Antitrust Regulation

Compliance Protocol

Translation originally issued in Spanish and prepared in accordance with the regulatory applicable.

In the event of a discrepancy, the Spanish-language version prevails.

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CHANGE CONTROL

VERSION	DATE	APPROVAL BODY	AUTHOR	SUMMARY OF CHANGES
0	7 July 2021	Sole Director	Compliance	Initial version
1	9 May 2022	Board of Directors	Compliance	Regulatory adaptation

1 Definitions

- **VINCI**: VINCI, S.A., parent company of VINCI Group.
- **COBRA SCE**: COBRA SERVICIOS, COMUNICACIONES Y ENERGÍA, S.L.U., parent company of COBRA IS.
- **COBRA IS or the organisation:** includes the parent company, COBRA SCE, and its various subgroups[1], as well as their respective subsidiaries and joint ventures in which Group companies are located.
- **Members of the organisation:** governing body, management, employees, volunteers of the organisation and other persons under the hierarchical subordination of any of the above.

[1] COBRA INSTALACIONES Y SERVICIOS, S.A.U. ("**COBRA**"), CONTROL Y MONTAJES INDUSTRIALES CYMI, S.A. ("**CYMI**"), CYMI BRASIL, S.L.U. ("**CYMI BRASIL**"), DRAGADOS OFFSHORE, S.A. ("**DRAGADOS OFFSHORE**"), ELECTRICIDAD ELEIA, S.L.U. ("**ELEIA**"), ENCLAVAMIENTOS Y SEÑALIZACIÓN FERROVIARIA, S.A.U. ("**ENYSE**"), ELECTRONIC TRAFIC, S.A. ("**ETRA**"), IMESAPI, S.A. ("**IMESAPI**"), INITEC ENERGÍA, S.A. ("**INITEC**"), INTECSA INGENIERÍA INDUSTRIAL, S.A. ("**INTECSA**"), MAETEL INSTALACIONES Y SERVICIOS INDUSTRIALES, S.A ("**MAETEL**"), MAKIBER, S.A. ("**MAKIBER**"), MANTENIMIENTO Y MONTAJES INDUSTRIALES, S.A. ("**MASA**"), SOCIEDAD ESPAÑOLA DE MONTAJES INDUSTRIALES, S.A. ("**SEMI**"), SICE TECNOLOGÍAS Y SISTEMAS, S.A. ("**SICE**") and SYNEOX RAIL, S.L. ("**SYNEOX**").

- **Governing body or, as the case may be, board of directors**: governing body of the specific company COBRA IS (COBRA SCE or any of its subgroups or corresponding subsidiaries), to the extent that it has been assigned the responsibility and fundamental authority of the activities, governance and the policies of that specific company.
- **Legal Compliance Body (LCB)**: The internal body of COBRA SCE, with autonomous powers for initiative and control, which is entrusted, among other missions, with the responsibility of supervising the functioning and observance of the Corporate Compliance Programme of COBRA SCE. The existence of the LCB responds, among others, to the requirements set forth in the Spanish Criminal Regulations (Article 31 bis of the Spanish Criminal Code) regarding the supervision of the Corporate Compliance Programme.
- **Corporate Compliance Officer (CCO)**: It is the internal body of the companies (subgroups and subsidiaries) of COBRA IS, with autonomous powers for initiative and control, which is entrusted, among other missions, with the responsibility of supervising the functioning and observance of the Corporate Compliance Programme of the corresponding company of the Group.
- **Third party**: A natural person or legal entity or body independent of the organisation.

2 Introduction

This Protocol establishes the fundamental rules that COBRA IS employees must adhere to with regard to compliance with competition law in coherence with VINCI standards.

The Protocol provides a general basic description of the laws and regulations protecting competition and its goal is to ensure that the business activities of COBRA IS companies are conducted in compliance with such laws and regulations.

Likewise, the Protocol facilitates the identification of potential anti-trust behaviours by third parties and provides guidelines for action on how to proceed in view of these types of situations.

3 Scope of Application

This Protocol applies to all COBRA IS employees, regardless of their hierarchical position within the organisation or professional qualification.

Particularly, it must be stated that business development, bids and procurement departments as well as local offices must be particularly sensitive as concerns compliance with these rules, ensuring compliance thereof by all employees.

Any doubts with respect to a practice that may be in conflict with competition law must be discussed with the CCO and, as appropriate, with the Legal department. For this purpose, the Ethics Channel digital communications management platform available on the website https://cobrais.integrityline.com may be used, which allows complaints to be made in writing and verbally, as well as via the telephone line associated with this platform and/or the enquiry channel set up for Compliance.

4 Competition law: purpose, regulatory framework and enforcement authorities

Competition law aims to sustain a market economy model where real and effective competition between firms results in the most efficient allocation of goods and services, which translates into lower prices, higher quality and an optimal level of technological innovation. Thus, the ultimate objective of competition law is to safeguard the play of competition, so that each economic agent makes its commercial decisions independently and companies do not engage in agreements or practices that may eliminate or restrict competition.

The applicable rules in the field of competition law are: (i) the basic European Union rules on this matter are found in Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFEU"); and (ii) at the national level, Articles 1 and 2 of Law 15/2007, of 3 July, on the Defence of Competition ("LDC"). These provisions need to be complemented by the case law interpreting them, as issued by the EU Courts and national courts.

The competition authorities are the entities in charge of ensuring compliance with the competition regulations, and have the power to inspect, investigate and sanction conduct that infringes the regulations. There are authorities at the European, national and, in the case of Spain, regional level. At the European level, the competent authority is the European Commission's Directorate-General for Competition.

In Spain, a distinction can be made:

- With powers to act at the national level, the Comisión Nacional de los Mercados y la Competencia ("CNMC") (in English National Markets and Competition Commission).
- At the regional level, the competition authorities of the Autonomous Regions.

