COMPETITION LAW REFERENCE GUIDE

Purpose of the Guide

The Institute of Actuaries of Australia (the **Institute**) convenes forums, presentations and meetings of various practice committees, taskforces and working groups (**Institute Meetings**) which are attended by its professional members. These meetings can give rise to a range of activities.

Such meetings are convened, and activities conducted, in accordance with the Institute's Public Policy Principles and the particular terms of reference for the relevant committee, taskforce and working group. The conduct of the professional members at Institute Meetings is also governed by the Institute's Code of Conduct.

The purpose of this Reference Guide is to provide Competition Law guidance to all members attending Institute Meetings and conducting related activities. It provides an overview of relevant Competition Law concepts, describes behaviours that should be avoided and highlights activities where Institute approval is required.

Overview

The Institute is committed to ensuring that Institute Meetings are convened and conducted in accordance with Australia's *Competition and Consumer Act 2010* (Cth) (**CCA**). The Institute is also committed to ensuring that the work of the Institute is conducted in accordance with the CCA.

The Institute brings its members and broader industry together to assist its members in their professional practice or to improve public policy outcomes. It is, however, acknowledged that attendees at Institute Meetings include professional Institute members who are, in their employed capacity, active market participants in their respective industries who may compete with each other as defined by competition law.

Consequently, particular care should be taken to ensure that there can be no suggestion that Institute Meetings facilitate, or are the focal point of, any behaviour that could result in a breach of competition law.

In particular, the CCA prohibits **cartel conduct** and attempted cartel conduct, irrespective of its effect on competition in markets.

> *<u>What is cartel conduct?</u>*
>
> *A cartel exists when competitors agree to act together instead of competing with each other.*
>
> *The CCA* ***strictly prohibits*** *a business practice* ***where competitors*** *make (or give effect to) a contract, arrangement or understanding containing a provision that has the purpose or effect of fixing prices, or the purpose of restricting supply, allocating customers or geographic areas, or rigging bids, instead of competing with each other.*
>
> *It is a breach of the CCA to make an agreement that contains a cartel provision and a further breach to put that agreement into effect.*
>
> *The consequence for breaching the cartel prohibitions are extremely serious and can result in breaches of civil and criminal law. Individuals, for example, can face up to 10 years in jail and fines for a contravention.*

The CCA also prohibits making or giving effect to a **contract, arrangement or understanding** with the purpose, effect or likely effect of substantially lessening competition in a market.

> *<u>What contracts, arrangements or understandings are prohibited?</u>*
>
> *Contracts, arrangements or understandings (unlike cartels) are not strictly prohibited, they are only prohibited if they have the purpose, effect of likely effect of* ***substantially lessening competition*** *in a relevant market. The CCA does not define 'substantially lessen competition', however it is in essence where a contract, arrangement or understanding meaningfully lessens the process of rivalry, or the competitive process is compromised or impacted.*

Additionally, the CCA prohibits persons from engaging in a **concerted practice** that has the purpose, effect or likely effect of substantially lessening competition.

> *<u>What is a concerted practice?</u>*
>
> *Concerted practice is not defined in the CCA but has been explained to mean the following:*
>
> (a) *Any form of cooperation between two or more firms (or people), or conduct that would be likely to establish such cooperation, where this conduct substitutes, or would be likely to substitute, cooperation in place of the uncertainty of competition.*
>
> (b) *A concerted practice involves communication or cooperative behaviour between businesses that may not amount to an understanding but goes beyond a business independently responding to market conditions.*
>
> *The focus of this provision is on the reduction of uncertainty between competitors in situations where, without necessarily agreeing a course of conduct, they change their behaviour and this results in a reduction in competition.*

Conduct to avoid

Participants in Institute Meetings should never engage in the following conduct:

