

RULES – March 2020

In-House Competition Lawyers' Association (ICLA)

1 Introduction

- 1.1. The In-House Competition Lawyers' Association ("ICLA") is an informal gathering of in-house competition law experts across the world.
- 1.2. The main purposes of the association are to:
 - a. Share legal and compliance related developments at national and supranational level and update members on issues of common interest (such as regulatory initiatives, case law developments, specific members' experience, events or conferences). In addition, develop and perform activities (on its own or jointly with others) to the benefit of the association;
 - b. Discuss matters of interest to members with competition authorities, regulators and public officials (e.g. legal privilege; compliance programs, impact of regulatory actions on business, etc.). Government officials and members of competition authorities may be invited to attend and present at ICLA meetings;
 - c. Prepare and submit responses to consultations of interest to members. These responses on behalf of ICLA contribute to the public debate by bringing the specific in-house perspective of ICLA members. They also increase the visibility of ICLA and its reputation with competition authorities and other regulators.
- 2.1. ICLA web site is <http://www.competitionlawyer.co.uk>

2 Membership

- 2.2. Membership is open to in-house competition law experts, and primarily to those individuals responsible for competition law in their respective companies.
- 2.3. In-house competition law experts who work for associations of companies can also become members, subject to approval of the Steering Group.
- 2.4. In-house competition law experts who work in State Owned Enterprises can also become members, subject to approval of the Steering Group.

- 2.5. Companies, law firms, external lawyers, public affairs personnel, academics and government officials cannot be members of ICLA. Exceptions may apply to former members who move to private practice or become academics (see Section 8).
- 2.6. Membership is individual. Members are part of the association in their personal capacity as experts in competition law. Companies are not members of the association.
- 2.7. Members express their own personal views and not those of the organizations employing them.
- 2.8. ICLA membership is currently free. In exceptional circumstances, when necessary to cover expenses that are critical for the functioning of ICLA (such as the development or maintenance of the website), the Steering Group may seek to collect voluntary contributions, or to make a reasonable charge for attending an ICLA event, to cover for such expenses.
- 2.9. The Chair shall maintain a register of members. Requests for membership shall be made through a centralized application form. The Chair may appoint a member of the Steering Group to assist in the management of the register. Membership applications will be accepted if the members fulfil the criteria outlined in the rules.
- 2.10. Members can also join national / regional ICLAs.
- 2.11. Any change of roles or update of contact details of members should be communicated to the Chair (or, if applicable, the member of the Steering Group appointed to manage the register).
- 2.12. In order to ensure compliance with paragraphs 2.1-2.4 of the rules, it is encouraged that members register by using their work email. The use of personal or web-based emails is discouraged.

3 Governance

- 3.1. A Steering Group will ensure the running of ICLA.
- 3.2. The Steering Group will include a Chair and at least two Vice Chairs as well as the Chairs and Vice Chairs of national / regional ICLAs.
- 3.3. The Steering Group will appoint the Chair for a period of 5 years. The 5-year period can be renewed.
- 3.4. The Steering Group will appoint the Chairs of the national / regional ICLAs for a period of 3 years. The 3-year period can be renewed.

- 3.5. The Chair as well as the Chairs of the national / regional ICLAs will appoint their Vice Chairs for a period of 3 years. The 3-year period can be renewed.
- 3.6. The Steering Group will meet at least twice a year.
- 3.7. Prior to any election, the Chair will inform members about the upcoming election, and ask members to put forward their candidacy. Any member can put forward its name. One of the key criteria for election taken into account by the Steering Group will be the member's previous contribution to ICLA.
- 3.8. Members of the Steering Group who stand for election or re-election will not vote.
- 3.9. Decision of the Steering Group will be taken by majority vote (either by email or at meetings). Quorum for decisions is achieved if at least one third of the Steering Group votes.
- 3.10. A key objective of the Steering Group will be, amongst others, to ensure consistency between the various national / regional ICLAs and ICLA itself, to decide which consultations to answer to and how to do so, to consider whether members that have become external lawyers or academics can stay ICLA members, to review ICLA's rules periodically, etc.
- 3.11. The Steering Group can dismiss the Chair and Vice-Chairs of ICLA or its national / regional groups when considered necessary to do so in line with the rules or objectives of the association.
- 3.12. In circumstances in which individual members bring into disrepute the association or harm it in any way, the Steering Group can dismiss that member.

4 Meetings

Meeting Attendees

- 4.1. Each ICLA member is entitled to participate in any ICLA meeting, including national / regional ones. If he or she cannot participate, another representative with competition law expertise from within the same organization can be sent in his / her place. Only one member is allowed to attend from each organisation. This restriction is in force only to ensure that there are enough places for members to attend in person. In exceptional circumstances and with the consent of the Chair, two or more members who work in the same organisation can be allowed.

