CWTA *Competition Act* Compliance Policy

Date of Adoption: July 25, 2016

Executive Summary

The Canadian Wireless Telecommunications Association ("CWTA") is committed to complying with both the spirit and the letter of the Canadian *Competition Act* (the "Act") in a clear, continuous and unequivocal manner.

The cornerstone of the Act is an absolute prohibition against agreements or arrangements between competitors or potential competitors for the purposes of:

- price fixing;
- market allocation; or
- supply management or control.

Other types of agreements or arrangements between competitors or potential competitors may be prohibited if they substantially lessen or prevent competition. It is essential that CWTA does not foster, sanction or facilitate (such as acting as a conduit for) any inappropriate agreements or arrangements between its members.

The Act also imposes certain limits with respect to the commercial activity of companies that, by virtue of their membership in the CWTA, may enjoy collective market power. It is important that CWTA members do not engage, under the auspices of the CWTA, in coordinated behaviors or practices that restrict competition or target competitors who are not members of the CWTA.

The consequences of violating the Act can be very serious for CWTA and its staff, as well as for its members and their employees. In addition to the possibility of fines and imprisonment, significant reputational damage and/or civil damages can flow from breaches of the Act.

The CWTA *Competition Act* Compliance Policy (the "Policy") provides a summary overview of the applicable provisions of the Act for the CWTA, particularly those that deal with competitor agreements or coordinated actions between CWTA members under the auspices of the CWTA. The Policy also provides CWTA staff and CWTA members with guidance and practical advice regarding behaviors and practices that are acceptable or unacceptable in CWTA meetings or activities.

It is critical that CWTA staff and CWTA members abide by these guidelines, which are designed to avoid not only actual wrongdoing but also the appearance of wrongdoing. To that effect, CWTA members should generally refrain from sharing with each other any confidential and/or sensitive commercial information such as pricing, capacity, expansion, business plans, etc. Moreover, any CWTA sanctioned agreement amongst members should be reviewed by CWTA's legal counsel early on to ensure that it complies with this Policy and the Act.

Please review the Policy carefully. Should you have any questions or concerns, please contact the CWTA's Director of Operations at 613-233-4888.

CWTA *Competition Act* Compliance Policy

I. Introduction

Purpose

The Canadian Wireless Telecommunications Association ("CWTA") is committed to complying with both the spirit and the letter of the Canadian *Competition Act* (the "Act") in a clear, continuous and unequivocal manner. The purpose of the *Act*, as stated in section 1.1 of the *Act*, is:

> ...to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

While CWTA has always been mindful of potential issues related to the *Act*, in order to formalize and ensure compliance with the *Act*, CWTA has adopted this *Competition Act* Compliance Policy (the "Policy").

This Policy is not intended to restrict the legitimate roles of CWTA as the industry's trade association. These roles include government relations, joint promotion/marketing of the industry, the development and promotion of legitimate standards, market and policy analysis, the administration of the Common Short Code initiative and Mobile Giving Foundation Canada through the Short Code Council, management and promotion of industry programs (e.g. Recycle My Cell – a national recycling program) and education/training programs. **However, since industry associations such as CWTA by their nature encourage contact and interaction between actual or potential competitors[1], their activities are inherently of interest to competition law enforcement agencies.**

The Policy describes: the structure of the *Act*, the sections of the *Act* of particular relevance to the CWTA and the types of infractions and offences that can lead to investigations, sanctions, and other potential consequences to CWTA, its Directors, executive/senior staff and members. The Policy also sets out guidelines and procedures designed to avoid potential or actual breaches of the *Act* and to appropriately deal with such breaches should they occur.

This policy is not meant to provide a comprehensive review of competition law or all potential competition law issues. Rather, it is intended to raise awareness of potential problem areas so that readers will be better able to recognize competition issues and take appropriate precautions, including seeking legal advice.

CWTA member companies[2] may also have corporate competition law compliance policies. This Policy is <u>not</u> intended to supersede or replace those policies, which continue to apply to member company employees when acting in their employment capacities. Rather, this Policy is intended to apply to member company employees when they are acting as CWTA Directors, committee members or attending CWTA functions.

Similar competition regimes exist in the United States and other developed nations. By adopting this Policy, CWTA aims to comply with the principles underpinning most international competition legislation.

