance Officer.

Informal meetings

Informal meetings (e.g. at industry social events) can sometimes create the appearance of an opportunity to discuss prohibited or sensitive items, even if no such discussions have occurred. You should always avoid getting into discussions about commercially sensitive subjects both in formal and informal settings.

LEGISLATIVE CAMPAIGNS

Competition law issues can arise when IFPI and National Groups engage with government and legislators on policy matters, for example the Value Gap. Each campaign is likely to raise different issues, and National Groups should consult the Compliance Officer and take advice from competition counsel on a case-by-case basis.

It will generally be acceptable for IFPI and National Groups to comment on the broad commercial implications of a campaign and its potential outcomes from an industry perspective. It is essential that IFPI or National Groups do not comment on the present or future commercial conduct or plans

of individual IFPI members, in the event that the campaign either does, or does not, succeed. A member company's specific negotiating approaches, investment plans or relationships with individual third parties should never be discussed by IFPI or National Groups.

ANTI-PIRACY ACTIVITIES

Various measures that IFPI or National Groups might consider as part of the fight against piracy may raise important competition law issues.

Collective Boycotts: Dealings with Third Parties, Dealings with Online Intermediaries (e.g. ISPs, Mobile Network Operators, Advertisers/Ad Networks, Payment Providers, Search Engines, Domain Registrars)

Where piracy is proven (or even suspected on objective grounds), individual members of IFPI may, in most circumstances, refuse to supply or license a third party such as a retailer. Any such decisions should be made individually by each record company.

If a number of record companies refuse to deal with a particular supplier or (potential) customer, or if existing licences are withdrawn, the inference may be drawn that such behaviour has been collectively co-ordinated and as such is likely to be prohibited. If IFPI is involved in any discussion about such issues (even by simply hosting a meeting at which any co-ordinated behaviour has been agreed or discussed), IFPI will itself be at risk of serious competition law issues.

It is appropriate for IFPI to provide information to its members that they may individually decide to act upon. For example IFPI could inform its members that an online service provider or mobile device manufacturer is facilitating piracy and individual members may decide not to license that service provider until the piracy problem is addressed. However any recommendation by IFPI to its members to refuse to license or deal with a third party should be avoided.

Related issues arise when dealing with other intermediaries including ISPs, advertisers, payment providers, search engines, domain registrars and social media. It is legitimate for IFPI to lobby these industries on the issue of piracy. It can be appropriate for IFPI to notify:

- ISPs if they are providing hosting and internet service to rogue sites;
- advertisers (and others involved in facilitating the delivery of advertisements, such as ad agencies, ad networks or ad exchanges) when advertisements for products and services are appearing in connection with pirated material.
- payment providers whose services are being used in connection with piracy.
- search engines when they provide search results linking to sites engaged in piracy.
- domain registrars if they are providing service to rogue sites.
- social media services where infringing content is available via links or embedded players, or where rogue sites promote themselves on the service.

- IFPI members or online intermediaries about which sites are engaged in piracy, for example by providing a list of sites which can be referred to by intermediaries who wish to consider how they provide their services or where they place advertising.

In all of these cases, you should collect and hold documented evidence of the relevant infringements, measured against transparent and objective criteria, so that any communications can be shown to be justified.

Provided such evidence exists, it can be appropriate to request that the recipients of such communications ensure that they do not allow their services or advertisements to be used in a way that supports or contributes to copyright infringements on the sites referred to.

It is essential that requests to third parties should never be accompanied by any threats, nor should they imply negative consequences if there should be a failure to comply with the request.

If a list of infringing sites is circulated, it must be based on transparent and objective criteria, be updated with reasonable frequency so that any sites which are no longer infringing or do not satisfy the objective criteria are removed from the list, and there must be a mechanism for appeal for sites that feel they have been wrongly included.

Particular caution should be exercised in the case of any site that conducts illegitimate activity but also some legitimate activity, for example a file hosting service that hosts or may host legitimate content as well as infringing content. Because some of these sites' activities may be legitimate, there is an increased risk that action targeted at these sites will give rise to competition concerns, so care should be taken to ensure that any letters are framed appropriately, and careful consideration given to the inclusion of such sites on any list of infringing sites.

Letters or lists of infringing sites sent to ISPs, advertisers/ad networks, payment providers, domain registrars, social media, or other intermediaries should be shown to your Compliance Officer before being sent or communicated.

Anti-Piracy Litigation and Settlements

IFPI and its National Groups are entitled to take action on behalf of members to combat piracy. Trade associations are well placed to represent their members, and collective representation and enforcement is an efficient allocation of resources and essentially pro-competitive in nature.