(a) **Fixing, controlling or maintaining prices** – participants in Institute Meetings should never discuss or agree between themselves to fix, control or maintain prices of a good or service (e.g. agree on selling or buying prices, minimum prices, formulas for pricing or discounts and rebates, allowances and other pricing terms). They should also never make agreements that could have this effect;

(b) **Restricting supply** – participants in Institute Meetings should never agree to prevent, restrict or limit the amount of goods or services to be supplied to or acquired by customers to be purchased from suppliers;

(c) **Bid rigging** – participants in Institute Meetings should not disclose confidential information with a view to coordinating how parties will respond in a bidding process;

(d) **Allocating customers, suppliers or geographical areas** – participants in Institute meeting should not agree to divide suppliers so that participants are sheltered from competition in regard to certain customers, suppliers or geographical regions;

(e) **Sharing commercially sensitive pricing or cost information** – participants should not discuss, share or compare information relating to their employers non-public pricing information; and

(f) **Sharing other commercially sensitive information** – participants should refrain from sharing any other non-public information of a commercially sensitive nature. Generally speaking if you consider information to be confidential from a commercial perspective, it may also be the type of information which you should not discuss with your competitors from a competition law perspective.

Conduct that requires consideration

The following activities or conduct may or may not be permissible depending on the circumstances. If the proposed conduct falls within the below, the Institute encourages chairs of Institute Meetings to seek approval from the Institute (who will seek legal advice as appropriate) before proceeding:

(a) **Information sharing** – where there is a need to share certain commercial information, this should, as far as possible, be information that is publicly available, anonymised, aggregated and historic. You should avoid sharing any information that could be considered to be competitively sensitive information. Before sharing any information that is not widely publicly available (regardless of its source) with a competitor you should speak to the Institute (who will seek legal advice as appropriate);

(b) **Publication of material (survey results)** – the ACCC has recognised that the publication of material around which competitors may adjust their behaviour may give rise to a concerted practice risk. For example, the ACCC considers that the publication of the aggregated results of a survey of competitors regarding future pricing intentions by category hinders competition as it restricts a key competitive uncertainty that would otherwise be inherent in the market. The ACCC considers that publishing price intentions through such reporting could be considered as engaging in a concerted practice;

(c) **Publication of other material** – care needs to be taken to ensure that the information published will not reduce the uncertainty of competition in a market and enable competitors to substitute this uncertainty with convergence (for example) around the information that has been published. Care should be taken to the extent that the material published limits competitors' choices. If there are concerns regarding such publication, discuss these with the Institute who will seek legal advice as appropriate;

(d) **Discussions on market products and initiatives** – the ACCC considers that serious competition concerns can arise where competitors are brought together and discuss and agree matters that limit the availability of products in a market or improve the profitability of particular products. It is therefore important that what is discussed is reflective of personal views on the industry (for example) and not reflective of, or the views of, the person's employer, is not competitively sensitive strategy information of the person's employer, and is not reflective of future commercial strategy; and

(e) **Public policy initiatives** – while it is not necessarily problematic to discuss future regulatory or legislative developments between participants that are competitors with a view to shaping and understanding their requirements, discussions should not involve individual firms' strategies for implementing legislative or regulatory changes and explicit or implicit alignment of future conduct. It is important that such discussions are monitored to ensure that participants do not share additional information that is unrelated to the Institute's public policy efforts or preparation of the relevant submission such as prices, commercial strategies, future intentions etc.

Institute procedures in place to ensure competition compliance

To manage Institute Meetings, the Institute requires the following competition compliance actions for all Institute Meetings:

(a) Terms of Reference put in place for all Institute committees, taskforces and working groups which are agreed to by the participants in the relevant groups and approved by the Institute's Public Policy team;

(b) The following "Important Notice to all Participants" is provided to all participants by the relevant Chair at the commencement of the Institute Meeting:

Important Notice for All Meeting Participants

This meeting is being conducted in accordance with Institute's Code of Conduct and attended by members in their professional capacity.