Distribution

[1] All references to "competitors" in this policy includes "potential competitors".
[2] All references to "CWTA member companies" or "members" includes all current CWTA members, associates and affiliates as defined by the CWTA's Bylaws and rules of membership.

CWTA will distribute this Policy to all of its present:

- Members of the Board of Directors;
- Senior level staff, including all staff who manage or support CWTA committees and programs);
- Member company representatives participating on CWTA committees; and
- Member companies.

CWTA will also provide this Policy to new members of the aforementioned groups as they are hired or appointed. All individuals within these groups must, as a condition of their employment or appointment, familiarize themselves with this Policy and abide by its terms as amended from time to time. CWTA has also distributed a copy of this Policy to the legal representatives of its member companies.

Adoption

CWTA's Board of Directors endorsed and adopted this Policy on July 25, 2016.

II. Sections of the *Act* of Particular Relevance to CWTA

The *Act* is a federal law governing most business conduct in Canada. It contains both criminal and civil (reviewable) provisions aimed at preventing anti-competitive practices in the marketplace. The *Act* subjects anti-competitive conduct to a regime of investigation, adjudication and criminal and civil remedies. The *Act* is essentially composed of four sections:

1. A section dealing with the administration of the *Act;*
2. A section on criminal offences subject to direct prosecution by the Attorney General of Canada before Canadian courts. The offences under this section that are potentially the most relevant to CWTA are:
    - **Conspiracy:** When competitors or potential competitors enter into agreements or arrangements with respect to prices, allocations of markets or customers, or restrictions on supply. These types of competitor agreements are prohibited regardless of whether they have any impact on competition.
    - **Bid-rigging:** When, in response to a call or request for bids or tenders, two or more bidders secretly agree not to submit or to withdraw a bid, or two or more bidders agree to submit bids that have been prearranged among themselves. Joint or collaborative bids are generally permissible so long as the agreement between bidders is disclosed to the tendering party on or before submitting the bid.
    - **False or Misleading Representations:** When a person, for the purpose of promoting, directly or indirectly, any business interest (including the supply or use of a product or service), knowingly or recklessly makes or permits to be made a representation to the public that is false or misleading in a material respect. The general impression conveyed by a representation as well as its literal meaning is taken into account in determining whether or not the representation is false or misleading in a material respect.
3. A civil (reviewable) section on deceptive marketing practices. This section includes a provision that is nearly identical to the false or misleading representations offence noted above, except that the civil provision does not require proof that the representation was made "knowingly or recklessly" and liability

does not result in criminal sanctions. As is the case with the criminal offense, parties may be found liable of the civil provision if they made or permitted to be made the representation that is false or misleading in a material respect; and

4. A civil section on other reviewable commercial practices that can lead to review and orders to cease certain prohibited trade practices by the Competition Tribunal (the "Tribunal"). The Tribunal can also impose significant (up to $10 million for a first infraction) Administrative Monetary Penalties ("AMPS") in connection with certain practices. The reviewable practices are not always prohibited but they can be in certain circumstances where their effect is anti-competitive. The main reviewable practices are:

   - **Certain Types of Competitor Agreements** that are likely to substantially lessen or prevent competition. Whereas hard core cartel activity between competitors is prohibited under the criminal section, some competitor agreements (i.e. joint ventures, co-promotion agreements, buying groups) are acceptable and in fact may be pro-competitive depending on the circumstances. Where the Commissioner of Competition (the "Commissioner") believes such an agreement, which is not prohibited outright, is nevertheless likely to substantially lessen or prevent competition, he or she may seek an order from the Tribunal prohibiting the agreement.

   - **Abuse of Dominant Position:** When one or more persons substantially or completely controls a significant portion of a market engages in anti-competitive practices that substantially lessen competition in the market, or are likely to do so. Although not a criminal offence, a finding of abuse of dominance can lead to the imposition of AMPS. Notably, the Federal Court of Appeal has held that a trade association that does not participate in a market with its members can nevertheless be found to be dominant in that market, particularly when it acts on behalf of the majority of its members. The Competition Tribunal has observed that "[t]rade associations can exercise market power [and therefore be dominant in a market] in a broad range of ways, including by establishing or mandating product standards or other rules, by-laws or practices that insulate all or some of its members from one or more sources of actual or potential competition."