5 Risks in relations with competitors

One basic principle of fair competition is that companies must determine their conduct in the market autonomously and independent of their competitors. This principle does not mean that companies are prohibited from adapting to practices they may observe in their competitors (in fact, market intelligence can be an essential aspect). However, you should never agree with competitors on how to behave in the market or participate in an exchange of strategic or commercially sensitive information.

The primary behaviours that are prohibited are explained below.

5.1 Cartels

“Cartel” means any verbal, written, express or implicit agreement in virtue of which two or more competitors agree not to compete against each other.

The notion of agreement in competition law is very broad. In particular, the law prohibits not only formal agreements (contracts), but any kind of agreement, formal or informal, written or oral. It applies even to agreements where the concurrence of wills of the parties has not been formally articulated (e.g. collusion through digital tools).

Cartels may have as their object:

- Price fixing or price coordination.
- The distribution of customers, suppliers, markets or territories (such as what is known as “non-aggression pacts”).
- Not soliciting certain customers, not contracting certain suppliers (“boycotts”) or otherwise jointly hindering a third party from engaging in their business in the market.
- Exchange of sensitive information between competitors on strategic variables such as future prices or quantities.

Also considered a cartel is an agreement between competitors to coordinate their behaviour as part of a tender procedure (what is known as “fraudulent bidding” or “bid-rigging agreements”).

It should be noted that public procurement is a competitive market and, as such, competition law is fully applicable. To this end, there is a whole set of unlawful practices, the common denominator of which is the alteration and/or manipulation of the outcome of public tenders. Such practices may consist of, for example:

- Agreeing with other bidders on the terms and conditions for the submission of bids or the distribution of contracts, directly or through subcontracting, on an ad hoc or sustained basis over time.
- Agreeing that certain competitors do not submit bids, make artificially high bids or bids that do not comply with the procurement documents in order to avoid being awarded the contract ("cover bids").
- Agreeing on any kind of compensation to companies that have not been awarded contracts, e.g. by subcontracting them for the partial performance of the contract.
- Declining an invitation to bid or not bidding when in response to a market or customer allocation or to compensate for a previous favour. It is therefore recommended to internally document the economic or commercial reasons for deciding not to bid for a tender, especially when an express invitation to participate has been received from the client.

The CNMC has identified the following factors, among others, as indications of the existence of a cover or accompanying bid[2]:

- A small number of bidders.
- Inconsistent bids from the same operator in similar tenders.
- Suspicious similarities between offers, poor content and format.

In relation to cartels, it should be clarified that:

[2] Guide to Public Procurement and Competition of the now defunct National Competition Commission (2011): https://www.cnmc.es/ambitos-de-actuacion/promocion-de-la-competencia/contratacion-publica

- Agreements between competitors do not necessarily have to be the result of direct agreements between the parties. These agreements may be articulated through an intermediary such as a consultant, supplier or subcontractor used by different competitors as the means to exchange the necessary information for the cartel ("*hub & spoke cartel*").
- Cartels violate competition law by definition meaning it is not necessary for an anti-competitive agreement to actually be performed or achieve the expected outcome. A failed cartel may also be investigated and sanctioned by the competition authorities.
- Please note that a company may be considered responsible for a cartel even if it has simply adopted a passive attitude. To this end, explanations and excuses of the likes of "*I was only listening to what others were saying*", "*I never responded to the email*" or "*we weren't going to compete for that tender anyway*" are not accepted by the competition authorities.
- Therefore, if there are any suspicions that a COBRA IS company may be directly or indirectly participating in a cartel, the CCO must be immediately informed in order to avoid any possible risk of violations and adopt the appropriate measures.
- The fact that coordination with competing undertakings for the submission of bids has been proposed, agreed or validated with the customer itself does not exclude the undertaking's liability vis-à-vis the competition authorities.

QUESTION: Would an agreement concluded between two subsidiaries of the same group of companies whereby they both agree on which tenders they will bid for, respectively, constitute a breach of competition law?

ANSWER: No, because **Article 101 TFEU (and/or Article 1 LDC) does not apply as a general rule to agreements between companies belonging to the same group**. An agreement or exchange of price sensitive information between two subsidiaries would also fall outside the scope of the rule and would therefore not be punishable as an anti-competitive agreement. However, the fact that they are two subsidiaries of the same group does not exempt them from complying, where applicable, with the requirements of public procurement law.

QUESTION: Employee *A* receives a message from a competitor's employee on his corporate email address, which in turn forwards an email from the bidding entity. *A* can see that, as the competitor claims, the bidding entity would prefer to contract with the competitor, so would welcome an accompanying bid to ensure the award of the contract to the competitor. Would the validation of an accompanying bid by the bidding entity release the companies from liability? What if the bidding entity were a private entity?

ANSWER: **No, no agreement between companies aimed at manipulating or altering the outcome of a tender, whether public or private, can be justified by consent or knowledge of the conduct on the part of the bidding entity**.

QUESTION: Company *A* has submitted a non-competitive bid with the intention of favouring the position of company *B* in the tender for a public works contract, as company B had done the same in order for *A* to be awarded a previous contract. However, in the end, *B* is the runner-up and is overtaken by *C*, which is awarded the contract thanks to a bid with a very aggressive price reduction. The contracting authority, observing signs of coordination between companies *A* and *B*, informs the relevant competition authority of the facts. Will the authority be able to sanction the conduct of *A* and *B*, given that their conduct did not alter the outcome of the tender?

ANSWER: **Yes. The agreement between the two companies constitutes an infringement of competition law by object, so it is not necessary for the agreement to have had effects on the market for the competition authority to be able to sanction the conduct.**

5.2 Other Agreements with Competitors

There are other agreements among competitors that may have a lawful purpose and the compatibility thereof with competition law depends on the specific circumstances, terms and conditions of the agreement and the market shares of the participating companies. Therefore, it is important to always check with the CCO and, as applicable, the Legal department before entering into any such agreements; particularly, the following:

- **Constitution of Temporary Joint Ventures (TJVs)**: although a TJV is a lawful figure, it may be potentially considered problematic from a competition standpoint if formed by competing companies.