It is acknowledged that professional members in their employed capacity may be active market participants in their respective industries who may compete with each other as defined by competition law.

Participants are, therefore, reminded that in accordance with their competition law compliance obligations they should not:

- *discuss any matter that may be perceived as being cooperation by competitors in a market to influence that market;*
- *discuss any matters that could be regarded as fixing, maintaining or controlling prices, allocation of customers or territories, coordinating bids and/or restricting output or acquisitions in any circumstances;*

- *share commercially sensitive information relating to their employer; or*
- *share information for an anti-competitive purpose.*

(c) All Institute Meetings have (as far as practical) a written agenda circulated in advance and (as far as practical) this agenda is adhered to;

(d) All Institute Meetings have (as far as practical) minutes or a summary of the main discussion points of any meetings where competitors are present, including a list of those members present at the meeting (listed by name without reference to their employer given their attendance being in their professional capacity);

(e) A record is kept either in the minutes or summary of discussion of the Institute Meeting where any competition concerns have been raised and how they have been resolved; and

(f) All new Chairs of Institute Meetings will be required to complete online competition compliance training prepared for the Institute. Participants of Institute Meetings will be required to complete the online competition compliance training as required by the Institute from time to time.

What to do if a concern arises

If, during an Institute Meeting, a participant has concerns about the discussion from a competition law perspective, the participant should make their concerns known to the Chair of the meeting and the discussion giving rise to such concerns should immediately cease. These concerns should be noted in the minutes of the Institute Meeting or in the summary of discussion of the Institute Meeting.

In the unlikely event the concerning discussion does not cease, the concerned participant(s) should leave the meeting and ask that their departure be minuted or noted in the summary of discussion.

The Chair should bring such matters to the attention of the Institute's Public Policy Team – public_policy@actuaries.asn.au who will take appropriate advice on the concern raised.

Other Resources In addition to the above, the following Appendices provide "Quick Guides" in relation to Institute Meetings, events and related activities:

Quick Guides
Appendix 1: Meetings and discussions with competitors
Appendix 2: Surveys – Conducting, compiling and sharing
Appendix 3: Creating and publishing documents
Appendix 4: Presentations

Additional Competition Law guidance is also provided with case study examples for members:

Appendix 5: Case Study Examples

Further reference can also be made to the following ACCC guidance material:

Cartels – What you need to know – a guide for business

Updated Guidelines on Concerted Practices

APPENDIX 1: MEETINGS AND RISKS ASSOCIATED WITH DISCUSSIONS BETWEEN COMPETITORS

The RISK

The Institute brings its members and the broader industry together to assist its members in their professional practice or to improve public policy outcomes. It is, however, acknowledged that attendees at Institute Meetings include professional Institute members who are, in their employed capacity, active market participants in their respective industries who may compete with each other as defined by competition law.

Care should be taken by each participant to ensure there can be no suggestion that Institute Meetings facilitate any behaviour that could result in a breach of competition law. There must be no discussions regarding fixing, maintaining or controlling prices, allocation of customers or territories, coordinating bids and/or restricting output or acquisitions in any circumstances.

Participants are also reminded they should not share commercially sensitive information relating to their employer such as pricing, business plans, marketing plans, new product development, current and future trading strategies and costs and profits that is not already publicly available.

Sharing information

Non-confidential information in the public domain	Current or future pricing and discounts or matters that affect price
Industry public relations or lobbying initiatives, provided that you do not share competitively sensitive information. Seek advice if initiatives may exclude market participants or restrict product details	Any matters relating to specific suppliers or customers (including allocation of products, customers or geographic markets and bidding intentions)
Aggregated, historic and anonymised information	Business expansion and contraction plans (including geographic growth) and strategic plans
Publicly available data sets and data sets from which commercially sensitive information cannot be reverse engineered	Company cost and sales information including production, capacity or sales volumes
Non-confidential "best practice" guidance	Key (non-public) contract terms

Actions to take

If a prohibited subject is discussed, broached or inferred in any conversation between competitors where members of the Institute are present:

(a) **Do not discuss it**;

(b) **Speak up** – alert the relevant Chair of the meeting to the discussion and indicate that you do not consider that such subjects should be discussed;

(c) **Report** – Chairs of meetings are to report any concerns regarding prohibited subjects to the Institute; and

(d) **Seek advice** – the Institute will take appropriate legal advice where necessary.

