Compliance System

Antitrust guidelines

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1. Introduction

1.1. Antitrust regulations: What are they and why are they important for IDOM?

Antitrust regulations seek to prohibit business conduct that is contrary to free competition and the public interest. The ultimate aim of competition regulations is thus to safeguard competition, such that each company makes its business and strategic decisions independently, without implementing agreements or practices that may eliminate or restrict competition.

Competition authorities are the public bodies responsible for ensuring that competition rules are respected, with broad powers for inspection, investigation and, ultimately, the penalization of conduct that violates the rules. There are authorities at the European and national level and, in the case of Spain, also at the regional level.

At the European level, the competent authority is the Directorate-General for Competition of the European Commission. For its part, in Spain the central authority is the National Markets and Competition Commission ("CNMC"), with competence to act throughout national territory, as well as regional authorities within several Autonomous Regions.

Other competition authorities could likewise include the National Economic Prosecution Office in Chile, the Federal Commission for Economic Competition in Mexico, the Superintendency of Industry and Commerce in Colombia, the Competition and Markets Authority in the United Kingdom, the Office of Competition and Consumer Protection in Poland, among others.

It is essential that all of us at IDOM understand antitrust rules very clearly. This document has therefore been drawn up with a series of guidelines that we must take into account on a daily basis during the performance of professional functions and activities.

Antitrust infringements can have serious negative consequences for IDOM and its professionals. These include:

a) Extraordinarily high economic sanctions, which in the case of Spain may amount to 10% of the annual turnover of the IDOM Group worldwide.

b) Imposition of prohibitions or limitations in bidding for public tenders. For example, in Spain such bans can last up to 3 years and potentially affect the entire Spanish public sector. It is also possible that the existence of a competition investigation may have repercussions in other Member States of the European Union, even leading to exclusion from contracts tendered in other countries.

c) Obligation to repay amounts received as a result of anti-competitive agreements.

d) Dedication of substantial economic and human resources to the administrative and court proceedings resulting from the infringements, in addition to substantial expenses for the legal defense of IDOM in these proceedings.

e) Serious reputational damage regarding clients, providers, investors and financial institutions, as well as

f) Claims for damages by clients or competitors who have been affected by the infringement. Damage claims can amount to even more than the financial penalties of competition authorities.

g) Personal liability of persons involved in the sanctioned events. In Spain, these fines can be as high as 60,000 euros.

h) Possibility of disciplinary consequences for employees. If the possible infringement consists of agreements restricting competition within the framework of public tenders, the acts could even be punishable as an offense with a penalty of fine or imprisonment.

In recent times, there has been a significant increase in the resources available to competition authorities for the detection and prosecution of so-called cartels, which consist of agreements between companies to reduce or eliminate competition from a market, with increased inspections and penalties imposed. These resources include:

a) "Leniency programs", which grant full exemption to companies and their employees (if they so request) that cooperate with competition authorities, or at the very least, a substantial reduction of the financial penalty to which they would be subject.

b) Sectoral investigations by competition authorities, even without the suspicion of cartel agreements. Competition authorities have external whistleblowing channels through which any person can bring to the attention of the authority any evidence of conduct contrary to antitrust regulations. This channel has been the source of various investigations by the CNMC.

c) Competition authorities have also equipped themselves with economic intelligence units and equipment that enable them to monitor market developments and to detect possible anti-competitive practices ex officio without the need to formally receive a complaint.

d) Creation of specialized and well-equipped units at the cross-border level. Almost all countries today have antitrust laws and combat anti-competitive conduct through their authorities. In addition, the authorities of the different countries are interlinked and are informed of the investigations being carried out in the different countries. In the case of the European Union, cooperation and contact between the various competition authorities has been strengthened following the adoption of European Directive 2019/1 of the European Parliament and of the Council of December 11, 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (also known as the "ECN+ Directive").

1.2. Criminal liability of the company, directors and their employees

In the most serious cases of breach of competition law, both natural and legal persons may incur not only financial penalties but also CRIMINAL liability, and be prosecuted and potentially convicted for this. We refer to the following offenses:

- Offense of manipulation of auction tenders and public tenders.