  A lawful TJV allows companies that cannot submit a bid to join forces by collaborating to submit a joint bid. Therefore, it is an alliance with a pro-competition aim given that it makes it possible to submit more and better bids in a tender process.

  To avoid violating competition law when constituting a TJV, there must be proof that the real reason behind the constitution thereof (objective, credible and demonstrable) fosters competition in the tender process by allowing the submission of a bid that would not otherwise have been submitted or, as applicable, allowing the submission of a better bid.

  It should be noted that the validation of the formation of a TJV by the contracting authority does not guarantee the compatibility of the TJV in question with the competition regulations. Therefore, it is mandatory that any doubts regarding the creation of a TJV with competitors be referred to the corresponding CCO or to the Legal department, as well as to prepare a report justifying the need for the creation of such a TJV.

  For more information on the constitution of TJVs and their compatibility with competition law, please refer to the document on creating TJV included as Annex 2 to this document.

- **Subcontracting**: the subcontracting of or by competitors in the framework of tenders entails mainly two risks from the perspective of competition standards.

  Firstly, subcontracting should not be a mechanism to compensate competing companies for not having submitted a bid or for having submitted a bid with no real intention of competing for the contract award (see point 5.1 on cartels and bid rigging).

Secondly, the information exchanged with a competitor due to a service provision agreement must be restricted to that which is strictly necessary in order to engage in the subcontracting relationship.

As a general rule, the following precautions must be taken:

- Never request or receive information from the subcontracted company (when also a competitor) relating to other projects.
- Never request or receive information from a supplier/competitor relating to their costs or production capacity.

- **Joint procurement**: agreements between competitors to jointly purchase raw materials and other consumables generally do not constitute a violation of competition standards if the joint share of the undertakings does not exceed 15%. To this end, COBRA IS companies may partner with competitors to purchase consumables, in particular, if they do not reach this percentage.

  Nonetheless, it is important to note that certain precautions must also be taken in this area such as refraining from exchanging information on the volumes acquired by each competitor.

5.3 Other Contact with Competitors

- **Exchange of information**: violations of competition standards often involve the exchange of strategic or commercially sensitive information between competitors. To this end, COBRA IS employees must not under any circumstance communicate this type of sensitive information to a competitor or receive it from one.

  "Sensitive information" means the information a company would normally not share with a third party external to the organization and, in particular, information that may allow the recipient to know or foresee the company's conduct in the market. As a general rule, recent data are more sensitive than historical data and detailed or disaggregated data relating to a specific company are more sensitive than aggregate data.

  Some of the details normally considered sensitive from a competition perspective include:

  - Intentions of bidding in a tender process or submitting offers in relation to a specific contract;

- Current or future prices including discounts, sales and promotions;
- Sales figures, cost data or margins;
- Market shares, capacity data;
- The identity of clients or suppliers (real or potential);
- Information on manufacturing technologies, intellectual or industrial property rights and technical knowledge;
- Strategies, budgets, plans or business or marketing policies;
- Expansion or business contracting plans or plans to enter new markets or leave an existing market;
- Planned future offers, demand or supply conditions or financial indicators.

In general, information considered sensitive from a competition perspective must not be shared with anyone external to COBRA IS whether or not they are considered competitors unless authorized by the CCO.

> The **exchange of** sensitive commercial information with competitors **constitutes in itself a very serious infringement of competition standards**, without the need for the companies involved in the exchange to have made actual use of the information exchanged.

If a competitor suggests exchanging sensitive information, they must clearly and expressly reject receiving or exchanging any such information and communicate the incident to their superior and to the CCO. If information of this kind is received (by email or during a meeting, for example), the employee must contact the CCO which may help it decide the best means to proceed by distancing him/herself from the conduct, for example.

Adopting a passive attitude is not generally a good option as, as stated, merely receiving sensitive information may constitute a violation of competition standards.

It is therefore prohibited to exchange strategic information with a competitor or to extend the scope of the cooperation (subjective, objective or temporary).

- **Public disclosures**: public disclosures of economic data by a COBRA IS company may at times be necessary and justified or even be required by applicable regulations (depositing annual accounts with the Trade Register, for example). However, certain public disclosures may be interpreted by the competition defence authorities or courts as an invitation to competitors to participate in a certain commercial conduct depending on the context. As a result, the CCO must be consulted before any public disclosure of competition-sensitive information (relating to future price changes or forecasts, for example) or other matters that may influence competitors' commercial behaviour.
- **Visits to competitors' facilities**: visiting a competitor's facilities or inviting competitors to visit ours may serve a completely lawful purpose. However, these types of visits may be misinterpreted and generate a competition risk. If there are any doubts about the lawfulness of the purpose of such visits and the need to engage in them, first check with the CCO. Nonetheless, consultation is not normally necessary in a situation where an employee of a COBRA IS wishes to visit a competitor's facilities in the context of the constitution of a TJV, outsourcing or lawful procurement. To this end, it is important to clearly identify the lawful purpose of any visit in advance.
- **Agreements with suppliers**: are prohibited when their direct and indirect object is the limitation of territory or customers. Reaching agreements with suppliers that impose non-competition, non-recruitment of employees, management or exclusivity commitments is also prohibited.

5.4 Industry Associations

Business associations in the industry have a relevant role as forums for discussion and the exchange of opinions on important issues of common interest to the industry. Their activities as concerns technical requirements and specifications, quality control and applicable standards, laws and applicable regulations can bring substantial benefits for members and other operators. It should be recalled that participation in industry associations is allowed, subject to authorisation by the LCB.

Nonetheless, it is worth noting that industry associations may also pose important risks with regard to competition to the extent they are permanent forums of contact between competitors. Therefore, they must never facilitate the exchange of sensitive information among members such as prices and commercial strategies.

To this end, always remember that any COBRA IS company may be declared liable for a violation committed by an industry association it is a member of even if it has not actively participated in the violation.

> Mere attendance **or presence at the meeting** where an anti-competitive exchange of sensitive information has taken place shall be considered as participation in the anti-competitive conduct, unless the disengagement has been publicly and expressly stated.