APPENDIX 2 – SURVEYS – CONDUCTING, COMPILING AND SHARING

The Institute may consider conducting a survey of its members, and market participants, on particular issues of interests.

Whilst surveys can improve, for example, decision making and increase competition, surveys can also be a means of communicating competitively sensitive information with the purpose or effect of substantially lessening competition.

Surveys can give rise to concerted practice risks because a survey can seek the views of competitors on matters that may be competitively sensitive and the sharing of such competitively sensitive information without appropriate safeguards can allow the reduction in uncertainty between competitors. As such, by conducting a survey, and compiling and sharing survey results the Institute may facilitate a concerted practice by survey participants and others.

To minimise these concerted practice risks arising from conducting a survey and compiling and sharing the survey results, seeking and sharing individualised, private, current/ recent data in surveys should be avoided. The ACCC in its guidance on concerted practices has made the following clear in the context of a worked example on an association conducting a survey (see further **Appendix 5**, example 2):

> *… the exchange and publication of future price intentions by product category risks hindering competition even though that data is aggregate and anonymised. By disclosing and increasing the reliability of information regarding future pricing in the market, the report is restricting key competitive uncertainty, being each member's competitors' future pricing strategy, that would otherwise be inherent in that market.*
>
> *The ACCC considers that by publishing future pricing intentions through these quarterly reports, [The association] and its members are likely to be engaging in an agreement or concerted practice that has the purpose, effect or likely effect of substantially lessen competition.*

In light of these risks, for Institute surveys the following guidance should be followed:

(a) **Consider and articulate the purpose for the survey** – It is important that consideration is given to the purpose for which the survey is being conducted and that this purpose can be clearly articulated to survey participants. As noted above, surveys can give rise to compliance risks if they are being conducted with the purpose of substantially lessening competition.

(b) **Survey questions should avoid requesting competitively sensitive information** - Consideration should be given to the nature of the questions to be asked in any survey. Surveys should avoid questions that provide any insight into future competitive behaviour, particularly future price intentions and future strategy (for example future sales, market shares, margins, territories and customers).

(c) **Avoid surveys with limited participation (particularly in markets which have limited players)** – consideration needs to be given to the scope of the survey to ensure that there are sufficient enough participants to avoid the risks around anonymity and aggregation (see further below). Consideration should also be given to the concentration of the market that the survey relates to. If this is a concentrated market with limited competitors, then a survey of such participants is potentially higher risk.

(d) **Survey responses should be independently compiled** – responsibility for the interviewing of survey participants, the compilation of information and also the dissemination of information should not be entrusted to an active market participant (i.e. someone working within an insurer who has an interest in the inputs to, and outcomes of, a particular survey). If possible, the work should be entrusted to someone who works, for example, within a consultancy or to Institute staff. The reason for this is that if there is not this separation questions can be raised as to the efficacy of the information barriers that are put in place to prevent the leakage of confidential information within a market participant.

(e) **Survey results should focus on historical rather than future behaviour** – If the survey does contain results that relate to competitively and commercially sensitive areas, it may be permissible to seek such information and compile and share these results if it relates to historical behaviour. The key, however, is to ensure that the historical survey results, particularly regarding competitively and commercially sensitive matters cannot be used by competitors to determine the future conduct of other competitors. Approval from the Institute should be sought for all surveys that seek to obtain competitively and commercially sensitive information so these risks are appropriately managed.