- 4.2. Each member attending meetings should make an effort to contribute, by bringing to members' attention matters of interest, either in their own jurisdiction or in their work (as long as it is not confidential).
- 4.3. The Chair can invite to present at ICLA meetings:
 - i. officials from competition authorities;
 - ii. Academics, representatives from law firms or other professionals (such as economists, consultants, members of international organisations, etc.) based on that person's knowledge and expertise.
- 4.4. Each Member shall confirm at least two days in advance of the meeting whether they will be attending or not. Meeting participation may not be guaranteed in case of later confirmation.
- 4.5. Members may be appointed to be ICLA's point of contact for international or national organisations¹ to ensure consistency and knowledge sharing.

Frequency

- 4.6. In principle ICLA shall meet twice a year. Specific ad-hoc meetings may also be set up.
- 4.7. Dates of the meetings will be communicated as early as possible and invitations will be sent closer to the date.
- 4.8. Agendas shall be circulated as early as possible in advance of the meeting.

Location

- 4.9. Meetings shall take place at offices of members or, if that is not possible, at other locations such as law or consultancy firms, bar associations or academic institutions as long as there are no costs and no marketing activity addressed to the members.

Conduct of Meetings

- 4.10. ICLA meetings shall operate under the Chatham House Rule².

¹ Such as the OECD, the International Competition Network ('ICN'), the International Chamber of Commerce ('ICC'), the Association of Corporate Counsels ('ACC'), the International Bar Association ('IBA') as well as the American Bar Association ('ABA') and others.

² The **Chatham House Rule** is a principle that governs the confidentiality of the source of information received at a meeting. The rule states: "When a meeting, or part thereof, is held under Chatham House Rule, participants are free to use the information received, but neither the identity

- 4.11. When government officials are present, no conference call facility will be available, unless the officials consent. This is to ensure adherence to Chatham House rules and avoid officials not being aware of who is attending the call.
- 4.12. In some instances, conference call facilities may be provided when there are meetings amongst members without public officials.
- 4.13. As outlined in paragraphs 2.5 and 2.6 above, views expressed by members during ICLA meetings are the personal views of the meeting attendees.
- 4.14. Members of ICLA shall not exchange or disclose competitively sensitive information whether at ICLA meetings or otherwise and will at all time abide by competition and other compliance rules whenever engaged in activities within the context of ICLA.

5 External representation and responses to consultations

- 5.1. No member of ICLA shall give the impression that his or her views on a competition law matter are the views of the ICLA or other members, unless there is prior approval of the Steering Group to do so.
- 5.2. Members of the Steering Group can attend conferences or other meetings in their ICLA capacity to increase awareness of the association amongst in-house lawyer. If they do so, the member should not make statements that are contrary to previous ICLA positions, or alternatively make it clear that he/she is representing its own views. If a presentation, such as PowerPoint, is used, the presentation must be circulated in advance to the Steering Group at least three working days prior to the conference or meeting.
- 5.3. In order to increase awareness of ICLA, ICLA may partner with other associations, universities or law firms to organise events. The Steering Group will decide on whether partnership for a specific event with a specific organisation is appropriate or not.
- 5.4. The ICLA members' distribution list should not be used for marketing purposes. If organisations such as conference organisers make available free tickets to members, and these events can be of benefit

nor the affiliation of the speaker(s), nor that of any other participant, may be revealed". The rules provide a way for speakers to openly discuss their views in private while allowing the topic and nature of the debate to be made public and contribute to a broader conversation. The rule originated in June 1927 at the Royal Institute of International Affairs, which is now known as Chatham House: <https://www.chathamhouse.org/chatham-house-rule>.

to members, the Chair can forward the invite to members. The Chair, the Steering Group, or any of the members can never provide external organisations with members' contact details, unless those members provided their explicit consent to do so.

- 5.5. One of the key aims of the association is to prepare and submit responses to consultations on topics of interest to members. These responses contribute to the public debate by bringing the specific in-house perspective of the ICLA members. They also increase the visibility of ICLA and its reputation with competition authorities and other regulators.
- 5.6. One of the tasks of the Steering Group will be to decide which public consultations merit a submission on behalf of ICLA. A small working group including members who are interested and can contribute will be set up. The decision to aim to respond to a specific consultation, as well as an invitation to join such working group, will be sent to all members
- 5.7. Any written submission in ICLA's name will contain appropriate disclaimers. In particular, the introduction shall state that the ICLA submission represents views of individuals/members who are expert in competition law, not their companies. In addition, appropriate wording shall be used to the effect that the submission does not necessarily represent the view of all of its members.
- 5.8. A disclaimer which has been used effectively so far is as follows:
 - i. *“The In-House Competition Lawyers’ Association (“ICLA”) is an informal association of in-house competition lawyers across the world. The Association meets usually twice a year to discuss matters of common interest, as well as to share competition law knowledge. There are currently almost [x] members in [x] countries. The Association does not represent companies but is made up of individuals as experts in this area of the law. This paper does not necessarily represent the views of all of its members”*
- 5.9. Although the submission does not represent the view of all members, the working group should aim to share draft written submissions with all members prior to submission.
- 5.10. If a large number of members raise serious concerns about a submission, the Steering Group will consider and review those

concerns. The Steering Group will be ultimately responsible for the final version.