- Guidelines for Behaviour at Industry Association Meetings
    - Carefully review the agenda before the meeting;
    - Be sure to be informed of the different items on the agenda and that there are no doubts about the lawfulness thereof; request explanations in relation to any item that is not very clear;
    - Do not attend if you believe inappropriate matters will be discussed;
    - Make sure the content of the meeting minutes is accurate, exact and corresponds to the discussions held during the meeting;
    - If inappropriate matters are raised during a meeting (discussions or conversations on sensitive commercial information, for example), distance yourself from the conversation and ask that your objections be recorded in the meeting minutes;
    - Leave the meeting unless the inappropriate conversation is ended;
    - Inform your superior or the CCO as soon as possible if any questions are raised about whether a conversation may be compatible with competition law.
    - Documents obtained in the framework of an industry association or through informal contacts with competitors that may contain indications of illegal contacts should not be destroyed but immediately made available to the company's legal services.

- **Market statistics and studies**: many industry associations or economic consultants produce market statistics for their respective sectors. These statistics are many times legal and useful to association members as well as to other operators. However, if these statistics allow companies to identify sensitive competitor data or facilitate coordination within the market, the conduct may constitute a competition violation.

  Therefore, the CCO must be consulted before exchanging information about an COBRA IS with a industry association or take part in industry surveys.

  On the other hand, statistics must not be acquired or received from an industry association or economic consultant that would identify individual competitor data (instead of aggregate data) or exchanged at a frequency higher than annual without first consulting the CCO. To this end, only conducting and participating in general market or aggregate surveys with historical commercial information (more than 12 months old) are allowed.

  The same principles should be applicable in relation to market studies and reports produced by market research organizations and independent consultants.

5.5 Follow-up meetings and contacts with competitors

This section aims to establish the specific obligation to report in detail any encounter with competitors in which conduct contrary to competition regulations may have taken place.

To this end, the guidelines to be followed by those subject to such regulations are:

- **The obligation to report the meeting**: any member of the organisation attending a meeting with competitors on behalf of COBRA IS shall submit the form annexed to this Protocol to the relevant Legal Compliance Body when:
  - In the course of the meeting, the participant has participated or has considered participating in conduct contrary to competition regulations.
  - In the course of the meeting, the participant has participated or has considered participating in conduct that raises reasonable doubts as to its compatibility with competition law.
  - In the course of the meeting, there is evidence of the existence of conduct contrary to competition standards carried out by third parties and which could directly or indirectly affect COBRA IS.

Such communication shall be made as soon as possible and, in any case, within a maximum of 7 calendar days from the date of the encounter or contact with competitors.

The form must be completed, indicating in detail the content of the meeting, the decisions taken and any doubts, indications of infringement or irregularities detected. The attached form should also be accompanied by all documentation relevant to the meeting (meeting notes and minutes, if any), as well as documents produced after the meeting.

The attached form and any other relevant documentation must be provided through the Ethics Channel digital communications management platform available at the website https://cobrais.integrityline.com.

The obligation to disclose the content and circumstances of the meeting applies both in the case of anticipated meetings and in the case of chance or casual meetings with competitors, irrespective of the context in which the meeting took place (industry associations, trade fairs and events or other informal forums).

- **Monitoring by the Legal Compliance Body**: the competent Legal Compliance Body shall review the communications or reports submitted by those subject to the regulations and, where appropriate, shall conduct the corresponding internal investigation in accordance with the COBRA SCE Corporate Defence Procedure Activation Protocol.
- **Disciplinary measures**: infringement of this Protocol shall entail the corresponding sanction in accordance with the legal and conventional regulations in force. The following is a non-exhaustive list of some of the conduct that violates this Protocol:
  - Repeated failure to submit the annexed form when it is required to be submitted under the provisions of this Protocol;
  - Repeated submission of the attached form after the maximum 7 calendar day deadline for submission; and,
  - The wilful omission or misrepresentation of material information in the attached form which could jeopardise the company or which has the effect of frustrating the effective control of the company.

6 Relations with Customers and Suppliers

Contact with competitors are high-risk behaviours from a competition perspective. On the contrary, contact with customers and suppliers are often a normal part of daily commercial operations and generally do not involve any competition risks. Nonetheless, certain practices may pose risks particularly in markets where a COBRA IS company has a strong current or future position.

It is important to note that having a dominant position in relations with competitors is not allowed.

Although it is legal to safeguard the company's interests, commercial relations and strengths should not be used to try to exclude other companies from the market or obtain undue profits. In general, the freedom of customers and suppliers to determine their conduct towards third parties in the market should be respected.

- **Market intelligence obtained from customers and suppliers**: COBRA IS companies must not force any customer or supplier to disclose sensitive information on competitors. Without prejudice to the foregoing, occasional communication of said information is often a normal part of commercial relations. For example, a customer may communicate the prices applied by a competitor as part of its price negotiation strategy. This is lawful and COBRA IS companies may use this information internally. However, the source of the data must be indicated in the very internal document generated when sensitive information is obtained on a competitor through this lawful means to prevent any possible suspicions that it was received from a competitor (i.e. "source or received from [name]" indicating the date).
- **A violation of competition standards by suppliers or customers**: finally, everyone must remain alert for possible violations of competition law by business partners who are also required to comply with them. Competition violations (a price cartel between COBRA IS suppliers or unlawful cooperation between customers, for example) may cause COBRA IS significant damage. These competition violations may also involve COBRA IS an intermediary in the exchange of sensitive information or the organisation of collusion between competitors which would lead to a risk of participating in a very serious competition violation ("*hub & spoke*" cartel).

If there are reasons to believe that a COBRA IS company may be a victim or be participating in any competition violation, communicate your suspicion to the CCO.

7 Document Creation

Any document written by a COBRA IS employee may some day become known by anti-trust authorities or courts. As part of an investigation into potentially anti-competitive conduct, the authorities have broad powers of investigation and may conduct onsite inspections without prior notification (also known as "*dawn raids*"). The purpose of these types of inspections is to search for evidence, for example, the commercial reasoning behind a certain conduct, contacts with competitors, etc.

