

Policy – Anti-Competitive Behaviour



1. Purpose

This policy provides a baseline organisational commitment to Australia's competition laws and process for the management of anti-competitive behaviour as a matter of corporate governance within DMTC Limited.

It outlines the principles of competition law relevant to DMTC. It also issues guidance to management staff, secondees and contractors on the correct procedure to identify, disclose and manage instances of anti-competitive conduct, whether actual or potential.

The DMTC Board of Directors ("Board") is the oversight authority on this policy and the handling of specific matters concerning potential breaches of competition law; with coordination, implementation and monitoring exercised by the DMTC executive.

The policy and its contents reflect competition law principles as they are governed and operate at the Commonwealth jurisdiction through, primarily, the *Competition and Consumer Act 2010* (Cth) ("CCA") and as administered by the Australian Competition and Consumer Commission ("ACCC"). This policy accounts for the fact that such laws evolve and also accounts for revisiting and reviewing this policy and any related procedures as required.

2. Scope of Application

This policy applies to all DMTC staff, including seconded and contracted personnel for the duration of engagement. Due to the nature of the relevant laws and policy, the Board, as a collective and individually, fall within the scope of application.

3. Defining Anti-competitive Behaviour

3.1. Purpose and Definition

Competition law, as governed by the CCA, operates in Australia with the overarching intention of governing the behaviour of corporations as they seek to gain market share and profitability through trading. The law prohibits certain behaviour, in particular anti-competitive behaviour, in order to promote competition and fair trade.

The CCA regulates the way businesses conduct themselves while operating in Australian markets. This includes the relationships between Australian businesses and their competitors, customers, and supply chains.

The law makes no distinction between for profit entities and not-for-profit entities. For anti-competitive behaviour to be established, there is a requirement to prove malicious intent.

Australia's competition regulator, the ACCC, has a wide remit to investigate and enforce the law in relation to actual or potential breaches of the CCA.

Anti-competitive behaviour as referred to in this policy reflects the relevant provisions of the CCA and policy guidelines of the ACCC.

3.2. Examples

Examples of anti-competitive conduct listed in the CCA fall into two categories and include but are not limited to:

- Conduct prohibited outright:
 - Price fixing;
 - Output restrictions and restrictions on acquisition;
 - Bid-rigging; and
 - Secondary boycotts.
- Conduct prohibited but otherwise subject to the substantial lessening of competition (“SLC”) test:
 - Anti-competitive contracts, arrangements, or understandings;
 - Concerted cooperation between businesses to reduce competition;
 - Boycotts affecting competition;
 - Misuse of market power;
 - Anti-competitive mergers and acquisitions; and
 - Exclusive dealing.

4. Interaction of Anti-competitive Behaviour and Conflicts-of-Interest Policy

Acting on a conflict-of-interest may constitute anti-competitive conduct under the CCA where to do so amounts to cooperating with competitors to lessen competition in a market.

Maintaining and updating the existing Conflicts of Interest Policy is one element of mitigating the risk of anti-competitive behaviour. DMTC’s Conflicts-of-Interest Policy (“COI Policy”) is robust in this regard, with particular consideration of ‘Notable Risk Areas’ such as:

- Conduct of Above the Line and Below the Line consulting services on the same program or project simultaneously;
- DMTC-to-government tender processes; and
- Situations where DMTC provides advice to Government on a grants program or procurement activities of which DMTC concurrently has commercial relationships with grant applicants or procurement tenderers.

These scenarios, which are specifically referenced by DMTC’s existing COI Policy, are examples of behaviour that, in addition to representing conflicts-of-interest, may contravene provisions of the CCA prohibiting anti-competitive conduct.

As a result, the Conflicts-of-Interest Policy is an essential component of DMTC’s CCA compliance framework.

5. Policy Statement

5.1. Overview

It is the policy of DMTC as well as the responsibility of its personnel that anti-competitive behaviour is avoided as a matter of corporate governance.

DMTC Limited is committed to complying with the CCA. A key intention of the Act is to promote and protect competition. DMTC Limited is committed to acting ethically, honestly, and reasonably in the course of business operations; and avoiding restrictive trade practices.

DMTC acknowledges that the ACCC can bring proceedings against companies and individual employees who infringe the CCA. This can result in substantial fines and court action against DMTC Limited. Partners and competitors can also seek damages and court orders for infringement of the CCA.

Such processes are expensive, time-consuming and, most importantly, damage corporate confidence and DMTC's reputation with partners and the Australian Defence and national security community more broadly. DMTC Limited is committed to creating a culture of compliance with the relevant competition law components of the CCA through measures including:

- Developing and implementing this policy;
- Establishing responsibilities for overseeing this policy; and
- Providing staff training, support systems and compliance aids as necessary.