The key guidance is that IFPI and National Groups should not become involved in the detail of negotiations relating to future commercial arrangements.

IFPI and National Groups may represent the collective interests of members in anti-piracy litigation and subsequent settlements. This includes dealing with administrative matters such as the general co-ordination of the litigation and agreement of the basic terms of settlement agreements. The individual commercial interests of members cannot be negotiated or agreed by IFPI or National Groups. This includes in particular the commercial terms on which individual members may agree to license the defendant(s) to any piracy-related action ("the Defendant"). IFPI and National Groups should not be associated with such discussions in any way so as to ensure that IFPI and National Groups cannot be alleged to have encouraged or facilitated a boycott or to have coordinated business terms.

Where IFPI and National Groups are coordinating anti-piracy action and the Defendant is seeking a licence from the record companies, IFPI and National Groups will need to take steps to avoid any suggestion or perception that they are involved in or coordinating commercial discussions. If meetings are held with the Defendant (particularly if record company representatives are also going to attend), a written agenda should be prepared in advance, and IFPI and National Groups will need to ensure that discussion does not stray outside the legal points at issue. Business people from the companies should not attend such meetings – company representatives should be limited to lawyers who need to attend to discuss legal issues.

Where settlement is being discussed, IFPI and National Groups can negotiate the terms of a settlement agreement covering the cessation of infringement, and payment of compensation for past infringement, but future licensing will need to be addressed in either of the following ways:

- where the record companies have mandated a collective licensing body to license the relevant rights, the defendant may undertake to take a licence on standard terms through the relevant collecting society or other collective licensing body. IFPI and National Groups can facilitate such licensing but the details of the licence should be addressed by the collecting society; or
- the Defendant may negotiate licence terms separately with individual companies. IFPI and National Groups cannot be involved in such negotiations for the reasons outlined above. IFPI and National Groups may include a provision in settlement agreements that each individual company shall offer a representative to negotiate with the Defendant.

INDEPENDENT REPRESENTATION

IFPI's and National Groups independent members are appropriately represented within the structure of all bodies and committees that have effective decision-making power within IFPI. This is because IFPI represents the whole industry, and takes decisions which affect a number of differing interests within it.

There is no definitive rule indicating what proportion of voting power should be accorded to IFPI's independent membership. However, IFPI National Groups are advised to follow the example of IFPI, which has a defined level of independent representation on its Regional and Main Boards. In short, independent record company members should be given the opportunity to be heard in similar equivalent committees at the national level, and be given voting rights consistent with their financial contribution.

STATISTICS AND MARKET RESEARCH

The IFPI Market Reporting – Competition Law Compliance Guidelines were updated in May 2017 and are contained in Annex 1 to this Manual.

The previous version of the IFPI Market Reporting – Competition Law Compliance Guidelines required strict adherence by all National Groups within the EU and EEA, but allowed National Groups located outside the EU and EEA to depart from the Guidelines subject to fulfilment of certain conditions. Following a decision of IFPI's Main Board in May 2016, departure from the Guidelines is no longer allowed in any circumstance: all IFPI National Groups are now required to strictly adhere to the Guidelines. Local legal advice obtained by National Groups, whether within or outside the EU/EEA, and whether before or after the date of publication of this Manual, cannot be relied upon to justify a departure from the IFPI Market Reporting – Competition Law Compliance Guidelines.

MEMBERSHIP ISSUES

IFPI's membership must remain open to all those who satisfy the criteria set out in its Statutes. IFPI's Statutes have been reviewed for compatibility with competition laws. It is recommended that IFPI National Groups follow the model of IFPI's membership rules or seek their own competition law advice on this issue.

When dealing with membership applications:

- any quantitative criterion for membership (for example that members must be "substantial producers of music") is likely to discriminate against smaller members and should be avoided; however it is acceptable to create a tiered membership structure that is based on a lower subscription fee for smaller companies;
- membership fees at the lowest end of the scale should not exceed US\$1500 or its equivalent;
- funding of IFPI or National Group activities by third parties who are not members (for example, music licensing companies/producers' collecting societies) can raise competition law issues and it is important to exercise caution.
- National Groups should consult their Compliance Officer to determine whether local specialist competition counsel's opinion is required.

LICENSING AND OTHER COMMERCIAL ACTIVITY/COLLECTIVE NEGOTIATION

As a trade association representing the international recording industry, IFPI and National Groups should avoid becoming directly involved in licensing and other commercial activities.

IFPI and National Groups should in general not be mandated by members to collect revenues on their behalf, or in any other way to administer copyright in sound recordings, unless advice has been taken from local specialist competition lawyers. To the extent IFPI members wish to administer their rights collectively this should in general be done through a separate collecting society.

