



301-15 Toronto St.
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416. 860. 1133 | cfla-acfl.ca

As approved by the CFLA Board of Directors
February 5, 2014

Competition Law Compliance Policy Summary

The CFLA is the trade association that represents the interests of the asset-based finance, vehicle and equipment leasing industry in Canada. The Association consists of Regular Members, Associate Members, and Non-resident Members. The Board of Directors has overall supervisory duties while the Officers and staff are charged with management. The CFLA's core responsibilities are advocacy, education, information and networking.

The Competition Act

The *Competition Act* is a federal law that governs the conduct of business in Canada. It is enforced by the federal Competition Bureau. Among other things, the purpose of the Competition Act is to maintain and encourage competition in Canada to:

- Promote the efficiency and adaptability of the Canadian economy,
- Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy,
- Provide customers with competitive prices and product choices.

The complete statute can be found online: [Competition Act](#) [Loi sur la concurrence](#)

The federal Competition Bureau has indicated its interest in trade associations which “engage in practices – from regular conferences to drinks and dinners among competitors – which leave them naturally exposed to greater risks of anti-competitive behaviour.” [In October 2012, the interim Competition Commissioner is quoted as making it clear “the bureau is getting tougher on all anti-competitive behaviour, especially by industry associations which ‘by their very nature, face unique compliance issues.’”¹](#)

Purpose of the CFLA Competition Law Compliance Policy

CFLA is committed to complying with all provisions of the Competition Act. The Competition Law Compliance Policy sets out the Association's policy and guidelines to assist Members, Directors, Officers and staff in understanding the requirements to ensure compliance. As a trade association, CFLA's

¹ *Competition Bureau sets sights on industry associations*, Toronto Star, February 1, 2013



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activities are distinct from the business of its members, who are responsible for their own compliance with the Act.

The Policy is not intended to be a comprehensive review of Canadian competition law. It focuses on competitor collaboration issues as this is the area of greatest concern for trade associations.

CFLA'S Core Responsibilities

CFLA's core responsibilities of advocacy, education, information and networking are areas of appropriate trade association activity, provided they do not result in or facilitate anticompetitive conduct. There are limits to be observed but CFLA and its members may, as a general rule, collaborate in the following areas:

- Membership decisions,
- Government relations and policy lobbying to change laws or policies,
- Encouraging the development of education programs,
- Exchange of industry statistics (with appropriate safeguards),
- Research and development for the benefit of the sector, which may result in the development of industry standards, best practices and benchmarks available to the sector at large (legal advice should first be obtained),
- Measures to protect the environment, consumers at large or a specific segment of the population (legal advice should first be obtained).

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- **Competitor collaboration** (including conspiracy, bid-rigging and agreements of arrangements that prevent or lessen competition substantially)
- **Competitively sensitive information**
- **Other anti-competitive issues** (including refusal to deal and abuse of dominant position)
- **General guidance for CFLA operations** (including industry standards/self-regulation, government relations and lobbying activities, information gathering and exchange, meetings, business decisions, communications)

CFLA Meetings

Members will be reminded that competitively sensitive information or topics cannot be discussed at CFLA meetings (see Schedule A: Competition Law Checklist for CFLA Meetings below). Written agendas are prepared for each meeting. The CFLA President will review them to ensure that any possible anti-



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competitive topics are excluded from the meeting agenda and not discussed at the meeting or otherwise.

Minutes of each meeting are prepared to document that discussions did not infringe the Competition Act. All minutes, documents, and notes relating to meetings will reference the specific purpose of the topic, and the persons present.

As a general rule, topics or information not on the agenda will not be discussed if they could conceivably raise concerns under the Competition Act.

Monitoring and Reporting

All members of the CFLA Board of Directors, Executive Committee, staff, and Member company representatives participating in CFLA activities, collectively share the responsibility for ensuring compliance with the Policy.

Actual or potential breaches of the policy cannot be tolerated or ignored. They must be reported as soon as possible to the CFLA President. Any delay in reporting a potential breach of the Policy may compromise the Association's ability to effectively resolve the issue and protect the rights of CFLA, its Board of Directors, Executive Committee, Officers, staff, and Members. Any potentially inappropriate discussion or written communication, or one that raises a concern, should be reported.

At any meeting of CFLA, Members are to:

- Immediately stop any conversation with anyone who insists on discussing a prohibited or competitively sensitive matter and ensure that any meeting minutes reflect the termination of the discussion,
- Immediately report to the President of the CFLA any requests to agree on prices/rates, allocate customers, allocate territories, refuse to supply customers, refrain from supplying products, or any other anticompetitive conduct,
- Refer any questions on matters which may raise issues under the Competition Act to the President of the CFLA and/or its legal counsel.



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Competition Law Checklist for CFLA Meetings

This Checklist is for use by CFLA's directors, officers and staff and member company representatives in the conduct of CFLA-sponsored meetings and is intended to avoid even the appearance of inappropriate action. Prohibited discussion topics apply equally to social gatherings and other communications outside of, or incidental to, CFLA-sponsored meetings. Failure to comply can result in severe criminal and civil penalties for trade associations, companies and individuals.

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Do ensure that CFLA meetings have appropriate oversight and supervision:

- Have a CFLA staff representative at each CFLA-sponsored meeting, unless an exception has been authorized by senior CFLA official.
- Consult with legal counsel on any competition law issues or questions relating to CFLA-sponsored meetings.
- Limit meeting discussion and materials to agenda topics.

Do insist on appropriate record keeping:

- Prepare an agenda and minutes or action lists which accurately reflect the matters that are discussed and the individuals in attendance. A CFLA staff representative should normally be assigned to prepare and review the official minutes.
- If certain working groups or subgroups are formed within a committee, fully describe the purposes and authorities of those working groups and/or subgroups in the minutes of the appropriate parent committee.

Do be vigilant:

Do not, in fact or appearance, discuss or exchange the following types of "competitively sensitive information" (unless pre-cleared with legal counsel):

- Individual company prices/rates, price/rate changes, price/rate differentials, discounts, down payments, prepayments, credit terms, warranties or terms or conditions of sale, lease or financing.
- Individual company data on costs, inventories, leases, loans, sales, etc.
- Individual company plans concerning the design, distribution or marketing of particular products or services, including actual or proposed sales territories or customers.
- Individual company bids on contracts or procedures for responding to bid invitations.
- Matters relating to actual or potential individual suppliers, distributors, or customers that might have the effect of excluding them from any market or influencing the business conduct of other companies towards them.
- Information that your company considers to be confidential or sensitive,



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- Protest against any discussion or meeting activities which appear to violate this checklist.
 - Report all perceived violations to the President of the CFLA or to legal counsel.
 - Discontinue the discussion and consult with legal counsel whenever questions regarding competition law compliance arise.
- even if that information does not fit in any other category above.
- Do not** engage in collective action, or appear to engage in collective action, by way of refusal to deal or boycott of certain competitors, suppliers or customers.
- Do not** enter into any agreements or make any threat or promises involving the pricing or rate setting activities of other companies.

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