   - **Exclusive Dealing, Tied Selling and Market Restrictions:** When a supplier requires or induces a customer to: (a) deal only, or mostly, in certain products; (b) buy a second product as a condition of supplying a particular product; or (c) sell specified products in a defined market, the Tribunal may prohibit the practice if it is likely to substantially lessen competition;

   - **Refusal to Deal:** When a party is substantially affected in its business, or is unable to carry on business, because of the inability to obtain adequate supplies of a product on usual trade terms and this is likely to have an adverse effect on competition, the Tribunal may order a supplier to deal on usual trade terms;

   - **Price Maintenance**: Where a supplier imposes minimum resale prices for its products, the Tribunal may prohibit the practice if it is likely to have an adverse effect on competition.

III. Applicability of the CWTA Competition Law Compliance Policy

CWTA's composition and mandate mean that many of the *Act*'s provisions aimed at preventing anti-competitive practices are not relevant to its activities as an association, but may impact member company activities significantly. For instance, the sections dealing with deceptive telemarketing, deceptive notice of winning a prize, price maintenance, tied selling or mergers have little bearing on CWTA. For more

information on these sections, member company representatives are advised to contact their respective legal departments.

However, contacts and discussions amongst competitors within the wireless telecommunication sector are essential to CWTA's activities. This interaction between actual and potential competitors gives rise to a need for special caution with respect to any activities or discussions that may be (or may be perceived to be) in contravention of the sections of the *Act* prohibiting anti-competitive agreements or arrangements between or among competitors or certain cases of abuse of dominant position.

Therefore, CWTA, together with its directors, executive and senior level staff, and committee members must exercise vigilance to ensure that the avenues for important interactions that it provides to members are not used, or perceived to be used, in the furtherance of anti-competitive activities.

This policy applies to all activities that are conducted under the auspices of the CWTA. The policy is not meant to govern or apply to CWTA member's commercial activities that are not carried out under the auspices of the CWTA or sanctioned by the CWTA.

"Billing on Behalf of" Practices

As noted above, both the criminal and civil provisions of the *Act* dealing with false and misleading representations provide for liability in circumstances where a person makes or permits to be made a representation that is false or misleading in a material respect. This raises unique and complex compliance issues for the CWTA in respect of its participation in programs such as the Common Short Code initiative and the Mobile Giving Foundation where the CWTA's members act as the billing conduit for third parties (i.e., "billing on behalf of" practices). The CWTA, together with its directors, executive and senior level staff and committee members should not knowingly permit or allow false or misleading representations to be made by third parties who are engaged in billing-on-behalf-of activities.

IV. Limits on CWTA sanctioned agreements

Not all agreements between competitors are prohibited. Some agreements can be pro-competitive and are permitted under the *Act*. Great care must be taken when discussing any agreement to ensure it does not fall within the prohibited categories. Below are some guidelines as to which agreements should be discussed or not discussed. All agreements reached between CWTA members under the auspices of CWTA must be reviewed by CWTA's legal counsel before they are adopted.

Prohibited Agreements

Agreements between competitors, (whether they are oral or written, explicit or implicit), dealing with the following issues are prohibited (subject to the ancillary restraint defence discussed below):

- Prices, anticipated changes in prices, anticipated supply or price maintenance; terms of sales, offers or supply; profit margins, costs, or other indicators tied to prices;
- Allocation or limitation of territory in terms of either clients, geography or products; or
- Current or future levels of production, inventory, supply or demand.

Agreements that deal with the three above-mentioned issues indirectly may be permissible. This narrow exception known as the "Ancillary Restraint Defence" exists only where the terms of the agreement dealing with prices, market allocation or control of supply/production are ancillary and necessary to give effect to a broader agreement which is itself not unlawful. This is a complex area of law and legal advice must be sought early on in connection with any proposed agreement between competitors particularly if they may have any effect on prices, market allocation or production/supply.

Within the telecommunication industry, agreements are often made with governments, public or para-public entities. **The fact that a prohibited agreement is made with or otherwise sanctioned by a government, public or para-public entity may be a relevant defense, but it does not necessarily provide CWTA or member companies with immunity from prosecution.**

Agreements to Fix Prices or Terms of Sales

An agreement, (whether official or informal, or made directly or indirectly) between two or more competitors for the purpose of fixing the price at which the competitors sell a particular product is prohibited. The agreement does not need to mention a specific price to be illegal. Any agreement which artificially sets, stabilizes, increases or decreases prices or margins, or sets price ceilings and floors, is prohibited.