In some specific cases, IFPI may be able to exercise some commercial function, in particular when it is representing its members as buyers rather than suppliers and where collective negotiation is justified under competition rules. Thus, for example, IFPI and IFPI National Groups assist in collective negotiations with music publishers regarding the terms for online licensing.

From time to time IFPI and National Groups may become involved in negotiations for agreements at industry level, for example with artists, performers and their representatives, or with other recording industry bodies, on issues of mutual interest. There are a number of areas where such agreements may be appropriate, for example anti-piracy activities. However, discussions and agreements relating to financial, commercial or contractual terms, for example in connection with the payment of royalties or the setting of royalty rates, are likely to raise competition issues. National Groups should proceed with caution, consult the Compliance Officer, and take advice from competition counsel where appropriate.

MUSIC LICENSING COMPANIES/PRODUCERS' COLLECTING SOCIETIES

Given that its membership base is similar to that of the producers' collecting societies, IFPI has a legitimate role in providing a discussion forum for these societies, and providing advice and coaching to enable them to increase revenues. IFPI may also assist in drafting model reciprocal contracts, provided that these do not involve a consideration of commercial terms, which are for negotiation between each society and its users.

IFPI should never provide a forum in which collecting societies agree to exchange commercially sensitive information with each other. As noted above, in general it is permissible for societies from different countries to exchange information about their business as it relates to traditional uses such as broadcasting and public performance within their country, since the societies are not direct competitors of one another with respect to these uses.

There are areas in which collecting societies will be regarded as actual or potential competitors, where they are licensing services that can be subscribed to from various countries, such as simulcasting, webcasting and other new media and internet uses. For this reason all collecting society meetings should be supervised by the Compliance Officer.

CHARTS AND OTHER PROMOTIONAL ACTIVITIES

Charts represent an important promotional tool for the music industry. IFPI has developed a set of IFPI core principles for National Charts (which are not specifically focused on competition law compliance) designed to provide guidance to National Groups and to achieve charts consistency across markets to monitor artist performance effectively. Further details of the core principles are available from IFPI.

Charts tend to be operated by IFPI National Groups or by third parties acting according to rules defined by IFPI National Groups. In the past, some IFPI National Groups have changed chart eligibility criteria following complaints by record producers who do not or cannot comply with applicable thresholds.

The object of qualification criteria is to ensure that charts are not and cannot be distorted. Objective criteria are justifiable provided they are proportionate to this aim and necessary to ensure the charts reflect a true and accurate position of customer preferences. The guidelines set out below should reduce the risk of exposure to legitimate complaints. As charts are likely to have effect at a national level, local legal advice should also be sought in relation to charts programmes.

Chart Guidelines

- Qualification criteria should be open, transparent and non-discriminatory. They should also be objectively justifiable as well as being necessary and proportionate to the objectives pursued (maintenance of chart integrity etc.).
- If the chart is publicised as a "national chart" it should not be restricted to the sound recordings of IFPI members only.

- The incorporation of streaming into a chart can raise competition law issues and IFPI has issued guidance on the incorporation of streaming which includes information about competition law compliance. Further details are available on request.
- Certain pricing thresholds at the dealer level may be justifiable, provided that they are proportionate, imposed in order to ensure that the integrity of the chart is upheld, and are not distortive of true customer preference. Where a dealer price threshold for eligibility is proposed, it should be reviewed by local specialist competition lawyers before being applied to the chart.
- Criteria based on retail price levels, or retail price levels for any format, should not be adopted to determine eligibility. Whatever their merits, these may be misconstrued as involving illegal re-sale price maintenance.
- If chart positions are achieved by anything other than volume of sales to the public or airplay (for example volume of product shipped), this should be made clear on the face of the chart, to avoid misleading consumers.
- In all cases, the guidance provided in the IFPI Market Reporting - Competition Law Compliance Guidelines annexed to this document and should be followed in collecting and publishing market data in sales charts.

Award ceremonies and other joint promotional activities for the Industry

As with the charts, if participation in award ceremonies or the receipt of sales achievement awards (e.g. gold discs) are to be restricted to IFPI members only, this should be made very clear (i.e. published), so that consumers are not misled into believing that the awards reflect the results of competition across the whole industry.

Where it is considered necessary to limit awards, charts or other industry promotions to IFPI membership alone, the fact of such limitation will need to be made very clear and should be seen as a benefit of IFPI membership.

DEALINGS WITH TECHNOLOGY

When IFPI or National Groups are engaging in a process involving technology providers (for example in connection with content recognition technology solutions) there is potential for providers who feel excluded to claim that IFPI and its members are preferring one provider over others and thereby limiting competition in a market.