The competition authorities have the power to access documentation, both on paper and in electronic format, and irrespective of the medium on which it is stored. This includes messages in social networks, messaging applications (such as WhatsApp), chat rooms, etc. The authorities have advanced computer tools to search for electronic documents and restore deleted files.

7.1 Guidelines

Given that any document drafted may potentially be known by a competition authority, thought should always go into the way in which such a document could be interpreted by a person external to the company. Cautious wording will not prevent being held liable if the conduct constitutes a violation of competition standards but it will prevent the unlawful behaviour from being misinterpreted and considered suspicious.

The following guidelines should always be considered when drafting documents:

- Avoid using language that suggests there is something hidden such as "destroy once read / do not copy / non-officially".
- Avoid using language that suggests the existence of market power or aggressive intentions such as "dominant / monopoly / control the market / eliminate the competition / exclude them from the market".
- Avoid using language that suggests the company and several competitors have coordinated their behaviour in the market such as "sector policy" / stabilize the market / joint efforts / the competitors allege their goal is / we should act in line with the competitors".

- Be specially cautious when referring to competitors and prices or other commercially sensitive information relating to them. If you need to mention said information in writing, you should indicate the lawful source thereof (for example, “received from [name], by customer [X], on [date] / in accordance with our internal estimates”).
- Clearly mark preliminary versions of documents as “DRAFTS”.
- Avoid speculating in writing about the lawfulness or unlawfulness of a certain conduct. Raise your questions with your superior or the CCO.

The **legal advising provided by external attorneys** (or documents produced for the purpose of requesting such advising) are covered by **attorney-client privilege** and the competition authorities cannot generally gain access to them. However, such advice should be treated and filed with caution. In communications with external lawyers, always stating that the communication is covered by professional secrecy is recommended.

8 Consequences of breaching fair competition regulations

Administrative penalties for the company

Companies involved in a very serious infringement of the regulations may be sanctioned by the competition authority with fines of up to **10% of the overall COBRA IS** turnover for the immediately preceding fiscal year. Horizontal agreements constituting cartels, as the most serious infringements of competition law, carry the highest penalties.

Sanctions for management and legal representatives

Competition authorities may also sanction members of the company's management bodies or legal representatives involved in the infringement with fines of up to **60,000** euros. Competition authorities may impose such fines on individuals who, **although they do not occupy the first level of management or do not form part of the company's governing body**, have the power to mark, condition or direct the company's actions in the market.

Corporate responsibility of Directors	If a member of the governing body engages in anti-competitive behaviour, he or she may thereby cause economic and reputational damage to the company he or she represents. The shareholders may hold them liable for such damages to the extent that they result from a breach of the law and also, where applicable, from neglecting the duties inherent in their office.
Compensations	Affected competitors, business partners and customers can claim compensation for damages suffered as a result of anti-competitive conduct by the company.
Criminal and labour liability	Infringements of competition standards can also lead to **criminal liability** both for the individuals involved and for the company itself (offences of bid-rigging, price-fixing, private-to-private corruption, bribery, etc.). On the other hand, such conduct may lead to disciplinary **consequences** for the employee, including **dismissal**.
A ban on public contracting	The competition authorities are empowered to impose the corresponding financial penalty on the company and/or its directors as well as a **prohibition on contracting with any government agency** for a period of up to **3 years**. This measure may be adopted even when the unlawful conduct sanctioned is not related to the disruption of the functioning of public procurement procedures.

The nullity of the agreements made	The regulations provide for the **radical nullity of anti-competitive** agreements, which may jeopardise the relationship with third parties and other operators in the market.
Reputational and defence costs	Being sanctioned for a violation of competition standards is highly damaging to the company's **image** in the market, which can lead to the **loss of potential investments, the termination of contracts by business partners or exclusion from tendering procedures.** On the other hand, defending the company in an administrative sanctioning procedure and in any subsequent court proceedings is very costly for the company on a human level (personnel working hours) and on a financial level (legal defence).

9 FAQ on Competition Matters

1. **What should I do if I have any questions about whether an agreement or other commercial practice is compatible with competition law?**

   If you have any questions about the compatibility of an agreement or practice with fair competition regulations, COBRA IS directors, management and employees should not enter into the agreement or engage in the commercial practice until they have consulted with the CCO and the Legal department. For this purpose, the Ethics Channel digital communications management platform available on the website https://cobrais.integrityline.com may be used which allows complaints to be made in writing and verbally, as well as via the telephone line associated with this platform and/or the enquiry channel set up for Compliance department.

2. **What should I do if I think a COBRA IS company may have violated competition law?**

   Report to the CCO as soon as possible, either through the relevant Ethics Channel, in person or by telephone. Whatever the means used to inform the CCO, due confidentiality or, where appropriate, anonymity of the informant shall be ensured.

   Do not destroy documentation (whether in paper or electronic format) relating to a potential breach and do not inform anyone except the Legal department and/or the CCO of each COBRA IS subgroup or the relevant company.

3. **What should I do if I think COBRA IS competitors or its business partners may have violated competition law?**

   Inform the CCO. In the event that you become aware of such a possible breach of regulations as a result of a contact or meeting with competitors, you must report in detail the circumstances and content of the meeting using the form annexed to the Protocol for monitoring contacts and meetings with COBRA IS competitors.

   Finally, the CCO will make recommendations and/or decide upon the proper measures to be adopted.

4. **What is the Leniency Programme?**

   Companies that bring their participation in a cartel to the attention of the competition authority may benefit from a full exemption from the administrative penalty (where they are the first company to inform the authority of the existence of the cartel) or a reduction of up to half of the amount of the fine provided that their contribution brings significant added value to the authority's investigative work. In addition, entering the Leniency Programme qualifies for exemption from the prohibition on contracting with the public sector. Finally, persons benefiting from an exemption from the payment of the fine under a Leniency Programme are also limited in their liability for possible claims for damages (Article 73(4). LDC).