It is irrelevant whether: (a) prices decrease rather than increase; (b) that the agreed upon prices are reasonable; or (c) that the purpose of the agreement is to prevent ruinous competition; or (d) that the agreed upon prices are not uniform. It is also illegal for competitors to enter into agreements or arrangements regarding list prices, a pricing formula, price differentials, credit terms, or minimum or maximum prices. An agreement may be found to be illegal even if it does not mention prices. For instance, a competitor agreement on the standard terms of sales or on conditions of sales is prohibited.

Even mere exchange of sensitive commercial information between competitors (especially information relating to prices and margins) may be construed as steps towards an illegal price fixing agreement, especially if followed by the apparent alignment or coordinated movement of competitor prices. Unusual similarities in prices or conditions of sales together with exchanges of information could be construed as circumstantial evidence of a price fixing agreement.

Agreements to Allocate or Restrict Markets

An agreement, (whether official or informal, or made directly or indirectly) between two or more competitors for the purpose of restricting their respective markets is prohibited. Competitors must not enter into agreements restricting the types of products they offer or restricting their target markets whether by geography, retail venue or customer type.

Agreements to Limit Research or Supply

An agreement, (whether official or informal, or made directly or indirectly) between two or more competitors for the purpose of limiting research, development, capacity or the supply of products is prohibited.

Some agreements with respect to ensuring interoperability and common platform as between carriers are necessary and pro-competitive. These agreements are not always illegal but care must be taken at all times that any cooperation between competitors does not lessen or prevent competition but rather fosters it.

Permissible Agreements

Other types of agreements between competitors that do not pertain to prices, market allocations or control of supply are presumptively permissible unless they are likely to lead to a substantial lessening or prevention of competition. Generally speaking, agreements with respect to the following topics are permissible provided such agreements are not designed for the purpose of creating artificial barriers to entry into the market, giving some members a competitive advantage over others or to exclude competitors from the market. Any proposed competitor agreement under the auspices of CWTA must be reviewed by CWTA's legal counsel.

- Exchange of statistics

  Statistics and data, unless otherwise publicly available, should always be anonymized and presented in statistical (aggregated) form. There should be no member-specific price information disclosed and competitive information such as market share should remain anonymous. Data collection should be performed by either an independent third party or by CWTA staff who are not associated with any CWTA member.

- Defining product standards

  Developing and promoting industry standards, codes of practices and common terminology is generally acceptable and often pro-competitive especially when it enhances consumer protection and interoperability. However, the adoption of standards should not be used to restrict, lessen or prevent competition. Standards must be related to specific legitimate objectives and no more detailed or restrictive than necessary. Standards should not be used to create artificial barriers to entry into any particular market or to exclude competitors. Specifications for standards should be transparent and accessible. Compliance should be voluntary. Standards must not be used to prohibit the use of competing technology. Likewise, membership in CWTA is voluntary and based on clear and transparent criteria, i.e. membership is open to carriers (licensed by Industry Canada pursuant to the *Telecommunications Act*), to companies engaged in the supply of goods and/or services to the Canadian wireless industry, to companies engaged in the purchase and/or resale of bulk wireless services and to companies directly or indirectly engaged in the supply of products/services to the Canadian wireless industry. Membership in CWTA should not be used as a "standard", a pre- requisite or barrier to entry into a particular market or to exclude competitors.

- Cooperation in research and development

  Some cooperation with respect to common issues, particularly interoperability, is generally permissible so long as it does not lessen or prevent competition.

- Measures to protect the public/environment

  These are generally permitted. However, they cannot be used to create artificial barriers to entry into markets, to exclude competitors or otherwise lessen or prevent competition.

V. Limits on coordinated action between CWTA members

Abuse of Dominant Position

The ability to act independently and set or influence prices regardless of customers' or suppliers' demands or competitive pressures is referred to as dominance. It is, in essence, the power to over-price, which is assumed if a firm accounts for a dominant share of supply or demand.

Even though individual members may not be individually dominant, trade association members may be considered collectively dominant in a particular product market if four or fewer of them account for a large share of supply and if they have contacts with each other through the trade association. In such an oligopolistic market, parallel behavior that restricts competition or excludes or targets competitors might be found abusive even if there is no evidence of active collusion.

