

## OGUK COVID-19 Principles for Cooperation

- OGUK and its members recognise the severe challenges which the COVID-19 pandemic presents to the Oil & Gas industry.
- These suggested principles (SP) are intended to provide a framework and guidance during the period of COVID-19.
- The SP have been developed in the light of recent European Commission and Competition and Markets Authority (CMA) guidance on the application of Competition laws during the Covid-19 crisis. Both note that Competition law continues to apply, but that certain types of cooperation between competitors would be permitted in the light of the crisis.
- The CMA has, in addition, stated that it will not take action against cooperation essential to ensure the protection of consumers during the crisis and has made it clear that companies should not seek to exploit the crisis in a manner which could lead ultimately to customer detriment. Guidance on the relevant Competition law principles are set out at the end of the SP.
- The SP is not designed to duplicate or replace OGUK's 10 Supply Chain Principles, but to supplement them with a view to allowing for increased cooperation during the Covid-19 crisis. It has been developed as a result of the extraordinary threats of disruption posed by Covid-19. The other challenges facing the sector are not within the scope of the SP.
- The following principles and statements of intent are indicative only and not to be regarded as legally binding.
- OGUK will keep the need for the SP under review in the light of the development of the Covid-19 crisis (reviewing them at least at the beginning of each month), and will withdraw them as and when appropriate. In this respect, it will bear in mind the Government's approach to withdrawing the special exemptions established for other sectors of the economy (such as the supermarkets), whilst taking any differences between those sectors and the oil & gas sector into account. In any case, each supply chain participant is responsible for ensuring that any cooperation within the scope of the SP is time limited as necessary.

### Core Principles

#### *General*

- Supply chain participants (participants) should work in a cooperative manner where necessitated by COVID-19. They should cooperate in a positive spirit of transparency, fairness and trust where necessary during the Covid-19 crisis to ensure:
  - continuity and security of supplies;
  - the health and safety of personnel, including the ability of key workers to travel to and from their place of work, and perform their roles, safely;
  - the safe operation of facilities;
  - the protection of the environment; and/or

- the stability of the supply chain during the crisis.
- Participants should continue to compete, but should not unduly exploit the crisis in a manner which threatens the achievement of the aims above or in a way which is an abuse of any temporary position of power.
- Supply chain participants should recognise the important role played by smaller suppliers (including SMEs) in the supply chain and extend the principles in the SP, and the offer of cooperation, to such suppliers

#### *Payment / Financial*

- The importance of the protection of cash flow during the crisis should be recognised. Participants should work with each other to minimise cash flow impacts throughout the chain by ensuring prompt payments when due, reducing long payment terms where possible and pre-funding resource requisitions where practicable.
- Where participants cooperate to provide support within the scope of the SP, they will ensure that any financial (and other) terms are reasonable and will not seek to exploit any temporary position of power:
  - Provision should be on a cost (plus a reasonable margin if required) / no worse off basis; and
  - Participants will seek to agree an appropriate transfer of any liabilities and indemnities required – see further below.
- Details of costs incurred or prices charged to customers should not be provided where the cooperation is between competitors. Participants should be prepared to offer to be audited by third party auditors (after the event) if necessary to verify compliance with the general principle above – any rights of audit should be used in good faith only.

#### *Sharing Resources*

- It may be necessary to share personnel resources in respect of both physical and technical onshore or offshore support work.
- Where there is an identified shortage, it may be necessary, on a strictly temporary basis, for participants to share details of their product / goods / service resources and agree to work together by regularly listing their current capabilities and goods availability in order that urgent identified gaps can be filled. This should go no further (or longer) than necessary to adapt to shortages in essential supplies / services.
- It may be necessary for participants to work together to co-operate regarding storage / drop off points for goods in the event that some companies' locations will be closed for at least some of the time during the current crisis. Participants are not to coordinate on closure of locations (but may offer support once the decision has been taken by an operator independently to close a location).
- It may be necessary, where freight capacity is limited, to have regular discussions around freight movement and to co-ordinate freight movements where possible and practicable.
- It may be necessary to work together to streamline / connect processes to avoid duplication of effort and reduce pressure on downstream suppliers, again on a strictly temporary basis.

### *Miscellaneous*

- So far as practicable, those participants willing to consider cooperation of some form as envisaged by the SP and necessitated by the Covid-19 crisis should identify key contact individuals to control and expedite every request, and to ensure that the spirit of the SP is maintained.

### **Competition Law and other Legal Principles**

- Participants may need to cooperate to a greater extent during the crisis than they would ordinarily do. When doing so, they should comply with the Competition law principles set out in relevant CMA guidance (in particular, where cooperation between competitors is involved):
  - Participants should ensure that any cooperation (particularly between competitors) is strictly necessary to achieve one of the aims above – if one of the aims can be achieved by a participant alone, there may be no need for cooperation;
  - Any cooperation should be suitably limited in time and scope to that strictly necessary;
  - Any exchange of information should be kept to the minimum necessary – in particular, information on customer prices and/or future business plans should not be shared and information on each participant's costs should only be shared where strictly necessary;
  - Any cooperation should be limited to the performance of existing contracts or works / services already awarded, and should not extend to current or future tenders (without a separate assessment of the potential Competition law implications of such cooperation where between competitors); and
  - The cooperation envisaged in the SP is to be strictly limited in scope and duration, and should not be a cover for wider coordination.
- Necessity is to be assessed in the context of the short-term challenges created by Covid-19 and not the long-term / endemic challenges faced by the industry.
- Where cooperation involves discussions between competitors, those discussions should go no further than is necessary, should not involve the exchange of competitively sensitive information (other than where strictly necessary) and should be recorded in writing.
- The areas for potential cooperation identified above represent a non-exhaustive list of potential areas where cooperation may be necessary. However, these are not mandated and each party should assess whether cooperation is necessary within the Competition law principles noted above.
- Where the sharing of resources involves a sharing of personnel, the participants will work with each other to ensure this is done in a way that is GDPR compliant. In addition, the participants will not use any access to other party's employees (or their employee data) which they have gained solely by virtue of the arrangements put in place under the SP to solicit those employees for employment.
- There may be emergency situations in which the full legal terms of cooperation (in particular, around liability and indemnities) cannot be agreed in advance. The participants will act in good faith in this respect, and, where appropriate:

- will adhere to the industry standard Mutual Hold Harmless Agreement, or, if circumstances require, agree a set of mutual hold harmless provisions to apply in the relevant circumstances; and / or
- use LOGIC standard form contracts or alternative, short form contracts to facilitate rapid deployment and implementation in the circumstances outlined in the SP that reflect the urgency of the situation and agree to use a reasonable approach to their interpretation.
- To the extent not covered by legal agreements between them, the participants agree to respect the commercial confidentiality of other participants in respect of information received as a result of arrangements put in place pursuant to the SP. They will put in place appropriate measures to keep any such information confidential and ring-fenced internally.