(f) **Survey results should be aggregated** – information when it is shared should be in summary form so that granular information is not available. This means that survey results may either be collated, for example, according to groups of companies or types of companies or else based on multiple transactions or events. Whether something will be sufficiently aggregated will depend on, for example, the number of companies that have responded to the survey. It is important to ensure that no company should be able to obtain detailed information about a competitor's business, not otherwise available to it, by "reverse engineering" the results of the survey.

(g) **Survey results should be anonymous** – the anonymity of survey participants should be preserved. Where survey results mean that individual participants can be identified this will give rise to concerns as you will potentially be disclosing an individual competitor's sensitive information.

(h) **Care with free text responses** – If your survey contains a "free text" option, particular care needs to be taken when sharing such results to avoid issues with anonymity and aggregation as well as the inadvertent sharing of information that may be competitively or commercially sensitive. The same is equally true if you are relying on interviews being conducted for a survey where answers are provided unconstrained by pre-prepared options.

When sharing survey results at an Institute Meeting or Event it is important that you explain to the audience the key points around the purpose and methodology for your survey in line with the guidance above. A slide similar to the below should also be included (and consistent with how the survey was survey was conducted) in any slide deck that publishes survey results.

Introduction and purpose

- This presentation summarises the results of the 2022 survey of life insurance companies covering stress margins used to determine regulatory capital requirements, Target Surplus calibration and the risk adjustment adopted for AASB 17.
- The survey was undertaken on behalf of the Actuaries Institute to assist Appointed Actuaries in undertaking their professional responsibilities.
- The survey questions are limited to historical considerations in setting assumptions. No requests have been made for information relating to intentions or future behaviour.
- Results are presented on an aggregated and anonymised basis. We have not provided reasons or sought to understand why insurance stress margins differ between companies.
- The survey is independently compiled by KPMG and EY, and individual information on company responses is not made available to market participants.

- Enquiries can be directed to the following LIPC Risk Margins Taskforce members:

APPENDIX 3: CREATING AND PUBLISHING DOCUMENTS

When CREATING documents:

(a) Remember the ACCC has extensive information gathering powers;

(b) Be careful how you describe the purpose of the conduct;

(c) Avoid phrases that may be misconstrued, such as;

  (i) "It is better to cooperate than compete";

  (ii) "For your eyes only";

  (iii) "Please destroy after reading";

  (iv) "Our goal is to stabilise industry prices";

  (v) "Achieve convergence";

(d) Do not exaggerate (choose your words carefully to avoid potential misunderstandings); and

(e) Remember that electronic documents may remain available even after they have been deleted from inboxes or servers.

When PUBLISHING documents:

(a) Consider the language that you are using in the publication – be clear as to what you mean and avoid language being open to interpretation;

(b) Consider the audience of your publication but also the regulator (and the consumer and media) and how the material may be interpreted;

(c) Consider how the publication could be used by competitors – avoid content being something around which competitors can coordinate their behaviour;

(d) Ensure materials that are produced cannot enable competitively sensitive information to be re-engineered;

(e) Make it clear that companies need to independently reach outcomes – the Institute should not, nor does it have the power to, mandate requirements other than the Code of Conduct for members in their own professional capacity; and

(f) Check with the Institute before publishing materials for use by the profession or more broadly who will seek legal advice as required.

APPENDIX 4: PRESENTATIONS

When presenting material at an Institute event, for example an Insights session, consideration should be given to the content of the presentations and ensure that the guidance in Appendix 3 (Creating and publishing documents) and Appendix 2 (Surveys) has been adhered to. If any of the content raises possible competition concerns, the presentation should be provided to the Institute for approval prior to the event.

Assuming that the presentation does not raise competition concerns, the Institute event itself can still raise possible competition concerns due to the nature of the attendees at the meeting (see Appendix 1 (Meetings and Risks associated with discussions between competitors). To manage these risks, the following competition law reminder should be included in an opening slide.