As soon as a dominant group's behavior has an anti-competitive object or effect, without objective justification, it may result in an investigation by the Competition Bureau. There is no need to demonstrate the existence of an agreement or collusion. Examples of possible abuse of dominance include:

- Imposing excessive or discriminatory terms on customers or suppliers
- Offering below-cost prices with a view to excluding competitors from the market
- Limiting production or technical development
- Refusing to supply parallel traders
- Refusing to supply competitors or customers with products that they need and cannot buy elsewhere, or
- Making supplies of a product a customer needs dependent on the purchase of a product or service that the customer does not want (tying).

These topics should generally not be discussed as between members under the auspices of the CWTA.

As noted previously, trade associations can also be considered dominant in a market, and therefore potentially liable for abuse of dominance depending on the circumstances, even though they may not directly compete in the market at issue. For example, a trade association may be considered to have abused its dominance if it substantially or completely controls a given market and establishes or mandates product standards or other rules that insulate all or some of its members from one or more sources of actual or potential competition.

VI. Consequences of Violating the *Act*

Infringements of the *Act* can have serious and disruptive consequences for CWTA and its member companies. They can lead to investigations by the Competition Bureau, the imposition of fines or imprisonment, injunctive-type orders or the imposition of AMPS by the Tribunal, or to damages being claimed from CWTA and/or its members in civil suits before Canadian Courts. Anticompetitive behavior in Canada can also lead to enforcement actions from foreign authorities if the actions are deemed to have had an effect on foreign markets.

Criminal Penalties

Criminal offences under the *Act* carry sentences of up to 14 years in prison and fines of up to $15 million. In price fixing cases, the authorities may seek prison sentences for the individuals who participated in the conspiracy.

Civil Actions for Damages

Customers, suppliers, competitors or others who are injured as a result of a criminal offence under the *Act* often sue the offending entity and its individual employees or members for damages. Although successful plaintiffs in Canada do not receive three times (or "treble") the amount of their actual damages as in the United States[1], some civil actions have resulted in substantial damages awards and settlements. In most Canadian provinces, class actions are available to litigants claiming injury from a criminal competition law violation or a violation of a Competition Tribunal order.

The availability of class-action lawsuits has increased the number of private actions filed and the leverage plaintiffs can exert on defendants (and by extension the amounts paid out in settlements).

Injunctions or Prohibition Orders

The authorities, and in certain circumstances private parties, may also initiate proceedings which may result in injunctions, consent orders or administrative orders prohibiting violators from engaging in specific types of activities. These orders can be issued by the Courts or the Competition Tribunal and can even go beyond the scope of the violations committed.

AMPS

The Tribunal, in addition to injunctive orders, can also impose AMPS against parties who abuse their dominant position or engage in certain deceptive marketing practices (up to $10 million for a first infraction and up to $15 million for subsequent offences).

Financial and Operational Costs of Litigation

Defending allegations of anticompetitive behavior can be extremely time consuming and expensive. In addition to legal fees, photocopying and electronic discovery costs, there is also the significant distraction and cost of senior employee time consumed in litigation. It is not uncommon in major litigation or

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[1] In the United States, the *Sherman Act* provides that a successful plaintiff in a competition (known in the U.S. as "anti-trust") law action is entitled to three times (treble) his actual damages. It should be noted that the fact that an anti-competitive act occurred in Canada is no defense from the reach of U.S. anti-trust litigation, if the act had the effect of lessening or impeding competition in a U.S. market.

investigations for executives and employees to be completely diverted from their normal responsibilities for weeks or even months. Investigators and/or plaintiffs are normally entitled to review all relevant hard copy and electronic documents of the respondent/defendant – a potentially cumbersome, disruptive and expensive procedure for both CWTA and its member companies.

The negative publicity generated by competition-related investigations and lawsuits, even when they are ultimately shown months or years later to be without merit, could significantly tarnish the industry's credibility, and impair CWTA's ability to effectively represent its members with governments, stakeholders, media and the public. The media's publication of a defendant's exoneration after the fact rarely matches the negative impact of an investigation, indictment or lawsuit.