- Offense of price alteration.

- Offense of bribery (bribing a public authority or official through a gift requested in exchange for performing or omitting an act inherent to their office)

- The offense of private corruption, which is the same as the offense of bribery but in the private world, and punishes both those who offer or grant a benefit or advantage so as to be favored in the contracting of goods or services, and those who receive, request or accept a benefit or advantage to carry out that favorable act. This aims to ensure fair and honest competition between competitors in the marketplace

- Offense of corruption in international business transactions, punishing corrupt conduct in international business transactions, to prevent bribery in international relations that could distort fair and honest competition in international business.

The above offenses may also lead to penalties being imposed on the company, which could result in its winding-up, the closure of its offices, and even the suspension and prohibition of performing activities.

2. Practices that are prohibited as anti-competitive

2.1. Collusive conduct. Prohibition of anti-competitive agreements

So-called collusive conduct, which is agreements between companies, decisions, collective recommendations or concerted or consciously parallel practices, which do or could have the effect of preventing, restricting or distorting competition in all or part of the national market is prohibited.

What is collusive conduct?: where two or more companies, legally and economically independent of each other, coordinate their activity on the market, replacing free enterprise autonomy and independent effort, with some form of collusion.

What types of collusion can exist? there may be (i) explicit agreements or (ii) tacit agreements.

Is intent required?: NO intent to restrict competition is required. The absence of intentionality will only be taken into account for the purpose of reducing the administrative penalty, but is irrelevant for the purpose of declaring the infringement by the competition authority or in the compensation for damages to those affected by the infringement.

What evidence of collusive do competition authorities perceive?: mere participation at meetings, receipt of emails without express opposition to their content, mere handwritten notes and the existence of minutes of meetings (even if they are unsigned).

- Some examples would be: directly or indirectly **fixing prices or other commercial** or service conditions;

- **carving up markets, clients, tenders** or sources of supply;

- the application in trading or service relationships of **dissimilar conditions** to equivalent transactions, placing certain competitors at a disadvantage compared with others;

Prohibition of unlawful horizontal agreements

Agreements where competitors **agree with one another as to their offerings** and/or their presence in the market are prohibited. For example, agreements on prices or other **commercial conditions**, **market distributions**, agreements to reduce or control production, the **exchange of sensitive commercial information (prices, quantities, discounts, etc.) between competitors**, the **manipulation of competitive tenders**, etc. are prohibited. They are known as “horizontal agreements”.

The prohibition applies not only to **written** agreements, but also to **verbal agreements** (e.g. telephone calls), emails, non-committal confirmations, “recommendations” or a mere exchange of information; wherever they occur (at trade shows or similar, business association meetings, etc.).

It must be taken into account that in order for an infringement to be deemed to have occurred (and consequently in order for the corresponding penalty to be applied), **the restrictive agreements need NOT have been successful**.

Prohibition of the exchange of strategic or commercially sensitive information

Commercially sensitive information is any strategic information that IDOM would not routinely share with a third party outside the company, and in particular information that could allow the recipient to know or anticipate IDOM’s conduct in the market. As a general rule, recent data is more sensitive than historical data, and disaggregated or detailed data is more sensitive than data presented in an aggregate form.

By way of example, information regarding:

- Sales figures, cost data or margins.
- Market shares or production capacity data.
- Identity of actual and potential clients or providers.
- The intention to bid or offer for a particular contract.
- Information regarding the terms and conditions of a present or future offer in a competitive tender.
- Forecasts of future offerings, demand or supply conditions or financial indicators.
- Business expansion or contraction plans, or plans to enter new markets or withdraw from an existing one.

The exchange of commercially sensitive information between competitors in itself constitutes a serious breach of competition law, without the need for proof that the companies involved in the exchange have made effective use of it.

In the event that a competitor proposes to exchange sensitive information, a clear refusal to receive or exchange information must be given, and the incident reported to the Ethics Committee as soon as possible.