To avoid such claims, IFPI and National Groups should ensure that dealings with technology providers are transparent and open to any technology provider to participate. Any comments or recommendations regarding specific technology providers should be objectively justified, and carefully prepared, if necessary with the help of the Compliance Officer, to ensure they are fair, balanced, and do not unjustifiably exclude any provider from competing in the market.

The setting of industry-wide standards is highly sensitive not only in circumstances where other industries may be affected, but also where competition between record companies may be affected. Therefore, as a general rule, no IFPI or National Group employee should become involved in standard-setting discussions without first consulting the relevant Compliance Officer.

MONITORING PARALLEL IMPORTS

Many IFPI National Groups operate within defined customs unions, such as the European Economic Area (EEA), where countries have agreed free and unimpeded trade between them. Any attempt to block trade within such a union, whether by seeking to interfere with parallel imports or otherwise, will be viewed harshly by the relevant authorities.

Anti-piracy activities aimed at preventing unauthorised imports can be legitimate, however activities which seek to prevent the trade of authorised products from one member state of a union to another, give rise to competition concern. National Groups that are engaged in anti-piracy activities aimed at preventing unauthorised imports, including monitoring the flow of parallel imports into their territory, should consult the Compliance Officer and ensure that the activities are consistent with competition law.

DAWN RAIDS AND LEGAL PRIVILEGE

Many competition authorities have the power to gain access to premises unannounced and to seize documents. Guidance on how to handle such a situation is set out in Annex 2 to this Manual. All staff, including those on security or reception desks, should be familiar with the procedure set out in that guidance.

ANNEX 1

IFPI MARKET REPORTING – COMPETITION LAW COMPLIANCE GUIDELINES¹

Introduction and IFPI MAP

Following direction from IFPI's Main Board, IFPI continues to focus on enhancing its position as the definitive source of recording industry data. As part of that work, IFPI has developed the IFPI MAP (Market Analysis Portal) system, which enables record companies to input sales data relating to the major music markets, and serves as the sole authoritative source of the industry sales data that it covers. Any trade figures to be published by National Groups will need to be reconciled to the MAP data. Further information about IFPI MAP is available from IFPI.

As many readers of this Manual will already know, competition authorities take a restrictive view of the collection and dissemination of market data by trade associations such as IFPI and National Groups, because memberships are made up of direct competitors. There can be a suspicion that National Groups can facilitate the exchange of information that can be used by record companies for anticompetitive or collusive purposes, such as price fixing or dividing markets. Because recording industry markets are highly concentrated, the level of suspicion is even greater.

For this reason it is essential that National Groups ensure that the information actually disseminated is of such a nature that it cannot be used for such purposes. We have developed these IFPI Market Reporting Competition Law Compliance Guidelines to help you to do that. Please read them carefully.

A quick reference guide is included at the end of these Guidelines, showing which categories of industry sales and market share data can be shared with record companies, and how frequently.

As IFPI further consolidates its position as the recording industry data authority, these Guidelines will be updated to ensure ongoing compliance with competition laws.

The previous version of these Market Reporting – Competition Law Compliance Guidelines required strict adherence by all National Groups within the EU and EEA, but allowed National Groups located outside the EU and EEA to depart from the Guidelines subject to fulfilment of certain conditions. Following a decision of IFPI's Main Board in May 2016, departure from the Guidelines is no longer allowed in any circumstance: all IFPI National Groups are now required to strictly adhere to the Guidelines. Local legal advice obtained by National Groups, whether within or outside the EU/EEA, and whether before or after the date of these Guidelines, cannot be relied upon to justify a departure from these Guidelines.² Any questions related to these Guidelines should be directed to IFPI's Compliance Officer in London.

General Principles

To reduce exposure to competition law compliance risks, it is essential that the following general rules **are always** followed when collecting, storing, distributing and publishing industry information.

- National Groups can collect information as often as is necessary to produce reliable statistics or market data. This can be done directly or by third party providers, but National Groups that

¹ Replaces April 2012 Market Reporting Competition Law Compliance Guidelines

² With the exception of activities involving IFPI's Latin America Regional Office in Miami, as at the date of publication of this Manual, the US is outside the scope of the Market Reporting – Competition Law Compliance Guidelines.

contract market data functions to external providers still need to ensure compliance with these rules.

