

November 2017

## Action Plan

### Compliance with competition law

Banking activities do not fall out of scope of competition law. Both the European Commission and the Luxembourg Competition Council have broad investigatory powers and penalties for breaches that can be extremely heavy. In addition, any institution subject to an investigation may suffer serious and long-lasting reputational damage.

The ABBL has the duty to address the issue proactively in order to raise its members' awareness of the need to comply with competition law and to assist the management of institutions in the implementation of an effective prevention policy so as to avoid breaches and manage any potential investigation in the best manner.

Besides, the ABBL intends to implement an internal competition policy to ensure compliance with applicable rules within its remit and thus protect its members' representatives taking part in its work.

In the current competitive environment shaped by technological change and the emergence of new players in the market for banking and financial services, compliance with competition rules is becoming more important than ever.

For this reason, the ABBL is adopting, as a complement to its Code of Conduct<sup>1</sup>, the following plan of action<sup>2</sup>, consisting of three core elements: ensuring awareness of the ABBL members, the ABBL's internal policy and training programmes.

<sup>1</sup> Note Point 1.2 of the ABBL Code of Conduct:

*"Professionals shall respect the rules of healthy and fair competition.*

*1.2.1. They should ensure that their advertising presents an honest and fair picture of the activities and services they offer.*

*1.2.2. They should not seek to distinguish themselves from their competitors by claiming qualities that are required by law of all professionals.*

*1.2.3. They should ensure they do not claim superiority or exclusivity over their competitors through exaggerated, deceptive or denigrating advertising.*

*1.2.4. They should not abuse a dominant position.*

*1.2.5. They should refrain from attracting clients from competitors for their own benefit through methods contrary to honest competitive practices."*

<sup>2</sup> The European Commission issued in 2012 a brochure regarding respect for competition rules in which it recommends the creation of internal guidelines setting out the institution's strategy for ensuring compliance. The implementation of a compliance programme is considered by the Commission as a key element of good corporate governance. In practice, the Commission regards the absence of a compliance programme as an aggravating factor when determining financial penalties, especially for listed companies.

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## **I. Ensuring awareness among ABBL members**

Ensuring awareness on the part of the ABBL involves action at various levels:

### **1. Raising awareness among decision-makers**

Raising awareness among members of the ABBL's board of directors by putting the topic on the agenda of the next board meeting and obtaining endorsement of this plan of action.

### **2. Creation of guidelines for the implementation of procedures for on-site inspections**

The ABBL secretariat has been working on guidelines since 2015 within a Dawn Raids working group under a mandate from the ABBL's legal committee. This work, which will be endorsed by the legal committee at its meeting on 8 December 2017, consists of:

- 1) Drawing up a list of cases in which a Luxembourg or European authority may carry out an on-site inspection at a banking institution;
- 2) A memorandum with proposed guidelines for internal procedures, to be adopted by institutions in order to define how to behave in the event of an on-site inspection by a supervisory authority and establish a crisis management plan (alert process, crisis management team, positions affected, communications plan, etc.).

### **3. Raising members' awareness through the activities of technical committees, clusters, working groups and forums**

Various measures will be undertaken to raise members' awareness through the activities of technical committees, clusters, working groups and forums:

- 1) Put the competition law issue to the agenda of all technical committees, clusters, working groups and forums in order to raise awareness among members of these groups regarding:
  - adherence to competition law by their respective institutions in the area in question, and
  - required limitations on group discussions by highlighting high-risk behaviour (see also point II. below).
- 2) Drawing up a mission statement incorporating these issues for each cluster, technical committee, working group and forum, setting out their responsibilities and duties.
- 3) Closely involving the chairs and vice-chairs of clusters, technical committees and working groups insofar as they are responsible for moderating discussions during meetings.

## **II. ABBL internal policy**

As an organisation, the ABBL is also subject to competition rules and must ensure their strict observance. It is thus required to put in place preventative measures and establish an internal procedure for on-site inspections.

### **1. Conduct of meetings with our members**

During working meetings involving our members, it is essential to avoid any discussion that could conceivably be treated as collusion under competition law.

- 1) Draw up guidelines for members of clusters, technical committees, working groups and forums.
- 2) Have a compliance commitment signed by each member of a cluster, technical committee or working group.

To this end, a formulation should be included in the documentation relating to the establishment or renewal of clusters, technical committees and working groups, under which each member undertakes to adhere strictly to the rules laid down by competition law. Guidelines will be drawn up for this purpose setting out rules of behaviour (Do's and Don'ts).

- 3) Ensure that all advisers with responsibility for a cluster, technical committee or working group observe the limitations of the tasks defined in the respective mission statement and take care to restrict discussions that are potentially at risk. For this purpose, a special Banking and Finance Briefing session will be organised to provide advisers with greater understanding of competition law and help them adopt appropriate responses and behaviour. In addition, advisers should alert the management without delay if they observe any breach or risk of breach of the competition rules.

### **2. Internal procedure and improving staff awareness**

Incorporate an addition to our internal procedures covering on-site visits by a supervisory authority, to determine everyone's role and stipulate behaviour to be followed or avoided.

An information session for the entire staff would help ensure proper knowledge of this procedure.

## **III. Training programmes**

To ensure adoption of best practice regarding competition in everyday activities, it would be appropriate:

- 1) To review the training offering, under the partnership between the ABBL and the House of Training, regarding competition law (currently limited to a single four-hour session), by adding a more practical training module: 'What behaviour should be adopted or avoided in the event of an on-site inspection?'
- 2) To encourage our members to send staff to these training courses.