Given the risk involved, the utmost caution should always be exercised in contact with competitors. From the point of view of competition authorities, such contacts are always suspicious unless a legitimate purpose can be demonstrated (e.g. association meetings, conferences, where strategic or commercially sensitive

information is not processed). The mere existence of regular contacts with competitors may – at least in the context of a stable market or with few variations – prompt an investigation by competition authorities.

Competition risks in the field of public procurement

I. Agreements to distort public tenders

Competition law is also applicable in the context of public tenders. To this end, there is a set of unlawful practices the purpose of which is to alter and/or manipulate the outcome of public tenders.

Among others, the following practices should be noted:

- Agreements with other bidders regarding terms and conditions for the presentation of offers, distribution of contracts, directly or through subcontracting, on a one-off or ongoing basis.
- Agreements with certain competitors not to submit bids or to make them artificially high or in breach of the specifications governing the contract to avoid being awarded the contract ("complementary or cover bidding").
- Compensation agreements with companies that have not been awarded contracts, for example through subcontracting for the total or partial execution of the contract.
- Rejection of an invitation to present an offer or refusal to bid if this corresponds to a distribution of markets or clients. It is therefore advisable to document internally the economic or commercial reasons why IDOM decides not to submit an offer for a particular contract, especially when an explicit invitation to participate has been received from the client.

The CNMC has identified the following factors as indications of the existence of complementary or cover bidding, among others:

- Small number of bidders.
- Inconsistent offers from the same operator in similar tenders.
- Suspicious similarities between offers, in particular poor content and format, as well as identical wording and/or format.
- Uncompetitive offers.
- Suspected boycotting.
- Patterns of suspicious behavior among bidding companies.
- Unjustified subcontracting between bidding companies.
- Offers submitted by the same natural persons.

II. Incorporation of unjustified Joint Ventures

Although the Joint Venture (JV) is a legal and accepted figure in the field of public procurement, the establishment of such a relationship between competing companies can under certain circumstances be considered problematic from the perspective of competition law.

A specific and detailed analysis must be conducted of the need to establish a JV with competing companies if IDOM or its competitor have the capacity to bid separately for the tender in question. A company is understood to enjoy such capacity if it has in the past bid individually for similar contracts or attempted to bid as a JV for a contract of similar characteristics, and ultimately participated individually.

Nonetheless, the incorporation of a JV with competitors may be justifiable if it is adequately demonstrated that the constituent companies could not bid individually (either because of a lack of productive capacity, economic resources, etc.).

In order to avoid the risks arising from the creation of a JV, either in the agreement as to its establishment or in a report or analysis, the technical, professional or economic reasons that led the companies to present a joint bid should be included. The text must be as specific and precise as possible to sufficiently justify that, in the absence of such a JV, the companies concerned would not have been able to bid in the tender or that the joint submission generates clear efficiencies for the contracting administration and/or consumers.

It should lastly be pointed out that acceptance of the incorporation of a JV by the procurement body does not guarantee the compatibility of the JV with competition law. It is therefore advisable to refer any doubts regarding the incorporation of a JV to the Ethics Committee or the responsible person at the IDOM Legal Department, especially when it is considered that the members of the JV could compete separately in the tender.

III. Subcontracting

Subcontracting of or by competitors in the context of tenders is primarily subject to two limits as regards antitrust rules.

First, such subcontracting should not consist of a compensation mechanism for competing companies for not having entered a bid or having submitted an offer with no real intention of competing for the award of the contract.

Secondly, the information exchanged with the subcontracted competitor must only be as strictly necessary to perform the activity subject to subcontracting. As a general rule, then, no information should be requested or received from the subcontractor regarding other present or future projects, or those regarding providers, costs or production capacity.

Prohibition of vertical restraints on competition

Purchase contracts with providers and clients are the essence of IDOM's business, and as such are, of course, permitted.

However, agreements restricting the freedom of one party to freely decide prices (e.g. resale prices to distributors) or commercial terms with third parties, or free choice of trading partners (so-called "vertical agreements or restrictions") may be contrary to the law.