VII. Compliance Guidelines and Procedures

In general, CWTA Directors, executive/senior staff and member company employees participating on CWTA committees should not disclose or seek to obtain specific commercially sensitive information that is not already publicly available or discuss commercially sensitive topics, such as:

- Prices, changes in prices or price lists, offers or pricing mechanisms;
- Terms of sales, terms of purchase, discounts, allowances;
- Profit margins, costs or other similar information relating to prices;
- Allocation or restriction of territory, clients, or markets;
- Sales or capacity, whether they be current or projected;
- Distribution practices;
- Bids or intents to bid;
- Selection/termination of customers[2];
- Marketing plans and initiative;
- Commercial decisions or activities in the marketplace[3]
  (Collectively referred to as "Commercially Sensitive Information").

Discussions related to Commercially Sensitive Information, or the exchange of Commercially Sensitive Information, may be perceived as inappropriate collaboration between competitors by competition enforcement agencies.

A list of do's and don'ts is attached as Appendix "A".

Meeting Guidelines

Meetings involving Member Company representatives should, whenever feasible, have a written agenda. The agenda should, at a minimum, specify the purpose of the meeting.

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[2] The Short Code Council has established guidelines that applicants must meet in order to be eligible for issuance of a Common Short Code. Members of the Short Code Council may discuss an applicant's compliance with the guidelines to determine the Applicant's eligibility, but each member of the Short Code Council makes an independent decision on whether to participate in any given Common Short Code program.

[3] Although two or more carriers must approve a Common Short Code application, each carrier is free and independent to decide whether it wants to participate in any compliant Common Short Code program.

Irrespective of whether there is a written agenda, all documents and notes relating to meetings involving member company representatives, including meeting minutes, should indicate and reference the specific purpose of the meeting.

Where any employee of CWTA or industry representative believes that the subject matter of a particular meeting could deal directly or indirectly with Commercially Sensitive Information, that person should ensure that the agenda and any other document or information that will be presented at the meeting is reviewed by the CWTA's Director of Operations (hereinafter "the Compliance Officer")[3].

If a meeting may pertain directly or indirectly to Commercially Sensitive Information, the convener should begin the meeting with a reminder of the Policy and a statement as to the legitimate purpose of the meeting. At every meeting where the subject matter could deal directly or indirectly with Commercially Sensitive Information, someone should be designated to keep minutes. Copies of the agenda, minutes and any documents circulated during the meeting should be retained for a reasonable period of time.

CWTA Directors, executive/senior staff and committee members should attempt to avoid discussing, disclosing or seeking Commercially Sensitive Information. Participants at CWTA meetings should also avoid discussions of company specific marketing initiatives, margins, costs, profitability, etc., unless such information is already public.

Participants at CWTA meetings are free to discuss and come to understandings and agreements with respect to industry policy positions that need to be communicated to various levels of government in order to advance industry interests (through legislative or regulatory initiatives, assistance to the industry, or trade negotiations with other governments). However, such discussions and agreements with respect to public policy should be kept on an industry wide level as opposed to the company specific level, and should generally not refer or be premised upon Commercially Sensitive Information.

In the event a particular meeting topic raises or is likely to raise competition issues, discussions of that topic should be adjourned until the issues and concerns have been reviewed by CWTA's Compliance Officer to determine whether discussions can proceed and, if so, what if any precautions need to be implemented. In the event competitive or Commercially Sensitive Information may have been discussed or disclosed, the incident should be promptly reported to CWTA's Compliance Officer.

Any CWTA government relations initiative, response to consultations, or submission to public authorities containing Commercially Sensitive Information should be reviewed by CWTA's Compliance Officer to ensure compliance with this Policy. Similarly, any proposed CWTA agreement with third parties or CWTA policy that deals with Commercially Sensitive Information or that may potentially raise competition law issues should be reviewed by CWTA's Compliance Officer to ensure compliance with the Policy.

Communications

External communications to CWTA members, government entities or other parties may make policy arguments and communicate CWTA's position on various issues. However, such communications should not advocate specific commercial actions in the market(s) by CWTA members, their customers or suppliers (such as refusal to deal or boycotts).In the event of an investigation or legal action, any and all relevant internal communications could be subject to a warrant, production order or disclosure obligation.[4]

[3] See Section IX of this policy for the duties and responsibilities of the CWTA's Compliance Officer.