   In order to obtain the above benefits, the leniency applicant must (i) provide detailed information on the cartel; (ii) cease its participation in the cartel; and (iii) cooperate fully, continuously and diligently with the competition authority during its investigation.

The **Leniency Programme** allows for an exemption of up to 100% of the administrative penalty for the company or its management, as well as an exemption from the prohibition on contracting. However, it **does not protect against the other consequences** of a competition violation set out above: private claims for damages (albeit with a limited degree of liability), nullity of agreements and/or contracts or reputational damage.

Annexes

Annex I. Basic Rules - Competition

1. Serious consequences due to a breach of fair competition regulations.

• Fines of up to 10% the overall turnover. • Individual fines for management and employees of up to 60,000 euros. • Significant damage to the COBRA IS companies' reputation and corporate relations.	• Claims for any damages caused. • A prohibition on contracting with government agencies for a maximum period of 3 years. • Disciplinary measures for management and employees.

2. Relations with Competitors

DO NOT agree to any aspect of the commercial conditions with customers or suppliers, particularly prices (including discounts or rebates).	**DO** unilaterally decide upon the commercial terms and conditions with customers or suppliers.
DO NOT agree to a collective boycott of customers or suppliers.	**DO** unilaterally decide which customers and suppliers to work with.
DO NOT agree upon market sharing with competitors such as a distribution of products, customers or geographic areas.	**DO** unilaterally decide the products to be commercialized, the customers to be served and the geographic areas to be covered.
DO NOT agree to or inform of participation in tender processes or bids submitted.	**DO** unilaterally decide whether to participate in a tender process and the conditions to be offered.
DO NOT decline an invitation to tender or refrain from bidding in response to a competitor's request.	**DO** decide at your own discretion which tenders to bid for and which contracts are not in the company's interest. Provide documentary justification for the reasons for declining the invitation to tender.
DO NOT constitute a TJV without analysing the actual need for bidding in a tender process with a competitor.	**DO** constitute a TJV with competitors if it allows both companies to submit a bid when they would otherwise not have done so.

DO NOT exchange information which allows coordination in the market or knowledge of competitors' future behaviour.	**DO** unilaterally decide upon the COBRA IS strategy and the commercial actions taken in the market.
DO NOT exchange information that is commercially sensitive, in particular information on bid prices, costs (including expected or estimated costs), discounts, decreases, customers, marketing strategies, investment plans or strategic decisions.	**DO** unilaterally decide upon prices and commercial conditions. If a competitor were to offer this type of information, it must be rejected. It is possible that said information may not be sensitive if outdated (more than 1 year), if it cannot be identified with the company or is publicly available.
DO NOT participate in comparative assessments ("*benchmarking*") without consulting first with the CCO or engage in surveys requiring the disclosure of information that may be identified with COBRA IS or reveal its competitive strategy.	**DO** participate in business associations if there are guarantees there will be no commercially sensitive information exchanged.
DO NOT remain in a meeting, whether formal or informal, or continue any conversation discussing commercially sensitive matters even if you are not actively participating.	**DO** act with precaution when contacting a competitor even if at informal or social gatherings.
DO NOT gather data on competitors without at least generally identifying the source of information.	**DO** obtain market intelligence information on customers when not required and there is no economic incentive for doing so.

3. Protocol for Incidents

DO NOT destroy documents or inform anyone outside COBRA IS.	**DO** inform the CCO by means of the form annexed to the Protocol for monitoring contacts and meetings with COBRA IS competitors.

Annex II. Protocol on Constituting a TJV with Competitors

1 Introduction

The purpose of this protocol is to offer a series of criteria with respect to the drafting of TJV constitution agreements in order to assess their compatibility with competition law.

2 General Principles on Creating TJVs

A TJV is a system of collaboration between companies for a specific, fixed or indeterminate period of time to develop or execute a construction job, service or supply. It does not have its own legal personality and the holders, which may be natural persons or legal entities, shall have joint, several and unlimited liability towards third parties for all actions taken through the TJV without prejudice to any possible rights of internal recovery between the parties.

Albeit lawful, TJVs are a potentially problematic form of operation from a Fair Competition Standards perspective[3]. It is a system of collaboration between companies where the companies often form such alliance to submit a joint bid in a tender process; however, they are actually competitors and, therefore, the contact between them may be considered contrary to such competition.

However, a lawful TJV allows companies that cannot submit or would not otherwise individually submit a bid to join forces with sector companies that also would not otherwise individually submit a bid and collaborate by submitting a joint bid. Therefore, it is an alliance with a pro-competition aim given that it makes it possible to submit more and better bids in a tender process.

Despite the above, the use of TJVs for anti-competition purposes is contrary to article 1 of Spanish Law 15/2007, of 3 July, on the Defence of Fair Competition and article 101 of the Treaty on the Functioning of the European Union. This violation of competition standards may lead to the opening of a sanctions case and, as applicable, may lead to the following consequences:

- The voidance under law of the TJV constitution agreement;

[3] Without prejudice to this, the CNMC has pointed out in Case S/0473/13, Postes de Hormigón, of 15 January 2015, that *"the creation of a joint venture does not constitute per se an anti-competitive agreement, since it is a legally permitted form of association and is also common in the business sector in our country", it has also been pointed out that "the assessment of its effect on competition must be made according to the characteristics of the companies that form it and the specific context in which it occurs"*.

- The imposition of administrative sanctions;
- A ban on contracting with public administrations in the future;
- Claims for damages by those harmed by the illegality;
- The possible commission of a criminal offence under articles 262 and 284 of the Spanish Criminal Code.

To avoid violating competition standards when constituting a TJV, there must be proof that the real reason behind the constitution thereof (which must be objective, credible and demonstrable) is different from collusion or an anti-competition pact and that the participation of several companies together fosters competition in the tender process by allowing the submission of a better bid or a bid that would not otherwise have been submitted.