When dealing with an agreement that may contain clauses of this type, it is necessary to obtain prior legal advice from the responsible person at the IDOM Legal Department, or to contact the Ethics Committee.

2.2. Prohibition of abuse of dominant position

Competition law imposes special rules of conduct on companies that have a dominant position in all or part of the market.

What is a dominant position?: A dominant position is one in which a company finds itself when, in developing its commercial strategy in the market, it can act independently without taking into account competing companies, providers or buyers. Market share as a reference element: in general, it is unlikely that there will be a dominant position if the **market share** of the company is less than 40%, although there may be certain cases below that share.

It is important to clarify that the dominant position is not prohibited, only its abuse. The law does not prohibit such a market position, but it imposes a special responsibility on companies with a dominant position to protect competition.

What is abusive conduct of a dominant position?

- The **imposition**, directly or indirectly, of **prices** or other commercial or service conditions that are unfair.
- The **limitation of production, distribution or technical development** to the unjustified detriment of businesses or consumers.
- **Unjustified refusal to meet demands** for the provision of services or purchase of products.
- The application in trading or service relationships of **dissimilar conditions** to equivalent transactions, placing certain competitors at a disadvantage compared with others.
- Making the conclusion of contracts dependent on the acceptance of **supplementary services** which, given their nature or in accordance with commercial practices, are not connected with the object of said contracts.

The following are thus especially prohibited because they are considered abuse of a dominant position:

- Abuse against competitors: exclude competitors from the market, or hinder or prevent them from accessing the market.
- Abuse towards clients or providers: clients and providers are exploited by taking advantage of the dominant position

In relation to those services where IDOM might not have competition or where this is negligible, it is essential that we refrain from all conduct that could be considered an abuse of market position.

2.3. Distortion of competition by unfair acts

When is conduct unfair?: any behavior conducted on the market and for competitive purposes that is objectively contrary to the demands of good faith, is unfair. This includes, for example: acts of deceit, acts of confusion, aggressive practices, acts of denigration, violation of industrial secrets, inducement of breach of contract by clients or workers, exploitation of a situation of economic dependence, among others.

When does it affect the public interest?: when it affects or could affect the implementation or maintenance of free competition in the market in question, creating a serious distortion in it. Distortion of competition by unfair acts is prohibited, and is likewise prosecuted by competition authorities, wherever it affects the public interest.

2.4. Merger control infringements

Merger control is a mechanism provided for in competition law for the purpose of verifying whether a merger, total or partial acquisition or any other form of concentration between undertakings may affect competition in a given market and, if so, imposing the necessary conditions to ensure that an effective degree of competition is maintained.

Where certain thresholds established at the European and/or national level are met, the operation in question must be notified to the competent authority, its enforceability being suspended until the required authorization is received from the competent competition authority.

In this context, failure to comply with the obligation to notify or, having given notice, to carry out the transaction without having received authorization from the competition authority, constitutes a serious breach of the regulations and may result in fines of up to 5% of the total worldwide turnover of the offending company.

3. Basic recommendations

3.1. Guidelines for the preparation and storage of documents

It is important for us to be aware that competition authorities, in the framework of their investigations and competences, may carry out **surprise inspections at offices and premises** both of the company and of the employees themselves to gather evidence.

As a result of these inspections, and of access to physical documents (e.g. documents, books, filing cabinets, etc.) as well as digital documents stored on computers, computer devices, mobile phones and servers, it is not only possible but common for competition authorities to access:

- **Formal communications and documents:** contracts, computer files, minutes of meetings, work agendas, meeting calendars, drafts, etc.

- **Informal communications and documents:** correspondence, telephone, email, WhatsApp conversations and other messaging and chat apps, external and internal notes, post-its, social media (Facebook, Twitter, LinkedIn, etc.), personal notes, travel expense settlements, telephone bills and call lists, etc. The range, and actual elements involved in cases, are huge.