Important notice for all participants

This meeting is being conducted in accordance with Institute's Code of Conduct and attended by members in their professional capacity.

It is acknowledged that professional members in their employed capacity, may be active market participants in their respective industries who may compete with each other as defined by competition law.

Participants are, therefore, reminded that in accordance with their competition law compliance obligations they should not:

- discuss any matter that may be perceived as being cooperation by competitors in a market to influence that market;
- discuss any matters that could be regarded as fixing, maintaining or controlling prices, allocation of customers or territories, coordinating bids and/or restricting output or acquisitions in any circumstances;
- share commercially sensitive information relating to their employer; or
- share information for an anti-competitive purpose.

The Chair of any Institute event should monitor the discussion and if he/she becomes concerned that the discussion is raising competition law risks, the Chair should speak up to stop that discussion. In the unlikely event that the discussions does not cease following the Chair's intervention, Institute event staff at the event should be called upon to intervene.

Equally if a participant at an Institute event has any concerns about the discussions from a competition law perspective that the Chair has not yet raised, participants should be encouraged to bring these to the attention of the Chair who will follow the above procedure if such concerns arise.

APPENDIX 5: CASE STUDY EXAMPLES

Information Sharing

Example 1

Sam is a Junior Actuary at HealthCo and is attending his first Institute working group meeting. At this meeting, Sam notices that other members of the working group include colleagues from other health insurers.

The meeting features discussions regarding some upcoming changes to legislation that will affect the health insurance industry, in particular, the premium and waiting periods associated with particular products.

The working group's conversation is efficient, with each member sharing their good practice views about the nature of the products and concerns around issues associated with the products for certain demographics of the population. However, with 10 minutes left in the working group session, a fellow working group member asks openly which insurers are considering getting ahead of this legislative change and raising prices now. The group then begins discussing potential out of cycle premium increases and longer waiting periods that could be put in place prior to the anticipated changes.

Sam remembers his competition law training and feels uncomfortable with where this conversation has gone. What should Sam do?

Possible assessment of conduct

Sam is right to feel uncomfortable with where this conversation has gone. Sam should alert the Chair of the meeting about his concerns and the Chair should consider what steps should be taken.

Practically the Chair should, upon this issue being raised by Sam but ideally would have done so beforehand, stop the conversation (as this is obviously a competition law risk) and report the matter to the Institute who can take advice on whether any further discussions can continue at a subsequent meeting.

Concerted Practice

The ACCC has stated the following in their guide on Concerted Practice:

> *Industry and professional associations provide a valuable service to their members and can assist the productivity of industries through research, advocacy and development of best practices. However, as a place where competing firms may meet, associations have always had to take care that they do not facilitate anti-competitive arrangements between their members. Associations and their members must take care when exchanging commercially sensitive information*

Example 2

The Institute is seeking to assist the profession through the publication of quarterly 'advocacy and industry planning' documents. These documents provide quarterly trends in the insurance industry.

In order to prepare these reports, the Institute sends its members a voluntary survey to complete.

The survey requests detailed, commercially sensitive data from their members about their recovery costs (premiums less operating costs) and future premium intentions.

Although the members are not under any obligation to do so, most members see the benefit of these reports and seek to provide accurate data to the Institute.

The Institute does all the right things and ensures that responses are not circulated among competing members or their staff, and aggregates and anonymises the confidential information before releasing it in the quarterly reports that are publicly available.

However, among the information about the historical performance of the sector, each of the Institute's quarterly reports includes an aggregated chart setting out its members' premium forecast and also the overall trend for the recovery of costs. In relation to the premium forecasts, many members say that the reports are the most reliable means of ensuring their future premium decisions are not 'out of step' with the market.