3 General Principles on Creating TJVs

In order to constitute a TJV that is compatible with competition law, observing the following criteria is recommended:

- Ideally, each TJV should only do a single construction job, service or supply.
- A TJV constitution agreement must refer to specific construction jobs or projects (not uncertain jobs or projects which have not even been announced by the contracting authority or organization).
- The duration of the TJV should coincide with the duration of the project. In any case, the lifetime of the TJV should be restricted as much as possible to that which is strictly necessary.
- A TJV constitution agreement must include wording that manifests and provides grounds for the need to bid jointly for technical, professional or economic reasons. The wording should be as specific as possible.
- A justification report should always be prepared, even if short, of the need to bid through a TJV for each job.

4 Practical Guidelines on the Constitution of TJVs ("Red Lights")

SITUATIONS WHERE THE CONSTITUTION OF A TJV IS CONTRARY TO COMPETITION LAW

1. **The TJV is constituted by competing companies and the purpose is to prevent competition between them in a public or private tender process by submitting a single bid so they all receive at least a portion of the contract award.**

   The grounds, objective or purpose of constituting a TJV cannot be anti-competitive but rather must meet objective requirements of need.

SITUATIONS WHERE THE RISKS OF CONSTITUTING A TJV MUST BE CAREFULLY ANALYSED

In all of these cases, a casuistry analysis of the TJV must be done based on the companies comprising them and the context in which they are created.

1. **Some of the companies that comprise a TJV have the necessary material resources and personnel availability and the technical, professional and economic capacity required to participate individually in a tender process.**

   It is important to note that the Spanish competition authority has been very restrictive to this end to date. Pursuant to the precedents of the now-extinct Court of Competition Defence and the CNMC (Spanish National Markets and Competition Commission), "only when the companies involved alone lack sufficient capacity to perform the object of the tender and cannot bid individually may [a TJV] be established without any impact on competition[4]".

2. **Some of the companies comprising the TJV have submitted similar bids individually and have been awarded contracts, which proves they had sufficient technical, professional and economic solvency as demanded by the authority to be able to individually bid on the contracts and, as applicable, be awarded the contracts.**

   If one of the companies comprising the TJV has submitted a similar bid and has been awarded a contract, said company has already proven it complies with the requirements for individual submission and, therefore, could be suspect when submitting a bid along with other companies. If the circumstances of the company or market have not significantly changed, it could be difficult to justify the need to bid along with other companies.

[4] Resolution of 20 January 2003, File R 504/01, Home Respiratory Therapies.

3. **Two or more companies have previously tried to submit a bid through a TJV, but later participate individually.**

   This situation can arouse suspicions that the companies still intend to act in a coordinated manner during the tender process as well as after the contract is awarded (by submitting cover bids, outsourcing parts of the work to each other, etc.)

4. **The companies bid individually and then outsource the execution of the work with competitors.**

   This could be a risk factor if there is a market sharing agreement to ensure that, irrespective of the party awarded the contract, the work will be done jointly.

SITUATIONS WHERE A TJV MAY BE CONSTITUTED BUT THERE MUST BE JUSTIFICATION WITH OBJECTIVE BUSINESS OR ECONOMIC GROUNDS

In all of these cases, a casuistry analysis of the TJV must be done based on the companies comprising them, the work being contracted and the context. It is important to note that there are no clear precedents to this end.

1. **One or some of the companies comprising a TJV could bid individually, but would not have done so considering certain objective, lawful and verifiable reasons** such as the following:

   - A lack of capacity to submit a credible offer at a competitive price;
   - Customer preferences;
   - The impossibility of dedicating resources to several contracts, if awarded, and therefore only bidding on a few tenders or tenders that are more likely to be awarded;
   - Internal requirements as concerns minimum profitability or the maximum risk;
   - Costs for submitting an offer versus the possibility of securing the contract;
   - Other reasons.

2. **One or some of the companies comprising a TJV could bid individually, but prefer to do so through a TJV considering the savings created as a result of the constitution thereof**:

   - A better bid due to the combination of resources and experiences;
   - Several project managers;
   - Lower transaction costs for the customer;
   - Lower total bid preparation costs;
   - Other savings.

SITUATIONS WHERE CONSTITUTING A TJV IS NOT PROBLEMATIC

3. Companies comprising the TJV would not be able to bid individually.

TJVs are fully justified when there is an objective need by the companies to partner due to a lack of the companies' capacity to participate in a tender process individually.

For this to be true, a lack of sufficient productive, financial and investment capacity (*ability*) to submit a bid individually must be observable. The companies are then considered not to actually be competitors, not even potentially, meaning the combination of forces does not restrict the competition between them:

a) A lack of productive capacity: the companies do not alone have the technology, *know-how*, machinery, materials, raw materials, human resources, etc. needed to submit a bid individually.

b) A lack of financial capacity: the companies do not alone have sufficient resources or the capacity to submit financial guarantees or assume the risks needed to submit a bid individually.

c) A lack of investment capacity: the companies do not alone have the possibility of expanding their capacity for the period necessary or believe the investment to be made in order to submit a bid is not efficient.

All of this shall be understood in a dynamic context where companies submit bids for more than one tender process with more than one contracting authority which compromises their resources and financial capacity. All of these elements must be considered when evaluating a company's actual capacity to individually submit a bid in a tender process.

Annex III. What to do when there's a surprise competition inspection ("dawn raid")?

When the inspectors arrive

Competition authorities (European Commission, Spanish National Markets and Competition Commission (CNMC) or a regional competition authority) have broad powers of investigation and can carry out **unannounced inspections at company headquarters**. In the course of an inspection, and subject to the provisions of the investigation order and, where applicable, the court order, inspectors are authorised to:

- Inspect books and other company records.
- Make copies or take extracts from such documents.
- Conduct interviews with company staff, documenting the content of the interview.
- Access any room or space in the company, as well as commercial establishments and means of transport.
- Seal off any area, book or file.

Inspections are ordered by the corresponding competition authority. If the competition authority inspection staff has the **required court order**, the company is required to allow the inspection.

