CREFC EUROPE

COMPETITION COMPLIANCE POLICY STATEMENT

Introduction

It is the policy of the Commercial Real Estate Finance Council Europe (**CREFC Europe**) to govern its activities in compliance with UK and European competition laws. CREFC Europe also acknowledges that the UK's Competition and Markets Authority (**CMA**) and the European Commission (**EC**), together with other competition authorities, have become increasingly focused on competition enforcement in the financial services sector.

Through the adoption and issuance of this policy statement, CREFC Europe reconfirms its intent to abide by the spirit and the letter of UK and EU competition laws. This statement sets out guidelines that all CREFC Europe officers, directors, employees and members must follow. It applies both to activities within CREFC Europe and any joint activities that involve CREFC Europe with other entities, trade associations and the like. Moreover, CREFC Europe's officers, directors, employees and members will ensure that persons working for them also comply with this policy statement as actions taken by individuals purporting to speak or act on behalf of CREFC Europe can result in liability for CREFC Europe itself.

Compliance with competition law is crucial to any trade association. Competition law violations can lead to significant fines and damages actions for the association and/or members concerned, and fines, imprisonment and/or director disqualification for individuals. Competition proceedings and litigation are expensive and burdensome even when ultimately successful. Moreover, mere allegations of wrong-doing can harm an association's reputation and impair its ability to serve its legitimate role as a spokesperson and forum for information on important issues affecting its members.

CREFC Europe will deal with violations of this policy statement with appropriate action tailored to the circumstances of the particular violation.

This policy statement is necessarily general in nature and cannot anticipate every legal issue or fact pattern that might be faced by CREFC Europe, its members, or its staff. Therefore, it is important that individuals consult CREFC Europe's secretariat who shall in appropriate cases seek legal advice when questions arise as to this policy's application. Additionally, any person who knows of or suspects a violation of this policy statement should immediately inform CREFC Europe's secretariat.

This policy statement shall apply to all meetings involving CREFC Europe, whether or not it is represented through members or staff. Each such meeting should be conducted in accordance with the *Meeting Guidelines* attached at Annex 1 to this statement. CREFC Europe shall ensure that the attendees at every meeting, seminar or conference organised or sponsored by CREFC Europe where two or more competitors are present, including every meeting of the Board of Directors, Board of Advisors, committees or working groups, are reminded of the principles in this policy statement and specifically those set out in the Declaration attached at Annex 2.

Where CREFC Europe has not organised or sponsored the event, for example where its staff or members represent the organisation at an external conference or seminar, CREFC Europe's representatives and members shall apply the principles set out in this policy statement and remain vigilant to competition law risks. In particular, CREFC Europe's representatives and members shall review the event agenda in advance

and alert the organisers to any competition law concerns they may have, ensure that the event follows the approved agenda, and not engage in any discussions or behaviour that violate this policy.

UK and EU Competition Laws

UK and EU competition laws prohibit all agreements, decisions and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition. In particular, they prohibit agreements, decisions or concerted practices which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control markets, technical development, or investment; and/or

(c) share markets or sources of supply.

UK and EU competition laws also prohibit any abuse by one or more undertakings of a dominant position.

NB: Certain exemptions may be available under UK and EU competition laws in particular circumstances, and the UK and EU competition authorities also publish guidance from time to time clarifying their approach to application of competition laws in certain contexts. Guidance which is focused on the application of competition laws to sustainability agreements is considered further on pages 8 and 9 of this policy.

Compliance with the Competition Laws

Because a trade association is, by definition, a joint activity engaged in by persons within the same industry (including actual and potential competitors), special care must be taken to avoid any action that could be questioned under the competition laws. In particular, CREFC Europe, its officers, staff, members and anyone acting on its behalf should be aware of the following key areas of competition risk:

A. Discussion of market pricing (or price elements) that may entail, or be perceived as entailing, price fixing;

B. Other information exchange, including industry surveys or joint responses to regulators, that may involve, or be perceived as facilitating coordination between competitors;

C. Standard setting, including best practices, where this may give rise to restrictions on competition;

D. Boycotts, refusals to deal and exclusions from membership in CREFC Europe which are not justified by objective and legitimate reasons; and

E. Any other activities that may involve, or be perceived as involving, the making of market allocations and/or the placing of restrictions on access to markets or the output of financial products or services.