Likewise, our company's documents may reach the competition authorities through other means, **e.g. periodic controls by the authorities for market analysis,** procedures initiated against our competitors (when inspected by the competition authorities or when invoking the leniency program, they provide their own and third-party documentation), clients or providers, or complaints filed by them.

These documents or communications, even if they are mere "drafts", "memos" or "working papers", can be used against the company, and also against individuals at the organization (such as managers), in antitrust proceedings.

It is thus important not only to be impeccable in our actions, but also to be seen to be so, to avoid possible misinterpretations by the competition authorities.

All people must, in our professional activity and/or in the use of the means and tools available to us, observe the following rules:

1. General rule: Put ourselves in the position that the competition authority could read and see our official and non-official documentation and our communications. In other words, imagine that third parties, other than the recipients, may end up reading and/or using such documents and communications (they will or may furthermore also do so in time and out of context). This means in particular, for the purposes of this Guideline:

   a) All correspondence (ordinary, electronic or digital), and all messaging communications (conventional or otherwise), above all with competitors **must be carefully worded:** without disclosing prices or other sensitive information, without ambiguous formulations, and clearly establishing the purpose, which must, of course, be lawful.

   b) If, for whatever reason, internal documents containing data on competitors' prices, business strategies, etc. fall into our possession, we must ensure that the source of the information was lawful and **is clearly formulated, avoiding expressions that may arouse suspicion of anti-competitive conduct**.

2. When we draft documents for contracts or meetings, and they are mere drafts or proforma texts, we must unequivocally indicate that they are **drafts subject to review and, where appropriate, negotiation and approval**.

3. Where we maintain professional communications with lawyers outside IDOM or reproduce their advice, this should be clearly indicated at the start of the document or communication. In the specific case of emails, the subject line shall indicate the expression **"Confidential and legally privileged" or "Confidential – Lawyer-client communication"**. It is important for us to know that the safeguard of professional secrecy is only applicable in relations with lawyers (not auditors, for example) and generally with **external lawyers (not in-house lawyers). Nonetheless, communication with the in-house lawyer is identified using the expressions indicated above.**

   Very important: It may be that we are on occasion the recipients of messages or emails, with proposals or suggestions of unlawful practices. If this occurs, they must receive an explicit, emphatic, unambiguous rejection, while the Ethics Committee must be contacted as soon as possible.

3.2. Prevention of unlawful horizontal agreements

For the specific prevention of unlawful horizontal agreements, we must follow the following basic recommendations and instructions:

1. The golden rule: treat all meetings and conversations with competitors as if they took place in public. This is the same recommendation and instruction as set out above with regard to communications and written documents.

2. In relations with competitors, we must avoid providing, receiving and/or sharing information, whether verbally or in writing, on sensitive competition issues such as prices, costs, margins, production capacities, strategies or guidelines in the event of tenders launched by governments or private companies, etc.

Clearly, not all contact or relationships with competitors are prohibited by the regulations, only those that have the object or effect, directly or indirectly, of altering or restricting competition. In particular, the following are permitted provided that they do not have the aforementioned purpose or effect:

1. The exchange of information on topics other than competition or lawful collaboration within trade and industry associations; and

2. Cooperation (R&D, joint marketing of services), wherever such collaboration brings benefits for consumers (price or quality improvements, etc.). However, agreements of this nature must meet demanding requirements to be lawful. It is therefore imperative prior to implementation to consult the Manager of the Legal Department of the company, or, alternatively, the Ethics Committee, to clarify compatibility with competition law.

3.3. As a summary and reminder

What information can and cannot be shared?

Allowed		Not allowed	
Truly public information	✓	**Prices:** non-public information regarding prices, pricing policies or prices in the future	×
or		**Financial data:** non-public information regarding input costs, margins, revenue from specific products or market shares	×
Past information that has been collected by an independent third party and aggregated and anonymized in such a way that competitors' data cannot be identified	✓	**Strategy:** non-public information regarding commercial strategies, business plans, new products or services	×
As a rule, ask yourself whether the information in question would be useful for your own business; if so, the exchange of information is likely to be illegal		**Clients:** non-public information regarding clients, specific client terms or distribution models	×
		Commercially sensitive/current data	×
		Non-aggregated data	×

How should a company with a dominant position act?