- In all cases, only statistics that are necessary for the purpose of the exercise should be collected. National Groups should always be able to justify objectively the collection of any data that is not subsequently distributed, for example because it is necessary for verification purposes.
- It is important that National Groups ensure that systems for collection and storage of data are secure. For example, computer information will need to be password protected and physical files should be stored in a locked room.
- To the extent these Guidelines allow distribution of market data, it can be published by National Groups (for example, by posting on the National Group website) or circulated to record companies and other interested third parties. Publication may help to indicate to a competition authority that the object of the data exchange is not anticompetitive, but **publication in itself will not make an otherwise unlawful exchange lawful**. An information exchange is only considered to be genuinely public if it makes the data equally accessible to all competitors and buyers. Where information is circulated to interested third parties, a reasonable fee for costs incurred might be charged to those receiving the information. N.B. The timing and content of the industry's public communications are carefully managed for reasons that are unrelated to competition law compliance. In addition to ensuring competition law compliance, you should contact the IFPI Communications team if in any doubt whether the timing or content of a proposed public communication is appropriate.
- Individual record companies **should not be in a position to see the individual figures** as reported by their competitors. It is essential that data supplied to National Groups is kept totally secure and that access by individual record companies to the raw data is prohibited. National Groups that are involved in arrangements with third parties who provide data to record companies should ensure that this rule is followed in implementing those arrangements. This principle applies whatever means is used to collect data from or provide it to record companies, including, for example, through an online system with password access for individual companies.
- **It must not be possible for record companies' average prices, rates or tariffs for any particular product or service (e.g. downloads or streams) to be calculated** from any aggregated information distributed, even in relation to historical price information. **General approaches to pricing (including discounts) of an individual company's products should not be discernible** from industry information.
- **No statistics representing forecast or future average price, rate or tariff levels** should be disseminated, although it is acceptable to provide a general view of how the industry as a whole is progressing and to provide forecasts that make general predictions on volumes or future industry sales (based, for example, on previous years' trends or changing market conditions).
- **A reasonable administration fee may be charged for the aggregation and dissemination of information to record companies**. The administration fee should not be prohibitive and it may be reasonable and necessary to consider different levels of fees for members or third parties on the basis of objective criteria, e.g. the revenue of the members or third parties.

- **National Groups should avoid providing data to record companies on an informal basis** (i.e. outside the framework of the formal market statistics programme), nor should they participate in or facilitate the provision of data by third parties in such circumstances.
- **Where meetings are held** with more than one record company to discuss industry statistics or market information, it is essential that **National Groups ensure** that:
 - individual company data; or
 - existing or future pricing levels; or
 - other commercially sensitive strategies that have been or might be adopted,

do not form any part of the discussions or become the subject of any agreement or understanding (explicit or implicit) between any of the participants. In addition, the Guidelines for Meetings and Related Communications contained in the IFPI Competition Law Compliance Manual should be applied.

- **In no circumstances should a National Group make commercial recommendations** to record companies arising from an analysis of IFPI’s market reporting information, for example in relation to pricing.

Inclusion in Sales Figures of Revenue Received by Record Companies Under Most Favoured Nations (“MFN”) Provisions in Agreements Between Record Companies and Commercial Partners

The competition compliance of MFN clauses has been investigated by the European Commission and national regulatory authorities on a number of occasions. MFN provisions are not illegal per se, however competition authorities including the European Commission have held that they infringe competition law rules in certain circumstances. The competition authorities’ decisions are fact-specific and do not provide definitive guidance, however the two main competition law concerns are that MFN provisions may inhibit effective price competition, or lead to the exchange between competitors of sensitive information about terms and conditions.

In order to minimise competition law risk, the following guidelines should be observed when handling, discussing or making communications about the inclusion of MFN related revenue figures in industry sales figures, or when implementing a policy for how this should be done:

1. IFPI and record companies **are** entitled to discuss general issues relevant to the creation, amendment and updating of IFPI’s policy on the reporting of MFN revenue to and the inclusion of MFN-related revenue in industry sales figures (“IFPI’s MFN Reporting Policy”).
2. However record companies should avoid jointly discussing the compliance of individual companies with IFPI’s MFN Reporting Policy, in order to ensure that conversations do not stray into discussing more commercially sensitive issues.
3. It is essential that IFPI and National Groups do not become involved in directly or indirectly disclosing between record companies information about the terms and conditions that they have entered into. Some examples of such information include the existence of specific MFNs,

the identity of particular counterparties, the terms of any particular MFNs, or information that might enable such commercially sensitive information to be reverse-engineered.

4. MFN-related information provided to IFPI or National Groups by an individual record company should not be shared with any other record company.
5. If a record company has concerns about other company's compliance with IFPI's MFN Reporting Policy, these should be raised with IFPI's CFO, in order to avoid the need for bilateral discussions between record companies.

Industry Sales and Market Share Data

The provision of industry sales and market share data to record companies will be acceptable as long as the data distributed is not too specific and not provided too frequently. In order to help you to avoid competition issues, the tables on the following seven pages set out the maximum frequency and specificity with which industry sales and market share data may be reported to record companies. In addition, there is a quick reference table summarising the permitted distribution frequency by category of market share data. It is essential that market data is not provided to record companies more frequently, nor with a more specific breakdown, than indicated.