A. Discussion of market pricing (or price elements) that may entail, or be perceived as entailing, price fixing

There is a risk of discussions at CREFC Europe meetings giving rise to, or being construed as facilitating, an agreement by competitors to fix prices. "Price fixing" in this context means any agreement between competitors or potential competitors to fix, control, coordinate, maintain or otherwise affect the prices, or the elements of a pricing policy (for example the rates, costs, credit terms, margins, dates of change or other elements), of commercial real estate financing products or related services. These may include, but are not limited to, prices related to (or pricing elements of) commercial mortgages, commercial mortgage backed securities, the securitisation of commercial mortgages, bilateral loans, syndicated loans, sub-participated debt, mezzanine loans, development finance, and other secured loan or capital markets products or financial products associated therewith.

Price fixing is unlawful regardless of whether the parties to the agreement are buyers or sellers, and whether the price is a maximum price or a minimum price. **An agreement among competitors to raise, lower, or stabilise prices will be unlawful even if the price agreed upon is reasonable or beneficial to consumers and even if the agreement is never put into effect.**

Meaning of illegal "agreement"

To prove that competitors have colluded to fix prices, it is not necessary to show either a formal, written agreement or an agreement that deals specifically with the level of prices. **An improper agreement can be formal or informal, oral or written, and can arise from a single or multiple contacts**. Any consensual arrangement that limits the commercial freedom of either party can be considered an illegal agreement, even if it is not binding in law (e.g. a "gentleman's agreement").

An unspoken understanding can also amount to an implied agreement. Note that **an unspoken understanding can arise from the discussion of pricing information followed by parallel conduct**. Parallel conduct is not in itself an issue since it is often due to lawful market conditions. However, if competitors have communicated in some way in the past that they will not compete on price, then each knows that there will be no risk in a price increase. It is this element of collusion that can make such parallel conduct illegal.

Dos and don'ts for CREFC Europe meetings

The exchange of information on prices or pricing intentions between competitors may lead to price coordination and therefore diminish competition which would otherwise be present between them. Accordingly, competition authorities closely scrutinise the activities of trade associations, given that they provide a forum for discussion between competitors and have in the past often been used to enable or conceal price-fixing. Moreover, communications between competitors in the financial services sector are currently under particular scrutiny from competition authorities worldwide. In light of these risks, **discussions at CREFC Europe meetings or events concerning pricing or price-elements should as a general rule be avoided**. Where such discussions arise (which should be limited to legitimate circumstances such as the preparation of joint industry submissions to a regulator), they should be conducted strictly according the conditions outlined below, and always mindful of possible competition law risks.

Pricing information that should never be shared or discussed at CREFC Europe meetings or events

Price or price-related information which, if disclosed to competitors, could reduce uncertainty in the market and therefore enable competitors to adjust their own strategy or pricing should never be shared or discussed between competitors. Accordingly, where two or more competitors are present at a CREFC Europe meeting or event, **current (including very recent) and future pricing or price-related intentions or strategy should not be shared or discussed.**

For the avoidance of doubt:

(a) Current or future pricing information should not be discussed even if the information has already been publicly disclosed or is derived from publicly available data. European competition authorities have recently determined that unilateral statements on future strategy made in public by individual operators (for example, at conferences, in interviews for specialised industry magazines or even in generic price announcements in letters to customers) can –on their own– be used as a means by which market players can coordinate their behaviour (i.e. even without discussion). Thus the subsequent *discussion* of such information by competitors is even riskier and could be perceived as facilitating the coordination of conduct.

(b) Current or future pricing information should not be discussed even if the information is just "rumour" or "speculation" regarding specific companies or where the market is headed, seemingly discussed out of curiosity. The competition authorities are likely to assume that any discussion between competitors concerning current pricing or future intentions is designed to reduce uncertainty in the market and therefore treat it as unlawful.

(c) The rule applies to discussions between competitors of joint price-related responses to what may be perceived as a common problem (e.g. to regulatory changes or market issues). Therefore the preparation of joint responses by members of CREFC Europe should always follow the principles outlined in Section (B) below.

