

TRANSPORT FOR LONDON

AUDIT COMMITTEE

SUBJECT: COMPETITION LAW – NEW GUIDANCE

DATE: 7 MARCH 2012

1 PURPOSE AND DECISION REQUIRED

1.1 The purpose of this paper is to advise the Committee on TfL’s response to the Office of Fair Trading’s guidance “Company Directors and Competition Law” (the Guidance).

1.2 The Committee is asked to note the paper.

2 THE GUIDANCE

2.1 In June 2011, the Office of Fair Trading issued guidance on competition law compliance. There has been no change to the relevant legislation; rather, there is now guidance on the ways in which directors can protect their companies from competition law breaches and themselves from disqualification under the Company Directors Disqualification Act 1986.

2.2 The methodology used in the Guidance of identifying, assessing, mitigating and reviewing risks mirrors the approach taken in the guidance on the Bribery Act 2010, which was considered by the Committee at its meeting on 15 June 2011.

2.3 The Guidance is addressed to directors of companies appointed under companies legislation. TfL ought generally not to be susceptible to being involved in the main activities on which competition law bites such as bid rigging, price fixing and other cartel behaviour, as TfL is not generally operating in a competitive supply market. Nevertheless, taking a prudent view, it is appropriate for TfL to ensure that there is an appropriate level of awareness and activity across the organisation in this regard.

3 TFL’S RESPONSE

3.1 TfL already has a number of measures in place providing controls that relate to competition law, including providing guidance for procurement teams on identifying and avoiding bid rigging (cover pricing), and TfL’s general requirements for competitive procurement arising from TfL’s own Standing Orders as well as procurement regulation. TfL’s standard contracts provide that breaches of legislation are events of default, giving a course of action against contractors who are shown to have engaged in behaviour contrary to competition law.

- 3.2 TfL is not generally active in supply markets and is not, therefore, considered to be materially at risk of breaching competition law.
- 3.3 Nevertheless, to reinforce good practice and endorse a culture of compliance as recommended in the Guidance, it is being brought to the attention of all staff with managerial responsibilities through an online briefing, which recommends the following behaviours and actions:
- (a) having an understanding of what competition law encompasses – the Office of Fair Trading has produced a guide that provides a useful overview;
 - (b) questioning (and encouraging others to question) practices which may seem risky in competition law terms;
 - (c) considering and paying particular attention to any areas within their responsibility that are likely to be susceptible to competition law issues;
 - (d) seeking legal advice when dealing with issues that may have competition law implications; and
 - (e) for completeness, it is expected that no employee will actively contribute to a breach of competition law and that all employees would prevent or report (depending on the seniority) any breach by another colleague. If any employee wishes to raise any issue of this sort anonymously, they should use TfL’s confidential reporting line SafeLine.

4 RECOMMENDATION

- 4.1 The Committee is asked to NOTE the paper.

5 CONTACT

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