Where it is indicated that market *size* data may be provided but market *share* data is not to be displayed, this applies to competitor market share data i.e. it will be acceptable for a record company to be provided with details of its own market share, if desired, but not with details of the market share of any other company.

As indicated, market share data may be provided to record companies by a single measure only. As at the date of this edition of the Guidelines, the single measure used by IFPI is value (not volume). It is permissible to break down market share data by sales channel and geography, but not more specifically than is indicated in the tables set out in these Guidelines.

Calculating prices: it must never be possible to work out an individual company's prices, rates or tariffs for any particular product or service (e.g. downloads or streams) from any market data which is distributed.

Please note that references in these Guidelines to "market share", refer to revenues from sales or licensing by record companies individually and do not include data relating to uses that are managed collectively by MLCs, for example broadcast and public performance rights. In general, there is no competition law restriction on MLCs circulating information to companies they represent regarding total distributions to individual companies, insofar as the MLCs' distributions are made based on actual use of recordings in broadcasting or public performance and not on sales market share.

**ANNUAL REPORTING:
DISTRIBUTION NOT MORE FREQUENTLY THAN
ONCE EVERY 12 MONTHS (3 MONTHS AFTER THE PERIOD END)**

Physical Recorded Music

Total Singles Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Vinyl Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Compact Disc Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Other Audio Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Total Albums Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Total Music Video Shares			
INCLUDING DISTRIBUTION DEALS			
Company	CY [YEAR]	CY [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Note: Data may be reported on an including distribution deals basis, and excluding distribution deals basis, or on both bases. Data may be reported on a global, regional and country-by-country basis.

Repertoire Origin

Market	CY [YEAR]				CY [PRIOR YEAR]				CY [YEAR]		CY [PRIOR YEAR]	
	Physical		Digital		Physical		Digital		Total (Physical + Digital)		Total (Physical + Digital)	
	Local	International	Local	International	Local	International	Local	International	Local	International	Local	International
	%	%	%	%	%	%	%	%	%	%	%	%

Note: Percentages are calculated on trade value (physical + digital), in local currency as reported by the companies (sales before coverage). Local repertoire: Artists signed in the reporting country (e.g. sales of an artist signed in the UK would be recorded as local repertoire in UK sales). International repertoire: Artists signed outside the reporting country.

**HALF-YEARLY REPORTING:
DISTRIBUTION NOT MORE FREQUENTLY THAN ONCE EVERY SIX MONTHS
Digital Recorded Music**

Permanent Downloads Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Audio Single Track Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Audio Full Album Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Music Video and Other Permanent Downloads Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Subscription Audio Streams Income Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Ad-supported Audio Streams and Video Streams Income Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Other Digital (including Mobile Personalisation) Shares			
INCLUDING DISTRIBUTION DEALS			
Company	H1 [YEAR]	H1 [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Note: Data may be reported on an including distribution deals basis, and excluding distribution deals basis, or on both bases. Data may be reported on a global, regional and country-by-country basis.

**QUARTERLY REPORTING: DISTRIBUTION NOT MORE
FREQUENTLY THAN ONCE EVERY THREE MONTHS**

Total Shares (Physical + Digital)			
INCLUDING DISTRIBUTION DEALS			
Company	[Q] [YEAR]	[Q] [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Physical Shares			
INCLUDING DISTRIBUTION DEALS			
Company	[Q] [YEAR]	[Q] [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Note: Data may be reported on an including distribution deals basis, and excluding distribution deals basis, or on both bases. Data may be reported on a global, regional and country-by-country basis.

MONTHLY REPORTING: DISTRIBUTION NOT MORE FREQUENTLY THAN ONCE EVERY MONTH

Physical and Digital Recorded Music

Total (Physical + Digital)			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Physical			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Digital Shares			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Universal	%	%	%
Sony	%	%	%
Warner	%	%	%
Indies	%	%	%
Total market	USD '000s	USD '000s	USD '000s

Digital Recorded Music

Permanent Downloads			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Subscription Audio Streams Income			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Ad-supported Audio Streams Income			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Video Streams Income			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Other Digital (including Mobile Personalisation) Income			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Audio Single Track			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Audio Full Album			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Music Video and Other Permanent Downloads			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Physical Recorded Music

Total Singles			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Vinyl			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Compact Disc			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Other Audio			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Total Albums			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Total Music Video			
INCLUDING DISTRIBUTION DEALS			
Company	[MONTH] [YEAR]	[MONTH] [PRIOR YEAR]	% Point Change
Total market	USD '000s	USD '000s	USD '000s

*No market shares displayed

Note: Data may be reported on an including distribution deals basis, and excluding distribution deals basis, or on both bases. Data may be reported on a global, regional and country-by-country basis.

