



## **OEM MINING SUPPLIER FORUM COMPETITION LAW POLICY STATEMENT (JUNE 2020)**

- 1 The OEM (Original Equipment Manufacturers) Mining Supplier Forum ("**OEM Forum**") and its constituent members who are original equipment manufacturers in the mining sector ("**Members**"), recognise the importance of the mining sector to the South African economy as well as the role of competition law in addressing competition and public interest issues in South Africa. As such, the OEM Forum (including the management oversight board, Secretariat and all its office bearers, officials and officers) and its Members are committed to complying with the provisions of the Competition Act, No. 89 of 1998 ("**the Competition Act**").
- 2 The OEM Forum, facilitates meetings and events between Members, the government and other organisations involved in the mining industry pursuant to the OEM Forum's objectives stated in its Constitution. This Competition Law Policy Statement ("**Policy Statement**") is not intended to provide a comprehensive outline of the South African competition law framework but rather to raise awareness around the potential competition law risks arising from Member interactions and promoting Members' compliance with the Competition Act.
- 3 This Policy Statement contemplates the avoidance of any conduct which violates, or which appears to violate, the provisions of section 4 of the Competition Act, which provision regulates the conduct of firms in a horizontal relationship, i.e. a relationship between competitors or potential competitors. It is acknowledged that Members may generally be perceived by the competition authorities as being competitors (or potential competitors) of one another and, as such, would be subject to the provisions of section 4 of the Competition Act. In the circumstances, the contents of this Policy Statement shall apply to all direct and indirect interactions between Members, including but not limited to formal and informal meetings or gatherings, correspondence (written or verbal), board meetings, working groups, committees, sub-committees, social events and other functions of the OEM Forum.
- 4 This Policy Statement is binding on the OEM Forum and all its Members from the date of the Policy Statement's adoption. This Policy Statement shall be brought to the attention of, and be binding on all invitees and guests of the OEM Forum or its Members. As such, Members must acquaint themselves, and at all times act in accordance, with



the contents of this Policy Statement. In addition, it is the responsibility of each Member to seek advice from legal counsel if there is any uncertainty as to whether certain conduct or a proposed topic on a meeting agenda for discussion contravenes, or might contravene, the provisions of the Competition Act.

5 Members are reminded that a contravention of the prohibited practices provisions of the Competition Act may result in the imposition of an administrative penalty of up to 10% (first time offences) or 25% (repeat offences) of a Member's annual turnover in South Africa and its exports from South Africa during the firm's preceding financial year. Additional sanctions for breaching the provisions of the Competition Act include criminal sanctions for directors, managers and anyone who knowingly acquiesces to prohibited cartel conduct, being subjected to civil damages claims and sustaining reputational damage. Furthermore, contracts containing unlawful provisions under the Competition Act may be declared void and unenforceable by the competition authorities.

6 Therefore, Members are advised to avoid:

6.1 any conduct (including discussions) which involves any kind of collaboration, co-ordination, understanding, arrangement or agreement with other Members which could, directly or indirectly, give rise to price fixing, market allocation or collusive tendering in contravention of section 4(1)(b) of the Competition Act;

6.2 any conduct (including discussions) which involves any kind of collaboration, co-ordination, understanding, arrangement or agreement with other Members which could, directly or indirectly, give rise to a substantial prevention or lessening of competition in a particular market in contravention of section 4(1)(a) of the Competition Act; and

6.3 discussing or exchanging any competitively sensitive information which may lead to a contravention of the Competition Act, including, without limitation, the following information which is generally regarded as constituting competitively sensitive information:

6.3.1 costs, profit margins and/or pricing policies;



- 6.3.2 selling and/or purchase prices of goods or services, tariffs or other terms of trade (including discounts, margins, rebates, commissions and credit terms) with customers or suppliers;
- 6.3.3 price differentials between goods or services, mark-ups or allowances;
- 6.3.4 details of price changes, including the date/s proposed for price changes;
- 6.3.5 information of sales or purchase contracts with customers or suppliers;
- 6.3.6 details of customers or suppliers;
- 6.3.7 policies or strategies concerning the pricing, costs, production and/or distribution of particular goods or services, including targeted territories, market shares or customers; and/or
- 6.3.8 details of individual bids / tenders for contracts or company procedures for responding to bid invitations.

This Policy Statement shall be a standing agenda item at all meetings, events and functions held under the auspices of the OEM Forum. Members are also referred to the OEM Forum Constitution and Member Application form (last updated 15 October 2019) which contain details regarding, *inter alia*, how meetings at the OEM Forum will be conducted and how Members are required to conduct themselves in order to avoid possible contraventions of the Competition Act. Accordingly, those relevant provisions in the OEM Forum Constitution and Member Application form shall be read as being incorporated herein.