(d) These principles also apply to other elements of business strategy or competitive information (e.g. market shares, product launches, marketing strategies etc.), which if shared or discussed by competitors could reduce competitive uncertainties in the market.

Guidelines for permissible pricing information exchange

As explained above, discussions at CREFC Europe meetings or events concerning pricing or price-elements should as a general rule be avoided. CREFC Europe acknowledges, however, that there may be circumstances where pricing discussions are required to take place for legitimate reasons, for example in the context of a conference assessing the health of the industry. In such circumstances, the following guidelines shall be followed:

(a) Price or price-related information exchanged shall be limited to historical information that could no longer realistically be expected to affect competition between competitors in the industry. The more recent or current the information exchanged, the more likely that exchange will be deemed to affect competition.

(b) A presentation by an outside speaker showing historical pricing trends should not in itself raise significant competition law risk. CREFC Europe shall however ensure that all speakers (including

external speakers) at its meetings or events are familiar with the principles in this policy and shall ask speakers to review their presentations from a competition law perspective to ensure they do not contain future pricing information. Speakers shall be made aware that any forecasts should be general and vague (e.g. statements such as "I would expect rates to increase / decrease" or "hedge funds are expected to drive down margins" should be permissible). However, forecasts should never contain figures or specifics (e.g. "I would expect rates to increase / decrease to around X" or "hedge funds are expected to drive down margins by X").

(c) CREFC Europe acknowledges that discussions of historical pricing information often lead to discussions of future pricing. Accordingly, the exchange of historical pricing information should be limited to unilateral presentations, and follow-up discussions between competitors should be avoided. Where they arise, discussions should be carefully monitored to avoid competition law risks.

(d) CREFC Europe acts as a legislative and regulatory voice for market participants within the commercial real estate financing industry. In this role, it may be required to gather pricing or price-related information from participants, in order to prepare legitimate industry surveys or joint responses to regulators or government bodies. In so doing, CREFC Europe shall ensure that the principles set out in Section (B) below are followed in the gathering and dissemination of commercially sensitive participant information, including pricing information.

(e) For the avoidance of doubt, at times CREFC Europe staff may also visit individual companies to discuss issues affecting the commercial real estate financing industry. These meetings *may* include discussions of a particular company's pricing, product development, market strategy (either in terms of products or geographic regions) or competitive strategy in general, provided that no such information shall be shared with any of that company's competitors. When collecting individual company data, each firm should be informed that its information will not be passed along to other companies during other company visits and that, if aggregate data or examples are used by CREFC Europe, no individual company will be identified and the precautions set out in Section (B) below will be followed.

Given the sensitivity of this issue, advance legal clearance should be obtained if there are any doubts concerning the permitted scope of discussions at CREFC Europe meetings or events.

B. Other information exchange, including industry surveys or joint responses to regulators, that may involve, or be perceived as facilitating coordination between competitors

As discussed in Section (A) above, the exchange of pricing information between competitors – for example at CREFC Europe's meetings – may lead to illegal price co-ordination.

CREFC Europe, its staff and its members should also remain alert to the competition law risks which may arise through other forms of information exchange. Many of CREFC Europe's activities will have little effect on competition and therefore not be caught by the competition laws. However, in its role as a legislative and regulatory voice for market participants in the commercial real estate financing industry, CREFC Europe needs to ensure that the compilation and distribution of industry information, for example, in the context of an industry survey or joint member response to a regulator, complies with competition law principles and does not facilitate the coordination of competitors' behaviour or pricing.

In particular, the following precautions should be observed:

(a) To ensure that illegal information exchange does not occur between individual competitors and that the sensitive information of competitors remains confidential, the collection, handling and dissemination of participant information should be managed by an **independent third party**.

(b) There should be a **sufficient number of respondents** to enable concealment of respondents' identities and no respondent should represent a significant amount (e.g. more than 25%) of a weighted basis for any given statistic.

(c) The information **obtained** from participants to the survey (or joint response) should as a general rule be historical. Whether data is sufficiently historical will depend on the circumstances and it needs to be asked in each case whether the information is sufficiently old enough to no longer pose risks to competition.

  (i) Current information may be gathered from participants, but it may only be disseminated once it has become sufficiently historical.