QUICK REFERENCE TABLE

Notes: The following table indicates the frequency with which **competing record companies' market share data** may be shared by IFPI and IFPI National Groups i.e. where each record company receiving the data can see the market share of other record companies. Where a record company is provided with details of **its own market share only** i.e. the receiving record company cannot see the market share of any other record company, there is no frequency restriction. There is no frequency restriction on the provision of **market size data** in the below data categories. With limited exceptions which are beyond the scope of these Guidelines, **market data can be provided by volume or value, but not both.**

DATA CATEGORY* P = Physical Recorded Music D = Digital Recorded Music	FREQUENCY OF COMPETITOR MARKET SHARE DATA DISTRIBUTION			
	Annual	Half-yearly	Quarterly	Monthly
P & D – Total Physical + Digital	✓	✓	✓	X
P – Total Physical	✓	✓	✓	X
D – Total Digital	✓	✓	✓	✓
P - Total Singles	✓	X	X	X
P – Vinyl	✓	X	X	X
P - Compact Disc	✓	X	X	X
P - Other Audio	✓	X	X	X
P - Total Albums	✓	X	X	X
P - Total Music Video	✓	X	X	X
D – Permanent Downloads	✓	✓	X	X
D – Audio Single Track	✓	✓	X	X
D – Audio Full Album	✓	✓	X	X
D – Music Video and Other Permanent Downloads	✓	✓	X	X
D – Subscription Audio Streams Income	✓	✓	X	X
D – Ad-supported Audio Streams and Video Streams Income (as a combined category only)	✓	✓	X	X
D – Other Digital	✓	✓	X	X
P & D – Repertoire Origin (Local/International)	✓	X	X	X

ANNEX 2

DAWN RAID PROCEDURE

Many competition authorities have the power to gain access to premises unannounced and to seize documents. All staff, including those on security or reception desks, should be familiar with the procedure set out on the following pages.

Of particular importance in a dawn raid will be the identification of legally privileged documents, which can legitimately be withheld from production to the inspectors. Some regulators, notably the European Commission, distinguish between advice given by external lawyers, which is usually treated as privileged, and advice given by in-house lawyers, which in the case of a European Commission investigation, will not be considered to attract privilege. In practice, this is often a difficult distinction to draw. For this reason, it is better to mark all legal advice and all correspondence with legal advisers with a stamp or header indicating that it is legally privileged. Keep such information filed separately from non-privileged material, both in hard copy and electronically.

However, the protection accorded to legally privileged documents should not be abused, and documentation should not be marked as such unless legal privilege genuinely attaches, especially as if discovered by the authorities, this could lead to disputes over genuinely privileged documents. Given the distinction between the practice of the European Commission and national laws, it is recommended that you seek the advice of local competition lawyers.

For IFPI, the policy is to mark the following documentation "legally privileged" and where possible to keep it in separately identifiable files that can be withheld from all regulators, including the European Commission:

- correspondence to or from outside counsel seeking or giving legal advice;
- documentation prepared by IFPI employees which summarises advice received from outside counsel.

Advice sought from and given by qualified in-house IFPI lawyers will be privileged in respect of some National Competition Authorities' investigations including the UK, but not in respect of those by the European Commission.

DAWN RAID PROCEDURE

Most competition authorities have extensive investigative powers to establish the facts of an alleged infringement. These investigative powers include not only the ability to request documents, but also to gain entry to premises unannounced and seize files, computers, etc. accompanied, if necessary, by the police.

These guidelines were prepared for staff in the IFPI offices in London and Brussels to be followed in the event of an unannounced visit by officials from a competition authority. The same principles should be followed in other countries (particularly in all Member States of the EU where the same rules and procedure apply during European Commission investigations).

Officials from the Competition and Markets Authority and the Serious Fraud Office (in the UK) and/or the European Commission or other relevant competition authorities may call unexpectedly to

investigate possible anti-competitive activities ("dawn raid"). The law entitles them to do so and obliges companies to co-operate whether or not the company is itself suspected of anti-competitive behaviour. This obligation extends to individuals. In certain circumstances authorities can also carry out investigations at the homes of directors and managers or other members of staff if they believe that relevant material is held there.

Below are some general rules about (i) powers to conduct an investigation; (ii) the conduct of an investigation; and importantly (iii) Do's and Don'ts for you as an employee of your company.