- 5.11. The final version will be published on the ICLA website.
- 5.12. Any draft or final submission shall remain the ICLA's work product. No draft shall be shared outside ICLA without the Steering Group's approval.

6 Personal data

- 6.1. Members shall not disclose the ICLA membership list or contact details (i.e., email, address or phone numbers) of ICLA members or meeting attendees to any third party.
- 6.2. ICLA members can mention externally that they are members of ICLA and are encouraged to promote the association to other in-house competition counsels.
- 6.3. The mailing list cannot be used for any other purpose than those linked to the purpose of the association.
- 6.4. The Steering Committee may in exceptional circumstances decide to share the membership list with third parties, if doing so is in the best interest of the association. In that case, members' contact details can only be shared if members provide their explicit consent to share their contact details for that specific purpose.
- 6.5. By becoming a member of the association, members agree that their name and contact details might be shared with other members of the association, and by signing up to a specific meeting, members also acknowledge that their name and contact details might be shared with the speakers at that meeting.
- 6.6. ICLA will maintain its own registration in the EU Transparency Register or seek to declare its interests where it is required to do so, for example, when engaging in consultations outside of the EU.

7 National / regional ICLAs

7.1. General Rules

- a) The ICLA rules set out above will apply to each national / regional ICLA in addition to the specific rules below.
- b) As of March 2020, ICLA has national / regional associations in Germany, Italy, Spain, the Nordic Countries (Sweden, Denmark, Finland, Iceland and Norway), the UK and South East Asia.

7.2. Creation

- a) At the request of members, a national or regional ICLA can be set up in countries or regions if there is an interest of at least 4 members to join such national or regional ICLA.
- b) National / regional ICLAs will have as their only focus activities relating to national laws as well as interaction with National Competition Authorities (NCAs), national regulators or government officials and national public institutions in relation to national competition law matters.
- c) Only members of ICLA can be members of a national / regional ICLA.
- d) When becoming members of ICLA, members should elect whether they would like to be member of any national / regional ICLAs.

7.3. Role of the national / regional Chair

- a) Each national / regional ICLA will have a national / regional Chair who will be located in that country or region. Each national / regional ICLA should also have a national / regional Steering Group made up of the Chair and at least two Vice-Chairs.
- b) The national / regional Steering Group will keep the Chair (or the appointed member of the Steering Group) informed about changes in the national / regional membership.
- c) The national / regional Chair will set up the national / regional meetings and be responsible for the organisation of those meetings, including any meeting with / submissions to the NCA, national regulators and national public institutions.
- d) The national / regional Chair should make his / her best efforts to attend at least once a year an ICLA meeting and must ensure consistency with ICLA and its views, through the Steering Group.
- e) The national / regional Chair will inform the Steering Group sufficiently in advance of any national / regional meeting and in particular the date, the location and the agenda. That information will be shared with all members (through email, on the ICLA website, or any other means) and attendance to national meetings will be open to all ICLA members who have an interest.

7.4. Responses to public consultations

- a) The national / regional Chair will inform the Steering Group of any public consultation of interest to a national / regional ICLA and of the intention to prepare a response. The Steering Group will approve or reject such request.
- b) If approved, the intention to prepare a response will be notified to all members. The national / regional Chair will set up a Working Group to prepare a response. Members that are not member of the national / regional ICLA may join such group if the topics is of specific interest to them.
- c) Any draft written submission at a national / regional level will be given appropriate publicity prior to its publication. The national / regional Chair will share it with the Steering Group at an early stage in order to allow the Steering Group to review the draft submission for consistency with ICLA positions prior to submission. The final version will be posted on the ICLA website.
- d) A short summary of the key points of any draft submission might be circulated in English to all members before submission.
- e) If a large number of members raise serious concerns about a submission, the Steering Group will consider and review those concerns and will be ultimately responsible for the final version.
- f) To ensure consistency, if an issue is or becomes of wider interest (and no longer purely a national or regional issue), as determined by the Steering Group, this issue will be dealt by ICLA and not by a national / regional ICLA. Also, if the Steering Group believes there is a risk for inconsistency with previous ICLA positions, it may decide to request the national / regional group to revise its draft.

8 Rules for members who have become external lawyers or academics

- 8.1 In exceptional circumstances, the Steering Group may decide that former members who move to private practice or become academics may remain as members, if they provided a substantial contribution to ICLA during their membership. Former Chairs and Vice Chairs who have held the position for more than 3 years will be presumed to have contributed substantially to the association.
- 8.2 Contributions by external lawyers and academics will be monitored and reassessed by the Steering Group every 5 years and membership will be confirmed or not.

- 8.3 The number of external lawyers and academics in the association. may not exceed 5% of the total number of ICLA members. The same percentage applies to the national / regional ICLAs.
- 8.4 External lawyers or academics who are members of ICLA and who cannot attend a meeting cannot send representatives.
- 8.5 External lawyers or academics who are members of ICLA cannot be Chairs of ICLA or of the national / regional ICLAs.