  (ii) If future information is gathered from participants, it should as a general rule be vague in nature – e.g. "Our company expects margins will increase over the next year" rather than "we expected margins will increase by / to X". Specific future information, such as actual projected *figures* or *dates* should generally not be gathered.

  (iii) In very limited circumstances, in particular where there are many participants to a survey who operate at different levels of the industry (i.e. it is not limited to competitors), it may be permissible to gather more specific future information (e.g. projected figures or specific intentions) for the purposes of conducting research or preparing a confidential response to the regulator. *However*, such specific data should never be disseminated to the participants or the market, including in the form of an average figure. In all cases, the dissemination of information to industry participants should follow the principles in point ((d).) below.

(d) With respect to the **dissemination** of the surveyed data to industry participants:

  (i) Information should be sufficiently aggregated such that it would not allow recipients to identify the data provided by any particular respondent.

  (ii) Where current (including very recent) information has been gathered, this should only be disseminated once it has become historical (e.g. several months later).

  (iii) Where future information has been gathered, this should only be disseminated in general and vague terms – e.g. "participants to the survey expected rates to decrease". Specific projections or intentions (i.e. figures, ranges or dates) should never be disseminated (e.g. "participants to the survey expected rates to decrease to around X-Y").

(e) The above precautions should also be taken with respect to the collection and dissemination of sensitive non-price information which could, if associated with a particular competitor, reduce market uncertainties and potentially affect other companies' competitive strategies.

C. Standard setting, including best practices, where this may give rise to restrictions on competition

Industry self-regulation through standard-setting initiatives (e.g. the establishment of best practice guidelines or standard terms) can, among other things, help to establish a baseline for product or service quality in an industry, enhance technical compatibility among the products of different manufacturers, improve product safety and efficacy, and ensure that firms adhere to basic rules of business ethics. Because the adoption of uniform standards may restrain competition on the standardised features, however, the process can raise competition concerns. Standard-setting efforts can dampen key aspects of market competition by denying consumers the choice of non-standardised products or services, can serve to exclude or discipline firms that pose a competitive threat, and can provide a forum for unlawful collusion.

In order to ensure that standard-setting activities remain well within the competition bounds, CREFC Europe should clearly articulate the pro-competitive objectives to be achieved at the outset of the standard-setting process (i.e. the benefits for consumers or customers and/or the economy which the standards are designed to achieve).

CREFC Europe should ensure that all standards and standard terms are objectively developed and reasonably designed to achieve the stated pro-competitive objective(s), in other words that:

(a) All interested parties are afforded some opportunity to participate in the standard-setting process. Participation in the establishment of standards and standard terms should be unrestricted for competitors in the industry (e.g. by ensuring it does not unfairly exclude members from joining or participating in CREFC Europe – see further Section (D) below);

(b) Standards or standard terms do not restrict companies' behaviour more than is necessary to achieve the desired pro-competitive benefits;

(c) Standards or standard terms are not binding;

(d) Standards or standard terms are effectively accessible for anyone in the industry; and

(e) Adequate records are maintained on the process and basis for any decision to adopt a specific standard.

Standard terms or agreements that follow the above principles are generally not likely to give rise to restrictive effects on competition, however CREFC Europe should remain vigilant to standards creating an opportunity for or giving rise to anti-competitive behaviour, such as the common application of standards by members resulting in a *de facto* alignment by competitors in relation to areas where they should be competing (e.g. pricing, product choice, strategy etc.), or a negative impact on product choice, quality, variety or innovation.

D. Unjustified boycotts, refusals to deal and exclusions from membership in CREFC Europe

<u>Boycotts and refusals to deal</u>

Boycotts and concerted refusals to deal may be unlawful. Accordingly, CREFC Europe must not suggest to its members, directly or indirectly, that they should or should not do business with certain third parties. Similarly, CREFC Europe must not create "blacklists" of companies engaged in disfavoured practices, nor suggest or foster agreement as to specific methods of dealing with certain companies.

These restrictions do not mean that CREFC Europe is powerless to express views on industry practices. CREFC Europe may, for example, express its views on the adoption of standardised forms or contractual provisions, or generalised practices of the commercial real estate financing sector. However, any CREFC Europe decision to discuss trade abuses in the industry or to recommend improved practices must be carefully considered and analysed pursuant to these principles. It may be appropriate to seek legal advice in relation to any such statement prior to its issuance.