Dominant companies should:		Dominant companies cannot:	
Maintain evidence that their prices are fair, reasonable and non-discriminatory	✓	Sign contracts with long-term and 100% exclusive requirements	×
		Set prices excessively high or lower than cost	×
Offer volume rebates and not loyalty rebates	✓	Price discriminate against clients without objective reason	×
Obtain legal advice if in doubt; the questions raised often require thorough legal analysis	✓	Refuse supply without an objective reason	×
		Offer clients loyalty rebates	×
		"Link" products	×

3.4. Some examples of expressions that could be suspected of anti-competitive conduct

DO NOT WRITE OR UTTER EXPRESSIONS SUCH AS THE FOLLOWING (OR SIMILAR)	WE MAY USE EXPRESSIONS LIKE THE FOLLOWING
This communication must be destroyed after reading it.	Strictly confidential
Remember that this issue is “off the record” and should not be filed or recorded	Please restrict distribution of this matter
I think if both companies move in this price bracket, we will all end up winning	We are the only ones who determine our prices or pricing policies.
We should coordinate our strategy	We are the only ones who determine our business strategy
This deal could be illegal, but our advisers are looking into it/are looking at ways to avert the pitfalls.	Under no circumstances will we implement this initiative if it is or could be contrary to regulations.
There are enough areas/markets for everyone, if we distribute them properly.	Our culture and policies prevent direct or indirect distribution of markets, zones, areas and/or clients
We are raising prices, others will do the same	Whatever you/others do will not determine our policies.
All members of the sector agree that the increase in raw materials should be passed on through higher prices.	What others think or do cannot determine our policies.
If we collaborate, we will dominate this market	Competition regulations, and our culture of compliance, prevent you from responding. We respect free competition.
If we apply these measures, taking advantage of our position, we could remove or weaken X (another competitor)	Under no circumstances will we perform any type of action as you request of me, in breach of the regulations.
Are you going to bid in this tender? If you didn’t plan to do so, could you do us an “I scratch your back, you scratch mine” favor?	Competition regulations, and our culture of compliance, prevent you from responding. We respect free competition.
I need you to “cover” mein this project/competition/tender	Under no circumstances will we perform any type of action as you request of me, in breach of the regulations.

3.5. Communication and transparency

In case of **doubt**, **ALWAYS** seek prior advice from the **Ethics Committee**, through the Queries and Suggestions Channel (accessible via the website) or from the **Manager of the IDOM Legal Department**, which you can do directly or through your superiors, at your discretion.

- Particularly in relations with competitors.
- If you are in doubt about whether the information you wish to disclose or have disclosed is competition-sensitive.
- If you receive problematic communication from a competitor, do not ignore it: contact the Ethics Committee or the Legal Department for evaluation and record how the company has handled the issue.

NEVER ignore or look the other way

3.6. Leniency Program

Companies which inform the competition authority of their participation in a cartel may benefit from a full exemption from the administrative penalty (if they were the first to inform the authority of the existence of that cartel) or a reduction of up to half of the fine provided that their contribution is valuable to the authority's training work.

Likewise, taking advantage of the Leniency Program allows for exemption from the prohibition on contracting with the public sector. Finally, companies that avail themselves of the Leniency Program may also have their liability limited in dealing with potential claims for damages.

To obtain the above benefits, the leniency applicant must (i) provide detailed information about the cartel; (ii) cease its participation in the cartel; and (iii) cooperate fully with the competition authority during its investigation.

However, the Leniency Program does not protect against the other consequences derived from the commission of a competition infringement: private claims for damages (albeit with a limited degree of liability), nullity of agreements and/or contracts, or reputational damage. It is therefore essential to avoid involving IDOM in any anti-competitive practice and, in case of doubt or evidence of infringement, always contact the Legal Department or the Ethics Committee as soon as possible.