These include e-mails, minutes, agendas, memos, calendars, presentation notes, and expense reports. In order to avoid the appearance of anti- competitive behavior or agreements, CWTA members, their employees and CWTA staff should avoid any language which could be misconstrued as suggesting a lessening of competition, sharing of Commercially Sensitive Information or an intention to manipulate markets or injure competitors. For instance, references to "controlling" supply, demand or markets immediately raise concerns, as do references to "eliminating" competitors or "driving them out of the market" or "controlling/cornering the market". All written communications, particularly those which concern Commercially Sensitive Information, should be accurately and carefully written.

VIII. Training

Initial training with respect to this policy and the *Act* will be provided to all senior CWTA staff who support or manage CWTA committees or programs as well as committee chairs. New staff or committee chairs will be trained by CWTA staff. In addition, a refresher course will be provided annually.

All CWTA staff that undergo compliance training will be required to execute a copy of the Certification Letter attached as Appendix "B" to this policy.

IX. Compliance Officer

The CWTA's Board of Directors has designated the Director of Operations as the Compliance Officer for the purposes of this policy. The duties of the Compliance Officer shall include the ongoing development and enhancement, implementation and maintenance of this policy, answering any questions and/or addressing any concerns from CWTA staff or member representatives regarding the policy, and generally fostering a culture of compliance within the CWTA. Where appropriate, the Compliance Officer may consult legal counsel to ensure the CWTA's continued compliance with the letter and spirit of the *Act*.

The Compliance Officer shall be responsible for conducting an annual competition law risk assessment and evaluation to address the following issues:

- assess potential compliance issues with respect to the Act and this policy;
- identify areas of operation within the CWTA that may raise unique compliance issues as well as employees that may be exposed to greater compliance risk as a result of their duties and responsibilities;
- develop appropriate and effective strategies (with the assistance of CWTA's counsel, where appropriate) to address any identified compliance issues and/or assist employees exposed to greater compliance risk; and
- revise and enhance this policy and/or the CWTA's practices and procedures as they relate to competition law, where appropriate.

Any changes to this policy and/or the CWTA's practices and procedures as a result of the annual risk assessment and evaluation will be promptly communicated to all affected CWTA staff.

The Compliance Officer shall also be responsible, on an ongoing basis, for monitoring and assessing compliance with this policy as well as for new competition law risks that may arise during the course of business, and to develop appropriate and effective strategies to properly address any such risks.

Finally, the Compliance Officer shall provide a quarterly report to the CWTA's Board of Directors with respect to the CWTA's compliance with this policy, including with respect to the annual risk assessment and audit discussed above. Any and all instances of non-compliance with the policy and/or the *Act* shall be reported promptly to the CWTA's President & CEO, as well as to the Board of Directors where appropriate.

X. Monitoring and Reporting Mechanisms

All members of the CWTA Board of Directors, CWTA executive/senior level staff, and member company representatives participating on CWTA committees, collectively share the responsibility for ensuring that this Policy is enforced at all times. Given that the Policy cannot cover every conceivable situation or issue that may arise, members of the above groups are responsible for adhering to both the letter and the spirit of this document. Any contraventions or perceived contraventions of this Policy and/or the *Act* should be reported immediately to the CWTA's Compliance Officer, who in turn will take appropriate action depending on the circumstances to address and resolve the situation.

Any breach of the Policy can lead to disciplinary measures against the responsible individual(s) including their dismissal or their removal from office or their expulsion from CWTA committees or CWTA altogether. Actual or potential breaches of the Policy must not be tolerated or ignored. They should immediately be reported to CWTA's Compliance Officer. Delays in reporting any breaches may significantly compromise CWTA's ability to effectively deal with these situations and to protect the legal rights of CWTA, its Board of Directors, executive/senior staff and member companies.

XI. Investigations

CWTA is committed to cooperating with the governmental authorities mandated with enforcing the *Act*. However, in doing so, it is imperative that the legal rights of CWTA, its directors, employees and members (and their employees) be protected. Any CWTA Director or employee who is contacted by the Competition Bureau[5] or any other government enforcement agency in relation to CWTA's activities is not obliged to grant voluntary interviews to those agencies. Any questions or requests for interviews should be referred to CWTA's Compliance Officer.

