

1. **Background on Canadian Competition Law and CARR**

In Canada, the *Competition Act*, which is enforced by the Competition Bureau, promotes the competitiveness of the Canadian economy and ensures that business activities are conducted in a competitive atmosphere. Adhering to competition laws is particularly important for any gathering where representatives of competitors meet, such as this one.

The *Competition Act* prohibits various types of anticompetitive conduct. Such prohibitions include the prohibition on agreements, conspiracies and arrangements between competitors (or potential competitors) to fix, maintain, increase or control the price of a product or service. Agreeing to allocate sales, territories, customers and markets for the production or supply of a product or service is similarly criminalized, as is agreeing to fix, maintain, control, prevent, lessen or eliminate the production or supply of a product or service.

However, the *Competition Act* permits participants and competitors to join together on committees like the Canadian Alternative Reference Rate working group (“CARR”) in order to make recommendations for industry reforms, best practices and other related activities. Because groups like CARR bring together competitors, care must be taken to ensure that no conduct becomes or appears anticompetitive. All CARR members and their representatives should review these guidelines carefully and share them with any of their staff involved in CARR projects and working groups. CARR is committed to strict compliance with law.

Participants in CARR and related meetings and activities are reminded of the importance of competition law compliance. Participants in CARR activities shall never discuss non-public firm-specific pricing, customers, suppliers, sales, output, production, supply or any other competitively sensitive information or future plans for their respective businesses. Where such information may be needed to undertake CARR’s legitimate activities, such information will be disclosed using an anonymization and aggregation process that will allow CARR members to review and discuss the aggregated materials without receiving any competitively sensitive information of particular CARR members. Discussions at CARR monthly meetings and subgroup meetings will be limited to those matters listed on the agenda for such meetings, unless specifically agreed to by the chair/co-chairs and clearly noted in the minutes.

It is the responsibility of each CARR member and its representatives to ensure that they are familiar with the requirements of the federal *Competition Act*, that they receive appropriate competition law training, and that they seek legal counsel where appropriate. All participants must be vigilant and ensure CARR complies with competition law at all times.

If any CARR member or its representative(s) have concerns about any topic being discussed or to be discussed at a CARR meeting or in connection with CARR’s activities, please raise such concerns with either of the co-chairs of CARR, with the Bank of Canada’s competition law counsel, or with the person(s) leading any particular meeting, and competition law advice will be sought before proceeding.

CARR members should know that violating Canada’s competition laws can result in serious consequences, including but not limited to reputational damage, monetary fines, civil claims and/or criminal charges.

2. **CARR's Competition Law Guidelines and Procedures**

(a) **Sharing or Discussing Competitively Sensitive Information:**

- (i) No competitively sensitive information should be shared or discussed by CARR members except as outlined here. In particular, CARR members should never directly share, discuss, or make any agreements with any other CARR members relating to any non-public pricing or fees information, or the process by which prices or fees are set, for the various products sold by their own financial institutions.
- (ii) To the extent that CARR members who are competitors of each other may be required to share any competitively sensitive information or potentially competitively sensitive information in order to further CARR's purpose, such information will be shared confidentially with a third party who is not a competitor of the members providing the information. The information will then be anonymized and aggregated, and will only be distributed as necessary to CARR members, and in all such cases, only in anonymized form.

(b) **Preventing the Exclusion of Market Participants:**

- (i) CARR members should refrain from entering into agreements in which they refuse to deal with someone or treat a particular firm or firms differently.
- (ii) CARR members should never agree to allocate customers or products.

(c) **Making Best Practices Recommendations:**

- (i) Best practices recommendations are perfectly acceptable, so long as they do not have the purpose or effect of excluding or eliminating competition in the pricing or sale of products or services. Best practices recommendations should seek to enhance the efficiency, stability and/or integrity of the market.

(d) **Presence of Competition Law Counsel:**

- (i) The Bank of Canada has engaged competition law counsel to attend all CARR monthly meetings and to attend certain CARR subgroup meetings.
- (ii) All CARR decisions are made at CARR monthly meetings and not at subgroup meetings.
- (iii) At meetings where competition law counsel is in attendance, counsel has been retained by the Bank of Canada to speak up and stop any discussions between CARR members that have the potential to raise competition law concerns. Such counsel can only provide legal advice to the Bank of Canada, and, for greater certainty, is not in a position to provide competition law advice to individual CARR members. To the extent individual CARR members or their representatives have any concerns, they are encouraged to consult with their own counsel.

(e) **Meeting Agendas and Minutes at Monthly Meetings:**

- (i) Every CARR monthly meeting and every CARR subgroup meeting will have, and follow, a written agenda.

- (ii) Minutes will be taken at the CARR monthly meetings and shared with participants in draft before being finalized and made public.
 - (iii) Participants will not engage in discussions outside of those on the written agendas, unless specifically agreed to by the chair/co-chairs and the discussion is clearly noted in the meeting minutes. In particular, any discussions involving information concerning the non-public prices for products or services for the various products sold by individual CARR member financial institutions are to be strictly avoided at all times, including at monthly meetings and in connection with all CARR-related activities.
- (f) Pausing Discussions of Potential Concern:
- (i) Where any CARR participant believes that a meeting's discussion is moving into areas of competition law sensitivity, such concern is to be made known to the meeting's co-chairs or chair. At CARR monthly meetings, the Bank of Canada's external counsel will be following the discussions and will do likewise.