Refusing or terminating membership, or restricting access to meetings/activities

Legitimate criteria for admitting new members into trade associations are acceptable under competition laws. CREFC Europe shall ensure that it applies objective and reasonable association rules and criteria for admission of new members, and does not exclude otherwise qualified third parties from membership.

CREFC Europe shall be permitted to reject a potential member, to terminate a membership and/or to restrict a member's right to participate in meetings or association activities, provided that it has objective, reasonable and legitimate reasons for doing so and applies the rules and criteria fairly and neutrally (i.e. does not favour certain members over others). Whether a reason is legitimate will depend on the specific circumstances of the case. CREFC Europe's secretariat should always consider whether CREFC Europe's decision or action might amount to (or could be perceived as) an illegal boycott of or refusal to deal with a particular third party, and legal advice should be sought in cases of doubt. CREFC Europe should never reject or terminate a member's membership or exclude them from participating in meetings and other initiatives because of their competitive activities or as a result of commercial disputes.

E. Other activities that may involve, or be perceived as involving, market allocations and/or restrictions

Finally, CREFC Europe shall not engage in any efforts to divide customers, allocate territories or markets, restrict sales volumes or in any way agree to control members' output of financial products or services.

Guidance on Sustainability Agreements

Certain activities undertaken by CREFC Europe may have a focus on sustainability. In this context, it is relevant that the UK's CMA and the EC have each published guidance on their approach to the application of competition laws to sustainability collaborations.

In October 2023, the CMA published its final 'Green Agreements Guidance'. The Guidance applies to environmental sustainability agreements, which "*captures agreements between competitors which are aimed at preventing, reducing or mitigating the adverse impact that economic activities have on the environment or assist with the transition towards environmental sustainability*." Examples are agreements aimed at improving air or water quality, conserving biodiversity and natural habitats or promoting sustainable use of raw materials. Broader societal objectives such as improving working conditions are excluded. A sub-set of 'Climate Change Agreements' sits under the environmental sustainability agreements definition and covers agreements which contribute to combating climate change, including agreements contributing towards the UK's binding climate change targets. Importantly for the financial sector, this category also includes agreements not to provide support such as financing or insurance to fossil fuel projects.

The EC has likewise published a revised block exemption regulation which includes updated guidelines for horizontal cooperation agreements (Horizontal Guidelines). The Horizontal Guidelines became effective on 1 July 2023 and include a chapter on sustainability agreements. The concept of 'sustainability' agreement is broader in the EU than the UK and also encompasses social objectives such as labour and human rights.

The Guidance and the Guidelines are not precisely the same, though they cover the same broad areas, including clarifying that firms and trade associations can rule out concerns about competition law compliance where agreements have no effect on the way they compete (e.g., campaigns to raise industry awareness of sustainability issues), and that businesses should not be concerned where agreements do not appreciably restrict competition in practice. The regulators have also provided helpful guidance on industry standard-setting (laying out certain procedural criteria which should be followed). Where agreements could restrict competition appreciably (e.g. by increasing prices, reducing output or restricting variety), the Guidance and the Guidelines provide for an exemption route to relevant competition law prohibitions, if certain conditions are satisfied. Further detail on the criteria and their application is available in the Guidance and Guidelines.

Copies of these documents are publicly available on the regulators' websites. Competition law advice should continue to be sought in respect of specific initiatives, as needed.

Conclusion

This policy statement is designed as a general statement of competition principles. However, no policy statement can anticipate each issue that will arise in the course of a trade association's activities. Therefore, CREFC Europe, its members and its staff should remain vigilant and continually conscious of competition concerns. If there is any doubt about particular conduct, it should be brought to the attention of the secretariat if necessary, and legal advice should be sought if the secretariat considers that appropriate.