[4] Only communications between CWTA and its legal counsel are generally protected by privilege. Labeling a document as privileged or confidential or personal or any combination thereof does not in itself protect the confidentiality of the document if the document is relevant to the allegations of misconduct.

[5] The Competition Bureau is an independent federal law enforcement agency responsible for the administration and enforcement of the *Act*. It has wide investigative powers which include subpoenas and search warrants. It investigates both criminal and civil breaches of the *Act*. It often collaborates with and assists foreign anti-trust/competition authorities.

Any CWTA member company or employee thereof who is contacted by the Competition Bureau or any other governmental enforcement agency in connection with CWTA's activities should immediately advise his employer's senior legal representative who, in turn, is encouraged to advise CWTA's Compliance Officer at the earliest appropriate opportunity.

Members are encouraged to report to CWTA's Compliance Officer, at the earliest appropriate opportunity, any communication from any source which suggests that an investigation or litigation is being contemplated or underway in relation to CWTA activities.

XII. Modifications to the Policy

In the event of amendments to the *Act,* or any other significant development that may affect CWTA's rights and obligations, this Policy will be modified accordingly. Any modifications will be brought to the attention of CWTA's Board of Directors, executive/senior staff, and member company employees sitting on CWTA committees.

Please contact CWTA's Compliance Officer if you have any questions with regard to this Policy.

As adopted by the CWTA Board of Directors:
July 25, 2016

APPENDIX "A"

LIST OF DO'S AND DON'TS

Do's

☑ Do immediately terminate inappropriate discussions or meetings between CWTA members and advise all concerned that the topic is inappropriate.

☑ Do notify CWTA's Compliance Officer of any improper discussions/meetings as between CWTA members.

☑ Do document legitimate purposes for meetings through agendas and minutes.

☑ Do arrange for CWTA's legal counsel to be present at meetings that might raise competition issues. Members may also want to have their own counsel present.

☑ Do consult CWTA's legal counsel before issuing joint positions with respect to any issues dealing with prices/rates or other commercially sensitive issue. Members may also want to consult their own counsel.

☑ Unless the information is otherwise publicly available, do anonymize and aggregate member data and statistics whenever possible.

☑ Do consult CWTA's Compliance Officer or member company counsel if you have any questions or concerns about a particular issue you think might raise competition issues.

☑ Do consult CWTA's Compliance Officer before discussing/proposing any new CWTA sanctioned agreement between members that has not already been approved.

Don'ts

☒ Do not agree to joint action or position with respect to CWTA sanctioned commercial activities without first reviewing with legal counsel.

☒ Do not discuss the following company specific confidential information at CWTA meetings:

a. price lists;
b. price quotes;
c. pricing policies;
d. discounts;
e. allowances;
f. terms or conditions of sale;
g. credit terms (with limited exceptions);
h. commissions;
i. profits, profit margins or costs;
j. sales, capacity or shares of the market;
k. bids or intent to bid or not bid for a contract;

l. sales territories, or division of territories;
m. selections, rejections or terminations of customers except in very specific pre-approved circumstances such as the Short Code Council;
n. allocating customers or dividing markets for the production, distribution, sale or purchase of any product;
o. business strategies, future plans;
p. product development or investment in research and development programs which are not widely known;
q. competitive strengths and weaknesses of individual members in particular areas;
r. company specific market share data.

☒ Do not tolerate or foster “off-the-record” or “cocktail” conversations or “gentlemen’s agreements” as between CWTA members. All CWTA sanctioned agreements should be transparent and clearly documented.

☒ Do not use in CWTA materials overly aggressive language (i.e. we will dominate market, crush competition, support prices, etc.) or use ambiguous language that can be misinterpreted.

APPENDIX "B"

CERTIFICATION LETTER

I, _______________, of the City of _______________, am employed by the CWTA in the capacity of _____________________________. I acknowledge that I am subject to and am required to comply with the CWTA's *Competition Act* Compliance Policy (the "Policy").

This is to advise that I have read and understand the Policy, the goal of which is to promote ethical conduct and compliance with the *Competition Act*. I understand that compliance with the Policy is a condition of my continued employment with the CWTA and that failure to comply with the Policy may result in disciplinary action, including termination of employment. I also understand that this certification letter is not a guarantee of continued employment with the CWTA.

Date:

Employee Name:

Employee Signature:

Witness name:

Witness Signature: