

ED Question 13

Do you have views regarding whether the proposals could be adopted by national standard setters or IFAC member bodies (whether or not they have a regulatory remit) within the framework of national anti-trust or anti-competition laws? The IESBA would welcome comments in particular from national standard setters, professional accountancy organizations, regulators and competition authorities.

The respondents' responses for Q13 are divided into 2 groups:

1. Suggestions or views
2. No comments

1. Suggestions or views

Regulators and Oversight Authorities, Including MG members

5. Independent Regulatory Board for Auditors (IRBA)

We do not foresee any restrictions in terms of anti-competition legislation. The IRBA has the mandate to set ethical standards for registered auditors. The consideration of fees has and will continue to be viewed in terms of threats to auditor independence, i.e. ethical consideration.

8. National Association of State Boards of Accountancy (NASBA)

The U.S. SEC has requirements for publicly-traded companies in place and the State Boards, as required by state law, would be legally bound to uphold those SEC rules. To the extent IESBA's standards align with those of the SEC and federal and state antitrust legal requirements, they could be adopted in the U.S. and upheld by the State Boards.

10. United Kingdom Financial Reporting Council (UKFRC)

We do not believe these proposals would give rise to anti-trust and anti-competition issues. We are concerned that IESBA has gone too far in seeking to avoid such issues and consequently proposed requirements that are not as robust as they should be. As identified in our other answers there are areas where IESBA should be more restrictive, with exceptions provided where compliance would be prohibited by national law or regulation.

Independent National Standard Setters

15. Accounting Professional & Ethical Standards Board Australia (APESB)

APESB is not aware of any issues in relation to anti-trust or anti-competition laws that would prevent the adoption of the proposals in the Fees Exposure Draft in Australia.

As mentioned in our comments on question 11, companies in Australia are currently required under the Australian Accounting Standards (and listed entities are required by legislation) to disclose the fees paid to auditors in their financial statements. Therefore, we do not think the disclosure of fee-related information will conflict with the provisions of the Australian competition laws.

However, it may be prudent for the IESBA to consider obtaining legal advice as to how these proposals interplay with competition legislation across different jurisdictions.

Professional Accountancy Organizations (PAO's)

18. Accountancy Europe (AE)

We do not have any specific comments on anti-trust and anti-competition issues. However, we are concerned that the requirement to collect and publicly disclose fee information of firms which are not members of the audit firm's network might cause anti-competition issues. If such a proposal is taken forward, we urge IESBA to seek legal advice with respect to at least the G-20 jurisdictions.

21. Botswana Institute of Chartered Accountants (BICA)

The large extent of the code should remain global to allow common understanding particularly with respect to network firms operating in various jurisdictions. Adoption to jurisdictions could be allowed in coming up with a specific threshold to account for varying degree of economic factors.

22. Chartered Accountants of Ireland (CAI)

We are not aware of any issues here on this matter

23. Compagnie Nationale des Commissaires aux Comptes (CNCC)

Some provisions of the proposed ED do not favor a free competition within the audit market and may lead to greater concentration on both the PIE and Non-PIE audit market.

This is the case of the restrictions on the size of audit clients entailed by the fee dependency provisions in the ED which are much more stringent than the extent and which do not leave much opportunity for a medium sized firm to grow in both size and experience with larger clients.

This is also the case when the ED requires the disclosure of the fees paid to other firms or when it requires the public disclosure of the fee dependency of the firm towards the audit client.

Such provisions will disqualify some firms of the audit market, when they are in fact perfectly independent and objective in issuing their opinion.

24. CPA Australia (CPAA)

CPA Australia is not aware of any impediment within the Australian Competition and Consumer Law framework which would prevent adoption of the proposed amendments by National Standard Setters.

29. Instituto dos Auditores Independentes do Brasil (Ibracon)

We recognize that some jurisdiction might have this potential conflict on the rules and regulation. Therefore, we recommend the inclusion of an application material in the Code requiring attention to the local laws regarding anti-trust and anti-competition.

30. Inter-American Accounting Association (IAA)

We believe that member organizations, due to their obligations, should adopt without restrictions the proposals made.

31. Institute of Chartered Accountants of Bangladesh (ICAB)

Yes, we believe that the proposals in the Exposure Draft could be adopted by the national standard setters as well as by the professional accountancy organization. We found no adverse impact relating to proposals stated in the Exposure Draft.

32. Institute of Chartered Accountants in England and Wales (ICAEW)

Most of our members who carry out audits do so within the United Kingdom, where there are extensive requirements on fee dependency and transparency already. These have not caused problems with competition authorities. In past dealings with competition authorities on fee-related matters, the principal concern has been to ensure that our requirements do not prescribe specific fee rates, a matter not addressed by the Code or these proposals.

33. Institute of Chartered Accountants Ghana (ICAG)

No, we don't have any other view. We believe that the proposals are very appropriate and will lead to transparency and fairness in audit reporting

34. The Institute of Chartered Accountants of India (ICAI)

The Institute of Chartered Accountants of India has been established by the Chartered Accountants Act, 1949 for regulation of the profession of chartered accountants in India.

We are of the view that the proposals could well be adopted by us within the framework of national anti-trust or anti-competition laws.

35. The Institute of Chartered Accountants of Scotland (ICAS)

From a UK perspective, we are not aware that the IESBA proposals would create anti-trust or anti-competition issues

36. Institute of Certified Public Accountants of Uganda (ICPAU)

ICPAU believes that these proposals could be adopted by standard setters within the framework of national anti-trust or anti-competition laws.

37. Institute der Wirtschaftsprüfer (Germany) (IDW)

To the extent that the proposed changes go beyond national law, and are detrimental to particular segments of the audit market, they could violate anti-trust or anti-competition laws. We have commented on certain issues that we believe may be detrimental to SMPs, for example. The Code may be problematical to the extent that the effect of the proposals is to make it effectively much more difficult for SMPs to perform work or accept certain engagements.

38. Mexican Institute of Public Accountants (IMCP)

Yes, the proposals could be adopted by IFAC members bodies.

41. Japanese Institute of Certified Public Accountants (JICPA)

We are concerned that the setting out of resignation causes by the JICPA, a professional accountancy body, could lead to infringements of Japan's Antimonopoly Act. We are in process of confirming our concern with the Japan Fair Trade Commission, and as of the date of this comment letter we have not obtained their final opinion.

42. Korean Institute of Certified Public Accountants (KICPA)

As the ED is not in violation of the anti-trust or anti-competition laws, we believe the proposals can be adopted in Korea.

43. National Board of Accountants & Auditors – Tanzania (NBAAT)

We have a view that the proposals should be adopted by IFAC member bodies to enhance consistency.

44. Malaysian Institute of Accountants (MIA)

Since audit fees are perceived to be closely linked to independence, we would like to propose that national accountancy bodies engage with their respective anti-competition authorities to consider the impact of these proposals.

It could be impracticable if specific standards are set in relation to the level of fees charged by audit firms. We believe that audit fees should reflect the following considerations:

- Skills, knowledge, level of training and experience required of the persons engaged with the service.
- Time spent in conducting the work.
- Degree of responsibility associated with the service.

45. Malaysian Institute of Certified Public Accountants (MICPA)

We believe we can adopt these principle-based rules within the national Competition Act 2010.

48. South African Institute of Chartered Accountants (SAICA)

As the material is not recommending the setting of audit fees but rather the disclosure of fees we do not foresee any problems. The disclosure of audit fees charged or charges for services is not anti-competitive in and of itself.

49. Wirtschaftsprüferkammer (Germany) (WPK)

In principle adoption of fee-related provisions in Germany should be feasible within the framework of anti-trust and anti-competition laws as long as the fee-related provisions are linked to the criteria independence of

the auditor and quality of audits and do not stipulate for any limits (minimum or maximum amounts for an audit).

Firms

51. BDO International Limited (BDO)

BDO's global organization extends across 167 countries and territories. Each firm is bound by jurisdictional law and it is our understanding that certain BDO firms may not be able to implement certain aspects of the proposal due to national anti-trust laws. In such cases, we would expect that such firm(s) would apply R100.3 which states:

A professional accountant shall comply with the Code. There might be circumstances where laws or regulations preclude an accountant from complying with certain parts of the Code. In such circumstances, those laws and regulations prevail, and the accountant shall comply with all other parts of the Code.

53. Deloitte Touch Tohmatu Limited (DTTL)

It is our view that the Board's proposal that that the principal auditor be required to obtain confidential and competitively sensitive fee information from a non-network component auditor raises questions under the antitrust and competition laws of the European Union, the United States, and other jurisdictions. Although legitimate standard setting activities are generally viewed as procompetitive, information exchanges in the standard setting context are not immune from antitrust scrutiny. In the European Union, for example, exchanges of fee or future price information between competitors may be prohibited by article 101(1) of the Treaty on the Functioning of the European Union (TFEU). Other types of confidential information exchanges may raise concerns under the TFEU, U.S. antitrust laws (particularly Section 1 of the Sherman Act), or the competition laws of other jurisdictions to the extent they threaten to harm competition and are not reasonably related to a procompetitive purpose.

54. Ernst & Young Global Limited (EY)

The determination of whether the proposals could be adopted by national standard setters or IFAC member bodies within the framework of national anti-trust or anti-competition laws must be answered by those parties. We strongly support a Code that is recognized and fully adopted in all jurisdictions. Thus, if jurisdictions have concerns that they will not be able to adopt the proposed standard, IESBA should address such matters before finalizing a standard.

55. Grant Thornton International Limited (GTIL)

GTIL understands that IESBA has engaged external, legal counsel on this matter and will await the legal opinion issued.

60. PricewaterhouseCoopers International Limited (PWC)

While we do not readily see why the provisions on fee-disclosures would result in anti-competitive behaviour, if there is a risk that this might be an issue in certain jurisdictions, we recommend that the Code includes application material to the effect that users should be aware of any anti-trust requirements in the territory and comply therewith.

61. RSM International Limited (RSM)

We believe that there is a risk that some of the proposals might impact free competition within the audit market which could, in turn, lead to greater concentration on the audit market and so we do not agree with some of the proposals, as outlined above.

Others

63. IFAC Small and Medium Practices Committee (IFAC SMPC)

No further comment from the SMPC. However, we would expect PAOs in each jurisdiction to contact their competition authorities to ensure the feasibility of these fee-related proposals if they foresee any future complication. IESBA may also need to engage further with the wider regulatory community to be able to quantify the impact of all the proposals in the Basis of Conclusions.

3. No comments

Regulators and Oversight Authorities, Including MG members

1. Bangladesh Financial Reporting Council (BFRC)
2. Committee of European Auditing Oversight Bodies (CEAOB)
3. Capital Market Authority – Saudi Arabia (CMASA)
4. Irish Auditing & Accounting Supervisory Authority (IAASA)
6. International Forum of Independent Audit Regulators (IFIAR)
7. International Organization of Securities Commissions (IOSCO)
9. Malaysian Audit Oversight Board, Securities Commission (MAOB)

Public Sector Organizations

11. Office of the Auditor General of New Zealand (AGNZ)
12. Auditor General of South-Africa (AGSA)
13. United States Government Accountability Office (GAO)

Preparers and Those Charged with Governance

14. Japan Audit & Supervisory Board Members Association (JASBMA)

Independent National Standard Setters

16. New-Zealand Auditing & Assurance Standard Board (XRB)

Professional Accountancy Organizations (PAO's)

17. Joint Submission by Chartered Accountants Australia and New Zealand and the Association of Chartered Certified Accountants (ACCA-CAANZ)
19. American Institute of Certified Public Accountants Professional Ethics Executive Committee (AICPA)
20. Association of the Italian Audit Firms (ASSIREVI)
26. European Federation of Accountants and Auditors for SMEs (EFAA)
27. Institute for Accountancy Profession in Sweden (FAR)
28. Hong Kong Institute of Certified Public Accountants (HKCIPA)
40. Institute of Singapore Chartered Accountants (ISCA)
46. New York State Society of CPAs (NYSSCPA)
47. Royal Netherlands Institute of Chartered Accountants (NBA)

Firms

50. Baker Tilly International (BKTi)
56. KPMG IFRG Limited (KPMG)
57. Mazars Group (MAZARS)
58. Moore Global Network Limited (MOORE)

Others

62. US Center for Audit Quality (CAQ)
64. Porus Pavri (PP)