ANNEX 1
COMPETITION GUIDELINES

General Guidelines

CREFC Europe, its officers, staff, members and anyone acting on its behalf:

1. Shall not engage in any collective effort by competitors to fix, control, coordinate, maintain or otherwise affect prices, elements of price (including margins) or other terms of competition;

2. Shall not suggest or encourage anyone to refrain from doing business with any third party;

3. Shall not encourage or facilitate any attempt to divide customers, allocate territories or markets, restrict sales volume, or in any way cause a member to alter its output of financial products or services;

4. Shall not engage in, encourage or facilitate the discussion by competitors of current or future pricing or price-related intentions or expectations; and

5. Shall ensure that membership is open to anyone meeting the criteria set forth in Article 10 of CREFC Europe's Articles of Association and complying with such formalities as may from time to time be required pursuant to Article 12 of those Articles, provided that CREFC Europe shall be permitted to reject a potential member, to terminate a membership and/or to restrict a member's right to participate in meetings or activities, if it has objective, reasonable and legitimate reasons for doing so and has applied the abovementioned criteria fairly and neutrally.

Survey and Information-Exchange Guidelines

1. Participation in any information or data collection shall be voluntary;

2. All individual submissions shall be kept strictly confidential;

3. All individual submissions shall be discarded after their incorporation into the intended association report;

4. Any publication of collected data should be in an aggregated form that prevents the identification of member-specific competitive information;

5. CREFC Europe members should not exchange any information that allows them to identify another competitor's competitive information;

6. Information gathered and exchanged should as a general rule be sufficiently historical and non-sensitive to not pose a risk to competition, and should be sufficiently aggregated to conceal the identity of individual respondents.

    i. Where current (including very recent) information has been obtained by the third party conducting the survey, this should only be disseminated once it has become historical.

ii. In the limited circumstances where information on future intentions or expectations has been obtained from participants, this may only ever be disseminated in general and non-specific terms.

Meeting Guidelines

1. All meetings shall follow an agenda approved in advance by the CREFC Europe secretariat or the chairman of the meeting, who shall obtain legal advice as appropriate;

2. CREFC Europe shall endeavour to prepare minutes of all meetings or a record of discussions as appropriate. CREFC Europe's secretariat or the chairman of the meeting shall review a draft of the meeting minutes or record before these are finalised;

3. Meeting participants shall not discuss the current or future prices, elements of price (such as margins) or other competitive terms offered by any particular company;

4. Meeting participants shall not discuss any intention or willingness to go along with future prices or margins;

5. Meeting participants shall not discuss or suggest any form of coordinated reaction to the business initiatives of any third party;

6. Meeting participants shall not discuss or suggest willingness to deal with any third party;

7. Meeting participants shall not pressurise anyone into adopting any agreed-to business practices;

8. External presenters and other non-member participants at meetings shall be advised in advance of CREFC Europe's competition compliance guidelines and the need to comply therewith in the preparation and presentation of their papers and in their conduct at the meetings;

9. CREFC Europe shall ensure that the attendees at every meeting, seminar or conference organised or sponsored by CREFC Europe where two or more competitors are present are reminded of the principles set out in the Competition Compliance Declaration attached at Annex 2; and

10. CREFC Europe shall endeavour to ensure (for example through the reminder given at the start of each meeting or event) that to the extent any informal sessions or discussions take place, they comply with these guidelines.

ANNEX 2

COMPETITION COMPLIANCE DECLARATION

[*CREFC Europe shall ensure that the attendees at every meeting, seminar or conference organised or sponsored by CREFC Europe where two or more competitors are present are reminded of the principles set out in CREFC's EU/UK Competition Policy Statement, and specifically those set out in the Declaration below. For the avoidance of doubt, this exact wording need not be used provided that the principles are clearly stated.*]

This meeting will be held in compliance with the competition policy that has been adopted by CREFC Europe. In particular, it is important to remember that CREFC Europe's activities will not include any action, express or implied, formal or informal:

(a) To collectively fix, control, coordinate, maintain or otherwise affect prices, elements of pricing or other terms of competition of or concerning commercial real estate financing products or related services. Accordingly, competitors at this meeting shall not share or discuss the current or future pricing information or intentions, or other commercially sensitive information (including business strategy), of any company;

(b) To boycott or refuse to deal with any third parties;

(c) To engage in any activities, such as standard setting activities, that have an anti-competitive objective or effect; or

(d) To engage in any efforts to divide customers, allocate territories or markets, restrict sales volumes or in any way agree to control members' output of financial products or services.