5.2. Responsibilities of the Board and Executive

The Board is responsible for independently overseeing controls established by DMTC's management, including DMTC's frameworks of policies and financial reporting processes, to prevent, deter and detect anti-competitive behaviour.

The Board is committed to systematically and periodically reviewing the same.

The DMTC executive is responsible for ensuring that DMTC complies with the CCA and for implementing procedures, processes, and practices to:

- Provide education and training where necessary;
- Embed compliance throughout the organisation through the adoption of appropriate compliance procedures and support systems, including addressing and responding to any failures;
- Set up delegations for review at the appropriate level of decisions, contract and arrangements which may have potential trade practices impact, including internal or external legal advice as required; and
- Act as a liaison point with the ACCC.

5.3. Identification and Disclosure of Anti-Competitive Behaviour

DMTC Personnel who have concerns about the company's compliance with the CCA should report concerns, in the first instance, to the CEO, or if the concern relates to CEO behaviour, to the Chair.

DMTC will not take any action against DMTC Personnel, and they will not be disadvantaged as a result of reporting instances of actual or perceived anti-competitive behaviour (see also: DMTC's Whistleblower Policy).

The CEO or Chair, as the case may be, will seek appropriate internal or external legal advice to provide guidance and information that will help compliance with the Act.

If DMTC Personnel are in any doubt about how the CCA might potentially apply to any conduct or proposed conduct, the CEO should be informed. The CEO will then arrange for appropriate advice to be provided on the matter.

5.4. Meetings with Competitors

A key risk area for DMTC relates to competition law implications flowing from meetings between management personnel and representatives of competitor businesses.

There are times when legitimate business activity brings employees into contact with representatives of competitor businesses. Examples include meetings of industry associations and collaborative projects or preliminary joint venture discussions.

Whenever competitors come together, there is a risk that competition law may be breached - even discussions or activities that appear to promote competition can raise competition law concerns.

A competitor's spoken or written words to another competitor can be used as evidence of a breach of the law. In consequence, it is advisable that certain topics are not discussed by competitors, whether during a scheduled meeting or any side discussions.

The following precautions apply to all contacts with a competitor and should be followed by DMTC management staff when attending meetings where competitors will be present, to avoid breaching relevant competition laws.

The parties should avoid any discussion of the companies' present or future:

- Prices;
- Bid amounts and terms;
- Costs;
- Capacity, including plans to add or reduce capacity;
- Profits or profit margins;
- Royalties;
- Agreement terms;
- Licensing terms;

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- Strategic plans;
- Customer lists;
- Salaries and wages;
- Business expansion or contraction plans;

Parties should also avoid:

- Discussing or unreasonably agreeing to refuse to do business with a competitor, customer, or company in the supply chain;
- Discussing and agreeing to any limitations on the company's activities or independent decision-making, such as changing the way prices are adjusted or output decisions are made; and
- Exchanging non-public competitively sensitive information with competitors.

Such discussions may trigger competition law implications and should therefore first be discussed with the General Counsel.

6. Compliance

It is noted that DMTC's objectives are aligned with creating conditions for the betterment of key sectors in the context of public good. DMTC staff should ensure that this remains a central element of behaviour and intent and avoid malicious intent in DMTC business dealings. If the Board or executive has reason to believe DMTC staff have engaged in behaviour inconsistent with the competition law provision of the CCA, it will investigate the circumstances and if appropriate engage independent counsel to provide advice.

If a member of DMTC staff suspects that the company or an employee has acted in breach of the CCA, they should consider the reporting requirements under the Whistleblower Policy.

Common sense applies to questions of potential anti-competitive behaviour. Where doubt exists, matters should be directed to the Board or Office of the General Counsel.

7. Staff Awareness and Training

As it is the responsibility of DMTC staff to identify and declare instances of anti-competitive behaviour, DMTC acknowledges the importance of providing education and training for DMTC Personnel regarding competition law and related matters outlined in this policy.

DMTC Limited is to provide training and related resources. Corporate training and awareness are to be provided at least once annually and as deemed appropriate by the executive.

8. Linked Policies, Procedures and Forms

- [DMTC Code of Conduct](#)
- [Policy – Approval](#)
- [Policy - Conflict of Interest](#)

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- [Policy - Director Independence](#)
- [Policy – Financial Delegation](#)
- [Policy - Fraud and Corruption](#)
- [Policy – Internal Controls](#)
- [Policy - Whistleblower](#)