THE POWERS OF THE COMPETITION AUTHORITIES AND THEIR INVESTIGATORS

The competition authorities have the power to carry out "all necessary investigations". During an investigation, authorised officials may:

- enter the company's premises, lands and means of transport;
- examine the company's books and other business records;
- take copies of extracts from the books and business records;
- seal any premises and books and records during an investigation; and
- ask any representatives or employee of the company for explanation on facts or documents.

Nowadays forensic IT plays an important role in inspections. Officials will use IT equipment to extract and create a forensic copy of possible relevant files from a company's IT system. The copy will be indexed on a powerful 'server' laptop, and several other laptops will be connected to the server laptop and used to review the copied material for relevance.

DAWN RAID CHECKLIST

You should follow these Do's and Don'ts in the event of an investigation. Anyone who works on reception or in security should have a copy of and be familiar with these guidelines.

Do:

- Ask the officials to remain in reception until the arrival of your Compliance Officer or other senior lawyer in your company. The officials are unlikely to wait longer than about twenty minutes before requiring access to files.
- In the meantime, urgently contact your Compliance Officer or if unavailable another senior lawyer in your company. If these are unavailable, contact Pat Treacy at Bristows on +44 (0)20 7400 8373. They will arrange for outside lawyers to attend and assist with the investigation (although there is no actual right to legal representation) and will appoint a spokesperson, usually the Compliance Officer/other senior in-house lawyer.
- Check, or ensure that someone has checked, the identity of the officials, and copy their credentials.

- Ask to see, and check carefully, the written authority for the investigation. You are entitled to have this, and it will state the purpose and scope of the investigation. This should be passed immediately to the Legal Department.
- Only the Legal Department in association with Senior Executives should decide whether to submit to the investigation or not. Nothing should be done to start the investigation until this decision has been taken. You should do whatever you can to maintain the status quo until the decision can be taken, for example by agreeing to ask the IT team to suspend email traffic and by asking staff not to make telephone calls. You should be pleasant and cooperative, but politely ask the inspectors to wait for a reasonable time period. In the unlikely event that it is not possible to contact a relevant decision maker within twenty minutes of the inspectors' arrival and the inspectors are unwilling to wait longer, despite your cooperation, then the inspection should be permitted to proceed. IFPI should submit to the inspection, unless there is very clear problem with the documents authorising inspection.
- Be polite and courteous at all times.
- Agree, if asked, to secure documents or equipment while the officials wait to proceed with their inspection.
- Find out as precisely as you can what it is the officials are looking for.
- Assign a member of staff (preferably also accompanied by a legal adviser) to stay with each official.
- Keep as full a record as you can (ideally verbatim) of what the officials ask for and inspect, of questions asked and answered, and of any other discussions.
- Take your own copy of all documents copied by the officials and of their listing of the documents.
- Remove communications with lawyers (or reporting on legal advice) from files before handing them to the officials.
- Have the IT department assist in identifying privileged communications and removing privileged communications from documents retrieved electronically by the officials. Copy all electronic files taken by the officials and note the key-word searches made.
- Make the IT department aware that it will need to help the officials understand the setup of the IT environment within the company. If requested, the IT department will also need to grant 'administrator access rights' support to the officials and assist the officials with temporarily blocking individual email accounts, disconnecting computers from the network and help removing and reinstalling hard drives.
- Be aware that anything you say may be used against your company and possibly yourself. If you are asked a factual question, you should respond.
- Seek immediate advice from the Legal Department if at any stage you are uncertain as to your rights and responsibilities.

Do Not:

- Refuse admission.
- Allow the inspection to proceed until you have received advice from the Legal Department except that, in the unlikely event that it is not possible to contact a relevant decision maker within twenty minutes of the inspectors' arrival and the inspectors are unwilling to wait longer, despite your cooperation, then the inspection should be permitted to proceed.
- Refuse to contact any executive, however senior, that the officials ask to see.
- Keep the officials waiting unduly.
- Tell any person inside or outside your company (except your Legal Department or Pat Treacy at Bristows as indicated above) what is happening.
- Appear unhelpful, or obstruct the investigation, at any stage.
- Destroy any records, paper or electronic.
- Volunteer records or information.
- Disclose communications with lawyers or reporting on legal advice. In instances of dispute with the officials about disclosing communications with lawyers, do not even let the officials glance at the document in question. Politely request for a legal advisor to be present to resolve the dispute. If this is not immediately possible, place disputed documents in a sealed envelope for later consideration.
- Engage in general conversation with the officials.
- Refuse to supply information requested without advice from the Legal Department.
- Speculate in answering questions - stick to facts you know.
- Sign anything at the officials' request without advice from the Legal Department.
- Hesitate to seek immediate advice from the Legal Department if at any stage you are uncertain as to your rights and responsibilities.

CONTACT DETAILS

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