If one or more persons who identify themselves as officials of a competition authority come to the office, observe the following guidelines:

You must:

✓ Ask the inspectors who they wish to see and what the object of the inspection is.

✓ Ask them how many are in the group and which competition authority they represent (European Commission, CNMC or a regional authority) and request their accreditations.

✓ Politely suggest they wait in a meeting room–where there are no confidential documents or people external to the company–.

✓ Immediately inform the highest authority at the company present at the time and, as applicable, the head of the Legal department.

✓ Inform the inspectors that the company will request the presence of an attorney during the inspection.

After this, you must:

- ✓ Ask the inspectors to wait until the company's attorneys have arrived. Remember, however, that they cannot be denied entry and will normally not be willing to wait longer than 30 minutes.
- ✓ Ask the inspectors to identify themselves and write down each of their names.
- ✓ Given that several inspectors usually arrive, politely ask them to put on identification tags indicating they are inspectors of the competent authority.
- ✓ Ask for a copy of the Investigation Order authorizing the inspection and, if not provided, ask whether the inspection was also court-authorized.
- ✓ Send a copy of the Investigation Order and, as applicable, the court order authorizing the inspection by fax or email to the highest authority at the company and the head of the Legal department.

During the course of the inspection, under no circumstances should you:

AVOID

- Engaging in conversation with the inspectors except for courtesy formalities.
- Preventing the inspectors from entering company rooms or any of its offices.
- Warning other companies or associations that the company is being inspected.
- Destroying or concealing any physical or electronic documents during the course of the inspection.
- Being hostile or obstructing the inspection. There is a legal obligation to collaborate with inspections.
- Destroying or concealing documents, deleting emails or electronic documents from your computer, preventing access by inspectors to a particular office.
- Providing documents or information the inspectors do not expressly request.
- Answering questions on actions taken by the company or its representatives, the response to which may be self-incriminating.
- Providing documents prepared by or for attorneys outside the company or any communications with them. These documents are protected by professional secrecy.
- Providing information not related to the object of the investigation (defined in the Investigation Order authorizing the inspection).
- Breaking seals affixed during an inspection.

REMEMBER

- To ensure the inspectors are always accompanied by a company representative or an attorney ("*shadowing*").
- To make a copy of all documents (physical or electronic) provided to the inspectors.
- To take notes on everything that happens during the inspection (offices searched, questions asked, documents requested, possible incidents, etc.).
- To ask for time to check with your attorney if the inspectors demand explanations or information on potentially sensitive topics and ask that your attorney be present during such interviews.
- To request a signed copy of the Inspection Report and check with your attorney before signing it.
- To check with your attorney if you have any questions with regard to the company's rights and obligations.

Obstruction of an inspection by a competition authority may lead to the opening of a separate infringement case and the imposition of sanctions in addition to those that may result from the main investigation.

The following are some of the behaviours that can be considered as obstruction:

- Denying access to inspectors when they have proper court authorisation.
- Providing the authority with incomplete, incorrect, misleading or false information in the context of the investigation.
- Destroying or hiding documents, both physical and digital.
- Breaking any seals affixed by the authority.

QUESTION: Can inspecting personnel make copies of any documents found at the inspection site?

ANSWER: No. Competition authorities do not have unlimited powers in relation to obtaining documents. There are three main constraints that they must respect:

- **Documents outside the scope of the investigation.** The scope of the inspection must be clearly defined in the investigation order. (type of anti-competitive conduct and affected market). Thus, documents that do not fall within the scope of the investigation cannot be inspected or copied. **Personal documents.** Documents of a purely personal nature are excluded from the investigation. However, inspectors may take random samples in order to verify the private and personal nature of the documents. **Correspondence with external lawyers.** Communications between the firm and its external lawyers are covered by the lawyer-client privilege. To ensure confidentiality of information, the company should visibly indicate that such communications have been made within the framework of the lawyer-client relationship, e.g. by stating the name of the law firm in the subject line of any emails.

Annex IV. Form for communicating professionally relevant meetings and contacts with competitors

In accordance with the provisions of the COBRA SCE Protocol for Compliance with Competition Standards, this form must be completed and sent to the competent Legal Compliance Body based on the COBRA IS company to which the professional or professionals who have participated in the meeting with competitors belong, as soon as possible after the end of the meeting.

This form must be completed whenever conduct contrary to competition law has occurred or is suspected in a meeting. The obligation to complete this form covers both anticipated meetings and those that may take place by chance.

Important: Do not forget to include and attach to this form any relevant documentation or information available for the purpose of the meeting.

1. Information concerning the circumstances of the meeting

- Date of the meeting:
- Start and end time of the meeting:
- Indicate whether it was an anticipated meeting or chance encounter:
- Place and context of the meeting:
- Attendees from COBRA IS:

Name and surnames	Position or professional category	Approximate date of last meeting[1] attended with competitors

- Attendees from COBRA IS competitors:

[1] Including, where appropriate, chance or fortuitous encounters

Name and surnames	Position or professional category	Company	Indicate whether this person regularly attends meetings between competing companies

2. Information on the content of the meeting

- Purpose of the meeting:
- Agenda (as applicable):

  State expressly whether any matters other than or in addition to those on the agenda were discussed during the course of the meeting and, if so, whether such matters were reflected in the minutes of the meeting or equivalent document.

- Incidents or irregularities detected:
- Other considerations:

  Please answer the following questions if they apply to the meeting you are reporting on:

  - Is it a recurring forum or event?

  - Have you been in contact with the other participants before or after the meeting?

- Are you aware that any of the attending companies have competed or intend to compete in any public or private tendering procedure in which COBRA IS has also participated or intends to participate? Where appropriate, try to identify such a tender in as much detail as possible.

- Have any of the attendees shared information about your company's performance in relation to current or future tendering procedures?

- Have any of the attendees been interested in the performance of COBRA IS in relation to current or future tendering procedures?

- Were there any relevant aspects in relation to current or future tendering procedures discussed during the meeting?