Possible assessment of conduct

Whilst in the hypothetical example the Institute has taken appropriate steps in the way it has gathered, aggregated and disseminated the information, there is a risk that publishing future premium intentions through these quarterly reports may be considered as the Institute and its members engaging in an agreement or concerted practice that has the purpose, effect or likely effect of substantially lessening competition.

Publication of future intentions about premiums must be avoided. However, publication of, for example, the outlook for drivers that affect part of the cost base and flow through indirectly to premiums, may be able to published if the risks of cartel conduct and/or concerted practices can be avoided. This could include responses being presented in broad rather than specific terms. Survey organisers should discuss these issues with the Institute's Public Policy team.

Example 3

The Institute is considering conducting an Insight session for its members regarding a segment of the insurance industry for which government regulation includes approval of the premiums that may be charged. The reason for the Insight session is to provide insight on general market trends that may be relevant for actuaries to consider as they form their advice to insurers on what premium increase application to government should be made.

In bringing members together in this space, is there are anything that should be considered before organising such a session?

Possible assessment of conduct

The Insights Session offers an opportunity for professionals who are employed by competitors (given the nature of the possible attendees) to attend a forum prior to premium change applications being made. This forum runs the risk that it may facilitate the sharing of information between them or the coordination of behaviour, particularly around the level of the price increase that will be sought for approval from government. This forum therefore could give rise to either cartel conduct or concerted practice risks depending on the conduct of participants and the manner and nature of the information that is shared.

To manage the cartel conduct risks, it is important that the participants are aware of, and comply with, their competition law obligations.

The management of the concerted practice risks will require consideration of the content of the proposed presentation and in particular the nature of the "insights" it is proposed will be shared and how the sharing of information between competitors is being managed. Considerations are similar to those outlined in Example 2. The organising group for this Insight session should discuss the proposed approach with the Institute's Public Policy team.

Example 4

The Institute has been approached by a regulator to collect additional data to update an existing database and share insights arising from that updated data to improve transparency and innovation in the industry. The regulator notes that the disaggregated data could benefit the industry and assist it in the commercial decisions that it makes, including around price.

As the regulator has made this request, the Institute forms a working group of individuals which includes members who work for consultancies, as well as directly for the part of the industry that would benefit from this data, to undertake this work. The Institute, as it has been asked by the regulator to participate, gets to work to assist it.

What risks arise for the Institute of just "getting to work" on this project?

Possible assessment of conduct

Without any safeguards for the collection, updating and dissemination of the data, the Institute and its members may risk contravening the cartel and concerted practice prohibitions depending on the particular conduct. If the Institute wishes to be involved in this project, the Institute should consider:

- Which members are to be involved - active market participants, for example, should be avoided and only members who are employed by consultancies should be considered initially;
- Agreeing to limitations on the Institute's role - The Institute would best assist the regulator by providing insights on the data that is provided rather than being involved in the collection and updating of the raw commercially sensitive data;
- Agreeing with the regulator that it is the one that ultimately provides the insights to the industry given the information may be utilised by the industry for pricing decisions. This will avoid any suggestion that the Institute, by publishing the information, has facilitated any concerted practice.

Cartel Conduct

Example 5

The Institute provides certain core continuing professional development training on risk management for its members. These sessions are extremely popular and relevant not just for actuaries, but all risk management professionals and senior executives. The Institute competes with other tertiary education providers for the delivery of these services.

The tertiary education providers in New South Wales call a meeting with the Institute to discuss the provision of these services given the impact that the Institute's free services are having on their businesses.

At this meeting, the tertiary education providers suggest that it would be in everyone's interest if the Institute would charge for these services, and in addition, that this fee be consistent across the Institute and the tertiary education providers. That way, everyone would have the benefit of delivering this important educational service and obtaining a fee that is commensurate with the costs associated with the training.

Possible assessment of conduct

The Institute in this example should be concerned as this could be price fixing behaviour, irrespective of how small a percentage of customers are involved. Such conduct is strictly prohibited cartel conduct.